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in Decision-making and Access to Justice
in Environmental Matters

Compliance Committee

Fifty-eighth meeting

Budva, Montenegro, 10–13 September 2017

Item 8 of the provisional agenda

Communications from members of the public

Findings and recommendations with regard to communication ACCC/C/2013/93 concerning compliance by Norway

Adopted by the Compliance Committee on 19 June 2017*

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* This document was submitted late owing to additional time required for its finalization.



I. Introduction

1. On 26 June 2013, Mr. Ole Kristian Fauchald (the communicant) submitted a communication to the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) alleging the failure of Norway to comply with the Convention's provisions on access to environmental information and access to justice.¹
2. Specifically, the communicant alleges that the Party concerned failed to comply with its obligations under the Convention in connection with its alleged refusal of the communicant's request for access to the legal assessment referred to in the preparatory works for Act No. 100 of 19 June 2009 relating to the Management of Biological, Geological and Landscape Diversity (Nature Diversity Act), concerning the relationship between the geographical scope of some of the provisions of the Act and public international law. In that regard, the communicant alleges the Party's non-compliance with article 4, paragraphs 3 (c), 4, 6 and 7, and article 9, paragraphs 1 and 4, of the Convention.
3. At its forty-second meeting (Geneva, 24–27 September 2013), the Committee determined on a preliminary basis that the communication was admissible.
4. Pursuant to paragraph 22 of the annex to decision I/7 of the Meeting of the Parties to the Convention, the communication was forwarded to the Party concerned on 17 December 2013.
5. The Party concerned responded to the allegations by letter dated 14 May 2014.
6. At its forty-sixth meeting (Geneva, 22–25 September 2014), the Committee agreed to discuss the content of the communication at its forty-seventh meeting (Geneva, 16–19 December 2014).
7. The Committee discussed the communication at its forty-seventh meeting, with the participation of the communicant and representatives of the Party concerned. During the discussion, the Committee invited the Party concerned to provide English translations of several documents and to respond in writing to a question from the Committee after the meeting.
8. The Party concerned provided its reply to the Committee's question on 12 January 2015 and provided the requested translations on 2 February and 23 March 2015.
9. The Committee agreed its draft findings at its virtual meeting on 27 March 2017. In accordance with paragraph 34 of the annex to decision I/7, the draft findings were then forwarded for comments to the Party concerned and the communicant on 29 March 2017. Both were invited to provide comments by 26 April 2017.
10. The communicant and the Party concerned provided comments on the Committee's draft findings on 26 and 27 April 2017, respectively, and the communicant provided additional comments on the comments of the Party concerned on 2 May 2017.
11. The Committee proceeded to finalize its findings in closed session. After taking account of the comments received, the Committee made some minor amendments and agreed that no other changes to its findings were necessary. The Committee adopted its findings at its virtual meeting on 19 June 2017 and agreed that they should be published as

¹ Documents concerning this communication, including correspondence between the Committee, the communicant and the Party concerned, are available on a dedicated page of the Committee's website (<http://www.unece.org/environmental-policy/conventions/public-participation/aarhus-convention/ftwg/envppcc/envppcccom/acccc201393-norway.html>).

a formal pre-session document for its fifty-eighth meeting. It requested the secretariat to send the findings to the Party concerned and the communicant.

II. Summary of facts, evidence and issues²

A. Legal framework

12. Environmental information is defined in section 2 of the Act of 9 May 2003 No. 31 Relating to the Right to Environmental Information and Public Participation in Decision-making Processes Relating to the Environment (Environmental Information Act):³

Environmental information means factual information about and assessments of:

- (a) The environment,
- (b) Factors that affect or may affect the environment, including
 - projects and activities that are being planned or have been implemented in the environment
 - the properties and contents of products
 - factors related to the operation of undertakings, and
 - administrative decisions and measures, including individual decisions, agreements, legislation, plans, strategies and programmes, as well as related analyses, calculations and other assumptions used in environmental decision-making,
- (c) Human health, safety and living conditions to the extent that they are or may be affected by the state of the environment or factors such as are mentioned in [subparagraph] (b).

The environment means the external environment, including archaeological and architectural monuments and sites and cultural environments.

13. Section 11 (“Exemptions”) of the Environmental Information Act sets out the grounds upon which an information request may be refused:

A request for environmental information may be refused if there is a genuine and objective need to do so in a specific case and the information, or the document containing the information, may be exempted from public disclosure pursuant to the Freedom of Information Act.

When considering whether there is a genuine and objective need pursuant to subsection 1, the environmental and public interests served by disclosure shall be weighed against the interests served by the refusal. If the environmental and public interests outweigh the interests served by refusal, the information shall be disclosed.

If there are grounds for refusing to disclose part of the requested information, the remaining information shall be disclosed provided that this does not give a clearly misleading impression of the contents.

² This section summarizes only the main facts, evidence and issues considered to be relevant to the question of compliance, as presented to and considered by the Committee.

³ English version available at <http://www.regjeringen.no/en/doc/laws/acts/environmental-information-act.html?id=173247> (accessed 31 August 2017).

14. Section 13 (“Administrative procedures”) of the Environmental Information Act describes the procedure for refusing an environmental information request:

...

If a request for environmental information is refused, the public authority shall indicate the provision pursuant to which the refusal is made, provide a brief explanation of the refusal, and inform the applicant of the right to request further grounds for the refusal and the time limit for doing so, and of the right of appeal and the time limit for lodging an appeal. ...

The applicant may, within three weeks of the date when notification of the refusal was received, request further explanation of the grounds for the refusal. The grounds shall be provided as soon as possible and at the latest ten working days after the request for further grounds was received. The grounds shall be provided in writing if the applicant so requests.

15. Section 15 (“Appeals”) of the Environmental Information Act sets out the process for appeals:

Refusal of a request for environmental information may be appealed to the immediately superior administrative agency ... The time limit for lodging an appeal is three weeks from the date when notification of the refusal has reached the party concerned. If no answer has been received to the request for information within two months after it was received by the public authority, this shall be regarded as a refusal that may be appealed. If the applicant has requested further explanation of the grounds for the refusal in accordance with section 13, sub-section 5, the time limit for an appeal shall be interrupted.

...

The provisions of the Freedom of Information Act relating to appeals apply insofar as they are appropriate to appeals against a refusal by a public authority to provide environmental information.

