



Economic and Social Council

Distr.: General
6 June 2014

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

Fifth session

Maastricht, the Netherlands, 30 June and 1 July 2014

Item 5 (b) of the provisional agenda

**Procedures and mechanisms facilitating the implementation
of the Convention: compliance mechanism**

Compliance by Ukraine with its obligations under the Convention*

Report by the Compliance Committee

Summary

The present document was prepared by the Compliance Committee pursuant to the request set out in paragraph 10 of decision IV/9 of the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (see ECE/MP.PP/2011/2/Add.1) and in accordance with the Committee's mandate set out in paragraphs 13 (b), 14 and 35 of the annex to decision I/7 on review of compliance (ECE/MP.PP/2/Add.8)

The document reviews the progress made by Ukraine in the intersessional period in implementing decision IV/9h of the Meeting of the Parties on compliance by Ukraine with its obligations under the Convention (see ECE/MP.PP/2011/2/Add.1).

* The present document has been submitted late due to the need for further consultation on the document before its submission.



Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction — decision IV/9h	1–11	3
II. Summary of follow-up action on decision IV/9h.....	12–35	5
III. Consideration and evaluation by the Committee	36–39	10
IV. Conclusions and recommendations.....	40–43	11
A. Main findings with regard to non-compliance.....	40–41	11
B. Recommendations	42–43	12

I. Introduction — decision IV/9h

1. At its fourth session (Chisinau, 29 June–1 July 2011), 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 IV/9h¹ on compliance by Ukraine with its obligations under the Convention (see ECE/MP.PP/20011/2/Add.1).

2. Ukraine's compliance with the Convention has been under review by the Compliance Committee since 2004, beginning with communication ACCC/C/2004/3² and submission ACCC/S/2004/1³ (the only submission to the Committee made by a Party concerning compliance by another Party) in relation to the construction of the "Bystre deep-water navigation canal" (also known as the Bystroe Canal). In its findings adopted on 18 February 2005, the Committee found that the Party concerned had failed to comply with article 6, paragraph 1 (a), of the Convention and, in that connection, also with article 6, paragraphs 2 to 8 and 9 (second sentence). The Committee also found non-compliance by the Party concerned with article 3, paragraph 1, and article 4, paragraph 1, of the Convention and made recommendations directly to the Meeting of the Parties (ECE/MP.PP/C.1/2005/2/Add.3).

3. Through decision II/5b (ECE/MP.PP/2005/2/Add.8), the Meeting of the Parties at its second session (Almaty, Kazakhstan, 25–27 May 2005) endorsed the Committee's findings on the communication and the submission, namely, that:

(a) By failing to provide for public participation of the kind required by article 6 of the Convention, Ukraine was not in compliance with article 6, paragraph 1 (a), and, in connection with this, article 6, paragraphs 2 to 8, and article 6, paragraph 9 (second sentence);

(b) By failing to ensure that information was provided by the responsible public authorities upon request, Ukraine was not in compliance with article 4, paragraph 1, of the Convention;

(c) The 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 and obligations with regard to making information available in the context of article 6, indicates the absence of a clear, transparent and consistent framework for the implementation of the Convention and constitutes non-compliance with article 3, paragraph 1, of the Convention.

4. Through decision II/5b, the Meeting of the Parties also requested the Party concerned to proceed with certain actions in identified areas of non-compliance, namely:

(a) To bring its legislation and practice into compliance with the provisions of the Convention and include information on the measures taken to that effect in its report to the next meeting of the Parties;

¹ Decisions of the Meeting of the Parties concerning compliance by Parties and documents related to their follow-up can be found on the Convention website at <http://www.unece.org/env/pp/ccimplementation.html>.

² Communications and other documents related to them, including the findings and recommendations of the Committee, where applicable, are accessible on the Convention website from <http://www.unece.org/env/pp/pubcom.html>.

³ Further information on submissions by Parties is available from <http://www.unece.org/env/pp/submissions.html>.

(b) To submit to the Compliance Committee, not later than the end of 2005, 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 might also include capacity-building activities, in particular for the judiciary and public officials involved in environmental decision-making.

