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Chairperson: Mr. Veit Koester
Compliance Committee
Convention on Access to Information, Public Participation
in Decision-making and Access to Justice in Environmental Matters
Environment, Housing and Land Management Division
Bureau 332
Palais de nations
CH-1211 Geneva 10
Switzerland

Dear Mr. Koester,

With regard to the letter addressed to the Compliance Committee on 06/05/2008 by Ukraine concerning the implementation of the Decision II/5b by Ukraine we would like to submit the following comments.

We are glad that the Ukrainian government has finally decided to address the issue of compliance with Aarhus Convention and the decision of the Second Meeting of the Parties (MOP-2), Decision II/5b.

Unfortunately, drafting and implementation of this "Plan of Strategic Decisions of the Ministry of Environmental Protection of Ukraine" (hereinafter referred to as Plan) can not be regarded as an effective way to implement the Aarhus Convention in Ukraine and it does not address the requirements of the Decision II/5b.

According to Decision II/5b, Ukraine must submit a strategy, including a time schedule, for transposing the Convention's provisions into national law and developing practical mechanisms and implementing legislation that sets out clear procedures for their implementation. The strategy could also include capacity-building activities, in particular for the judiciary and public officials involved in environmental decision-making.

There are no "timetables" for "developing practical mechanisms." There is no plan to "set out clear procedures" for implementation of the mechanisms. There is nothing about capacity-building for the public officials who are responsible for public participation in Ukraine.

The findings paragraphs of Decision II/5b make clear some of the deficiencies that led to our 2004 Complaint to the Compliance Committee, yet these are absent from the "Plan" submitted by Ukraine:

(a) . . . failing to provide for public participation of the kind required by article 6 of the Convention

(b) . . . failing to ensure that information was provided by the responsible public authorities upon request

(c) . . . lack of clarity with regard to public participation requirements in environmental impact assessment (EIA) and environmental decision-making procedures for projects, such as

- time frames and modalities of a public consultation process
- requirements to take its outcome into account
- obligations with regard to making information available in the context of article 6
- absence of a clear, transparent and consistent framework for the implementation of the Convention

The “Plan” submitted does not address the various areas of non-compliance with the Aarhus Convention. It does not assess problems that have been encountered with the Convention’s implementation. It does not show that the legislative measures proposed will be intended to address those problems.

In fact, one third of the proposed activities of this “Plan,” which apparently was drafted under a contract rather than representing discussions inside the Ministry about Decision II/5b, without public participation concern future actions of Ukraine on separate environmental agreements elaborated within Aarhus rather than the practical implementation of existing agreement is needed. It is doubtful that this “Plan” was even written to respond to Decision II/5b.

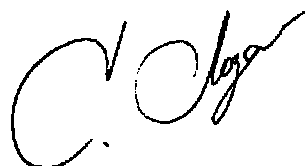
The government itself states in its cover-letter that Ukraine has sufficient laws on access to information, public participation and access to justice. But it does not go farther, as requested by Decision II/5b, and propose the adoption of “practical measures” and “clear procedures” for carrying out those laws. It is the compliance and enforcement of such provisions that is inadequate and that needs to be addressed. The new pieces of legislation mentioned in the “Plan” are not planned to do anything more than merely copy the provisions of Aarhus convention that are already obligatory in Ukraine. This will not ensure full compliance with Aarhus norms during day-to-day decision-making and the day-to-day work of state officials. The Plan lacks any specific actions that need to be taken by the Ministry itself to improve the access to information and public participation procedures during EIA of construction projects, or any other decisions affecting environment within the competence of the Ministry.

Since the MOP-2 decision 3 years ago, the Ministry of Environmental Protection of Ukraine has done nothing to improve the situation. There is no indication that the Ministry plans to deal with the practical problems in the future. If the MOP3 accepts this submission, it will simply be tolerating non-compliance with article 6 of Aarhus Convention and the word of the Parties will be no stronger than the “paper rights” that people in Ukraine live with every day.

The document presented by the Ministry just in a month before the MOP3 in order to prove compliance with the Decision II/5b by Ukraine only imitate compliance. Thus, the abovementioned Plan could not be considered as implementation of p.2, 3 of the Decision II/5b by Ukraine.

In a conclusion, we are asking the Compliance Committee to consider the issue of non-compliance of Ukraine not only with the Convention itself, but with the Decision II/5b of the Meeting of the Parties at its meeting and propose strong measures to be adopted at MOP3 concerning non-compliance of Ukraine.

Sincerely,
Executive director



Serhiy Lozan