16. More generally, access to information is regulated by the Act of 19 May 2006 No. 16 relating to the right of access to documents held by public authorities and public undertakings (Freedom of Information Act).⁴

17. Pursuant to the first paragraph of section 11 of the Environmental Information Act, the exemptions set out in the Freedom of Information Act are the basis for exemptions from the right of access to environmental information as well.⁵ Section 14 (“Documents drawn up for an administrative agency’s internal preparation of a case (internal documents)”) of the Freedom of Information Act states:

An administrative agency may exempt from access any document which it has drawn up for its internal preparation of a case.

The first paragraph does not apply to:

- (a) Any document or part of a document containing the final decision of the administrative agency in a case,
- (b) General guidelines for the administrative agency’s case processing,

⁴ English version available at <https://www.sjofartsdir.no/en/shipping/legislation/laws/act-of-19-may-2006-no-16-relating-to-the-right-of-access-to-documents-held-by-public-authorities-and-public-undertakings/> (accessed 31 August 2017).

⁵ Response to the communication, p. 25.

(c) Reasons for proposals that have been decided by the King in Council, and

(d) Brief descriptions of the content of documents and the like, but not if such a description reproduces internal assessments.

18. Section 15 (“Documents obtained externally for internal preparation of a case”) of the Freedom of Information Act states:

Where it is necessary in order to ensure proper internal decision processes, an administrative agency may exempt from access any document that the agency has obtained from a subordinate agency for use in its internal preparation of a case. The same applies to documents which a ministry has obtained from another ministry for use in its internal preparation of a case.

Moreover, exemptions may be made in respect of parts of any document containing advice on and assessments of how an administrative agency should stand on a case, and which the agency has obtained for use in its internal preparation of the case, where this is required in the interest of satisfactory protection of the government’s interests in that case.

The exemptions in this section apply correspondingly to documents concerning the acquisition of a document as mentioned in the first and second paragraphs, and to notices of and minutes from meetings between a superior and subordinate agency, between ministries and between an administrative agency and any person who gives advice or assessments as mentioned in the second paragraph.

This section does not apply to documents obtained as part of the general procedure of consultation on a matter.

19. Section 11 (“Enhanced access to information”) of the Freedom of Information Act states:

Where there is occasion to exempt information from access, an administrative agency shall nonetheless consider allowing full or partial access. The administrative agency should allow access if the interest of public access outweighs the need for exemption.

20. With regard to the relationship between the two acts, the Guidance on the Freedom of Information Act states on pages 28–29, *inter alia*:

To a large extent the rights of access pursuant to the [Environmental Information Act] and the [Freedom of Information Act] have the same coverage. However, since the rights of access pursuant to the [Environmental Information Act] are to a certain extent stronger than the rights pursuant to the [Freedom of Information Act], public authorities covered by both acts will have to consider a request for access in relation to the provisions of both acts, unless of course access is provided pursuant to the [Freedom of Information Act]. This duty applies regardless of whether the request for information specifies any of the acts or not.⁶

21. With respect to review procedures, the powers of the Parliamentary Ombudsman are regulated by the Act of 22 June 1962 No. 8 relating to the Parliamentary Ombudsman for Public Administration (Parliamentary Ombudsman Act).⁷ Section 10 (“Completion of the Ombudsman’s procedures in a case”) of that Act, *inter alia*, provides:

⁶ Response to the communication, p. 24.

⁷ English version available at: <http://app.uio.no/ub/ujur/oversatte-lover/data/lov-19620622-008-eng.pdf> (accessed 31 August 2017).

The Ombudsman is entitled to express his opinion on matters within his sphere of responsibility.

The Ombudsman may call attention to errors that have been committed or negligence that has been shown in the public administration. If he finds sufficient reason for so doing, he may inform the prosecuting authority or appointments authority of what action he believes should be taken in this connection against the official concerned. If the Ombudsman concludes that a decision must be considered invalid or clearly unreasonable or that it clearly conflicts with good administrative practice, he may express this opinion. If the Ombudsman believes that there is reasonable doubt relating to factors of importance in the case, he may make the appropriate administrative agency aware of this.

...

The Ombudsman may let a case rest when the error has been rectified or with the explanation that has been given.

22. Section 11 (“Notification of shortcomings in legislation and in administrative practice”) of the Parliamentary Ombudsman Act states that: “If the Ombudsman becomes aware of shortcomings in acts, regulations or administrative practice, he may notify the ministry concerned to this effect”. Pursuant to the second paragraph of section 4 (“Sphere of responsibility”) of the Act, the sphere of responsibility of the Ombudsman does not include, inter alia, “decisions adopted by the King in Council”.

B. Facts

23. The communication relates to the preparatory works for the Nature Diversity Act. Section 7.2.4.3 of the preparatory works (Ot.prp. No. 52 (2008-2009)) stated that: “An assessment of the relationship of the provisions to international law has been carried out, which has shown the necessity for amendments and adjustments of the provisions if they are to be applied outside of 12 nautical miles.”⁸ The communicant requested access to “this assessment”⁹ from the Norwegian Ministry of the Environment, now the Ministry of Climate and Environment, by email of 12 January 2011, pursuant to the Environmental Information Act.

24. The Ministry identified 25 documents, partly internal documents, partly documents exchanged between it and other ministries that it considered relevant to the communicant’s request. The request for information was made two years after the adoption of the Nature Diversity Act, and was made for the purpose of writing an academic article concerning the geographical scope of the Act and the establishment of marine protected areas.

25. On 19 January 2011, the Ministry rejected the communicant’s request.¹⁰ His request was considered to fall outside the definition of environmental information in the Environmental Information Act. The decision to refuse access was based on the exemptions for internal documents in the Freedom of Information Act. According to the Ministry’s reply, it was considered that the need to safeguard the confidentiality of the internal decision-making procedures of the government outweighed the public interest served by disclosure.¹¹

⁸ Communication, p. 1.

⁹ Communication, annex 6.

¹⁰ Email from the Party concerned, 2 February 2015, annex 1.

¹¹ Ibid.

