



Economic and Social Council

Distr.: General
24 August 2011

Original: English

Economic Commission for Europe

Meeting of the Parties to the Convention on
Access to Information, Public Participation
in Decision-making and Access to Justice
in Environmental Matters

Compliance Committee

Thirty-first meeting

Geneva, 22–25 February 2011

Report of the Compliance Committee on its thirty-first meeting

Compliance by Kazakhstan with its obligations under the Convention

I. Implementation of decision III/6c of the Meeting of the Parties

1. At its third session, the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) adopted decision III/6c on compliance by Kazakhstan with its obligations under the Convention (ECE/MP.PP/2008/2/Add.11).

2. Through decision III/6c, the Meeting of the Parties endorsed the findings of the Committee that, despite the efforts undertaken by Kazakhstan to implement most of the provisions of decision II/5a, the Party concerned had not yet achieved compliance with article 9, paragraph 4, in conjunction with article 9, paragraph 3, of the Convention, in particular with respect to practical possibilities to appeal against a failure to act by public authorities (ECE/MP.PP/2008/2/Add.11, para. 5).

3. The Meeting of the Parties invited Kazakhstan to thoroughly examine, with appropriate involvement of the public, the relevant environmental and procedural legislation, as well as the relevant case law, to identify whether it sufficiently provided judicial and other review authorities with the possibility to provide adequate and effective remedies in the course of judicial review (ECE/MP.PP/2008/2/Add.11, para. 6).

4. It further invited the Party concerned to report to the Meeting of the Parties through the Compliance Committee, six months before the fourth meeting of the Parties, on the

measures taken in connection with bringing about full compliance with article 9 of the Convention and ensuring effective implementation of article 6 (ECE/MP.PP/2008/2/Add.11, para. 7).

5. On 2 October 2008, the secretariat forwarded decision III/6c to Kazakhstan with a reminder concerning the requests and recommendations of the Meeting of the Parties contained therein.

6. On 7 October 2010, the secretariat sent a reminder to Kazakhstan about the report due at least six months before the fourth session of the Meeting of the Parties.

7. At its thirtieth meeting (14-17 December 2010), the Committee noted that, despite the reminder sent to the Party concerned through the secretariat, the Party concerned had failed to provide the information requested according to decision III/6c.

8. On 11 January 2011, the secretariat sent a second reminder to Kazakhstan.

9. At its thirty-first meeting, the Committee noted with regret that the Party concerned had not responded to its requests.

10. No further written input was received from Kazakhstan in advance of the Committee's thirty-first meeting. In particular, the Party concerned did not submit a report on the implementation of the measures referred to in decision III/6c to be submitted pursuant to paragraph 7 of that decision.

11. The Committee took note of the information in the national implementation report of Kazakhstan for the period 2008–2011. While welcoming the report and the general information on the implementation of the Convention contained therein, the Committee noted that the report did not contain any information on measures taken to implement provisions of decision III/6c. In particular, it noted that the report referred to legislation adopted in 2007, before the third session of the Meeting of the Parties in Riga, and that there were some contradictions in the legislation, especially with respect to public participation procedures in carrying out State environmental *expertiza* and the public environmental *expertiza* system.¹

12. In order to ensure the comprehensive review of compliance by Kazakhstan, the Committee invited Kazakhstan, as well as the communicant whose communication had initially triggered the review of compliance by Kazakhstan, to comment on the draft of the present report. No comments were received from either.

II. Conclusions

13. The Committee wishes to note the initial engagement of the Party concerned, demonstrated by its correspondence with the Committee before decision III/6c was adopted. The Committee regrets, however, that this initial willingness to engage in the process does not appear to have been coupled with any measures to implement the recommendations contained in decision III/6c.

14. Having considered the information available to it, the Committee concludes that Kazakhstan did not implement the measures referred to in paragraph 7 of decision III/5c of the Meeting of the Parties.

¹ “State environmental review” or “ecological expertise” (here *expertiza*) mechanism formally established in the former Soviet Union in the second half of the 1980s

III. Recommendations

15. In the light of the above, the Committee recommends that the Meeting of the Parties may wish to (a) confirm its earlier finding of non-compliance, and (b) consider whether to issue a declaration on non-compliance or a caution as set out in paragraph 36 of the annex to decision I/7, taking into account that no steps have been taken by the Party concerned to implement the measures referred to in decision III/6c.

16. The Meeting of the Parties may also wish to explore the possibility that an expert mission, with the involvement of Committee members and other experts, as appropriate, be undertaken with a view to assisting the Party concerned in implementing the measures referred to in decision III/6c, and to invite the Party concerned to accommodate such a mission.