5. During the intersessional period 2005–2008, the Committee reviewed the progress made by the Party concerned in the implementation of decision II/5b and submitted its report for consideration by the Meeting of the Parties at its third session (Riga, 11–13 June 2008) (ECE/MP.PP/2008/5/Add.9). On the basis of the information before it, the Committee concluded that the Party remained in a situation of non-compliance with the Convention. The Committee also noted with regret the Party's failure to engage sufficiently with the process of the review of compliance since 2004. It recommended to the Meeting of the Parties, among other things, to consider whether to apply measures set out in paragraph 37 of the annex to decision I/7.

6. Through decision III/6f (ECE/MP.PP/2008/2/Add.14), the Meeting of the Parties at its third session noted the continuing failure of the Party concerned to engage sufficiently with the compliance review process and took note of the action plan developed in May 2008. It regretted, however, that the fulfilment of actions in the action plan would not fully address the recommendations of decision II/5b, and decided to issue a caution to the Party concerned to become effective on 1 May 2009, unless the Party had fully satisfied the conditions set out in subparagraphs (a) to (d) below and had notified the secretariat of that fact by 1 January 2009. The successful fulfilment of the following conditions was to be established by the Committee:

(a) The action plan incorporates clear activities to resolve the problems identified by the Committee in its findings and recommendations (ECE/MP.PP/C.1/2005/2/Add.3), and in particular in paragraphs 29 to 35 of the latter document (including with respect to issues of clear domestic regulation of time frames and procedures for public consultation, commenting and making available to the public the information on which decisions are based);

(b) The action plan also incorporates capacity-building activities, in particular training of the judiciary and of public officials involved in environmental decision-making;

(c) The action plan establishes a procedure which ensures its implementation in a transparent manner and in full consultation with civil society;

(d) The action plan is transposed through a governmental normative act ensuring its implementation by all ministries and other relevant authorities.

7. The Meeting of the Parties also requested the Party concerned to regularly report to the Committee on its progress in implementing the plan.

8. During the intersessional period 2008–2011, the Committee reviewed the progress made by the Party in the implementation of decision III/6f. Further to the information submitted by the Party concerned, the Committee at its twenty-third meeting (Geneva, 31 March–3 April 2009), found that Ukraine had fulfilled the conditions set out in paragraph 5 (a) to (d) of decision III/6f (see. paras. 6 (a)–(d) above) to the extent that the caution issued by the Meeting of the Parties through decision III/6f should not become effective. However, it found that Ukraine was not yet fully in compliance with its obligations under the Convention and it therefore reserved the right to make further recommendations to the Meeting of the Parties, including to recommend the issuing of a new caution if it found that its concerns relating to the points highlighted had not been satisfactorily met.

9. At its thirty-first meeting (Geneva, 22–25 February 2011), on the basis of the information submitted during the intersessional period, the Committee prepared its report for consideration by the Meeting of the Parties at its fourth session (ECE/MP.PP/C.1/2011/2/Add.8).

10. On 29 June 2011, during the fourth session of the Meeting of the Parties, the Party concerned adopted new legislation on public participation in decision-making (Resolution of the Cabinet of Ministers No. 771 of June 2011 on the procedure for involving the public in discussions on issues related to decision-making that may impact the environment).

11. The Meeting of the Parties at its fourth session took note of the Committee's report on the implementation of decision III/6f and through decision IV/9h endorsed the Committee's conclusion that Ukraine was still in a state of non-compliance. It urged the Party concerned to implement the measures requested in decision II/5b as soon as possible, and issued a caution to Ukraine. The Meeting of the Parties also decided that the caution would be lifted on 1 June 2012, if the Party concerned had fully implemented the measures requested by the Meeting of the Parties in decision II/5b and had notified the secretariat of that fact, providing evidence, by 1 April 2012. The Compliance Committee was to establish the successful fulfilment of decision II/5b. The Meeting of the Parties also requested Ukraine to submit progress reports to the Committee in November 2012 and November 2013 with detailed information on its further progress in implementing the measures referred to in decision II/5b. The Compliance Committee was requested to report to the Meeting of the Parties at its fifth session on whether the Party concerned had fulfilled decision II/5b, with a view to the Meeting of the Parties deciding whether to suspend the special rights and privileges accorded to Ukraine under the Convention.

II. Summary of follow-up action on decision IV/9h

12. On 1 May 2012 the Party concerned submitted its progress report along with a copy of a new draft law "On Environmental Impact Assessment" which had been prepared to address, among other things, the compliance issues under the Aarhus Convention.

