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Compliance Committee

Fifty-eighth meeting
Budva, Montenegro, 10–13 September 2017
Item 8 of the provisional agenda
Communications from members of the public

Findings and recommendations with regard to communication ACCC/C/2014/99 concerning compliance by Spain

Adopted by the Compliance Committee on 19 June 2017*

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* This document was submitted late owing to additional time required for its finalization.

I. Introduction

1. On 20 January 2014, the non-governmental organization (NGO) Fons de Defensa Ambiental (the communicant) submitted a communication to the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) alleging the failure of Spain to comply with its obligations under article 6, paragraphs 2, 3, 4, 8 and 9, and article 9, paragraph 2, of the Convention.[1]

2. Specifically, the communication alleges that the public was not given the opportunity for early and effective participation regarding the award of an environmental permit to a private company, Uniland Cementera, insofar as the notice for the permitting procedure referred to the authorization of an activity that was different from the one actually authorized. For this reason, the communicant alleges that the Party concerned was not in compliance with article 6, paragraphs 2 and 3, of the Convention. Moreover, some information related to the permit and administrative file was made available to the public only after the environmental permit was issued. According to the communicant, the Party concerned thus failed to comply with article 6, paragraph 4, and consequently, also article 6, paragraphs 8 and 9, of the Convention. In addition, the communication alleges that there was a breach of access to justice under article 9, paragraph 2, of the Convention owing to an environmental NGO being denied standing to have access to an administrative review procedure.

3. At its forty-fourth meeting (Geneva, 25–28 March 2014), the Committee considered the preliminary admissibility of the communication and decided to defer its determination of preliminary admissibility in order to clarify certain points regarding the communication. The communicant was asked to address a number of questions put to them by the Committee.

4. The communicant replied to the Committee's questions on 26 June 2014.

5. At its forty-fifth meeting (Maastricht, the Netherlands, 29 June–2 July 2014), the Committee determined on a preliminary basis that the communication was admissible.

6. Pursuant to paragraph 22 of the annex to decision I/7 of the Meeting of the Parties to the Convention, the communication was forwarded to the Party concerned on 8 September 2014. On the same date, a letter was sent to the communicant along with number of questions soliciting additional information on the communication. Similarly, the Committee also called on the Party concerned to state its opinion on the communication and on the communicant's response.

7. The communicant sent its reply to the questions raised by the Committee on 23 September 2014. The Party concerned sent its response to the communication on 5 February 2015.

8. The Committee held a hearing to discuss the substance of the communication at its forty-ninth meeting (Geneva, 30 June–3 July 2015), with the participation of representatives of the communicant and the Party concerned. During the hearing, the Committee put a number of questions to both the communicant and the Party concerned and invited them to reply in writing after the meeting.

9. The Party concerned and the communicant submitted their replies to the questions put to them by the Committee during the above hearing on 17 and 28 September 2015, respectively.

[1] Documents concerning this communication are available on a dedicated page of the Committee's website: http://www.unece.org/environmental-policy/conventions/public-participation/aarhus-convention/tfwg/envppcc/envppcccom/acccc201499-spain.html.

10. The Committee agreed its draft findings at its virtual meeting on 1 June 2016, completing the draft through its electronic decision-making procedure on 15 June 2016. In accordance with paragraph 34 of the annex to decision I/7, the draft findings were then forwarded for comments to the Party concerned and the communicant on 27 June 2016. Both were invited to provide comments by 25 July 2016.

11. The Party concerned and the communicant provided comments on 22 and 24 July 2016, respectively.

12. At its virtual meeting on 13 September 2016, the Committee revised its draft findings taking into account the comments received, requested the secretariat to clarify one factual point with the Party concerned and agreed to complete its revised draft findings through its electronic decision-making procedure once the clarification was received.

13. On 16 September 2016, the secretariat wrote to the Party concerned seeking the requested clarification. The Party concerned provided its reply on 22 September 2016. The communicant provided its comments on the same day.

14. The Committee agreed its revised draft findings at its virtual meeting on 27 March 2017, taking into account the information received, and requested the secretariat to send the revised draft findings to the Party concerned and the communicant for their further comments, in accordance with paragraph 34 of the annex to decision I/7.

15. The Party concerned and the communicant provided comments on the revised draft findings on 19 and 20 April 2017, respectively.

16. The Committee proceeded to finalize its findings in closed session. After taking into account the comments received, the Committee made minor amendments to its considerations and agreed that no other changes to its findings were necessary. The Committee then adopted its findings at its virtual meeting on 19 June 2017 and agreed that they should be published as an official pre-session document for its fifty-eighth meeting. It requested the secretariat to send the findings to the Party concerned and the communicant.

II. Summary of facts, evidence and issues[2]

A. Legal framework

At the national level

17. For the legal framework on access to information and public participation in the Party concerned generally, see the Committee's findings on communication ACCC/C/2009/36.[3]

18. With respect to public participation in decision-making on the grant of integrated environmental permits, article 14 of Spanish Law 16/2002 on integrated pollution prevention and control,[4] as in force when the permit was issued, provided:

> The public authorities shall encourage the real and effective participation of those interested in the procedures for the granting of the integrated environmental authorization for new facilities or those who make any substantial changes to their facility and in the procedures for the renewal or modification of the integrated

[2] This section summarizes only the main facts, evidence and issues considered to be relevant to the question of compliance, as presented to and considered by the Committee.

[3] ECE/MP.PP/C.1/2010/4/Add.2, paras. 10–15.

[4] B.O.E. 12995.

environmental authorization of a new facility pursuant to the provisions of Articles 25 and 26.

The public authorities shall ensure that the participation referred to in the previous paragraph shall take place from the initial stages of the respective procedures. To that end, the provisions shall apply to such procedures for participation set out in Annex 5.[5]

19. Annex 5 of Law 16/2002, as in force when the permit was issued, provided:

1. The competent body of the autonomous community shall inform the public in an early stage of the procedure, before any decision has been taken or, at the latest, as soon as it is reasonably possible to provide information on the following situations:

(a) The application for integrated environmental authorization or, if applicable, renewal or modification of the content of said authorization pursuant to the provisions of Section 4 of Article 16.

(b) If applicable, the fact that the ruling on the application is subject to a national or cross-border environmental impact study or to consultations between Member States, pursuant to the provisions of Article 27.

(c) The identity of the bodies competent to rule the application, on which the relevant information may be obtained and of those to which observations or queries may be submitted, with express indication of the deadline available for so doing.

(d) The legal nature of the ruling on the application or, if applicable, the proposed ruling.

(e) If applicable, the details relating to the renewal or modification of the integrated environmental authorization.

