

Closing statement – Ole Kristian Fauchald

Access to information

The Ministry denies the public access to information on the opinion of the Ministry of Foreign Affairs regarding the content of Norway's rights and duties beyond the territorial sea. The only information that is currently available is the distinction that the Nature Diversity Act makes between provisions that are to be applied and those that are not to be applied beyond the territorial sea. We can only try to guess which rights and duties made it necessary to distinguish between the precautionary principle (which is to be applied) and the principle of best available technology (which is not to be applied).

We do not even know which legal basis the Ministry of Foreign Affairs referred to when making claims regarding Norway's rights and duties under international law. Was it the UNCLOS, one or more IMO conventions, the 1995 UN Fish Stocks Agreement, the OSPAR Convention, customary international law?

It is not clear why we should accept such extensive secrecy regarding statements invoking rights and duties under international law in order to limit the power of Parliament to enact legislation. It is such events as the one we are discussing here today that serve as bases for the strong critiques of international law that we frequently find within many countries these days.

I encourage the Committee to recommend that:

- Norwegian authorities reconsider the request for information;
- the authorities pay close attention to the public interest served by providing access to the information;
- the authorities explicitly consider whether access can be provided to parts of the documents;
- Norway specifies the public interest that will be served by providing access to the information and indicates the relative importance of such interests when weighted against the need for confidentiality.

I also encourage the Committee to conclude that:

- where a complaints procedure leads to a request for public authorities to reconsider a request for information, public authorities are bound by the deadlines of art. 4.2 and 4.7;
- Norwegian authorities should ensure application of the deadline in future cases of reconsideration, including in the potential reconsideration of my request should the Committee ask for such reconsideration.

Access to remedies

The issue of the complaints procedure of Norway is a tricky one. In cases concerning access to information from a Ministry, Norwegian legislation provides for a two-track system where private parties are forced to choose one of the tracks. Both tracks have significant problems when considered in light of Norway's obligation under art. 9.1.

1. The Ombudsman track has not worked well in the current case, as demonstrated by the failure to provide an "expeditious procedure". In addition, the Ombudsman's final decision is not legally binding, and it does therefore not fulfill this requirement of art. 9.1.
2. The ordinary complaints procedure leaves a lot of power to the Ministry that initially refused access to the information: it prepares the case for final decision (which includes drafting the content of the final decision), it presents the case to the decision-making body, and it takes part in the final decision. In my view, this procedure does not fulfill the requirements under art. 9.1 read together with art. 9.4 that the procedure shall be "fair" and "equitable".

Against this background, I encourage the Committee to recommend that:

- Norway takes the measures needed to ensure that a procedure as required in art. 9.1 and 9.4 is made available to those who are denied access to environmental information from ministries.

Implementation of the Environmental Information Act

My case has shown that there have been significant shortcomings in Norwegian authorities' implementation of the Environmental Information Act. To the extent that such lack of implementation also reflect a failure to ensure full compliance with the Aarhus Convention, this is a matter that should concern the Committee.

I encourage the Committee to ask Norway:

- to take appropriate and effective measures to ensure that environmental information is considered under the Environmental Information Act when decisions are made by public servants concerning confidentiality of the information;
- to ask Norway to ensure that those measures that are implemented within the Ministry of Climate and Environment are also implemented by other ministries and public authorities that are likely to handle significant environmental information.