26. On 20 January 2011, the communicant filed a complaint with the Parliamentary Ombudsman.¹²

27. By formal statement of 17 November 2011, the Ombudsman expressed doubts regarding the Ministry's interpretation of the definition of "environmental information" and consequently that the requested information was outside the scope of the Environmental Information Act.¹³ The Ombudsman furthermore considered that the explanation of the need to refuse access to the requested information was not elaborated in a satisfactory manner. Finally, the Ombudsman pointed out that the Ministry should have explicitly considered the possibility of providing partial access to the information requested.¹⁴ The Ombudsman concluded that the Ministry erred in failing to inform the communicant about the availability of administrative complaint procedures, and that there were reasons to raise questions regarding the Ministry's findings concerning the applicability of the Environmental Information Act and whether there was a genuine and objective reasons for denying access to the information.¹⁵ The Ombudsman requested the Ministry to reconsider the request for access to information.¹⁶

28. On 26 January 2012, the communicant sent a letter to the Ombudsman and to the Ministry stating that "as more than two months have passed since the Ombudsman's decision (dated 17 November 2011), and I have not received any message from the Ministry of the Environment, I deem it necessary to [take a new initiative in this case]. I remind the Ministry that according to section 13 of the Environmental Information Act, there is a duty to decide a request for information within 15 working days."¹⁷ The communicant asked the Ombudsman to consider this case according to section 11 of the Parliamentary Ombudsman Act: "If the Ombudsman becomes aware of shortcomings in acts, regulations or administrative practice, he may notify the ministry concerned to this effect".¹⁸

29. On 30 January 2012, the Ombudsman sent a reminder to the Ministry¹⁹ and responded to the communicant that it would await the Ministry's response.²⁰ On 2 February 2012, the Ministry informed the claimant that the answer from the Ministry would be delayed²¹ and that they did not consider the deadline for responding to information requests to be applicable to that response.²²

30. On 19 October 2012, the Ministry provided its reconsideration of the request for information to the Ombudsman. Its decision was to refuse access to the requested information.²³

31. On 23 October 2012, the Ombudsman asked the communicant for comments on the decision.²⁴ The communicant provided comments on 31 October 2012 regarding six issues:

¹² Ibid.

¹³ Ibid., annex 4.

¹⁴ Response to communication, p. 4.

¹⁵ Communication, p. 1.

¹⁶ Email from the Party concerned, 2 February 2015, annex 4, p. 7.

¹⁷ Communication, annex 10, p. 1. In his comments on the draft findings, the communicant amended the English translation he himself had provided as annex 10 to his communication. The amended text is shown in square brackets.

¹⁸ Ibid.

¹⁹ Email from the Party concerned, 2 February 2015, annex 5.

²⁰ Communication, p. 2, referring to annex 11 (in Norwegian).

²¹ Response to communication, p. 4.

²² Communication, p. 2, referring to annex 12 (in Norwegian).

²³ Email from the Party concerned, 2 February 2015, annex 6.

²⁴ Communication, p. 2, referring to annex 13 (in Norwegian).

(a) the time spent reconsidering the request, and the failure of the Ombudsman to ensure that the Ministry responded within a reasonable time; (b) the failure of the Ministry to communicate to the communicant the reasons why the reconsideration was delayed; (c) disagreement regarding the justification for continued denial of access to the information; (d) disagreement regarding the decision not to provide access to parts of the information; (e) a request that the Ombudsman, on the basis of the document provided by the Ministry, consider whether the Government in this case had misled the Parliament; and (f) a request that the Ombudsman consider the Ministry's implementation of the Environmental Information Act.²⁵ The communicant again asked the Ombudsman to consider the case under section 11 of the Parliamentary Ombudsman Act.²⁶

32. Having received the claimant's comments to the Ministry's answer, on 8 November 2012 the Ombudsman requested the Ministry's comments, on 21 December it informed the claimant and the Ministry of the status and expected conclusion from the Ombudsman, and on 7 March 2013 it informed the claimant of the delayed conclusion.²⁷

33. On 10 June 2013, the Ombudsman provided its final views.²⁸ The Ombudsman stated that the reconsideration provided by the Ministry was "somewhat general" but concluded, with some doubt, that it would not take further action.²⁹ The Ombudsman stated that it would keep the communicant's comments in mind in further communication with the Ministry.³⁰

C. Domestic remedies

34. The communicant's use of domestic procedures is described in paragraphs 23 to 33 above. The communicant states that no other international procedure has been initiated in this case.³¹

35. The communicant submits that the Ombudsman is in general the preferred option in cases concerning access to information from ministries. He further alleges that a submission to the Ombudsman in reality pre-empts other remedies, largely due to the time that the Ombudsman process takes. The communicant states that bringing an administrative complaint to the superior administrative authority, in this case the King in Council (i.e., the government), would have pre-empted bringing the case to the Ombudsman because, in accordance with section 4, paragraph 2, of the Parliamentary Ombudsman Act, the Ombudsman is not competent to review decisions of the King in Council (see para. 22 above). He further voiced concerns that, in any event, such a complaint procedure would be ineffective owing to the reviewing authority and the authority that originally took the decision's joint interest in maintaining confidentiality.

36. The communicant did not attempt to bring his case before the courts of the Party concerned. He submits that the Norwegian courts are rarely used for cases concerning access to information as such cases are expensive and time-consuming, and consequently do not provide any effective remedy.³² In that regard, he cites a press article discussing a case in which the applicant allegedly spent more than a year working on a case.³³

²⁵ Communication, p. 2, third paragraph, and see annex 14.

²⁶ Communication, p. 2.

²⁷ Response to communication, p. 4.

²⁸ Communication, p. 2, referring to annex 4.

²⁹ Email from the Party concerned, 2 February 2015, annex 7.

³⁰ Communication, p. 2.

³¹ Communication, p. 5.

³² Ibid.

³³ See Kristine Foss, "Dokumentinnsyn til tingretten", updated 27 April 2015. Available from <http://offentlighet.no/Nyhetsarkiv/2013/Dokumentinnsyn-til-tingretten> (in Norwegian).

