

Comments and suggestion to the Aarhus Convention Compliance Committee

Honored representatives of the parties to Aarhus Convention, dear colleagues,

recalling the audio conference in the open session held on 8 March at the Compliance Committee's 52nd meeting on decision V/9a of the Meeting of the Parties concerning Armenia, the Chair invited the parties to submit the comments they made during the session in a written form.

Comments

Hereby we call your attention to the fact that since the ratification of the Aarhus Convention in 2001 the Government of Armenia and entities responsible for the implementation of the rights prescribed by the Convention flagrantly and permanently failed to comply with implementation of the Convention. Since 2004 all the three Communications to the Compliance Committee launched by the concerned stakeholders have been satisfied, thus stating the total failure of the Convention in Armenia. Currently, the next in turn Communication is presented to the Compliance Committee boosting the same issues of non-compliance as in the previous three interrelated Communications referred below.

Particularly,

1. As a result of the communication ACCC/C/2004/08 the Committee came to the conclusion that the Government failed to ensure access to information on the Environmental matters (Article 4, point 1 and 2), public participation in the decision making (Article 6, point 1(a), 2-5 and 7-9), as well as Article 7), the access to justice (Article 9, point 2-4)¹.
2. As a result of the communication ACCC/C/2009/43 the Compliance Committee affirmed a failure to implement provisions of the Convention (Article 3, point 1), and stated once again the violation of the Convention on ensuring public participation in the decision making (Article 6, point 2,4 and 9)².
3. As a result of the communication ACCC/C/2011/62 the Compliance Committee stated again the violation of the right to access to justice (Article 9, point 2)³.

Obviously, for 15 years since the ratification of the Aarhus Convention and 12 years after the first Decision of the Compliance Committee concerning Armenia the subjects responsible for the implementation of the Convention have consistently failed almost all the major provisions of the Convention. The Government of Armenia has not so far implemented any of the recommendations made in the above mentioned three communications. In particular:

- a. legislative, regulatory or administrative measures necessary to ensure the environmental impact assessment and public participation in decision making procedures have not been properly regulated by the relevant legislation. Although drafted by the Intergovernmental Commission with the representatives of Civil Society, the new Law on Environmental Impact

¹http://www.unece.org/fileadmin/DAM/env/documents/2008/pp/mop3/ece_mp_pp_2008_5_add_2_e.pdf

²<http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2009-43/Findings/C43ARMFfindings.pdf>

³<http://www.unece.org/env/pp/compliance/compliancecommittee/62tablearm.html>

Assessment adopted in July 2013 did not reflect the position of Civil Society constituted in the above-indicated Decisions of the Compliance Committee, as the Draft Law was radically changed by the Government officials unilaterally. The Draft EIA Law, which was secretly amended at the last moment without taking into account the position of Civil Society stimulated protests of the latter.

As mentioned in the previous letter directed to the Compliance Committee concerning the matters of effective public participation, the Decree on Public Participation mechanism adopted by the Government after the new EIA Law was adopted, does not reflect the provisions of the Convention too. In addition, the mentioned Decree was adopted by the Government without any public hearings required by the national legislation and the Convention. Recently, the claim on the issue of Public Participation mechanism launched in the Syunik Region of Armenia but the Administrative Court dismissed it no sufficient explanation on non-admissibility of the claim, which is considered to be the ground for a new Communication upon the exhaustion of judicial procedures.

- b. necessary legislative and administrative measures have not been implemented to ensure the access to justice for the public concerned on environmental issues (residents of affected community and environmental non-governmental organizations). Currently, the Government pushed the new Draft Law on Non-Governmental Organizations to the Parliament, where the provision on access to justice for environmental non-governmental organizations was removed from the text of the Draft Law, though it was drafted before.

Thus, despite the consistent recommendations of the Compliance Committee and Meeting of the Parties, the entities responsible for the implementation of the Convention have not undertaken measures to ensure proper implementation of the Convention recommended to the Armenian Government continuingly. None of those non-compliant matters referred in the National Implementation Report was met⁴.

It should be noted that according to the Preamble to the Aarhus Convention, the failure of the provisions of this Convention highly affected the proper implementation of other international environmental agreements/treaties. Thus, failing the Aarhus Convention, the Government of Armenia essentially fails to comply also those international agreements/treaties in frames of which the Government receives huge financial support from the international organizations in relation to the environmental matters.

Currently, the UN family international organizations approved environmental projects with million euro budgets for effective forest management, to combat desertification, to preserve biodiversity and for other failed issues. To our estimation, the implementation of these projects will not be effective unless the Government of Armenia ensures the implementation of the obligations undertaken by the Aarhus Convention⁵.

⁴ http://www.unece.org/env/pp/reports_trc_implementation_2014.html

⁵ http://www.thegef.org/gef/country_profile/AM?countryCode=AM&op=Browse&form_build_id=form-OxhZS7tukBvarmpC5Wr_IgcrXLwjXsbqeIXJX1E7scE&form_id=selectcountry_form

Suggestion

Based on the above-analyzed and in accordance with “Aarhus Convention Compliance Mechanism”⁶ we call upon the Compliance Committee to suggest in the meeting of the Parties to the Convention to apply the following measure against the Government of Armenia: *in accordance with the Decision 1/7 point 37 (g) to declare suspension over the privileges and special rights⁷ given to Armenia in frames of the Aarhus Convention and presented in the report of the first meeting of the Parties to the convention⁸*. Obviously, consistent failure of its obligations undertaken by the Aarhus convention, the Government of Armenia subsequently fails to properly comply with its obligations undertaken by other international agreements/treaties on environmental issues as well. This approach is clearly derived from the preamble of the Aarhus Convention, as well as from the content of the Vienna Convention on "International Treaties."

Before applying the suggested measure, we will find sufficient if by the end of current year the respective public authorities fully and without any extension execute legal amendments to define the following provisions:

- the right to Access to Justice for the Non-Governmental Organizations promoting environmental protection within the regulatory scope of the national legislation,
- the legal regulations, which clearly and sufficiently define the public participation mechanism in environmental decision-making with regard to both Environmental Impact Assessment and the Strategic Impact Assessment, including the assessment of impact on human health.

We consider that the suggested measure may motivate the Government of Armenia to implement its international commitments in relation to the environmental matters and will stimulate the Party Concerned to ensure the public participation in environmental decision-making with subsequent transparency and efficiency of the implementation of environmental projects, financed by the UN-family organizations in particular.

We believe that the implementation of the above measures will increase overall public oversight over the activities of the Government, forcing the latter to be more accountable and to conscientiously ensure the protection of Human rights undertaken by the Aarhus Convention.

⁶United Nations Economic Commission for Europe, Guidance document on the Aarhus Convention compliance mechanism. http://www.unece.org/fileadmin/DAM/env/pp/compliance/CC_GuidanceDocument.pdf

⁷United Nations Economic Commission for Europe, Guidance document on the Aarhus Convention compliance mechanism. Point g) Suspend, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, the special rights and privileges accorded to the Party concerned under the Convention.

⁸Report of the first meeting of the Parties, Luccia Declaration, adopted at the first meeting of the Parties, held in Lucca, Italy, on 21-23 October 2002. <http://www.unece.org/fileadmin/DAM/env/pp/documents/mop1/ece.mp.pp.2.add.1.e.pdf>

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