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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 Denmark 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 Denmark in the intersessional period in implementing the recommendations set out in the Committee's findings on communication ACCC/C/2011/57, adopted on 30 March 2012 (ECE/MP.PP/C.1/2012/7), in particular with regard to the implementation of the Convention's requirement that access to justice procedures not be prohibitively expensive.

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1. Communication ACCC/C/2010/57¹ was submitted by the non-governmental organization (NGO) Dansk Ornitologisk Forening — BirdLife Denmark (Danish Ornithological Society) alleging the failure of Denmark to comply with its obligations under article 9, paragraphs 2, 3, 4 and 5, of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).
2. Specifically, the communication alleged that the Party concerned failed to comply with the requirements of article 9, paragraphs 2 to 5, of the Convention because the new fees regime before the Danish Nature and Environmental Appeal Board (NEAB), which came into effect on 1 January 2011, imposed fees on NGOs for bringing appeals to NEAB that were much higher than before and different from the fees imposed on private individuals.
3. Having considered the communication in accordance with the procedure set out in section VI of the annex to decision I/7 of the Meeting of the Parties, the Committee at its thirty-sixth meeting (Geneva, 27–30 March 2012) found that by introducing a fee of DKK 3,000 for NGOs to appeal to the NEAB, the Party concerned failed to comply with the requirement in article 9, paragraph 4, of the Convention, that access to justice procedures not be prohibitively expensive.
4. The Committee confirmed the adoption of the edited version of its findings and recommendations in English, as well as their translation into French and Russian at its thirty-eighth meeting (Geneva, 25–28 September 2013) as document ECE/MP.PP/C.1/2012/7.
5. The Committee, pursuant to paragraph 36 (b) of the annex to decision I/7, and noting the agreement of the Party concerned that the Committee take the measures requested in paragraph 37 (b) of the same, recommended that the Party concerned undertake the necessary legislative, regulatory and administrative measures to ensure that the fees for NGOs to appeal environmental decisions before the NEAB were not prohibitively expensive.
6. The Committee invited the Party concerned to provide information, by no later than 16 September 2013, on its progress in implementing the Committee's recommendations.
7. The Party concerned provided its progress report on 16 September 2013.
8. In its report, the Party concerned informed the Committee that the Danish Government had presented a bill to the Danish parliament (Folketinget) according to which the fee for those other than private persons to make a complaint before the NEAB was reduced from DKK 3,000 to DKK 500. The bill was voted in June 2012 and entered into force on 1 August 2012.
9. At its forty-second meeting (Geneva, 24–27 September 2013), the Committee reviewed the progress report submitted by the Party concerned and prepared the draft of the present report and recommendations. The draft was sent on 18 November 2013 to the Party concerned and the communicant for comments by 9 December 2013. The Party concerned provided comments on 6 December 2013. The communicant provided its comment on 17 December, indicating it had nothing to add. The Committee, considering the comments submitted, adopted the report and recommendations at its forty-third meeting (Geneva, 17–20 December 2013) and agreed to submit it to the Meeting of the Parties at its fifth session.

¹ The communication and other documents relating to it are available on the Committee's website from <http://www.unece.org/env/pp/pubcom.html>.

10. The Committee recommends to the Meeting of the Parties, pursuant to paragraph 35 of the annex to decision I/7, and taking into account the cause and degree of non-compliance and measures taken by the Party concerned in the intercessional period, to:

- (a) Endorse the findings and recommendations of the Committee as adopted at its thirty-sixth meeting;
 - (b) Welcome the measures taken by the Party concerned.
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