37. The Party concerned submits that domestic remedies were not exhausted or unreasonably prolonged, and it is not correct that they did not provide an effective and sufficient means of redress.³⁴

38. It submits that the time spent by the Ombudsman to thoroughly handle the complaint has not pre-empted other available remedies. While a claimant must choose between a complaint to the Ombudsman or an administrative appeal to the King in Council,³⁵ bringing the case to the court would have been possible.³⁶ The Party states that there are no specific time limits for bringing cases to court pursuant to sections 1-3 of Act No. 90 of 17 June 2005 relating to Mediation and Procedure in Civil Disputes (Dispute Act).³⁷ As long as a request directed by a person at public authorities has been rejected, and the decision to reject has not since been changed by the authorities themselves or through an appeal or a complaint to the Parliamentary Ombudsman, the claimant could still be considered to have a relevant claim towards the public authority that decided to reject the request.³⁸

39. With regard to the case cited in the press article, the Party concerned states that the claimant referred to in the article was not complaining about having spent one year to work on the case, but rather was pointing out that his case was an important reminder of the possibility to bring a rejection of a request for information to the courts.³⁹

40. As regards the costs of bringing a court challenge, the Party concerned submits that the costs of bringing a case to court will depend on the legal procedure involved and the time a case is expected to take. For a case brought before a district court, the standard court fee is 4,300 Norwegian krone (€474) for a one-day hearing. It is only in special cases that a main hearing is stipulated to last for more than one day. The Party concerned also submits that costs for legal assistance may also be incurred, although in this case the communicant's professional background (law professor at the University of Oslo) indicates that legal assistance might not be needed. It adds that, for claimants that are in need of legal assistance, possibilities for free legal aid exist.⁴⁰ Furthermore, if the claimant in a court action is successful, he or she is entitled to full compensation for his or her legal costs from the opposite party.⁴¹ The Party concerned also notes that, if not successful, the court can exempt the claimant from liability for legal costs in whole or in part if weighty grounds justify an exemption, for instance if there was justifiable cause to have the case heard because of uncertainty.⁴²

D. Substantive issues

Definition of environmental information – article 4, paragraph 1, in conjunction with article 2, paragraph 3

41. The communicant alleges that the Ministry of the Environment and other public authorities of the Party concerned have failed to establish a procedure to determine whether

³⁴ Response to communication, p. 29.

³⁵ Environmental Information Act, section 15, last para.; Freedom of Information Act, section 32, para. 1; and Ombudsman Act, section 4, para. 2 (b). Response to communication, p. 28.

³⁶ Response to communication, p. 28.

³⁷ An English translation of the consolidated version of 2013 is available on the World Intellectual Property Organization website from <http://www.wipo.int/wipolex/en/details.jsp?id=15536>.

³⁸ Response to communication, pp. 28-29.

³⁹ Response to communication, p. 29.

⁴⁰ See <http://sivilrett.no/free-legal-aid.307230.no.html>.

⁴¹ Dispute Act, section 20-2 (2).

⁴² Dispute Act, section 20-2 (3). Response to communication, p. 29.

information is to be regarded as “environmental information” when public authorities make their initial assessment of whether access to information should be granted or refused. The communicant alleges that public authorities will therefore rely on the Freedom of Information Act only and not on the specialized Environmental Information Act. To support his submission, the communicant cites the electronic service for seeking access to information in which he alleges all references to the legal basis for confidentiality of certain information are to the Freedom of Information Act.⁴³ He also submits that the measures taken by the Party concerned to ensure the implementation of the Environmental Information Act are almost exclusively taken within the Ministry of Climate and Environment, which he claims is inadequate as it does not take into account that access to environmental information is equally relevant for other ministries, e.g., the Ministry of Petroleum and Energy.⁴⁴

42. The Party concerned submits that its legislation (the Freedom of Information Act and the Environmental Information Act) and guidance provided on its application make it clear that it is always necessary to consider whether a request for access to information concerns environmental information. The Party concerned refers in that regard, *inter alia*, to the Guidance on the Freedom of Information Act which clarifies the relationship between the two acts (see para. 20 above).⁴⁵

43. The Party concerned further submits that article 4 of the Convention does not impose any obligation to introduce specific procedures for determining whether information is to be regarded as “environmental information”. The Party concerned submits that it is left to Parties as to how to implement the obligation that environmental information is made available upon request and which measures to introduce in that regard.⁴⁶

44. With regard to the categorization in the online platform referred to by the communicant, the Party concerned notes that this is only an initial classification and need not be complied with by the responsible public authority.⁴⁷ The Party concerned further notes that it has, without being under a legal obligation to do so, decided to introduce some measures to improve the handling of requests for access to environmental information, namely, including a reference to the Environmental Information Act on the web portal mentioned by the communicant, amending internal guidance documents and including a standard message in its internal distribution of requests for access to information.⁴⁸

Exemption for not disclosing environmental information – article 4, paragraph 3 (c)

45. The communicant alleges that the Party concerned failed to comply with article 4 of the Convention by not giving access to the information subject to his request, namely, the legal assessment regarding the limits that public international law implies for the Parliament concerning its decision regarding the geographical scope of the Nature Diversity Act. The communicant submits that the request was made two years after the adoption of the Act for the purpose of writing an academic article.⁴⁹ The communicant states that the requested information concerns legal analyses, rather than political statements, in which he

⁴³ Communication, p. 4.

⁴⁴ Communicant’s opening statement for the hearing at the Committee’s forty-seventh meeting, 17 December 2014, p. 5.

⁴⁵ Response to communication, p. 24.

⁴⁶ *Ibid.*, p. 25.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*, pp. 25-26.

⁴⁹ Communication, p. 2.

has no interest.⁵⁰ He also submits that therefore only documents 3, 5, 10 and 21, as identified by the Party concerned, are relevant to his request.⁵¹ He further states that the authorities of the Party concerned make available legal assessments provided by Ministry of Justice as a matter of routine, including those that may concern international law issues, and it is not clear why a different standard should apply to documents produced by the Ministry of Foreign Affairs.⁵²

46. The Party concerned submits that access to the requested information was validly withheld in accordance with the exemption for “internal communications of public authorities” in article 4, paragraph 3 (c), of the Convention.⁵³

47. The Party concerned submits that the requested documents consist of different ministries’ views on the geographical scope of the Nature Diversity Act in the light of public international law. The Party concerned alleges that the need for confidentiality in the correspondence and preliminary discussions was vital to reach an agreement in this case.⁵⁴ It submits that the requested information was exchanged within and between ministries for the purpose of reaching an agreement on the proposal for the geographical scope of the Act, which was decided both on the basis of a legal assessment and on the basis of political deliberations. The Party concerned alleges that this situation is reflected in the documents, where the legal and political discussions are not distinctly separated.