13. On 30 May 2012, the non-governmental organization Environment-People-Law (formerly known as Ecopravo Lviv, and the communicant of communication ACCC/C/2004/3) provided its comments on the report submitted by the Party concerned, noting in particular that Resolution No. 771 of June 2011 on public participation in environmental decision-making was subsequently subjected to many substantive changes that significantly reduced the public's rights to participate and was then annulled on 25 April 2012. Environmental-People-Law submitted that the new draft law "On Environmental Impact Assessment" seemed to be solid document, but remained a draft.

14. On 5 June 2012, the Committee sent a letter to the Party through the secretariat, in which it noted with concern the late submission of the report, which had been due on 1 April 2012. The Committee, however, was even more concerned at the fact that the report had not provided evidence of full implementation by Ukraine of the measures requested by the Meeting of the Parties. Instead, it mainly provided information on draft legal acts under preparation. In the same letter, the Committee had also urged the Party concerned to submit to the Committee, by no later than 25 June 2012, any additional information evidencing that it had actually fulfilled the measures requested in a successful manner.

15. By letter of 26 June 2012, the Party concerned informed the Committee that a draft law "On amending some laws of Ukraine on implementation of the Convention on Environmental Impact Assessment in a Transboundary Context" had been registered with the Verkhovna Rada (parliament) and was expected to be considered in July 2012.

16. At its thirty-seventh meeting (Geneva, 26–29 June 2012), the Committee took note of the information provided and entered into discussion with a representative of the

Government of Ukraine, who participated in the session by videoconference, and with the observers. During the discussion, the Party underscored the efforts undertaken by Ukraine to bring it into compliance with the Convention, as well as with the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention). The draft law at issue was being processed simultaneously with a draft law on urban development. The Government of Ukraine commended the role of the Committee in assisting the Parties to reach compliance with the Convention and, considering the current positive dynamic in the country, asked for the consideration of the issue to be postponed to the Committee's next meeting. A representative of the Government of Romania expressed Romania's concerns, saying a number of the changes undertaken by Ukraine did not properly reflect the recommendations of the decision. Observers noted that even if the draft law in question was adopted, there would still be difficulties in implementing the Convention in practice.

17. The Committee took note of the statements made. It expressed its appreciation at the steps taken by Ukraine, but noted that the condition of decision IV/9h required that the Party concerned had "fully" implemented the conditions of decision II/5b by the set deadline. In the view of the Committee, the Party concerned had not fully satisfied those conditions and therefore the caution could not be lifted. It expressed the expectation that Ukraine would continue its efforts, as described during the meeting, and reminded the Party of its obligation to submit its report no later than 30 November 2012. The Committee asked the Party to provide detailed information on the progress achieved with the legislative process, including the English translation of the draft law "On amending some laws of Ukraine on implementation of the Convention on Environmental Impact Assessment in a Transboundary Context". The secretariat was instructed to send a letter to the President of Ukraine informing him about the decision, and the Committee agreed it would evaluate the progress undertaken and consider further steps to be taken at its thirty-ninth meeting.

18. On 14 August 2012, a letter was sent by the United Nations Economic Commission for Europe (ECE) Executive Secretary to the President of Ukraine conveying the Committee's decision that the caution would not be lifted and reminding Ukraine of its obligation set out in paragraph 10 of decision IV/9h to submit to the Committee no later than 30 November 2012 detailed information on further progress in implementing the measures referred to in decision II/5b.

19. On 30 November 2012 the Party concerned submitted its report along with the requested translation of the draft law "On introducing amendments into certain Laws of Ukraine on implementation of the provisions of the Convention on Environmental Impact Assessment in the Transboundary Context".

20. At its thirty-ninth meeting (Geneva, 11–14 December 2012), the Committee noted that the Party concerned had submitted the requested information by the deadline, but that there appeared to be no significant progress, since the law was not in force yet. It confirmed that it would evaluate the situation in greater detail and would consider further steps to be taken at its fortieth meeting.

