

Ensuring a fair and effective compliance mechanism with an increasing caseload: Chair's proposal to the 62nd meeting of the Compliance Committee (5-9 November 2018)

This Chair's proposal will be discussed in open session during the Committee's session on its modus operandi to be held on Monday, 5 November 2018. It is a revised version of the Chair's proposal that was presented and discussed at the Committee's 61st meeting.¹ Written comments on this Chair's proposal are invited in advance of the meeting and you are welcome to attend the session either in person or by audioconference. If you would wish to attend the session either in person or by audioconference, please inform the secretariat at aarhus.compliance@unece.org as soon as possible before 29 October 2018 so arrangements can be made.

In its report on procedural matters (ECE/MP.PP/2017/31) to the sixth session of the Meeting of the Parties, the Committee reported:

22. At the Committee's fifty-fourth meeting (Geneva, 27–30 September 2016), the Committee noted that, in accordance with paragraph 24 of the annex to decision I/7, it had the discretion to proceed to commence its deliberations on the substance of a case without holding a hearing. In deciding in a particular case whether to proceed in such a manner, the Committee would consider, among others, whether there was no, or very limited, disagreement between the parties on the facts of the case and whether the underlying legal issues were well defined. In addition, the Committee would invite the views of the parties to the case and observers would be free to submit their comments, though the ultimate decision as to whether to commence deliberations on the substance of a case without holding a hearing would always rest with the Committee. During the reporting period, the Committee has proceeded to commence deliberations in this manner without holding a hearing with respect to two communications.

In line with the procedure agreed at its fifty-fourth meeting, to date the Committee has adopted one set of findings and is currently deliberating on two draft findings in which, after seeking the views of the parties, it commenced its deliberations without holding a hearing.

It is the Committee's experience that, in some cases, a hearing is very important to provide clarity on legal and factual issues. In certain other cases, the factual and legal issues are already fully clear from the documentation and a hearing does not provide any significant new information not already contained in the documents.

Currently, I am concerned by the timeframes for the Committee to complete its cases in the light of the high number of pending cases. As the Chair, I have the main responsibility to make sure that the cases before the Committee are managed in a satisfactory manner, and to propose necessary measures to ensure cases are examined effectively while ensuring due process and fair procedures.

Bearing in mind the above, given the importance of ensuring timely access to justice, **I propose that the procedure agreed at the Committee's 54th meeting, and reported to the sixth session of the Meeting of the Parties, should become a more regular part of the Committee's caseload management.** This means that, in each case, prior to scheduling a hearing, the Committee will examine the documentation before it with a view to considering whether a hearing is in fact needed in the case. In deciding in each case whether a hearing should be held, the Committee will consider the criteria agreed at its 54th meeting, namely:

1. Whether there is no, or very limited, disagreement between the parties on the facts of the case; and
2. Whether the underlying legal issues are well defined.

If after applying the two above criteria the Committee decides a hearing is needed, both parties will be invited and expected to attend the hearing in Geneva in person.

However, if on the basis of the above two criteria, the Committee's preliminary view is that a hearing will not be needed in order for it to commence its deliberations, the Committee will invite the views of the parties to the case on whether they consider a hearing would be needed. Observers will also be free to submit their comments on this point. If either party or any observer considers a hearing is indeed necessary, that party/observer should provide a brief explanation (maximum one page) to the Committee of the reason(s) why, in the light of particular factual or legal aspects of the case, it considers a hearing should be held.

The Committee will thereafter consider the explanation provided by the party/observer before deciding whether a hearing should be held. In considering the reasons provided, the Committee will take a careful approach. Accordingly, if the Committee considers that either a party or an observer provides a substantive reason showing why a hearing is needed, the Committee will hold a hearing.

I make the above proposal in order to ensure that the compliance mechanism is in keeping with the spirit of the Convention, in particular with respect to fair procedures and timeliness. If my proposal is agreed by the Committee, the Committee will review the effectiveness of the above procedure, as with its modus operandi in general, when preparing its report to the seventh session of the Meeting of the Parties. In keeping with its standard practice, this will include the possibility for Parties and observers to share their views on how the procedure has worked in practice.

¹ The proposal presented by the Chair to the 61st meeting is available at: <http://www.unece.org/index.php?id=48282>.