(f) The dates and place or places in which the relevant information shall be provided, and the means used for this purpose.

(g) The forms in which the public may take part and forms of public consultation, as defined in accordance with Section 5.[6]

20. As from 12 June 2013, Law 16/2002 now requires that the competent body of the autonomous community shall further provide information, inter alia, on:

The documentation of the application for integrated environmental authorization, its substantial change, or where applicable, the documents relating to the review, in accordance with article 16.[7]

21. Under article 16, paragraph 1, of Law 16/2002, a public participation period of 30 days is compulsory for environmental permits.[8] This provision has remained unchanged.

22. Under article 23, paragraph 4, of Law 16/2002, as in force at the time the permit was issued:

The autonomous communities shall publish the administrative rulings by means of which integrated environmental authorizations are granted or modified in their

[5] Reply by Party concerned to Committee's questions, 17 September 2015, p. 2.
[6] Ibid.
[7] Ibid., p. 4.
[8] Communication, para. 16.

respective official journals and shall make the following information available to the public:

(a) The content of the decision, including a copy of the integrated environmental authorization and any conditions and subsequent updates.

(b) A report containing the principal reasons and considerations on which the administrative ruling is based and indicating the reasons and considerations on which said decision is based, including the information relating to the process of public participation.[9]

Catalonia

23. Article 16 of Catalan Law 3/1998,[10] as in force when the permit was issued, provided for period of 20 days for public consultation on the application and, where relevant, an environmental impact study.

24. Article 31 of Catalan Decree 136/1999[11] on public and local procedures further specified that:

After the period of 15 days mentioned in the preceding article has passed or, if appropriate, once any shortcomings have been resolved, the [Oficina de Gestió Ambiental Unificada (OGAU)] must submit the application to public consultation for a period of 20 days, by means of its publication in the *Official Journal of the Government of Catalonia* and its dissemination on the telematic information networks, and the city council must submit the application to a local consultation phase open to the residents of the area surrounding the site of the activity for a period of 10 days, and notify the result to the OGAU.[12]

25. The foregoing provisions have been replaced by article 20 of Catalan Law 20/2009,[13] which provides for a public participation period of 30 days by means of publication in the *Official Journal* and on online information networks (article 20, para. 1) and also a local consultation of 10 days (article 20, para. 2).

26. Article 23 of Catalan Law 3/1998, as in force when the permit was issued, requires that the interested parties are notified of the ruling by which the environmental authorization is granted or denied through the municipal council of the municipality in which the activity is to take place. Article 37 of Decree 136/1999 further specified that OGAU was required to draft the notification and that the municipal council, within a period of 10 days, was to issue the notification to the interested parties and inform OGAU.

27. The foregoing notice provisions have been replaced by article 30, paragraph 1, of Law 20/2009, which provides similar requirements to notify interested parties. Article 30, paragraph 2, requires that the operative part of the ruling by means of which the environmental authorization is granted or modified and, where applicable, the environmental

[9] Reply by Party concerned to Committee's questions, 17 September 2015, pp. 7–8.

[10] Llei 3/1998, de 27 de febrer, de la intervenció integral de l'Administració ambiental, D.O.G.C. No. 2598; see also B.O.E. 8293.

[11] Decret 136/1999, de 18 de maig, pel qual s'aprova el Reglament general de desplegament de la Llei 3/1998, de 27 de febrer, de la intervenció integral de l'administració ambiental, i s'adapten els seus annexos, D.O.G.C. No. 2894, p. 6883.

[12] Response by Party concerned to the communication, 5 February 2015, pp. 9–10.

[13] Llei 20/2009, del 4 de desembre, de prevenció i control ambiental de les activitats, D.O.G.C. No. 5524 p. 93055.

impact statement, be published in the *Official Journal of the Government of Catalonia* and in the database of environmental activities.

28. Since 2007, the *Official Journal of the Government of Catalonia* is published exclusively in digital format and is accessible on the Catalan Government's website.[14] The same approach is followed for all autonomous communities.[15]

29. Under article 4, paragraph 1 (g), of Catalan Law 3/1998, as in force when the permit was issued, a "substantial modification or change" was "any change in the authorized activity that can have significant negative effects on safety, human beings or the environment".[16] Article 3 (e) of Spanish Law 16/2002 on integrated pollution prevention and control has a similar definition.[17]

30. An internal administrative instruction issued by the Ministry of Territory and Sustainability of the Government of Catalonia[18] on 1 April 2014 states that public announcements on environmental permits should include the following information:

(a) Whether it is a new environmental authorization or revision of an existing or a substantial modification;

(b) Whether an environmental impact statement is provided;

(c) Identification of the type of activity concerned;

(d) The legal or natural person holding the environmental authorization or applicant for authorization or modification;

(e) The municipality where the installation is or will be located.

Procedures for natural and legal persons bringing a case before the Spanish administrative courts

31. There are, in principle, two types of procedures for the administrative review of acts of the public administration in Spain:

(a) *Administrative appeals under article 116 seq. of Law 30/1992*:[19] Administrative appeals may be lodged against acts that constitute, for any reason, an infringement of the law. Appeals for reconsideration of an act must be lodged within one month from the date that the person concerned becomes aware of that act;[20]

(b) *Ex officio review under article 102 seq. of Law 30/1992*: An ex officio review is an extraordinary remedy that is limited solely to cases in which the law could be seriously affected once the act becomes enforceable. Before commencing an ex officio review, there

[14] See http://dogc.gencat.cat/ca.

[15] Reply by Party concerned to Committee's questions, 15 February 2016, p. 1.

[16] Communicant's reply to the Committee's questions, 23 September 2014, p. 5.

[17] Communication, para. 4.

[18] The communication (p. 2) notes that "the Land and Sustainability Department of the Catalan Government was previously called the Environment and Housing Department". The head of the Department is sometimes referred to as "counsellor" by both the Party concerned and the communicant in their correspondence. At other times, the Department is referred to as a Ministry led by a Minister, and the word "territory" is used rather than "land". As the English version of the Catalan Government website clearly translates the Catalan "departament" and "conseller" as ministry and minister, this nomenclature has been used throughout, and the Ministry will be referred to by its name at the time the events being related occurred.

[19] Ley 30/1992, de 26 de noviembre, de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común, B.O.E. 26318.

