



Economic and Social Council

Distr.: General
24 August 2011

Original: English

Economic Commission for Europe

Meeting of the Parties to the Convention on
Access to Information, Public Participation
in Decision-making and Access to Justice
in Environmental Matters

Compliance Committee

Thirty-first meeting

Geneva, 22–25 February 2011

Report of the Compliance Committee on its thirty-first meeting

Addendum

Compliance by the Republic of Moldova with its obligations under the Convention

1. Communication ACCC/C/2008/30 was made on 3 November 2008 by the Moldovan non-governmental organization (NGO) Eco-TIRAS International Environmental Association of River Keepers with regard to compliance by the Republic of Moldova with its obligations under article 3, paragraph 2, and article 4, paragraphs 1 and 2, of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), in connection with access to information on contracts for rent of land of the State Forestry Fund (Moldsilva).

2. 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 twenty-fifth meeting (22–25 September 2009) found that:

(a) The failure of the public authority Moldsilva to provide copies of the requested contracts of rent of lands of the State Forestry Fund to the communicant constituted a failure by the Party concerned to comply with article 4, paragraphs 1 and 2, of the Convention;

(b) The adoption of article 48 (e) of Government Regulation No. 187 of 20 February 2008 on Rent of Forestry Fund for Hunting and Recreational Activities, setting out a broad rule with regard to the confidentiality of the information received from the rent holders and the refusal of access to information on the grounds of its large volume,

constituted a failure by the Party concerned to comply with article 3, paragraph 1, and article 4, paragraph 4;

(c) The failure of the public authority Moldsilva to state lawful grounds for refusal of access to information in its letters No. 01-07/130 and No. 01-07/362 of 31 January 2008 and 14 March 2008, respectively, and the failure of the same public authority to give in its letters of refusal information on access to the review procedure provided for in accordance with article 9 of the Convention, constituted a failure by the Party concerned to comply with the Convention's article 3, paragraph 2, and article 4, paragraph 7;

(d) The failure of the public authority Moldsilva to respond in writing and in a timely manner to the last request for information submitted by the communicant to Moldsilva in the beginning of January constituted a failure by the Party concerned to comply with article 4, paragraph 7;

(e) The failure of the public authority Moldsilva to fully execute the final decision of the Civil chamber of Chisinau Court of Appeal, adopted on 23 June 2008, implied non-compliance of the Party concerned with article 9, paragraph 1 of the Convention.

3. The Committee recommended to the Party concerned, with its agreement, to:

(a) Ensure full execution of the final decision of the Civil Chamber of Chisinau Court of Appeal adopted on 23 June 2008 obliging Moldsilva to provide the communicant with the copies of the requested contracts;

(b) Take effective legislative and/or practical measures for better monitoring of the execution by public authorities of final court decisions under article 9, paragraph 1, of the Convention;

(c) Take effective measures for enhanced monitoring of the implementation by public authorities of the Convention and of the Moldovan legislation with regard to transparency of information, and for prevention of any future violation of the rights of the public under the Convention and the relevant Moldovan legislation by public authorities;

(d) Amend article 48 (e) of Regulation No. 187, so as to exclude its interpretation in contradiction with the requirements of article 4 of the Convention;

(e) Take effective measures, such as training activities, publications and conferences, with the objective of raising awareness of public servants, including representatives of Moldsilva and public servants of other public agencies responsible for the collection, maintenance and/or dissemination of environmental information, as well as the members of the judiciary, about requirements of the Convention;

(f) Examine the Moldovan regulatory framework on access to information in cooperation with representatives of the public and independent experts, in order to identify any provisions that might not be compatible with the provisions of the Convention, and accordingly decide on whether any amendments were necessary;

(g) Avoid inclusion in the contracts on the rent of lands administered by the State Forestry Fund of any clauses on confidentiality contradicting the requirements of article 4, paragraph 4, of the Convention;

(h) Develop and adopt an action plan for the implementation of the Convention, which would involve, inter alia, the measures recommended by the Committee under items (c), (e) and (f) above.