21. On 27 February 2013, information was submitted by Environment-People-Law, *inter alia*, indicating that:

(a) The Party concerned's report of 30 November 2012 had failed to mention that the draft law "On introducing amendments into certain Laws of Ukraine on implementation of the provisions of the Convention on Environmental Impact Assessment in the Transboundary Context" (the original draft law), which had been registered in the parliament in June 2012, had been automatically withdrawn pursuant to the parliamentary rules of procedure following the election of a new parliament in October 2012, and thus was no longer before the parliament;

(b) The draft had in the meantime been revised by the Ministry of Ecology and renamed as the draft law “On introducing amendments to certain laws of Ukraine on implementation of the provisions of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters” (the revised draft law). The revised draft law had been submitted to other ministries for approval in December 2012, but was subsequently declined by most of them. The draft had then been further revised by the Ministry of Ecology and resubmitted to other ministries for approval, which was then pending. The revised drafts had not been released to the public;

(c) The draft law “On introducing amendments on [the] Regulation of Urban Development Activities (related to public discussions of the project documentation on construction)”, proposing amendments to article 21 of the Law on Regulation of Urban Development Activities in terms of mandatory public consultation that had been submitted to the parliament in September 2012, had also been automatically withdrawn in December 2012 following the election of a new parliament (cf. subparagraph (a) above);

(d) In June 2011, the Law on Urban Development Activities had abolished the previous state ecological expertise for projects adversely affecting the environment. Under the Law on Urban Development Activities, the Ministry of Ecology and Nature Resources no longer participated in the assessment of documentation to evaluate the environmental impact of proposed construction projects; new higher thresholds for when an EIA was required were introduced, meaning a smaller number of projects would be subjected to EIA, and thus public participation; and there was no requirement for public participation during the expertise or when the permit was issued and no requirement for the outcomes of the public participation during the environmental impact assessment (known as OVOS) to be taken into account by the developer;

(e) There was a lack of coordination between the Ministry of Ecology and Natural Resources (the Ministry responsible for EIA, Aarhus matters and the draft law “On introducing amendments to certain laws of Ukraine on implementation of the provisions of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters”) and the Ministry of Regional Development and Construction (the Ministry responsible for urban development and construction activities and the draft law “On Urban Development Activities).

22. At its fortieth meeting (Geneva, 25–28 March 2013), the Committee took note of the information submitted by the communicant of communication ACCC/C/2004/3 (Environment-People-Law). It noted the continuous failure of the Party concerned to implement the public participation procedures of the Convention over the past eight years. It also noted that the report submitted by the Party concerned in November 2012 related primarily to changes proposed through draft legislation, which, according to recent information, had in the meantime been withdrawn from parliamentary proceedings.

23. The Committee then discussed the matter via teleconference with a representative of the Party concerned, who informed the Committee of the internal ongoing procedures for the approval of legislative amendments in order to reach compliance with the Convention, including the revised draft law subject to parliamentary proceedings and the amendment of the Law concerning Development Construction, which was also pending. The representative noted that, while the Party concerned had striven to properly include all elements of article 6 of the Convention in the new draft law, some elements remained weak, such as the obligations arising from article 6, paragraph 2 (regarding provision of information to the public concerned about environmental decision-making procedures). The representative of the Party concerned thanked the Committee for its assistance, and said that the statement made during the teleconference would subsequently be provided in writing.

24. An observer representing Environment-People-Law expressed its deep concern at the fact that the original draft law had been withdrawn and that the current changes to the revised draft law were not open to public comment. It was also noted that there was currently no draft legislation before the parliament with respect to public participation and that public participation, especially in the context of the State ecological expertise, had significantly deteriorated, while at the same time the scope of review by the competent authorities was much more limited.

25. The Committee requested the Party concerned to comment on the statement made by the observer. It also requested the Party to submit an advance copy of the revised draft law, after its approval by all the relevant ministers, and before it was submitted for parliamentary approval, and agreed to review the situation at its upcoming meetings.

26. At its forty-first meeting (Geneva, 25–28 June 2013), the Committee recalled that, further to the discussions at its fortieth meeting, the Party concerned was expected to comment on the statement made by the observer and to submit an advance copy of the revised draft law “On amending certain laws of Ukraine in connection to implementation of the Convention on Environmental Impact Assessment in a Transboundary Context”, after its approval by all the relevant ministers, and before it was submitted for parliamentary approval. The Committee agreed to review the situation at its next meeting, when the information expected by the Party concerned by 31 July 2013 had been provided. It requested the secretariat to remind the Party of its obligation to respond.

27. On 11 July 2013, the ECE Executive Secretary wrote to the Minister for Foreign Affairs of Ukraine to remind the Party concerned of the Committee’s request and the deadline of 31 July 2013 to respond.