[20] See response by Party concerned to the communication, pp. 13–14.

is a preliminary phase where two requirements are examined: the first, whether the applicant has the status of an interested party and, if so, whether the administrative act subject to the claim can be subsumed under the cases of invalidity as a matter of law set out in article 62, paragraph 1, of Law 30/1992. An ex officio review cannot be requested if the one month period for lodging an appeal for reconsideration was made available and allowed to expire.[21]

32. Administrative claims and appeals are decided by the Minister of Territory and Sustainability of the Government of Catalonia. The Minister does not purport to be an independent and impartial body established by law.[22]

33. After exhausting either of these legal remedies, the possibility exists to appeal to the contentious-administrative courts. Under the law of the Party concerned, standing for environmental NGOs before the courts is provided in three cases:[23]

(a) The NGO has the primary stated objective of promoting environmental protection and it has existed for more than two years;[24]

(b) The collective interest in the environment;[25]

(c) *Actio popularis* in waste law. [26]

B. Facts

34. Uniland Cementera (Uniland), a private company, operates a cement plant in the municipality of Santa Margarida i els Monjos, which is located in Catalonia, approximately 65 kilometres from Barcelona. The main activity of the company is to produce cement and rock aggregates.

35. On 24 November 2009, Uniland submitted a request to the Ministry of Environment and Housing of the Catalan Government for an environmental permit for the use of urban solid waste and dried sewage sludge at its plant. The communicant alleges that this request was a substantial modification of the authorization granted for the plant's activity on 19 January 2007, since it substituted a third of the petroleum coke used with urban solid waste (90,000 tons per year, i.e., 24 per cent of the total coke) and dried sewage sludge (50,000 tons per year, i.e., 9 per cent of the total coke).[27]

36. The communicant alleges that during the public information procedure, the public was not informed about this substantial change. The only activity submitted to public information regarding the environmental licence was "a project of cement production and the rock

[21] Ibid., pp. 14 and 17.

[22] Communicant's reply to the Committee's questions, 26 June 2014, pp. 1-2. Response by Party concerned to the communication, p. 13. In these documents, both parties use the translation "Counsellor" for Minister.

[23] Communication, para. 25.

[24] Spanish Law 30/1992, article 31, para. 2, and Spanish Law 27/2006 on access to information, public participation and access to justice in environmental matters, B.O.E. 2006, 13010, article 2, paras. 2 (b) and 22.

[25] Spanish Constitution, article 24, para. 1; Spanish Law 30/1992, article 31, para. 1 (c); and Spanish Law 27/2006, article 2, para. 2 (a).

[26] Catalan Law 1/2009 on waste (D.O.G.C. No. 5430) provides that "it is public the action to demand before administrative agencies and the courts of appropriate jurisdiction the observance of all the provisions of this Act" (article 106, para. 1). Translation provided by the communicant in its reply to the Committee's questions of 23 September 2014.

[27] Communication, annexes 1 and 2.

extraction done by the UNILAND company".[28] Specifically, the public information notice published in the *Official Journal of the Government of Catalonia* (No. 5590) on 18 March 2010 stated:

> In compliance with the provisions of Article 31 of Decree 136/1999, of 18 May, approving the general Regulations implementing Law 3/1998, of 27 February, on the comprehensive intervention of the environmental authorities and the adaptation of its annexes, we submit to public consultation the application for the environmental authorization of the Project involving the exercise of an activity of cement manufacture and rock extraction by the company Uniland Cementera, SA, in the municipality of Santa Margarida i els Monjos.
>
> The project will be available for viewing by the public for a period of thirty days, during office hours at the premises of the Unified Environmental Management Office of the Territorial Services and the Department of the Environment and Housing in Barcelona, Travessera de Gràcia, 26, 6th floor. During this period, any pleadings submitted in writing will be accepted.[29]

37. On 25 March 2010, the City Council of Santa Margarida i els Monjos commenced the local consultation procedure regarding the request for the environmental authorization filed by Uniland.

38. On 7 April 2010, a notice was sent to local residents in the immediate vicinity regarding the period of 10 business days for individual communications and hearings. No comments were received from the public during the required 30-day period for public comments.[30] Neither was any objection received after the notice was published on the Ministry's telematics networks. There is only one record of an enquiry made by the environmental officer of another cement company on 8 April 2010.[31]

39. On 28 April 2010, a local consultation certificate was added to the file confirming that no comments had been submitted during the consultation procedure.

40. On 3 June 2010, the Minister for Environment and Housing of the Government of Catalonia issued to the company an environmental permit (File BA20090192) for substantial modification to widen the scope of waste used in its energy recovery activities to include the use of urban solid waste and dried sewage sludge in the cement plant's clinker furnaces.[32] The full text of the permit was published on the website of the Legal Department of the Ministry of Environment and Housing, according to the Party concerned "immediately after 14 June 2010".[33]

41. On 20 June 2011, a representative of the NGO Col.lectiu Ecologista Bosc Verd (Green Forest Group) visited the offices of the Ministry of Territory and Sustainability of the Government of Catalonia requesting to examine file BA20090192 and make photocopies of the documents contained therein.

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[28] Communication, annex 4.

[29] Response by Party concerned to the communication, p. 10. The communicant states, very similarly, that the notice said: "Public notice: Public information about environmental permit application of the Project of a activity to produce cement and rock aggregates in the municipality of Santa Margarida e ils Monjos (BA20090192)". See communication, para. 6. For a copy of the notice itself (in Spanish) see annex 4 to the communication.

[30] Response by Party concerned to the communication, p. 2.

[31] Ibid.

[32] Communication, para. 9, and annex 5. Response by Party concerned to the communication, p. 3.

[33] Reply by the Party concerned to the Committee's questions, 17 September 2015, p. 14.

42. On 17 and 25 May 2012, Col.lectiu Ecologista Bosc Verd and 16 local residents, with the help of the communicant, submitted a request for an ex officio review under article 102 of Law 30/1992 to the registry of the central services of the Ministry of Territory and Sustainability of the Government of Catalonia with respect to the decision granting a substantial modification to the 2007 environmental decision.[34]

43. On 17 September 2012, the Minister of Territory and Sustainability of the Government of Catalonia rejected the request for ex officio review as inadmissible, on the basis of a lack of standing and legal grounds.[35] The Minister held that the NGO had no standing because it had no right or interest in the environment.[36]

44. On 5 November 2012, Col.lectiu Ecologista Bosc Verd and 16 local residents, with the help of the communicant, submitted an appeal for reconsideration of the Minister's decision of 17 September 2012.[37]

45. On 25 January 2013, the Minister of Territory and Sustainability rejected the appeal of the decision of 17 September 2012.[38] The resolutions restated the reasoning of the earlier resolutions rejecting the claims. At the same time, the applicants were informed that they could lodge an appeal with the contentious-administrative courts within two months. The applicants did not do so.

