



ROYAL NORWEGIAN MINISTRY OF  
CLIMATE AND ENVIRONMENT

United Nations Economic Commission for Europe  
Aarhus Compliance Committee  
Palais des Nations  
Room 429-4  
CH-1211 GENEVA 10

Your ref  
ACCC/C/2013/93 (Norway)

Our ref  
13/2965-

Date  
27.04.2017

**ACCC/C/2013/93 (Norway) - Committee's draft findings**

We refer to your letter 29 March 2017 inviting us to provide any comments to the above mentioned draft findings by Wednesday, 26 April 2017. We would like to provide the comments below to the draft findings.

Further below we also have some general comments to the communicant's comments to the draft findings that we just received.

Section II. Summary of facts, evidence and issues

*D. Substantive issues*

In *paragraph 43*, the last sentence, last line, the word "*message*" seems to have been omitted after the word "*standard*".

In *paragraph 61*, the first sentence should be corrected as follows to be in accordance with the Response: "*The Party contends that the Ombudsman adequately **addressed** ~~processed~~ the communicant's claims **regarding in accordance with** section 11(3) of the EIA and does not agree.....*"

Section III. Consideration and evaluation by the Committee

*Article 4, paragraph 7 – stating the reasons for refusal*

In *paragraph 82*, the last sentence, second last line, there seems to be an error with regard to the paragraphs referred to (*paragraphs 74-71*).

Section III paras 88-91 & IV. Conclusions and recommendations & Article 9, paras 1 and 4

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We understand the concerns expressed by the Committee about the duration of the review procedure before the Parliamentary Ombudsman. We note the Committee's finding that the 11 months it took for the Ministry to reconsider its initial decision pursuant to the statement from the Ombudsman, and the nearly 8 months thereafter it took for the Ombudsman to issue the final conclusion, failed to comply with the requirement in article 9, paragraph 1, second indent, to be "expeditious" and in article 9, paragraph 4, to be "timely".

We agree with the conclusion that there is no evidence to support that the time spent by the Ministry and the Ombudsman on this particular case is due to a systemic error.

As explained in our response there were some shortcomings in the handling of the complaint. They contributed to the prolonged process. The case could have been handled more swiftly. Consequently the case is no typical example of how appeals against refusals of requests for environmental information are handled by public authorities in Norway.

As explained in section 3.5. on page 19 of our response, appeals shall be prepared and decided without undue delay pursuant to the third paragraph of the Environmental Information Act, which refers to Section 32 of the Freedom of Information Act, which regulates appeals procedures. As further explained on page 19-21 of our Response, these acts do not apply to the Ombudsman. The Ombudsman Act and the Instruction for handling complaints pursuant to it do not set specific time limits, but the Ombudsman has nevertheless specified that statements should be given within 4-12 months depending on the case.

As can be seen from the attached letter and statistics from the Ombudsman, the case deviates from the usual practice of the Ombudsman. Cases regarding access to information are highly prioritized by the Ombudsman, and the deadlines for these cases are shorter compared to other cases. The processing time for cases regarding access to information under the Environmental Information Act and the Freedom of Information Act that necessitate further investigation («forelagte saker») is normally around 100-110 days. For cases that do not merit consideration by the Ombudsman («avviste saker») and cases that do not necessitate further investigation, («ikke-forelagte saker») the processing time is considerably shorter. The statistics show the processing time in the period from when the Ombudsman receives a complaint to the Ombudsman gives a statement or the case is being decided upon in another way. Pursuant to the internal guidelines of the Ombudsman, the public administration shall be given 3-4 weeks to follow up the Ombudsman's statements in cases regarding access to information. If the public administration does not respond accordingly, the Ombudsman will send a reminder, if needed repeatedly.

Furthermore, as stated in section 2.4. of our response, Norway has introduced appropriate measures to further improve the handling of requests for access to environmental information and avoid similar shortcomings in the future. These measures are further described in other parts of our response.

**With the exception of the minor factual corrections to sections II and III mentioned above, we therefore do not see any reasons for changes to the draft findings in the Committee's final findings.**

The Communicant's comments to the draft findings

Yesterday, we received a copy of the communicant's comments to the draft findings. We have not yet had time to go through the comments in detail. Having read quickly through the 14 pages including three annexes, it is however clear to us that the comments are extensive and substantive and seem in practice to ask for a rewriting of substantial parts of the findings and of reconsideration of most of the findings.

To a large extent the comments consist of references to the initial communication and the communicant's statement during the hearing of the case in December 2014. They therefore mostly include information that not only could have been, but actually have already been provided at an earlier stage of the process. According to the Guide to the Aarhus Convention Compliance Committee, last sentence of the last paragraph of section 7.3 on preparation of draft findings, page 33, comments on the draft findings and recommendations should not include information that could have been provided at an earlier stage of the process.

With regard to the comments concerning the redrafting of paragraphs 33-62 in Section II. Summary of facts, evidence and issues, the communicant asks for the arguments in his communication and statement in the hearings to be reflected differently and to some extent more extensively.

Should the Committee consider making such changes to these paras of the draft findings, we would like to ask for reasonable time to go through the comments or proposed changes by the Committee in order to consider whether that would result in the need for us to propose changes to the description of our arguments to secure that the presentation of the arguments of both sides continue to be reflected in a balanced way.

With regard to the comments concerning the reconsideration of the Committees draft findings, the communicant in reality asks the Committee to reconsider the case on the basis of the arguments he has already presented during the proceedings of the case and that consequently have been part of the Committee's considerations that led to the draft findings.

We therefore strongly encourage the Committe to refrain from following up on the communicant's request for reconsideration of its findings. Should the Committe despite this consider making changes to its findings, we would like to ask for reasonable time to comment upon the comments from the Communicant before any changes are considered.

Yours sincerely,

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Deputy Director General

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Senior Department Adviser

*This document is electronically approved and sent without signature*

Copy: Ole Kristian Fauchald, Blommenholm, Norway  
Mission of Norway, Geneva  
Annexes: Letter from the Ombudsman with attachment