28. On 31 October 2013, the Minister of Ecology and Natural Resources informed the Committee that in May 2013, the draft law “On introduction of amendments of some laws of Ukraine in terms of implementation of the Convention on the Assessment of Environmental Impact in the Transboundary Context” had been registered by the Ukrainian parliament, and had had its first reading on 17 September 2013. The Ministry for Ecology and Natural Resources was currently preparing the draft law for its second reading.

29. On 13 November 2013, at the request of the Committee a letter was sent by the ECE Executive Secretary to the President of Ukraine noting that pursuant to decision IV/9h the final deadline for the Party concerned to submit detailed information to the Committee on its progress in implementing the measures referred to in decision II/5b was November 2013. The Executive Secretary encouraged Ukraine to provide the requested information as soon as possible and no later than 30 November 2013 in order that it could be taken into account in the preparation of the Committee’s recommendations to the Meeting of the Parties at its fifth session. The Executive Secretary also stressed that confirmation that the relevant legislation bringing Ukraine into compliance with the provisions of the Convention had been passed into law would be critical to the recommendations that the Committee would make in its report to the fifth session of the Meeting of the Parties. The letter indicated that the Committee was scheduled to complete its draft recommendations to the Meeting of the Parties at its forty-third meeting (Geneva, 17–20 December 2013).

30. On 14 November 2013, during an informal meeting between representatives of the Party concerned and the secretariat organized at the latter’s invitation, the representatives of the Party concerned informed the secretariat that in a letter dated 1 August 2013 it had provided a full response to the requests made by the Committee at its fortieth meeting. The secretariat checked all incoming reception points for correspondence, and informed the Party concerned that the letter had not been previously received by ECE.

31. In his letter dated 1 August 2013, but hand delivered to the secretariat on 14 November 2013, the Minister of Ecology and Natural Resources stated that the draft law “On amendments of some laws of Ukraine on implementation of the Convention on the

Assessment of Environmental Impact in the Transboundary Context” had been available on the official website of the Ukrainian parliament from 21 June to 6 September 2013. In accordance with article 20.1 of the Law of Ukraine “On Citizens’ Application”, citizens were entitled to submit comments to the public authorities and the public authorities were required to consider and resolve the issues raised in the citizens’ applications within a period of one month. Hence, the observer’s allegation that the draft law was not open for public comment was not valid. With respect to the observer’s allegation that there were currently no draft legal acts concerning public participation before the parliament, the Party concerned stated that a pause in consideration of the draft law had been caused by the scheduled parliamentary election and by the forming of the parliament’s committees, but the draft law had been registered in the parliament in May 2013 and by decree of 4 July 2013 had been inserted in the Parliament’s agenda. With respect to the observer’s comment that the public participation procedure had deteriorated, while the scope of review by the competent authorities was much more limited, the Party concerned stated that “despite the fact that the order of the public participation doesn’t observe all Compliance Committee of Aarhus Convention recommendations, the order of the public participation, as at 25 of March 2013, was not deteriorated in comparison with the order, which existed under the Law of Ukraine ‘On Environmental Expertise’ and before the Law of Ukraine ‘On Regulation of Urban Development’ had been adopted.” The letter also enclosed the draft law “On amendments of some laws of Ukraine on implementation of the Convention on the Assessment of Environmental Impact in the Transboundary Context” as registered in the Ukrainian parliament on 23 May 2013.

32. At its forty-third meeting (Geneva, 17–20 December 2013), the Committee prepared its draft report to the fifth session of the Meeting of the Parties, completing the draft report through its electronic decision-making procedure before sending it to the parties for their comments by 12 April 2014.

33. The communicant of communication ACCC/C/2004/3 (Environment-People-Law) provided its comments on the draft of the current report on 25 March 2014. In its comments, the communicant informed the Committee that the Resolution of the Cabinet of Ministers No. 771 had indeed been annulled on 25 April 2012 as a result of the communicant’s court application. However, in February 2013, the Higher Administrative Court had cancelled the annulment decision on the grounds that the communicant lacked standing in the case. As a result, Resolution No.771 remained in force. No comments on the draft of the current report were received from the Party concerned.

34. Taking into account the comments received by the specified deadline, the Committee finalized its report using its electronic decision-making procedure for submission to the fifth session of the Meeting of the Parties.