46. On 23 November 2012, Col.lectiu Ecologista Bosc Verd and 16 local residents, with the help of the communicant, submitted a complaint to the Catalan Ombudsman relating to the completed administrative actions.[39] The Ombudsman issued its decision on 23 April 2013. That decision recommended that the Ministry of Territory and Sustainability should consider preparing and publishing guidelines on public information announcements relating to environmental matters and, in particular, when applicable, to include in the title of the announcement the term "substantial modification". Also, the title should include the term "evaluation of environmental impact" when the process requires a new environmental permit. The Ombudsman's decision did not analyse whether the Aarhus Convention had been violated by the issuance of the permit in this case.[40]

47. The plant was still burning waste at the time of submission of the present communication.

C. Substantive issues

Article 6, paragraph 1 (a) and annex I

48. The communicant submits that the burning of waste is an activity within paragraphs 3, 5 and 22 of annex I to the Convention and is thus subject to article 6, paragraph 1 (a). Paragraph 5 of annex I on waste management concerns, inter alia, installations for the incineration of municipal waste with a capacity exceeding 3 tons per hour and installations for disposal of non-hazardous waste with a capacity exceeding 50 tons per day. The communicant submits that the environmental permit allows for the use of 247 tons of solid urban waste per day and 127 tons of dried sewage sludge per day, totalling 374 tons of waste

[34] Communication, annexes 6 and 7.
[35] Communication, annex 8.
[36] Communication, p. 13.
[37] Communication, annex 9.
[38] Communication, annex 10.
[39] Communication, annex 11.
[40] Communication, para. 37.

per day (i.e., more than 50 tons per day) and incineration of 15.58 tons per hour (i.e., more than 3 tons per hour).[41]

49. Paragraph 3 of annex I to the Convention includes installations for the production of cement clinker in rotary kilns with a production capacity exceeding 500 tons per day. The communicant submits that the environmental impact study establishes that Uniland's plant produces cement clinker in rotary kilns with a production capacity of 5,000 tons per day.[42]

50. With respect to paragraph 22 of annex I, the communicant alleges that a substantial modification of the activity of producing cement has taken place, and thus this paragraph is also triggered.[43]

51. The Party concerned considers that the operation of Uniland's cement plant should be considered as an activity under paragraph 3 of annex I concerning the mineral industry.[44] It considers that the expansion of the waste to be used for energy recovery in the cement plant permitted by the decision of 3 June 2010 is a "change or extension" of the above activity in accordance with paragraph 22 of annex I.[45]

Article 6, paragraphs 2, 3, 4, 8 and 9

52. The communicant alleges that the Party concerned has breached article 6, paragraph 2, of the Convention because the public concerned was not informed early in the environmental decision-making procedure, and in an adequate, timely and effective manner of: (a) the proposed activity and the application on which a decision would be taken; (b) the nature of possible decisions or the draft decision; or (c) the envisaged procedure.

53. The communicant also alleges non-compliance with article 6, paragraph 3, of the Convention because the public participation procedure did not allow sufficient time for informing the public.

54. Moreover, the communicant submits that the Party concerned failed to comply with the requirement in article 6, paragraph 4, of the Convention to provide for early public participation, when all options are open and effective public participation can take place.

55. The communicant contends that public participation was not carried out before the activity was authorized. Rather, only on 20 June 2011, long after the environmental permit was issued on 3 June 2010,[46] did a member of the environmental NGO Col.lectiu Ecologista Bosc Verd get access to information related to the permit and other documents from the administrative file.

56. Finally, the communicant submits that the lack of public participation also violated article 6, paragraphs 8 and 9, of the Convention because the result of the public participation was not taken into account and the public was not informed about the decision in accordance with the correct procedure.[47]

57. The Party concerned contends that the notification of the activity stated that it was a significant modification with an environmental impact and that it granted all citizens access to the file and the opportunity to participate in the process. It concedes that notice No. 5590

[41] Communication, para. 13, annex 2, p. 12, and annex 3, p. 24.
[42] Communication, para. 14 and annex 3, p. 24.
[43] Communication, para. 14.
[44] Response by Party concerned to the communication, p. 7.
[45] Reply of the Party concerned to Committee's questions following discussion at the Committee's forty-ninth meeting, 17 September 2015, p. 11.
[46] Communication, annex 5.
[47] Communication, para. 19.

published in the *Official Journal of the Government of Catalonia* did not specify the precise content of the modification.[48] However, it submits that the notice complies with the requirement of article 6 of the Convention as: it stated that the authorization affected a plant for the manufacture of cement; it explained the applicable procedure and identified the regulations governing it; and it indicated the time and venue where the documentation relating to the environmental authorization might be consulted, the authorities to which any comments or questions should be addressed and the location of the activity. [49]

58. The Party concerned submits that, in addition to the public consultation procedure described above, an additional procedure was performed in accordance with Catalan regulations. Under this additional procedure, the City Council of the area where the activity is conducted must individually notify the immediate local residents of that area of the authorization that is being requested so that they may consult the file and submit their pleadings. Accordingly, on 4 March 2010 the entire file for the application was forwarded to the City Council of Santa Margarida i els Monjos in order to be communicated to immediate local residents. On 28 April 2010, the City Council of Santa Margarida i els Monjos issued a certificate in which it stated that individual notice was given to the immediate local residents with a commenting period of 10 days, during which time no pleadings were submitted to the file. [50]

59. Finally, the Party concerned submits that, in accordance with the legislation in force, the final decision was published on the website of the Government of Catalonia.[51]

Article 9, paragraphs 2 and 4 – standing and effective remedies

60. The communicant alleges that the resolution of the Minister of Territory and Sustainability of the Government of Catalonia dated 17 September 2012 rejecting the claim of Col.lectiu Ecologista Bosc Verd and local residents for administrative review on the basis of a lack of standing was in violation of article 9, paragraph 2, of the Convention. The resolution found that the NGO did not have standing because it had not demonstrated that the main aim of the NGO (to protect woodland and fauna) could be affected by the new activity.[52] Likewise, the local residents did not have standing because *actio popularis*, provided for in Spanish and Catalan waste law, was not applicable in this case, which concerned an environmental permit and not waste management.[53] The communicant submits that the denial of standing to the NGO was a clear violation of article 9, paragraph 2, of the Convention, and in particular the objective of giving the public concerned wide access to justice and the requirement that NGOs promoting environmental protection should be deemed to have an interest.

61. With respect to the first criteria for standing for environmental NGOs set out in national law (see para. 33 (a) above), the communicant submits that the NGO fulfilled these criteria since it has the primary stated objective of promoting environmental protection and was established in 1986 (i.e., more than the required two years).