Taking into account the public interest served by disclosure – article 4, paragraph 3 (c)

48. The communicant alleges that the Ministry of the Environment has consistently failed to consider and specify how it has taken into account the “public interest served by disclosure” and submits that it is not sufficient that the Ministry merely states that it has considered the issue.⁵⁵ He submits that the geographical scope of the Act in question was very controversial, which he asserts is an argument in favour of disclosure, but the Ministry’s reconsideration of his request only referred in one sentence to the public interest in disclosure.⁵⁶

49. The Party concerned considers that it fulfilled the requirement in article 4, paragraph 3 (c), of the Convention to take the public interest served by disclosure into account. The Party concerned submits that the public interest served by disclosure was taken into account when the Ministry considered the claimant’s request for information, even though initially the refusal was based on the Freedom of Information Act and not the Environmental Information Act, and even though no detailed explanation was given on how the public interest was taken into account until after the complaint to the Ombudsman.⁵⁷ The Party concerned submits that, in the initial refusal of 19 January 2011, the Ministry stated that the need to safeguard the confidentiality of the internal decision-making procedures of the government outweighed the public interest served by disclosure.⁵⁸ It alleges that this was further explained in the Ministry’s response to the Ombudsman of 12 April 2011 and even more thoroughly explained in the Ministry’s reply to the Ombudsman of 19 October 2012.⁵⁹

⁵⁰ Communicant’s opening statement for the hearing at the Committee’s forty-seventh meeting, p. 1.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Response to communication, p. 5.

⁵⁴ Ibid., p. 10.

⁵⁵ Communication, pp. 2-3.

⁵⁶ Opening statement for the hearing at the Committee’s forty-seventh meeting, 17 December 2014, p. 2.

⁵⁷ Response to communication, p. 9.

⁵⁸ Ibid., pp. 9-10.

⁵⁹ Ibid., p. 10.

Separation of information exempted from disclosure – article 4, paragraph 6

50. The communicant alleges that, in contravention of article 4 of the Convention, the documentation in this case demonstrates that the Ministry failed to conduct any real assessment of whether parts of the information could be disclosed. He further alleges that the authorities did not provide any reasons for why disclosure of parts of the documents was refused.⁶⁰

51. The communicant further alleges that there seems to be generally no effective procedure within the Ministry of the Environment, and perhaps more broadly in the public authorities of the Party concerned, to effectively assess whether information should be partially disclosed.⁶¹

52. The Party concerned submits that the requirement to make the non-exempted parts of the requested information available was fulfilled, since all the documents requested and the information therein were considered to be covered by the exemption from disclosure.⁶² The Party concerned concedes that the possibility of making the remainder of the information available was not mentioned in the initial refusal and in the initial correspondence with the Ombudsman, because the Ministry up to that point had interpreted the definition of “environmental information” in section 2 of the Environmental Information Act too narrowly, and consequently wrongly assumed that the requested information fell outside the scope of article 4, paragraph 6, of the Convention as reflected in section 11, paragraph 3, of the Environmental Information Act.⁶³ The Party concerned submits, however, that these shortcomings were corrected by the Ministry in its last answer to the Ombudsman.⁶⁴ It asserts that a real assessment was therefore indeed made and reasons were given for the conclusion that none of the requested information could be disclosed.⁶⁵

53. With regard to a general procedure to assess whether part of the information can be disclosed, the Party concerned submits that the Convention does not impose an obligation in that regard, and refers to its argumentation concerning the assessment of whether information is to be classified as “environmental” (see para. 43 above) and the measures adopted in response (see para. 44 above).

Stating the reasons for refusing an information request and providing information on access to the review procedures – article 4, paragraph 7

54. The communicant alleges that the Party concerned did not give sufficient reasons for its decision to refuse access to the requested information. The communicant submits that the initial refusal does not indicate whether and how the Ministry has considered the interests in providing access to information.⁶⁶ He also submits, as noted in paragraph 50 above, that the authorities did not provide any reasons why disclosure was not provided to parts of the documents.⁶⁷

55. The Party concerned maintains that it has fulfilled the requirements of article 4, paragraph 7, of the Convention to state the reasons for the refusal to provide the requested information.

⁶⁰ Communication, p. 3 and opening statement for hearing at Committee’s forty-seventh meeting, p. 7.

⁶¹ Communication, p. 4.

⁶² Response to communication, p. 13.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid., p. 15.

⁶⁶ Communication, p. 3.

⁶⁷ Communication, p. 3, and opening statement for hearing at Committee’s forty-seventh meeting, p. 7.

56. The Party concerned submits that the Ministry's initial refusal of 19 January 2011 stated that the information requested consisted of documents prepared as part of internal preparations within the ministries, that the need to safeguard the confidentiality of the internal decision-making procedures of the government outweighed the public interest served by disclosure, and that the request therefore was refused pursuant to sections 14 and 11 of the Freedom of Information Act. The Party states that the reasons given may be considered a bit brief and the initial rejection did not contain information on the right to request further grounds for the refusal and to appeal pursuant to section 13 of the Environmental Information Act. It further submits that, during the handling of the Ombudsman complaint, the Ministry admitted that it had erred in its interpretation of the Environmental Information Act and in omitting this information.⁶⁸ The Party concerned alleges, however, that while there may have been shortcomings in the reasons given in the initial refusal, any such shortcomings were corrected by the Ministry due to the Ombudsman's proceedings.⁶⁹ In this regard, the reasons for the refusal were further explained in the Ministry's reply to the Ombudsman of 12 April 2011 and even more thoroughly in the Ministry's reply to the Ombudsman of 19 October 2012.⁷⁰

Time frames for reconsidering the decision to refuse access to information – article 4, paragraph 7

57. The communicant alleges that the time spent by the Ministry to reconsider the request for information amounted to non-compliance with articles 4 and 9 of the Convention, because the Ministry spent approximately 11 months (17 November 2011–19 October 2012) to reconsider the request, despite the communicant's further letter to the Ministry and Ombudsman on 26 January 2012.⁷¹

58. The communicant submits that both his further letter of 26 January 2012 and the request from the Ombudsman to reconsider the initial decision should be regarded as requests for information and should thus have been responded to within the time frame prescribed for an access to information request.⁷² The communicant points to the fact that the complaint was filed on 20 January 2011 and was finalized only on 10 June 2013, when the Ombudsman provided its final views, i.e., almost two-and-a-half years later.⁷³

59. The Party concerned contends that the requirement for giving a timely response to requests of information in article 4, paragraph 7, is not applicable to requests to reconsider decisions to refuse information. It submits that the Convention does not expressly provide a time frame for such reconsiderations. The Party concedes that the Ministry's reconsideration could have been handled more swiftly, but states that it does not consider that the time spent by the Ministry to reconsider the request for information is contrary to article 4, paragraph 7, of the Convention.

