

NORWAY'S STATEMENT AT THE 47TH MEETING OF THE COMPLIANCE
COMMITTEE 17 DECEMBER 2014

Chair, Communicant, ladies and gentlemen,

Norway appreciates this opportunity to present our view on the Communicant's claims.

We do not share the Communicant's view that Norway has failed to fulfil the requirements of Articles 4 and 9 of the Convention in our handling of his request for information and his complaint to the Parliamentary Ombudsman for Public Administration.

We do however appreciate the incentive the communication has provided to critically scrutinize our application of the Environmental Information Act implementing the Aarhus Convention in Norway.

Admittedly, there were shortcomings in the initial handling of the request and the complaint. Norway is however of the opinion that they were corrected during the handling of the Communicant's complaint. We have introduced appropriate measures to improve the handling of such requests and thus avoid similar shortcomings in the future.

Contrary to the Communicant's *first claim*, Norway is of the opinion that the public interest served by disclosure was taken into account, and that the refusal of his request for access to information was in accordance with a restrictive interpretation of the exemption provided for in Article 4 paragraph 3 litra c of the Aarhus Convention.

Such an exemption is provided for in Section 11 of the Environmental Information Act, which refers to corresponding exemptions in Sections 14 and 15 in the Freedom of Information Act. In the initial refusal, the Ministry concluded that the need to safeguard the internal communications of the public authorities outweighed the public interest served by disclosure. The explanation may have been too brief, but further details confirming that the Ministry had taken into account the public interest and balanced them against the interests served by refusal, were given in letters from the Ministry to the Ombudsman.

The information that we refused access to consists of documents exchanged between ministers, state secretaries or ministries.

The different opinions of the Ministries were expressed during the hearing of the draft Act and some of the arguments were mentioned in the proposition to the Parliament. Any future proposal for extension of the scope of the Act will be subject to hearing. The public therefore has knowledge of the discussion and the main arguments. It is therefore able to engage in, contribute to and influence upon the matter without having access to the details of the internal discussions. Furthermore, the information requested does not relate to emissions into the environment. It is therefore not the type of information that the Convention in Article 4 paragraph 4 emphasizes as particularly important for the public to have access to.

The documents contain legal and political arguments and deliberations and draft versions of the proposition for the Nature Diversity Act to the Parliament concerning the geographical scope of the Nature Diversity Act in view of public international law. The legal and political arguments are not distinctly separated. The question of the geographical scope was difficult and controversial. The Act was adopted in 2009 with the geographical scope mainly restricted to Norwegian land territory and territorial waters. Whether and how the scope should be extended to the economic zone and continental shelf is still open for consideration. Confidentiality and mutual trust is still of vital importance for continuation of these considerations.

Contrary to the Communicant's *first, second and fourth claim*, the requirement to state the reasons for refusal in Article 4 paragraph 7 of the Convention was in our opinion also fulfilled. In its refusal, the Ministry stated that it had considered enhanced access and thus whether the interest of public access outweighed the need for exemption, but concluded that the need for exemption prevailed. It furthermore provided the legal basis and main reasons for its refusal, including a determination that the information requested met the criteria in the exemptions upon which the rejection was based. The Ministry later admitted that it made an error in omitting information on the right to request further grounds for the refusal and to appeal pursuant to Section 13 of the Act. Admittedly, the considerations of the possibility to give access to parts of the information were not included in the initial rejection, but they were included in the last answer from the Ministry to the Ombudsman.

Contrary to the Communicant's *second claim*, Norway is of the opinion that we complied with the obligation in Article 4 paragraph 6 of the Convention. Admittedly, the Ministry at first erred in its interpretation and wrongly assumed that the stricter requirements for refusal in the Environmental Information Act did not apply. During the handling of the Communicant's complaint to the Ombudsman, the Ministry did however acknowledge that the Act did apply. It nevertheless concluded that all the information except that contained in one document was covered by the exemptions. Separation of the exempted information could thus prejudice its confidentiality. In his final letter the Ombudsman saw no legal grounds for criticizing this conclusion.

Norway does not share the opinion expressed by the Communicant in his *third claim* that the time spent by the Ministry to reconsider the request for information is contrary to Article 4 paragraph 7 and Article 9 of the Convention.

A request for reconsideration is in our opinion not governed by Article 4 of the Convention and therefore not subject to its specific time-limits. The Article does not mention such requests or reminders of such requests. Paragraph 7 of the Article explicitly refers to the review procedure provided for in accordance with Article 9 in relation to a refusal of a request for information. The second section of paragraph 1 of Article 9 explicitly refers to a procedure for reconsideration by a public authority in cases where a request for information under Article 4 has been refused.