62. The communicant submits that Col.lectiu Ecologista Bosc Verd should, moreover, have had standing to protect the collective interest in the environment (see para. 33 (b) above).[54] According to decisions of the Constitutional Court of Spain, any non-profit

[48] Response by Party concerned to the communication, 5 February 2015, p. 11.
[49] Ibid., p. 10.
[50] Ibid., pp. 10-11.
[51] Ibid., p. 9.
[52] Communication, para. 23.
[53] Communication, para. 22.
[54] Communication, para. 27.

environmental organization is entitled to standing in the courts and public administration on issues of environmental protection.[55] The communicant submits that it is evident that the woodland and fauna of the area could be harmed by the burning of waste in the cement plant.[56] It notes that the environmental impact report identified the scope of the area affected by the activity as 280 square kilometres, which includes areas of woodland and fauna.[57]

63. Thirdly, the communicant submits that the NGO should have been entitled to have standing through *actio popularis* on waste law (see para. 33 (c) above).[58] The communicant notes that the resolution denied the NGO and local residents standing on this ground because no provision on the waste regulation was involved. The communicant submits that this was an overly restrictive interpretation, and moreover, the review procedure showed in any event that some provisions of the waste regulations had indeed been violated.[59]

64. The communicant notes that the restrictive interpretation of standing in this case was also contrary to article 9, paragraph 2, of the Spanish Constitution which binds all public authorities to effectively promote the participation of all citizens and groups.[60]

65. Finally, the communicant also submits that the denial of standing also led to a contravention of the requirement in article 9, paragraph 4, of the Convention regarding the effectiveness of review procedures subject to article 9.[61]

66. With respect to access to justice, the Party concerned submits that the communicant's allegations of non-compliance with article 9, paragraph 2, of the Convention are not substantiated. The Party concerned submits that under no circumstances can the actions of the Ministry of Territory and Sustainability of Catalonia involve a breach of article 9, paragraph 2, of the Convention, since it is not a court of law or an independent authority.

67. The Party concerned submits, moreover, that despite having access since 20 June 2011 to all the documentation relating to the environmental authorization, Col.lectiu Ecologista Bosc Verd allowed the statutory deadlines for filing an administrative appeal against this authorization to elapse, waiting one year before it officially requested the ex officio review on 17 May 2012.[62]

68. With respect to the rejection of the requests by Col.lectiu Ecologista Bosc Verd and 16 local residents for ex officio review, the Party concerned submits that under the Spanish legal system, an ex officio review is interpreted restrictively.[63] It is not possible to merely argue minor irregularities, but rather very serious defects or a complete lack of procedure must be alleged. It contends that an "opposite solution would lead to a conflict between the time frames for appeals and any annulment proceedings that may be brought, conflating different procedural channels that serve different purposes and have different functions".[64]

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[55] For example, Constitutional Court decision 34/1994 of 31 January 1994, B.O.E. 4723.
[56] Communication, para. 28.
[57] Ibid., citing annex 3 to the communication.
[58] Communication, para. 29.
[59] Ibid.
[60] Communication, para. 31.
[61] Ibid.
[62] Response by Party concerned to the communication, 5 February 2015, p. 12.
[63] The Party concerned cites a number of rulings in the documents it submitted on 5 February 2015, supporting this interpretation, among them the Spanish Supreme Court rulings of 30 September 2008, 3 December 2008 and 20 March 2012.
[64] Response by Party concerned to the communication, 5 February 2015, pp. 14–15.

69. The Party concerned points out that at no point did Col.lectiu Ecologista Bosc Verd and the local residents use the courts.[65] In response to the allegations of the communicant concerning the excessive costs of accessing justice, the Party concerned contends that recent judicial appeals in the area of environmental matters cast doubt that costs are indeed excessive. The Party concerned cites, for example, the case of Cassation Appeal No. 1703/2011, which imposed costs of €2,941.95 for an appeal against the ruling of the High Court of Catalonia in relation to the environmental authorization of the company Ercros Industrial. [66]

70. Finally, the Party concerned states that Uniland's cement activity has passed all its controls, thereby complying with the requirements and conditions stipulated in the environmental authorization. [67]

D. Domestic remedies

71. The use of domestic remedies by the communicants and others is described in paragraphs 42–46 above.

72. The communicant alleges that Col.lectiu Ecologista Bosc Verd and local residents were not able to submit the case to the Spanish courts due to the high cost of such proceedings, including court fees (€5,070), legal fees (minimum €13,000) and the practice of fee-shifting, i.e., the loser being required to pay the other parties' legal, expert and court fees.[68] Moreover, such proceedings would be ineffective in this case, given that the plant has been burning waste since 2010 and the final decision in the courts would take at least eight years.[69] In this regard, the communicant drew the Committee's attention to studies on access to justice in Spain conducted in 2009 and 2012. The 2012 study, inter alia, found:

> A negative, well-known aspect of Spanish administrative/environmental justice is that it is very slow. This is an uncontroversial, well documented conclusion, supported by the regular statistics and data offered by legal professionals, organisations and bodies … The delays in the Spanish court system are sometimes scandalous. For instance, the Constitutional Court took ten years to adjudicate a claim of unconstitutionality formulated against a 1988 State statute on local finance.[70]

73. The communicant thus submits that the NGO and local residents have exhausted all domestic remedies available to them.

74. The Party concerned disputes that the communicant has used all reasonably available domestic remedies, though it has not submitted that the communication should be considered inadmissible for this reason. In particular, it disputes that costs in environmental cases before the courts are excessive and submits that recent judicial appeals in the area of environmental matters cast doubt on the excessiveness of the costs alleged by the communicant (see para. 69 above).

[65] Ibid., p. 16.
[66] Ibid., p. 17.
[67] Ibid., pp. 19–21.
[68] Communicant's reply to the Committee's questions, 26 June 2014, pp. 2–4.
[69] Ibid., p. 5, citing two legal studies (2009) and (2012).
[70] Angel-Manuel Moreno Molina, "Study on aspects of access to justice in relation to EU environmental law — the situation in Spain", 30 April 2012, p. 18. Available from http://ec.europa.eu/environment/aarhus/access_studies.htm.

III. Consideration and evaluation by the Committee

75. Spain ratified the Aarhus Convention on 29 December 2004 and the Convention entered into force for Spain on 29 March 2005, 90 days after the deposit of its instrument of ratification.

Admissibility

76. The Committee notes the submission by the Party concerned that Col.lectiu Ecologista Bosc Verd and other members of the public concerned did not use all available domestic remedies to challenge the permit of 3 June 2010 allowing for substantial modification in the use of urban solid waste and dried sewage sludge at the plant (see para. 74 above).