60. The Party concerned submits that the request for reconsideration of the refusal to provide access to information is part of an appeal procedure under Norwegian law and is thus regulated by article 9, paragraph 1, of the Convention. As such it is not governed by the time limits set out in article 4 of the Convention and, consequently, the time spent to reconsider the request for information was not contrary to article 4, paragraph 7, of the

⁶⁸ Response to communication, p. 18.

⁶⁹ *Ibid.*, p. 11.

⁷⁰ *Ibid.*, p. 12.

⁷¹ Communication, p. 3.

⁷² Communication, p. 3, and communicant's opening statement at the Committee's forty-seventh meeting, p. 3.

⁷³ Communication, annex 15, p. 1.

Convention.⁷⁴ The Party concerned submits that since a request for reconsideration is regulated by article 9, paragraph 1, of the Convention, there is no need to consider it as a further request for information in order to safeguard the interests of the public in obtaining access to information. The Party concerned submits that an applicant always has the choice between appealing the decision to refuse access to information or submitting a new request, and consequently can choose the procedure he considers will be the best way to safeguard his interests.

Access to justice – article 9

61. The communicant alleges that the procedure of the Ombudsman was in non-compliance with the provisions of article 9 because it took prolonged periods of time to provide the first formal statement (10 months) and the final statement (7 months). In addition, the Ombudsman failed to follow up with the Ministry when it reconsidered its decision and did not adequately address the points raised in the initial complaint and subsequent comments. With regard to the latter point, the communicant submits that the Ombudsman in particular failed to address the time taken to resolve his complaint and to adequately consider the possibility to provide partial access.⁷⁵

62. The Party concerned contends that the Ombudsman adequately addressed the communicant's claims regarding section 11, paragraph 3, of the Environmental Information Act and does not agree that the Ombudsman failed to address the delays caused by the Ministry in a way that contravened article 9 of the Convention. The Party concerned submits that the Ombudsman did address the issue of time by sending a reminder to the Ministry on 30 January 2012, and that referring to the time taken in its final decision would not have changed the outcome as regards access to information.⁷⁶

63. With regard to providing partial access, the Party concerned submits that the Ombudsman addressed this issue by explicitly requesting in its statement of 17 November 2011 to consider partial disclosure, enquiring in its letter of 1 March 2013 whether the Ministry had considered this possibility, and stating in its final decision that the assessment by the Ministry could have been more explicit and thorough in that regard.⁷⁷

III. Consideration and evaluation by the Committee

64. Norway deposited its instrument of ratification of the Convention on 2 May 2003. The Convention entered into force for Norway on 31 July 2003.

Admissibility

65. The Committee notes that the communicant filed a complaint to the Ombudsman for Public Administration on 20 January 2011. After 10 months, in November 2011, the Ombudsman requested the Ministry to reconsider its decision to deny the request. It took another 11 months for the Ministry to provide its reconsideration, and again turn down the request, which appears to the Committee to be a relatively long time. The communicant then again asked the Ombudsman to consider the case. In June 2013, almost two-and-a-half years after the original request for information, the Ombudsman provided its final answer, expressing some doubts about the Ministry's decision, but declaring that it would not take any further action. While the Committee cannot rule out that there might have been some

⁷⁴ Response to communication, p. 15.

⁷⁵ Communication, p. 3.

⁷⁶ Response to communication, p. 22.

⁷⁷ Ibid.

other options for bringing the case further under domestic law, taking into account the remedies used, the lengthy time taken already in the domestic procedure and the uncertainty concerning the availability of further remedies, the Committee considers the communication admissible.

Environmental information – article 2, paragraph 3

66. In its initial answer to the communicant, the Ministry refused to provide the information requested, maintaining that it was not environmental information. At a later stage, on the advice of the Ombudsman, the Ministry accepted that the information requested amounted to environmental information, but refused to provide it for other reasons.

67. The Committee wishes to confirm what the Party concerned now acknowledges, namely, that the information requested by the communicant indeed amounts to environmental information under article 2, paragraph 3, of the Convention.

Procedure to assess whether requested information is environmental information – article 4

68. The communicant alleges that the Party concerned has no procedure in place to assess whether requested information is environmental information and that the lack of such a procedure constitutes a breach of article 4, paragraph 1, of the Convention.

69. While article 4 of the Convention obliges the Parties to ensure that public authorities make environmental information available, and sets out a number of procedural requirements to that end, there is no express requirement in article 4 for a specific procedure to be followed when assessing whether requested information is environmental information. At the hearing, the communicant sought to reframe his allegation under article 3, paragraph 1, of the Convention: namely, that the Party concerned had failed to take the necessary measures to establish and maintain a clear, transparent and consistent framework to implement the provisions of the Convention.⁷⁸ The Committee takes a dim view of adding new allegations for the first time during the hearing, as it denies the other party due opportunity to prepare its response. In any event, nothing turns on this point, since the communicant has provided no evidence that would indicate that the public authorities of the Party concerned systematically fail to correctly identify environmental information in practice and that the measures in place in the Party concerned to handle information requests are therefore inadequate in this regard.

70. In the light of the above, the Committee finds the communicant's allegation that, by not having put in place a procedure to assess whether requested information is environmental information the Party concerned has failed to comply with article 4, to be unsubstantiated.

Meaning of “internal communications” – article 4, paragraph 3 (c)

71. The Party concerned contends that the information requested was validly refused on the basis of the exception in article 4, paragraph 3 (c), of the Convention concerning the internal communications of public authorities. As to what constitutes “internal communications” for the purposes of article 4, paragraph 3 (c), the Committee notes that the term is not expressly defined in the Convention. Nevertheless, the Committee considers that the underlying purpose of such an exception is to give a public authority's officials the possibility to exchange views freely. Accordingly, not every document that is communicated internally can be considered as an “internal communication”. For instance,

⁷⁸ Opening statement of the communicant for the hearing at the Committee's forty-seventh meeting, p. 5.

factual matters and the analysis thereof may be distinguished from policy perspectives or opinions.

