

WGP 24

Agenda item 4(a) : Compliance mechanism

Presentation by the Chair, Mr Jonas Ebbesson

2 July 2020

OPENING

- Dear participants, dear Aarhus Convention community. I will report on the activities of the Compliance Committee. The Covid-19 pandemic affected the Committee's work already in early March, at its 66th meeting, when for the first time it held its ordinary meeting online, through audio-conference. As you know, for many years, the Committee has held virtual meetings in closed session between the meetings in Geneva, but at its 66th meeting both closed and open sessions were held online.
- Next week, the Committee will hold its 67th meeting, this time through video-conference.

COVID-19

- The ongoing COVID-19 pandemic has presented exceptional challenges for societies at large, and come at huge social and economic costs. I must stress, however, that this does not mean that the obligations in the Convention become softer, reduced, relaxed or any less binding during this period. It is important to stress this, because we see that in some countries, the pandemic has been taken as an excuse to cut down on democratic elements and participatory rights. So, to be clear, the Aarhus Convention does *not* allow its parties to limit the scope of participatory rights in environmental matters during the pandemic.
- To this end, at its 67th meeting next week, the Committee intends to prepare, in open session, a short statement on the application of the Convention during the COVID-19 pandemic. The statement will be discussed in open session next Monday, 6 July, at 11.30 CEST. Parties and observers are most welcome to take part in the session and to provide input. Based on this discussion, the Committee will rather swiftly prepare a draft statement, invite comments to take into account, and then adopt it.
- In addition, I would like to publicly thank Kazakhstan for its proactive approach in requesting the Committee to provide advice on the application of the Convention during COVID-19, specifically on whether it is compliant with the Convention to hold public hearings during the pandemic through video conferencing. In order to ensure that its advice could be timely and useful, the Committee applied an expedited procedure to prepare and finalize the advice through a transparent and participatory process. The advice was adopted 1 July – referred to as case A/2 – and is available on the Committee's website under "Requests for advice or assistance". In addition to explaining how the different provisions in article 6 should be applied to make public participation effective during the pandemic, the Committee reminds the Party concerned of the obligations under articles 3(1), 3(2) and 3(9) of the Convention. The

Committee also reminds the Party concerned that any shortcomings in ensuring effective public participation during the pandemic may be subject to challenge in accordance with article 9 of the Convention. Of course, it can also be subject to a communication to the Committee. I invite *all Parties and observers* to read the advice. The Committee commends Kazakhstan on its proactive approach and encourages other Parties to also take the advice by the Committee into account. Moreover, the Parties are encouraged, when they have queries about how the Convention should be applied, to follow Kazakhstan's example, and ask for advice in advance, rather than risk a possible compliance case in the future.

Facts and figures

- Turning now to the Committee's caseload, as you will have already seen, the report on the implementation of the work programme informs about the Committee's workload from 1 April 2019 to 1 April 2020 and I shall not repeat that information here.
- Since 1 April 2020, the Committee has held three further virtual meetings, on 13 May, 10 June and 16 June. In addition to the four findings adopted during the period covered in the report on the work programme¹, the Committee has completed one further set of draft findings since 1 April 2020 and is expected to complete three further draft findings during, or just prior to, its 67th meeting next week.
- The Committee currently has 49 pending cases, including 48 communications and one submission by a Party concerning another's compliance. In addition, at its 67th meeting next week the Committee will consider the preliminary admissibility of one new communication. At this time last year, the Committee had 47 pending cases. Its caseload thus remains high, and this means that it is not able to deal with cases as quickly as it should. I will return to that point later in my statement.

Deadlines for MOP7

- Besides its 49 pending cases, the Committee is also engaged in reviewing the implementation by the Parties concerned of the 10 MOP decisions and 2 MOP requests concerning the compliance of individual Parties.
- On this point, I would like to remind all Parties subject to MOP decisions, MOP requests and findings of non-compliance adopted by the Committee since MOP6, that their final progress reports are due on *1 October 2020*. That is less than three months from now. This will be their last chance – their last chance – to show the Committee that they have taken all the measures necessary to address the recommendations and have by then come into full compliance.
- Following the 1 October deadline, communicants and observers will have a 4-week period from the date they are forwarded the final progress report to provide their comments, and the Committee will thereafter start to prepare its draft reports to the Meeting of the Parties. Once the draft reports are prepared, they will be sent to Parties, communicants and observers for a two weeks commenting period. The Committee will finalize the reports, taking into account the comments received and submit them to MOP7.

¹ C107 (Ireland), C106 (Czechia), C121 (EU), C135 (France)

- Please note that the Committee will base its reports to MOP only on the information which is put before it by Parties, communicants or observers by the stated deadlines.
- I must make clear that the Committee will not be able to take into account any measures not already reported upon in the Parties' final progress report. Instead, there will need to be a further decision concerning that Party's compliance adopted at MOP7 and the Committee will review the measures taken in the next intersessional period.
- On a more positive note, if a Party in its final progress report demonstrates to the Committee that it has fully resolved the non-compliance, the Committee can report to the MOP that the Party is no longer in non-compliance and there will be no decision concerning that Party's compliance to be put to MOP7 for adoption.