77. With respect to use of available administrative remedies, the Committee notes the communicant's assertion that members of the public only learned about the permit of 3 June 2010 more than one year after it was issued (see para. 55 above). In such circumstances, the Committee considers the fact that Col.lectiu Ecologista Bosc Verd and the local residents did not lodge an "ordinary" administrative appeal within one month from learning about the permit, but rather requested an ex officio review of the permit, does not prevent the admissibility of the communication.

78. Regarding the use of available judicial remedies, namely the possibility to appeal to the administrative court, the Committee notes the communicant's submission that such a procedure would be prohibitively expensive for a local NGO like Col.lectiu Ecologista Bosc Verd and moreover, owing to the length of court procedures in Spain, would not provide for effective redress (see para. 72 above). With regard to the cost of court procedures, the Committee recalls its findings on communication ACCC/C/2009/36 (Spain), in which it held that the Party concerned, by failing to consider providing appropriate assistance mechanisms to remove or reduce financial barriers to access to justice to a small NGO, failed to comply with article 9, paragraph 5, of the Convention, and failed to provide for fair and equitable remedies, as required by article 9, paragraph 4.[71] The Committee notes that, pursuant to decision V/9k of the Meeting of the Parties, the Party concerned presently still remains in non-compliance with the Convention in this respect. In the light of the above, and also taking into account the evidence provided by the communicant as to the lengthy time frames for court procedures in the Party concerned, the Committee does not find the fact that neither Col.lectiu Ecologista Bosc Verd nor other members of the public appealed to the court regarding the Minister for Territory and Sustainability's decision of 25 January 2013 upholding the refusal for ex officio review of the permit bars the admissibility of the present communication.

Applicability of article 6, paragraph 1 and annex I

79. The communicant and the Party concerned agree that the operation of Uniland's cement plant in the municipality of Santa Margarida i els Monjos is an activity listed in paragraph 3 (mineral industry) of annex I to the Convention, and specifically an installation for the production of cement clinker in rotary kilns with a production capacity exceeding 500 tons per day. In addition, the parties agree that the expansion of the waste to be used for energy recovery in the cement plant permitted by the decision of 3 June 2010 is a "change or

[71] ECE/MP.PP/C.1/2010/4/Add.2, para. 66.

extension" of the above activity in accordance with paragraph 22 of annex I, albeit in the view of the Party concerned, not one meeting the criteria/thresholds in that annex.[72]

80. The communicant further submits that the burning of waste in the cement plant constitutes a (new) activity subject to paragraph 5 (waste management) of annex I (see para. 48 above). The Party concerned disputes this allegation, submitting that the use of waste in the facility must be classified as energy recovery to substitute a conventional fuel and not as waste management.[73]

81. The Committee notes the title of the environmental permit issued on 3 June 2010 permitting the activity in question, namely "Ruling of 3 June 2010, on the incorporation of a substantial change, due to the expansion of the waste to be used for energy recovery, to the environmental authorization of 16 January 2007 of Uniland Cementera, S.A. located in the municipality of Santa Margarida i els Monjos".[74] Moreover, according to the description of the project provided by the developer and annexed to the permit, the relevant change is stated to be "the partial replacement of this fuel (maximum 33% energy replacement) using the following as alternative fuels: "Combustible waste — [waste derived fuel] from the urban solid waste that has been classified, dried and ground (waste with code CER 191210, classified as not special); sludge from the wastewater treatment plant (waste with code CER 190805, classified as not special)".[75]

82. The Committee finds correct the parties' common view that the operation of Uniland's cement plant itself was an activity referred to in paragraph 3 (mineral industry) of annex I and thus subject to article 6, paragraph 1 (a), of the Convention. The Committee also finds correct the parties' common view that the environmental permit of 3 June 2010 was a change or extension of the cement plant activity in the sense of paragraph 22 of annex I to the Convention. Since the change in itself did not meet the criteria/thresholds set out in paragraph 3 of the annex, the Committee finds that the change was subject to article 6, paragraph 1 (b), of the Convention and, accordingly, it was up to the Party concerned to determine whether it may have a significant effect on the environment and consequently be subject to the requirements of article 6. The fact that an environmental impact study was carried out for the project[76] indicates that the authorities of the Party concerned considered that the change might have a significant effect on the environment, in line with the wording of article 6, paragraph 1 (b), and the Party concerned has not denied that the provisions of article 6 were indeed applicable. The Committee thus finds that the modification approved through the environmental permit of 3 June 2010 was an activity subject to the provisions of article 6 by virtue of article 6, paragraph 1 (b).

83. With respect to the communicant's submission that the modification should also be seen as a new activity under article 3 (waste management) of annex I to the Convention, the Committee does not find this submission persuasive, as the facts demonstrate that the activity approved by the environmental permit of 3 June 2010 was a modification, namely, the replacement of fuel, for an existing activity, i.e., the cement plant.

84. Finally, though neither the Party concerned nor the communicant refer to article 6, paragraph 10, in their submissions, the Committee finds that the modification approved by the environmental permit of 3 June 2010 also constituted an update of the operating conditions of that activity within the meaning of article 6, paragraph 10, of the Convention.

[72] Reply by the Party concerned to Committee's questions following discussion at the Committee's forty-ninth meeting, 17 September 2015, p. 11.

[73] Party's response to the communication, 5 February 2015, p. 11.

[74] Reply by the Party concerned to the Committee's questions, 17 September 2015, p. 11.

[75] Ibid., p. 13.

[76] See the reply by the Party concerned to the Committee's questions, 17 September 2015, p. 13.

Pursuant to article 6, paragraph 10, the provisions of article 6, paragraphs 2 to 9, were thus to be applied, mutatis mutandis, to the decision-making on the environmental permit.

85. In this regard, the Committee emphasizes that the clause "mutatis mutandis, and where appropriate" in article 6, paragraph 10, does not imply complete discretion of the Party concerned to determine whether or not it was appropriate to provide for public participation.[77] This discretion must be considered to be even more limited if the update in the operating conditions may itself have a significant effect on the environment, as in the present case.

86. In the light of the above, the Committee concludes that the modification approved by the environmental permit of 3 June 2010 was both an update in the operating conditions of the cement activity pursuant to article 6, paragraph 10, of the Convention and a change of the activity within the meaning of paragraph 22 of annex I, subject to article 6, paragraph 1 (b), of the Convention, and thus the requirements of article 6 of the Convention apply.