35. On the basis of the information before it, the Committee briefly summarizes the timeline regarding the development of the legislative measures requested through decision II/5b, as follows:

(a) In May 2008, the Party concerned provided its action plan requested through decision II/5b (although, through decision III/6f, the Meeting of the Parties regretted that the fulfilment of actions in the action plan would not fully address the recommendations of decision II/5b);

(b) On 29 June 2011, during the third session of the Meeting of the Parties, the Party concerned adopted Resolution of the Cabinet of Ministers No. 771 of June 2011 on the procedure for involving the public in discussions on issues related to decision-making that may impact the environment;

(c) On 25 April 2012, the Resolution of the Cabinet of Ministers No. 771 was annulled by the courts at the application of the communicant of communication ACCC/C/2004/3;

(d) On 1 May 2012, the Party concerned provided the Committee with a copy of the new draft law “On Environmental Impact Assessment”;

(e) On 26 June 2012, the Party concerned informed the Committee that the draft law “On amending some laws of Ukraine on implementation of the Convention on Environmental Impact Assessment in a Transboundary Context” had been registered with the Verkhovna Rada (parliament) and was expected to be considered in July 2012 (a copy of draft law was not provided to the Committee at that time);

(f) On 30 November 2012, an English translation of the draft law “On amending some laws of Ukraine on implementation of the Convention on Environmental Impact Assessment in a Transboundary Context” was provided to the Committee;

(g) Following the election of a new parliament in October 2012, the draft law “On amending some laws of Ukraine on implementation of the Convention on Environmental Impact Assessment in a Transboundary Context”, which had been registered in the parliament in June 2012, was automatically withdrawn in accordance with the parliamentary rules of procedure;

(h) Following the election of the new parliament, the draft law “On introducing amendments on Regulation of Urban Development Activities (related to public discussions of the project documentation on construction)”, proposing amendments to article 21 of the Law on Regulation of Urban Development Activities in terms of mandatory public consultation, which had been submitted to the parliament in September 2012, was also automatically withdrawn;

(i) In February 2013, the Higher Administrative Court overturned the lower court’s decision annulling Resolution of the Cabinet of Ministers No. 771. Resolution No. 771 of the Cabinet of Ministers thus remains in force. The Party concerned has not provided the Committee with the text of Resolution No. 771 nor any information on whether or how it is being applied in practice;

(j) On 23 May 2013, the draft law “On amending some laws of Ukraine on implementation of the Convention on the Assessment of Environmental Impact in the Transboundary Context” was registered by the parliament and had its first reading on 17 September 2013. Following the first reading, the Ministry for Ecology and Natural Resources began preparing the draft law for its second reading;

(k) On 14 November 2013, the text of the draft law “On amending some laws of Ukraine on implementation of the Convention on the Assessment of Environmental Impact in the Transboundary Context” as at its first reading was provided to the Compliance Committee;

(l) On 26 March 2014 the draft law “On amending some laws of Ukraine on implementation of the Convention on the Assessment of Environmental Impact in the Transboundary Context” was voted upon by the parliament and was rejected.⁴ The Committee is not aware of the reasons why the draft law was rejected by the parliament.

III. Consideration and evaluation by the Committee

36. Through paragraph 5 of decision IV/9h, the Meeting of the Parties urged Ukraine to implement the measures requested by the Meeting of the Parties in decision II/b as soon as

⁴ As announced on the webpage of the Ukrainian parliament (see http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=47080).

possible to bring its legislation and practice into compliance with the provisions of the Convention. Decision II/5b had found the Party concerned to be in non-compliance with article 3, paragraph 1, article 4, paragraph 1, and article 6, paragraphs 1 (a), 2 to 8 and 9 (second sentence), of the Convention.

37. In order to have fulfilled the requirements of decision IV/9h, the Party concerned would need to have provided the Committee with evidence that:

(a) It had adopted legislative measures to bring its legislation and practice into compliance with the provisions of the Convention;

(b) The legislative measures as adopted indeed fulfilled the requirements of the Convention, and in particular, article 3, paragraph 1, article 4, paragraph 1, and article 6, paragraphs 1 (a), 2 to 8 and 9 (second sentence).