Open dialogue session at CC67

- I now return to the issue of the Committee's *caseload*, which is something I have highlighted before. You can say that the huge number of cases is a sign of the effectiveness and relevance of, and trust in, Compliance Committee – otherwise members of the public would not submit so many communications. There is to my knowledge no other compliance mechanisms under any multilateral environmental agreement which manages so many cases as the Aarhus Convention Compliance Committee. As I said in my presentation to WGP23, the Committee is always looking at how it can improve the efficiency and effectiveness of its work, while at all times ensuring fairness and due process.
- As the Chair of the Committee, this is one of my main concerns. We still have a few cases pending which were submitted more than six years ago. The Compliance mechanism is not a remedy, but still, for the communicant who brought a case to the Committee's attention because they thought that a Party doesn't comply, it is not satisfactory to have to wait that long, to get a proper review. It is simply not in the spirit of the Convention. It is also not optimal, in case the Committee finds a Party in on-compliance, that it takes so long before a procedure to get into compliance starts.
- The Committee has already agreed on a number of measures to manage its caseload quicker, without compromising on due process, but more must be done. And I think more can be done within Decision I/7, as it is today. To that end, at next week's 67th meeting the Committee will hold an *open dialogue* session on Friday 10 July, at 15.00-17.15 CEST, to discuss further ways in which the Committee can more effectively manage its caseload. Both Parties and observers are warmly invited and encouraged to take part in that discussion.
- With the aim of assisting the discussion next Friday, we will tomorrow post a bullet point list of possible ways in which both communicants, Parties and the Committee can each work to ensure the Committee's caseload may be managed more effectively. This is just a list of possible ways, provided by the Chair. It has not been presented for or discussed by the Committee. I say this to ensure that nothing is yet agreed.
- I look forward to the participation of Parties and observers at the open dialogue session starting next Friday, at 3pm. This will be an initial discussion and I am planning to allocate time for a similar session during the Committee's 68th meeting in November to continue the discussion and to enable Parties and observers who may not be able to take part next Friday to also provide their input. It is my ambition that the

Committee can agree on a set of means to speed up its case management *before MOP* 7. I will come back to this point in a little while, when speaking about the secretariat's resources to assist the Committee.

Draft note on a rapid response mechanism regarding article 3(8)

- Before that, I would like to congratulate the Bureau on its draft note on a rapid response mechanism to deal with cases related to article 3 (8) of the Aarhus Convention.
- I consider a mechanism that can rapidly respond to imminent or ongoing violations of article 3(8) to be urgently needed, given the concerning and increasing reports of persecution and harassment of environmental defenders in a number of Aarhus Convention Parties. As the Bureau's draft note correctly points out, while the Committee may be aware of such incidents in Aarhus Convention Parties, its current mandate, functions and ongoing high case load mean that it is not able to respond rapidly to protect any person exercising their rights under the Convention from persecution, penalization or harassment.
- I thus commend the Bureau for its draft note, which is very timely, serious and important.
- I understand that the draft note will be discussed in detail at the in-person session of the 24th meeting of the Working Group of the Parties on 29 October and I look forward to comment in more detail on the options on the draft note then. However, I would just like to say now that, while it is for the Parties to decide in what format the rapid response mechanism should be established, given what I have just said, I would *strongly warn against* any option that would add *additional work* for the Committee. Thus, I must already now indicate my concern regarding Options 2(a) and 2(b). Option 2(a), under which the Committee would respond to urgent requests under article 3(8) jointly would mean that the Committee's already high workload would increase further, leading to delay across all aspects of its caseload. In contrast, Option 2(b), where a 10th Committee member would be elected to respond on his or her own to such urgent requests, would undermine the Committee's uniform and important practice that all its decisions are taken jointly. In addition, this alternative would also add work for the Committee, in terms of coordination with the Committee's regular work. These are just some initial comments for now. I would be very glad to comment further at the in-person session on 29 October.

Secretariat resources

- Turning now to the draft elements of the 2022-2025 work programme and the proposed allocation of secretariat resources in the next intersessional period, I must underline how critical the secretariat's support is to the efficient and smooth running of the Committee. This brings me back to the concern of the Committee's case-load.
- As you know, the Committee members are volunteers and do their work for the Committee on top of their already demanding jobs, very often at night and on weekends. While the Committee meets approximately once per month, it is the

secretariat that provides me as Chair the critical support to ensure the smooth and efficient running of the day-to-day work of the Committee.

- To that end, given the Committee's continued high caseload, shows no sign of abating, it is imperative that there is more secretariat legal support allocated to the Compliance Committee.
- I would like to make a quick comparison to the InterAmerican Court of Human Rights. Though a court, which the Committee is not, the support provided by the secretariat is very similar. The InterAmerican Court has approximately twice the case load of the Compliance Committee – but *seven* times the legal support in its secretariat (14 lawyers instead of just *two* in our case, and those two, in addition to their work for the Committee, support all the other legal work of the secretariat as well).
- I have read the draft 2022-2025 workplan and I fully support, and indeed call for, the increase in staff resources that is envisaged in that document. Without this support, the Committee will not be able to effectively function in the next intersessional period. With further support, the Committee is in a much better position to manage its case-load more quickly, without compromising on due process and quality, and without any need to change Decision I/7. By the way, speaking more generally, Decision I/7 has shown to provide a good balance of strictness and flexibility to ensure due process and fair and effective reviews.

Thanks to the Committee members and the secretariat

- In closing I would like to personally thank each of the Committee members for their dedicated and constructive work during the past year: My Vice Chairs, Áine Ryall and Alexander Kodjabashev, and Committee members Dmytro Skrylnikov, Fruzsina Bögös, Heghine Grigoryan, Jurek Jendrośka, Marc Clément and Peter Oliver. It is a privilege to work with each of you.
- Finally, I would like to thank the secretariat, in particular Fiona, Summer and Maricar, for their outstanding support over the reporting period. They do more than you can expect. I very often have contacts with the secretariat at late evenings and in the weekends in order to carry out necessary tasks of and for the Committee. It is a privilege also to have this support by a secretariat that is both committed and competent. Thank you!

And thank you all for your attention. I am available if you have any questions.