Article 6, paragraph 2

87. The communicant alleges that the information about the proposed activity contained in public notice No. 5590 published in the *Official Journal of the Government of Catalonia* on 18 March 2010 was misleading and prevented the public concerned from early and effective participation in the decision-making process. The notice referred to the authorization of "exercise of an activity of cement manufacture and rock extraction", which was an ongoing activity in the area. The public concerned could not tell from notice No. 5590 that the activity for which Uniland was in fact seeking an environmental permit was the use of urban solid waste and dried sewage sludge as a fuel at its cement factory. The communicant accordingly submits that the Party concerned failed to comply with article 6, paragraph 2, of the Convention, as the public concerned was not informed in an adequate, timely and effective manner of the proposed activity, the application on which a decision would be taken, the nature of possible decisions and the envisaged procedure (see para. 52 above).

88. The Party concerned concedes that public notice No. 5590 of 18 March 2010 did not specify the precise content of the activity in question. Nevertheless, members of the public were informed that the activity had an environmental impact and were also notified of the related decision-making procedure. The public had access to the files and could participate in the process with all the rights granted by articled 6 of the Convention (see para. 57 above). In addition, local residents in the area surrounding the site of the activity were individually notified.

89. The Committee will evaluate both the manner in which the public concerned was informed about the decision-making on the proposed activity in the specific case and the notice requirements contained in the applicable legislation in general.

(a) The case of Uniland

90. Public notice No. 5590 published on 18 March 2010 stated that "the application for the environmental authorization of the Project involving the exercise of an activity of cement manufacture and rock extraction by the company Uniland Cementera, S.A., in the municipality of Santa Margarida i els Monjos" is submitted for public consultation. It further stated that the project would be available for viewing by the public for a period of 30 days, at the premises of the Unified Environmental Management Office of the Territorial Services and the Ministry of Environment and Housing in Barcelona, and that during this period any

[77] See findings on communication ACCC/C/2009/41 (Slovakia) (ECE/MP.PP/2011/11/Add.3), para. 55.)

pleadings submitted in writing would be accepted (see para. 36 above for the full text of the notice).

91. In contrast, the notification sent individually to local residents expressly referred to the request by Uniland for the award of a substantial modification to its environmental authorization with respect to the use of waste and dried sewage sludge as a fuel at the cement factory.[78]

92. The Committee notes that the descriptions of the activity in public notice No. 5590 and in the notification sent individually to local residents differ. While the latter corresponds to the characterization of the project in the environmental permit issued on 3 June 2010 (see paras. 40 and 81 above), the former includes no indication that the modification related to the use of waste and dried sludge as a fuel at the cement factory. Therefore, members of the public concerned, except the local residents who were notified individually, were not informed in an adequate and effective manner about the proposed activity and the application on which a decision would be taken, as required by article 6, paragraph 2 (a), of the Convention. Such information must include a sufficiently clear and detailed description of the activity so that the public is able to gain an accurate understanding of its nature and scope. In this respect, the Committee reiterates its earlier finding on communication ACCC/C/2006/16 concerning Lithuania that "inaccurate notification cannot be considered as 'adequate' and properly describing 'the nature of possible decisions' as required by the Convention".[79]

93. In addition, the Committee points out that public notice No. 5590 did not specify: the public authority responsible for making the decision as required by article 6, paragraph 2 (c), of the Convention; what environmental information relevant to the proposed activity was available, as required by article 6, paragraph 2 (d) (vi); and the fact that the activity was subject to an environmental impact assessment procedure, as required by article 6, paragraph 2 (e), of the Convention.

94. In the light of the above, the Committee finds that, by not properly informing the public concerned about the proposed change or extension to an activity subject to article 6 or update to its operating conditions, or of the public authority responsible for making the decision, and by not indicating what environmental information relevant for the proposed activity was available and that the activity was subject to an environmental impact assessment procedure, the Party concerned failed to comply with article 6, paragraph 2 (a), (c), (d) (vi) and (e), of the Convention in this case.

(b) Legal framework and general practice

95. As for the relevant national legislation in force at the time when the public notice about the activity was published, the Committee notes that Spanish Law 16/2002 on integrated pollution prevention and control explicitly required the competent body of the autonomous community to inform the public, in an early stage of the procedure and before any decision had been taken, inter alia, about:

(a) The application for integrated environmental authorization;

(b) If applicable, the fact that the ruling on the application was subject to a national or cross-border environmental impact study;

[78] Response by Party concerned to the communication, 5 February 2015, annex, document 3 (in Catalan).

[79] ECE/MP.PP/2008/5/Add.6, para. 66.

(c) The authorities competent to decide the application, from which the relevant information might be obtained and to which observations or queries might be submitted, with an indication of the time frame for that purpose;

(d) The principal reports and decisions sent to the competent authority or authorities.

96. The current version of Law 16/2002 (as amended 12 June 2013) further requires that the public be provided with information on the documentation of the application for integrated environmental authorization, its substantial change or, where applicable, the documents relating to the review.

97. At the regional level, according to the publication criteria of the Catalan Ministry of Territory and Sustainability dated 1 April 2014 (an internal administrative instruction put in place after the permit in this case was issued), public announcements on environmental permits must include, inter alia, information on:

(a) Whether it is a new environmental authorization, a revision of an existing authorization or a substantial modification;

(b) Whether an environmental impact statement is provided;

(c) The type of activity concerned.

98. The Committee notes that Law 16/2002, as in force at the time the permit was issued, did not expressly require the public concerned to be informed about the "proposed activity", in accordance with article 6, paragraph 2 (a), of the Convention. However, following the 2013 amendments, Law 16/2002 as currently in force requires information to be provided about the documentation related to the proposed activity. In this context, the Committee recalls its findings on communication ACCC/C/2008/31 (Germany) in which it held that "the fact that the exact wording of any provision of the Convention has not been transposed into national legislation is in itself not sufficient to conclude that the Party concerned fails to comply with the Convention".[80] While not legislation, the publication criteria of the Ministry of Territory and Sustainability dated 1 April 2014 also require identification of the type of activity concerned. In the light of the above, the Committee does not find the legal framework of the Party concerned to be in non-compliance with article 6, paragraph 2 (a), of the Convention. Moreover, without any other examples of specific cases in which the "proposed activity" was incorrectly identified in the public notice being put before the Committee in due time,[81] it has not been substantiated before the Committee that there is any systemic non-compliance in the implementation of article 6, paragraph 2 (a), of the Convention by the Party concerned in practice.

Article 6, paragraphs 3, 4 and 8

99. The communicant alleges that as a consequence of the failure of the Party concerned to properly inform the public concerned about the proposed activity, members of the public could not effectively participate in the decision-making procedure in breach of article 6, paragraphs 3, 4 and 8, of the Convention. In particular, as a result of the inadequate notice, the public participation procedure did not allow sufficient time for informing the public in accordance with article 6, paragraph 3, of the Convention; the Party did not provide for early

[80] ECE/MP.PP/C.1/2014/8, para 75.