In Article 9, there are no specific time-limits for reconsideration of a refusal to grant access, only requirements for "expeditious" and "timely" procedures. There are no indications as to what this means in terms of days, weeks or months. Admittedly, the Ministry's reconsideration could have been handled more swiftly, but that does not necessarily amount to non-compliance with Article 9.

Norway does not concur with the Communicant's *fifth claim* that the Ombudsman failed to effectively follow up the case.

The time spent by the Ombudsman in handling the Communicant's complaint was to a large extent necessary to secure a thorough review based on all relevant information. It does not merit a conclusion that it amounted to non-compliance with the requirement in Article 9 for an expeditious and timely procedure.

The Norwegian Acts relevant to the case require a decision without undue delay. The Ombudsman has specified that his opinion should be given within 4-12 months, depending on the need for and the time it takes to collect additional documents and comments from those involved in the case. The Ombudsman gave his first formal statement 10 months after receiving the complaint from the Communicant. The final statement was given 7 months after he received the Ministry's answer to his request for reconsideration in his first statement. He went through several steps to collect the necessary information to give a thorough examination of the complaint.

The Ombudsman also followed up the case while the Ministry reconsidered its decision. The Ministry was reminded four times by phone and letter of his request for reconsideration of its refusal. The last reminder was given one month before the Ministry sent its letter containing the result of its reconsideration.

The Ombudsman furthermore addressed the Communicant's complaints in his letter in January 2012 concerning the Ministry's use of time in the case. Four days later, the Ombudsman reminded the Ministry of his request for reconsideration of its refusal, and asked the Ministry to also comment upon the content of the Communicant's last letter. Admittedly, the Ministry's reconsideration could have been handled more swiftly. The fact that the Ombudsman did not comment upon the use of time in his final statement does however in our opinion not amount to non-compliance with Article 9.

The Ombudsman also addressed the complaint regarding access to parts of the requested information. Shortly after receiving the complaint and the information concerned, he asked whether the Ministry had considered giving access to parts of the documents. In his first formal statement he explicitly asked the Ministry to make an explicit assessment of whether partial access could be granted. In his last statement he expressed the view that the assessment could have been more explicit and thorough, but did not find legal grounds for further actions with regard to the complaint.

Norway does not agree with the Communicant's *sixth and final claim* of non-compliance with Article 4 paragraphs 4, 6 and 7 of the Convention due to lack of or insufficient procedures for handling of requests for environmental information.

It is in our opinion difficult to deduce from Article 3 or 4 of the Convention any obligation to introduce specific procedures. We are obliged to introduce necessary implementation and enforcement measures. We are obliged to ensure that environmental information, or non-confidential parts thereof, is made available upon request unless it may be refused in accordance with paragraphs 3, 4 and 6 of Article 4.

If requests for access to environmental information in some instances are not handled correctly, it may be necessary to consider introducing appropriate measures to prevent such incorrect handling in other cases. That does not necessarily require specific procedures.

Each request for information shall be considered on a case-by-case basis, regardless of whether the information has initially been classified as confidential. The main rule is that no initial classifications shall be made.

The handling of the Communicant's request for information has however pointed to possibilities for shortcomings in the way requests for environmental information are handled. We have implemented the following improvement measures:

We have included a reference to the Environmental Information Act on the website of the Electronic Public Records. This is the official website where you can search for documents held by Norwegian Ministries and public agencies and apply for access to them.

The Ministry of Climate and Environment has also introduced a standard message for use when requests for access to information are being distributed internally in the Ministry for consideration and decision. It clearly states that access to documents containing environmental information cannot be refused unless the requirements of the Environmental Information Act are fulfilled. It furthermore states that any refusal of access must also include a brief explanation of the grounds for refusal and information to the applicant of the right to request further grounds, the right to appeal and the applicable time-limits. It also refers to the Section of the Environmental Information Act containing the requirement to disclose non-confidential parts of the information requested.

The Ministry is also preparing internal seminars on the Freedom of Information Act and the Environmental Information Act in order to further increase the competence within the Ministry on how to handle requests for access to environmental information.

Based on the experience gained from these measures, similar seminars within other ministries and guidelines on the application of the Environmental Information Act may be considered.

In conclusion, Chair, Communicant, ladies and gentlemen, we are of the opinion that the requirements of Articles 4 and 9 of the Aarhus Convention have been met in the handling of the Communicant's request for environmental information. There were shortcomings in the initial handling of the request and the complaint, but these were in our opinion corrected during the handling of the Communicant's complaint to the Ombudsman. The shortcomings have however led us to introduce appropriate measures in order to further improve the handling of such requests and prevent similar shortcomings in the future.

Thank you.