38. The Committee appreciates the helpful information provided by the Party concerned in its various progress reports and correspondence and its engagement with the compliance review process throughout most of the intersessional period. The timeline in paragraph 33 above shows that, beginning with the development of the action plan in May 2008, the Party concerned has, during the intervening years, taken a number of steps towards the preparation of legislative measures to address the requirements of decision II/5b. However, as at the present time the legislation proposed by the Party concerned during this intersessional period to address the areas of non-compliance endorsed by the Meeting of the Parties through paragraph 1 of decision II/5b has not been adopted and no longer exists even in draft form.

39. The Committee is deeply concerned at the absence of concrete progress by the Party since the fourth session of the Meeting of the Parties to adopt the legislative and practical measures necessary to address those areas of its legislation and practice found by the Committee to be in non-compliance with the Convention, and endorsed by the Meeting of the Parties in paragraph 1 of decision II/5b, and thus to fulfil the requirements of paragraph 2 of decision II/5b and paragraph 5 of decision IV/9h.

IV. Conclusions and recommendations

A. Main findings with regard to non-compliance

40. The Committee notes the engagement of the Party concerned during most of the intersessional period, demonstrated by its correspondence with the Committee and helpful progress reports. It regrets, however, that, as of the present time, the legislation proposed by the Party concerned during this intersessional period to address the areas of non-compliance endorsed by the Meeting of the Parties through paragraph 1 of decision II/5b has not been adopted and no longer exists even in draft form. The Committee is deeply concerned about the absence of concrete progress by the Party since the fourth session of the Meeting of the Parties to adopt the legislative and practical measures necessary to address those areas of its legislation and practice previously found to be in non-compliance, and thus to fulfil the requirements of decision IV/9h.

41. Based on its considerations and evaluation, the Committee concludes that, as the legislative measures to fulfil the requirements of paragraph 2 of decision II/5b have not been adopted, Ukraine has failed to meet the requirements of both decision II/5b and paragraph 5 of decision IV/9h of the Meeting of the Parties. This means the Party concerned remains in non-compliance with article 4, paragraph 1, of the Convention on access to information, numerous provisions of article 6 concerning public participation in decision-making and article 3, paragraph 1, requiring a clear, transparent and consistent framework to implement the Convention.

B. Recommendations

42. The Committee recommends to the Meeting of the Parties that it reiterate paragraph 5 of decision IV/9h by which it “urges ... the Party concerned to implement the measures requested by the Meeting of the Parties in decision II/b as soon as possible”, namely, for the Party to bring its legislation and practice into compliance with the provisions of the Convention and, in particular:

(a) To provide for public participation of the kind required by article 6 of the Convention (article 6, paragraph 1 (a), and, in connection with this, article 6, paragraphs 2 to 8, and article 6, paragraph 9 (second sentence));

(b) To ensure that information is provided by public authorities upon request (article 4, paragraph 1);

(c) To address the lack of clarity with regard to public participation requirements in 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 and obligations with regard to making information available in the context of article 6, in order to ensure a clear, transparent and consistent framework for the implementation of the Convention (article 3, paragraph 1).

43. The Committee recalls that a caution was issued to the Party concerned through paragraph 6 of decision IV/9h, and that the Meeting of the Parties requested the Committee, through paragraph 9 of that decision, to report to it at its fifth session on whether the Party concerned had fulfilled decision II/5b with a view to the Meeting of the Parties deciding whether to suspend the special rights and privileges accorded to Ukraine under the Convention. However, considering the recent political situation in Ukraine, including profound changes in the Government, the Committee considers that it would be inappropriate to recommend a suspension of special rights and privileges at this stage. In the circumstances, it recommends that the Meeting of the Parties:

(a) Maintain the caution currently in place since the fourth session of the Meeting of the Parties;

(b) Provide for the caution to be lifted if the Party concerned has adopted the necessary measures to bring its legislation into full compliance with the provisions of the Convention, in particular fully satisfying the conditions set out in paragraph 34 (a) and (b) above, and has notified the secretariat of this fact by 31 December 2015. The successful fulfilment of the conditions is to be established by the Committee;

(c) Request that the Party concerned provide detailed progress reports to the Committee:

(i) By 30 November 2014, regarding the proposed process of legislative reform, including the steps taken so far and future steps to be taken, the proposed timetable for doing so and the consultation plan;

(ii) By 1 March 2015, enclosing the text of the draft law(s);

(iii) By 31 October 2016, regarding the results achieved in the further implementation of the above recommendations.