[81] In its comments on the revised draft findings, the communicant provided a weblink to a 2015 court decision (in Spanish only) which it asserted was another example, without giving any explanation of that decision. The Committee generally will not consider new information submitted after the completion of its draft findings unless it determines that information to be of fundamental importance to its findings, which it considers is not the case here.

and effective public participation when all options were open and effective public participation could take place as required by article 6, paragraph 4, of the Convention; and the result of public participation was not taken into account in violation of article 6, paragraph 8, of the Convention.

100. With respect to its allegations concerning article 6, paragraphs 3, 4 and 8, the Committee notes that the communicant has not identified any specific additional failures in the public participation procedure besides the flaws in the notice already examined in paragraphs 90–94 above, and there found to amount to non-compliance with article 6, paragraph 2, of the Convention. The Committee finds that the communicant has not therefore established that the Party concerned failed to comply with article 6, paragraphs 3, 4 or 8, of the Convention in this case.

Article 6, paragraph 9

101. The communicant further alleges that, contrary to the requirements of article 6, paragraph 9, of the Convention, the public was not properly informed about the decision to permit the activity in question after it had been taken.

102. The Party concerned submits that the full text of the decision was published on the website of the Legal Department of the Ministry of Environment and Housing of Catalonia "immediately after 14 June 2010".[82]

103. The Committee notes that it is common ground between the parties that the text of the decision was published only on the website of the Ministry.[83] The Committee has concluded in its previous findings that to be in compliance with article 6, paragraph 9, of the Convention, the Parties should establish, in their legislation, a clear requirement to inform the public of when the decision is taken, including a reasonable time period (deadline) for providing this information "promptly" and "in accordance with the appropriate procedures", in particular bearing in mind the relevant time frames for initiating review procedures under article 9, paragraph 2.[84] The Convention leaves the Parties some discretion in designing "appropriate procedures" for informing the public under article 6, paragraph 9, about the decision once it has been taken. However, these procedures must ensure that information about the decision taken is communicated to the public in an effective way. In this regard, the Committee notes with approval paragraph 137 of the *Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters* which recommend that: "The methods used to notify the public concerned under article 6, paragraph 2, may also be used here, bearing in mind, however, that under article 6, paragraph 9, the right to be informed is granted to 'the public' and not to 'the public concerned' only."[85] Drawing on the above, the Committee considers that, as a good practice, the methods used to notify the public concerned under article 6, paragraph 2, should be utilized as a minimum for informing the public under article 6, paragraph 9, of the decision once taken, recalling that the latter requires the public generally to be informed, and not just the public concerned.

104. In the view of the Committee, informing the public about the decision taken exclusively by means of the Internet does not meet the requirement of article 6, paragraph 9, of the Convention. The Committee commends the practice of making the full text of the

[82] Reply by the Party concerned to the Committee's questions, 17 September 2015, p. 14.

[83] Ibid.

[84] See for example the Committee's findings on communication ACCC/C/2006/16 (Lithuania) (ECE/MP.PP/2008/5/Add.6), paras. 81 and 84, and findings on communication ACCC/C/2011/59 (Kazakhstan) (ECE/MP.PP/C.1/2013/9), para. 64.

[85] United Nations publication, Sales No. E.15.II.E.7, para. 137. Available from http://www.unece.org/index.php?id=41803.

decision available electronically on the website of the competent authority (and also, but not only, on the website of the developer). However, relying solely on publishing the decision electronically may exclude members of the public who do not use the Internet regularly or do not have easy access to it from the possibility of being effectively informed about the decision that has been taken. Moreover, as the Committee held in its findings on communication ACCC/C/2012/71 (Czechia), "it is not reasonable to expect members of the public to proactively check the Ministry's website on a regular basis just in case at some point there is a decision-making procedure of concern to them."[86] The Committee highlights that this logic is equally applicable to electronic publication in official gazettes. On this point, the Committee also recalls its finding on communication ACCC/C/2004/8 (Armenia) where it held that the mere fact that the public may be able to access a decision subject to article 6 through a publicly accessible electronic database does not satisfy the requirement of article 6, paragraph 9, if the public has not been promptly and effectively informed of that fact.[87]

105. In the light of the above, the Committee finds that by not informing the public about the decision to permit the activity subject to article 6 of the Convention by any other means than publishing the decision on the Internet, the Party concerned has failed to comply with the requirements of article 6, paragraph 9, of the Convention.

Article 9, paragraphs 2 and 4

106. The Committee notes that, based on the evidence before it, no member of the public has sought to challenge, either before a court of law or another independent and impartial body established by law, any decision, act or omission relating to the decision-making procedure on environmental permit of 3 June 2010 (File BA20090192) concerning the substantial modification to the scope of waste used in Uniland's energy recovery activities. The Committee accordingly finds the communicant's allegations concerning article 9, paragraphs 2 and 4, of the Convention (see paras. 60–65 above) to be unsubstantiated and the Committee will not deal with these allegations further.

IV. Conclusions and recommendations

107. Having considered the above, the Committee adopts the findings and recommendations set out in the following paragraphs.

A. Main findings with regard to non-compliance

108. The Committee finds that:

(a) By not properly informing the public concerned about the project by the company, Uniland Cementera, and in particular about:

(i) The proposed change or extension to an activity subject to article 6 or update to its operating conditions;

(ii) The public authority responsible for making the decision;

(iii) What environmental information relevant for the proposed activity was available;

(iv) The fact that the activity was subject to an environmental impact assessment procedure;

[86] ECE/MP.PP/C.1/2017/3, para. 76.

[87] ECE/MP.PP/C.1/2006/2/Add.1, para. 31.

the Party concerned failed to comply with article 6, paragraph 2 (a), (c), (d) (vi) and (e), of the Convention (para. 94);

(b) By not informing the public about the decision to permit the activity subject to article 6 of the Convention by any other means than publishing the decision on the Internet, the Party concerned failed to comply with article 6, paragraph 9, of the Convention (para. 105).

B. Recommendations

109. The Committee, pursuant to paragraph 36 (b) of the annex to decision I/7 of the Meeting of the Parties, and noting the agreement of the Party concerned that the Committee take the measures requested in paragraph 37 (b) of the annex to decision I/7, recommends that the Party concerned take the necessary legislative, regulatory or other measures and practical arrangements to ensure that the public is promptly informed of decisions taken under article 6, paragraph 9, of the Convention not only through the Internet, but also through other means, including but not necessarily limited to the methods used to inform the public concerned pursuant to article 6, paragraph 2, of the Convention.

110. Taking into consideration that no evidence has been presented to substantiate that the non-compliance with article 6, paragraph 2, was due to a systemic error, the Committee refrains from presenting any recommendations in this respect.