4. The above findings and recommendations of the Committee are contained in an addendum to the report of its twenty-fifth meeting (ECE/MP.PP/C.1/2009/6/Add.3).

5. The Committee invited the Party concerned to provide information, no less than four months before the fourth session of the Meeting of the Parties, on the measures taken and the results achieved in implementation of the above recommendations. The Party concerned did not respond to the letter of the Committee enquiring about any progress achieved.
6. At its thirty-first meeting, the Committee reviewed the national implementation report submitted by the Party concerned.
7. The Party concerned refers in its report to the findings of the Committee in connection with communication ACCC/C/2008/30, but does not provide any precise information on any progress it might have achieved with regard to the Committee's recommendations. The Committee regrets that the Party concerned has not provided detailed information on the specific recommendations on time.
8. The Committee notes that the Party concerned has engaged in a number of general capacity-building, training and awareness-raising activities targeting public officials, journalists, NGOs and members of the judiciary.
9. The Committee also notes that the article 7 of the Law on Access to Information provides for limited access to "confidential information in business relations, presented by public bodies as confidential, regulated by legislation on trade secrets which relate to production, technology, management, finance and other economic activities, dissemination of which may affect the interests of entrepreneurs". The Committee recalls that such exceptions should be interpreted strictly. For instance, in the case of communication ACCC/C/2008/30, the communicant was denied access to information related to contracts for rent of lands administered by the State Forestry Fund on the basis of confidentiality of information.
10. At its thirty-first meeting, the Committee concluded the draft of the present findings and recommendations and the Party concerned and the communicants were invited to provide comments. The Party concerned provided comments on 16 March 2011. On 4 March 2011, the Party concerned also addressed the letter of the Committee of 7 January 2011, where it had been asked to report on its progress with following the Committee's recommendations. The Committee appreciates that the Party concerned provided some clarification, as set out in the following paragraphs. The Committee considered the comments submitted and adopted the findings and recommendations using its electronic decision-making procedure. It agreed to submit them to the Meeting of the Parties.
11. The Party concerned informed the Committee that, on 4 March 2011, the communicant received the copies of all contracts for rent of lands of the State Forestry Fund, as required by final decision of the Civil Chamber of the Chisinau Court of Appeal, of 23 June 2008 (see also recommendation in para. 3 (a) above).
12. In addition, an Inter-Ministerial Working Group had been established, by Order of the Ministry of Environment, with representatives of various institutions, to ensure implementation of the Aarhus Convention in the country. The Group had developed a draft National Programme and Action Plan (see also recommendation in para. 3 (h) above) for the implementation of the Convention for the period 2011–2015, including the measures recommended by the Committee. According to the Party concerned, the National Programme and Action Plan had been prepared with the participation of environmental NGOs and were expected to be approved by the Government by June 2011.
13. The National Plan for harmonization of legislation for 2011 included a number of measures, including, inter alia, the elaboration of a new law on access to environmental information following the standards set by Directive 2003/4/EC of the European Parliament and the Council of 28 January 2001 on public access to environmental information (see also recommendation in para. 3 (c), (f) and (h)).

14. 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 intersessional period, to:

(a) Endorse the findings and recommendations of the Committee as adopted at its twenty-fifth meeting;

(b) Welcome the actions undertaken by the party concerned to address the recommendations of the Committee, such as the elaboration of the draft National Programme and the draft Action Plan;

(c) Welcome the many relevant capacity-building and awareness-raising initiatives for civil servants, NGOs, journalists and members of the judiciary undertaken by the Party concerned in cooperation with civil society;

(d) Invite the Party concerned to submit to the Committee the final versions of the National Programme and Action Plan, including the recommendations set out above, upon their adoption, and to submit to the Committee periodically (in November 2011, November 2012 and November 2013) detailed information on further progress in implementing the National Programme and Action Plan;

(e) Undertake to review the situation at its fifth session.