72. The communicant claims that the information he sought concerned the legal analyses concerning the Nature Diversity Act, rather than political statements, in which he had no interest. The Party concerned counters that the legal arguments were intertwined with political arguments and that therefore none of the documents could be disclosed.⁷⁹ While the Committee cannot verify whether that was the case with regard to the specific documents, it has nothing before it that would demonstrate this to be untrue. The Committee notes, however, that if it were shown that the public authorities routinely denied access to information, including assessments (legal, environmental, technical or otherwise), by referring to it as internal communication, thus denying access to assessments informing its internal decision-making relating to the environment, this could very well constitute non-compliance with article 4, paragraph 1, of the Convention. However, having nothing before it to demonstrate that this was the case here, the Committee does not find the Party concerned to be non-compliant in this respect.

Taking into account the public interest served by disclosure – article 4, paragraph 3 (c)

73. The communicant alleges that the authorities of the Party concerned failed to consider and to specify how “the public interest served by disclosure” was taken into account as required by article 4, paragraph 3 (c), of the Convention. The Party concerned concedes that there may have been shortcomings in considering the public interest in the Ministry’s initial response of 19 January 2011, but submits that the Ministry rectified its earlier failure in its reconsideration decision of 19 October 2012.

74. It indeed appears to the Committee that the public interest in disclosure was not adequately considered in the Ministry’s initial response to the communicant’s request, not least because the public authorities did not consider the request to concern environmental information. The general access to information legislation provides for potential enhanced access for information where “the interest of public access outweighs the need for exemption” (Freedom of Information Act, sect. 11), and this was also allegedly tested for by the Ministry at the time of its initial response.⁸⁰ Still, the Committee considers that, in the context of a request for environmental information, an assessment of the public interest in disclosure is not complete without weight being given to the fact that the information relates to the environment, including whether the information requested relates to emissions into the environment.

75. However, the Committee accepts that the initial failure to properly take into account the public interest in disclosure was rectified, although belatedly, in the Ministry’s reconsideration of 19 October 2012 which expressly recognized the public interest in disclosure, namely: “The Ministry assumes that the interests served by Fauchald being given access to the information for use in his academic article are relevant pursuant to section 11 [of the Environmental Information Act], and that academic articles may play an important role in setting the agenda for public debate”.⁸¹

76. While the Ministry’s reconsideration decision concluded that the interests being served by not disclosing the information outweighed those being served by disclosure,⁸² the Committee considers that in coming to that conclusion, the Ministry took into account the

⁷⁹ Opening statement of the Party concerned for the hearing at the Committee’s forty-seventh meeting, p. 2.

⁸⁰ Email of the Party concerned, 2 February 2015, annex 1, p. 2, enclosing email of the Ministry, dated 19 January 2011.

⁸¹ *Ibid.*, annex 6, entitled “Ministry’s letter to the Ombudsman, 19 October 2012”, p. 2.

⁸² *Ibid.*, p. 3.

public interest served by disclosure and specified how it had done so. The Committee accordingly does not find the Party concerned to be in non-compliance with article 4, paragraph 3 (c), of the Convention in this regard.

Partial disclosure – article 4, paragraph 6

77. The communicant alleges that the Party concerned did not consider whether parts of the requested information could be made available, as required by article 4, paragraph 6, of the Convention. The Party concerned concedes that this possibility was not referred to in the Ministry's initial response of 19 January 2011, but submits that this shortcoming was later rectified in its reconsideration decision of 19 October 2012.

78. The Committee notes that the last paragraph of the Ministry's reconsideration decision of 19 October 2012 indeed demonstrates that it did at that stage consider whether or not it was possible to disclose parts of the requested documents. It decided that the information could not be separated in all but one document, which was disclosed on the Ministry's website.⁸³ As noted above, the Committee does not have evidence before it to indicate that this conclusion was incorrect in the present case.

79. The communicant further alleges that, in general, there is no effective procedure within the Ministry, or more broadly within public authorities of the Party concerned, to effectively ensure partial disclosure. At the hearing, the communicant sought to reframe this allegation under article 3, paragraph 1, of the Convention: i.e., that the Party concerned had failed to take the necessary measures to establish and maintain a clear, transparent and consistent framework to implement the provisions of the Convention.⁸⁴ As noted in paragraph 69 above, the Committee takes a dim view of adding new allegations at the hearing. In any event, nothing turns on this point, because the communicant has provided no evidence that would indicate that the public authorities of the Party concerned routinely fail to separate out and disclose information not exempted from disclosure and that the measures in place in the Party concerned to handle information requests are therefore inadequate in this regard.

80. In the light of the above, the Committee finds the communicant's allegations that the Party concerned has failed to comply with article 4, paragraph 6, of the Convention, both with respect to his specific information request and through a failure to put in place procedures more generally, to be unsubstantiated.

Stating the reasons for refusal – article 4, paragraph 7

81. The communicant alleges that the Party concerned did not give adequate reasons to substantiate its decision to refuse access to the requested information as required by article 4, paragraph 7, of the Convention. The Party concerned concedes that there may have been shortcomings with respect to the reasons given in the Ministry's initial response dated 17 January 2011, but contends that the Ministry rectified its earlier failure in the reconsideration decision dated 19 October 2012.

82. The Committee notes that the duty to state reasons is of great importance, not least to enable the applicant to be in a position to challenge the refusal for information under the procedures stipulated in article 9, paragraph 1, of the Convention. It is, therefore, inadequate if these reasons are only provided at a very late stage, as the applicant will potentially only then be able to fully formulate the grounds for challenging the decision.

⁸³ Ibid.

⁸⁴ Opening statement of the communicant for the hearing at the Committee's forty-seventh meeting, p. 5.

83. Nevertheless, the Committee considers that in the present case, the Ministry's original failure to state sufficient reasons for refusing the communicant's request was rectified in its reconsideration decision of 19 October 2012.⁸⁵ In keeping with its findings in paragraphs 73-76 above, the Committee does not find the Party concerned to be in non-compliance with article 4, paragraph 7, of the Convention.

Time frame for refusal – article 4, paragraph 7

84. The communicant alleges that both the recommendation in the Ombudsman's statement of 17 November 2011 that the Ministry reassess the communicant's information request and his own letter of 26 January 2012 should be treated as new information requests for the purposes of article 4 of the Convention and that the Ministry was therefore required to notify the communicant of the outcome of its reconsideration decision within the time frame set in article 4, paragraph 7, of the Convention.⁸⁶ The Committee is not persuaded by this line of argument. Firstly, the statement of 17 November 2011 is from the Ombudsman, not the communicant, and thus cannot be considered to be a new information request by the communicant. Secondly, the Ombudsman, being a public authority, cannot make a request for information to the Ministry under article 4 of the Convention when acting in accordance with its powers for "completion of the Ombudsman's procedure" as set out in section 10 of the Parliamentary Ombudsman Act (see para. 21 above). Thirdly, while his letter of 26 January 2012 was addressed to both the Ombudsman and the Ministry, it clearly requested the Ombudsman to consider the case according to section 11 of the Parliamentary Ombudsman Act (see para. 22 above). The Committee accordingly does not consider the letter to be a new information request.⁸⁷ For these reasons, the Committee finds the allegation that, because of the long time it took for the Ministry to notify the communicant of its reconsideration decision, the Party concerned failed to comply with article 4, paragraph 7, to be unsubstantiated.

Applicability to Parliamentary Ombudsman – article 9, paragraph 1

85. Article 9, paragraph 1, of the Convention requires Parties to ensure that any person who considers that his or her request for information under article 4 of the Convention has not been dealt with in accordance with that article to have access to a review procedure before a court of law or another independent and impartial body established by law. Furthermore, where a Party provides for such a review by a court of law, it shall also ensure that there exists an expeditious procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law.

86. As indicated by the Party concerned, it provides for access before a court of law in cases where requests under article 4 of the Convention have been refused. Additionally, in cases such as the present the Party concerned provides for two mutually exclusive alternative routes (see para. 38 above) of which the Ombudsman proceedings constitute one. Neither the communicant nor the Party concerned dispute the competence of the Ombudsman to review access to information requests. In fact, the communicant submits that, in the majority of cases, the Ombudsman is the review procedure used by members of the public seeking a remedy in cases where access to information requests have been refused. The Committee considers that, under the legal framework of the Party concerned,

⁸⁵ See, in particular, email of the Party concerned, 2 February 2015, annex 6, p. 3, para. 3.

⁸⁶ Communication, p. 3 and communicant's opening statement at the Committee's forty-seventh meeting, p. 3.

⁸⁷ See communication, annex 6. In coming to this view, the Committee has taken into account the amended translation provided by the communicant in his comments on the draft findings.

the Parliamentary Ombudsman is an inexpensive, independent and impartial body established by law through which members of the public can request review of an information request made under article 4 of the Convention. The Committee therefore finds that the Parliamentary Ombudsman of the Party concerned constitutes a review procedure within the scope of the second sentence of article 9, paragraph 1, of the Convention.

“Expeditious” and “timely” – article 9, paragraph 1, second sentence, and article 9, paragraph 4

87. While the Committee does not find the lengthy procedures following the Ombudsman’s request to amount to non-compliance with article 4, paragraph 7, of the Convention, it will now examine whether this procedure complied with article 9 of the Convention. Article 9, paragraph 4, requires that the procedures referred to in article 9, paragraphs 1 to 3, of the Convention provide, inter alia, adequate and effective remedies and are fair, equitable and timely. This provision is applicable to all remedies within the scope of article 9 of the Convention, including those referred to in the second sentence of article 9, paragraph 1.

88. The second sentence of article 9, paragraph 1, requires that procedures within the scope of that sentence be “expeditious”, a reference lacking in regard to the other remedies in article 9 of the Convention. Procedures under article 9, paragraph 1, second sentence, will potentially be used prior to seeking review by a court of law pursuant to the first sentence of article 9, paragraph 1, which may justify the imposition of the additional requirement on authorities to act without undue delay. The Committee notes in that regard that time is an essential factor in many access to information requests, for instance because the information may have been requested to facilitate public participation in an ongoing decision-making procedure.

89. The Committee is concerned about the time taken for the completion of the Ombudsman procedure in the communicant’s case, i.e., nearly two-and-a-half years (20 January 2011–10 June 2013). The Committee also notes that nowhere in the documentation before it does the Ombudsman appear to have instructed the Ministry to respond within a certain time or even to request it to reply in a timely or expeditious manner. This is despite the communicant’s letter of 26 January 2012 requesting the Ombudsman to consider the Ministry’s delay under section 11 of the Parliamentary Ombudsman Act.

90. Of the two-and-a-half years taken to conclude the Ombudsman’s procedure, the Committee considers two periods to be of particular concern. First, the 11 months taken by the Ministry to issue its reconsideration decision of 19 October 2012 and, second, the nearly 8 months taken thereafter for the Ombudsman to issue its final conclusion of 10 June 2013. In this context, the Committee notes that a number of the Parties to the Convention impose explicit deadlines for public authorities to reconsider a refusal of an information request. While article 4, paragraphs 2 and 7, do not directly apply to such reconsideration, the Committee sees no reason why a public authority should need more time to reconsider its decision at the request of an Ombudsman, a court or the original applicant than when deciding a request for information by a member of the public in the first place. Accordingly, when considering in these contexts whether the procedure is “expeditious” or “timely” under article 9, paragraphs 1 and 4, respectively, the time limits set out in article 4, paragraphs 2 and 7, are indicative.

91. Considering the time taken (nearly two-and-a-half years) for the completion of the Ombudsman procedure, and in particular the time taken for the Ministry’s reconsideration decision (11 months) and the Ombudsman’s final conclusion (nearly 8 months thereafter), the Committee finds that in this case the Party concerned failed to comply with the

requirements in article 9, paragraph 1, second sentence, and article 9, paragraph 4, of the Convention to ensure an “expeditious” and “timely” procedure.

92. The Committee emphasizes the importance that the Party concerned take necessary measures to ensure that the review procedures and remedies related to requests for environmental information from the Ministry are timely. However, taking into consideration that no evidence has been presented to substantiate that the non-compliance in this case was due to a systemic error, the Committee refrains from presenting any recommendations.⁸⁸

IV. Conclusions and recommendations

93. Having considered the above, the Committee adopts the findings set out in the following paragraphs.

94. The Committee finds that that the review procedure before the Parliamentary Ombudsman failed to comply with the requirements set out in article 9, paragraph 1, second sentence, to be “expeditious” and the requirement in article 9, paragraph 4, to be “timely”.

95. Taking into consideration that no evidence has been presented to substantiate that the non-compliance with article 9, paragraphs 1 and 4, was due to a systemic error, the Committee refrains from presenting any recommendations in the present case.

⁸⁸ See the Committee’s findings on communication ACCC/C/2008/23 (United Kingdom), (ECE/MP.PP/C.1/2010/6/Add.1), in which the Committee also refrained from presenting any recommendations since the failure to comply was not due to a systemic error.