



“Eco-TIRAS”
International
Environmental
Association of River
Keepers

Asociația
Internațională
Ecologică
a Păstrătorilor Rîului
“Eco-TIRAS”

Str. Teatrăla 11A, Chișinău, MD-2012, Moldova

Tel. /Fax: (+373-22) 225615, 550953

Fiscal Code: 24940015

E-mail: ecotiras@mtc.md; www.eco-tiras.org

May 20, 2009

To: Secretary of the Aarhus Convention, Mr. Jeremy Wates

Copy: Focal point of Moldova for the Aarhus Convention, Ms. Inga Podoroghin

Re: Communication Ref. ACCC/C/2008/30

Dear Mr. Jeremy Wates,

Thank you for your letter from 24 December 2008 concerning the Communication ACCC/C/2008/30.

Hereby I would like to provide answers to the questions raised by the Compliance Committee as well as to inform you about other developments.

Question 1. Is the decision of the Civil Chamber of Chisinau Court of Appeals (dated 23.06.2008, Case nr. 3 – 2039/2008) is final and binding on the Forest Agency Moldsilva?

Yes. The abovementioned decision could have been either contested in the Supreme Court of Moldova within 20 days, or executed. The Forestry Agency “Moldsilva” did not contest the decision of the Civil Chamber of Chisinau Court of Appeals within 20 days. “Moldsilva” did not executed the decision, with exception of the coverage of advocate services of the plaintiff). Therefore, for now this decision should be qualified as final.

Question 2. What measures have been relled on or applied to enforce the decision of Civil Chamber of Chisinau Court of Appeals (dated 23.06.2008, Case nr. 3 – 2039/2008)? If no measures have been taken or applied for, please specify reasons for failure to do so.

On April 1, 2009, Eco-TIRAS asked the Chisinau Court of Appeals to enforce its decision by issuing an enforcement order for this dossier. On April 10, 2009, Eco-TIRAS received a letter from the Chisinau Court of Appeal. The letter informed Eco-TIRAS that “Moldsilva” was informed about the court decision in September 2008. In this respect, Eco-TIRAS on April 13, 2009, sent a copy of this letter with a copy of court decision to “Moldsilva” with a question whether “Moldsilva” is in the position to execute the court decision. “Moldsilva” received this letter on April 14, 2009. No answer was received in the period established by the Law on Access to Information and the Law on Petitions (15 days) as well until May 20, 2009.

Question 3. To your knowledge, does the Moldovan legislation afford you the possibility to appeal the Regulation on Forest Fund Rent for the Purposes of the Hunting Management and

Recreation approved by Government Decision No. 187, dated 20.02.2008 (hereafter – Decision No. 187), in particular article 48(e) of the Regulation?

No, Moldovan legislation does not afford private legal and natural persons the possibility to appeal the governmental regulations. Article 4 (c) of the Law on Administrative Court nr.793 from 10.02.2000 excluded governmental decisions of normative nature from the competence of the Administrative Court. Governmental decisions of normative nature can only be contested in the Constitutional Court. However, according to Article 25 of the Law on Constitutional Court Nr. 317 from 13.12.1994, only a member of the Parliament, a parliamentary advocate and some other public officials and authorities can address the Constitutional Court. Private legal or natural persons do not have a right to appeal to the Constitutional Court.

In this respect I would like to inform you that on February 27, 2009, the Parliament of Moldova adopted the Law on State Secret. This new Law will enter into force on May 27, 2009. Article 10 (4) of this Law allows public authorities to create lists of data subject to state secret. This Article provides that such lists shall not be published. In our view, this Law can be used by the Government and by the court in perspective to argue the preservation of the current text of the Governmental Regulation on Forest Fund Rent for the Purposes of the Hunting Management and Recreation. From the other side, laws could not be applied retroactively, i.e. the mentioned law as well as governmental decision on forest rent adopted in February 2008 could not be applied to the case which took place in January 2008.

Question 4. Please provide your views, if any, on the application of the Convention by courts in the Republic of Moldova (in the light of the absence of any references to the Convention in the decision of the Chisinau Court of Appeals).

In general, the court cases related to pillars of the Aarhus Convention are very rare in Moldova. In relation to access to environmental information, the organic Law on Access to Information (2000) until the year 2009 generally looked as an efficient tool for courts. In our view, this is the reason why the Court did not referred to the Aarhus Convention in its decision. Of course, with the adoption of the new restrictive Law on State Secret (entering into force on May 27, 2009) the implementation of this pillar of the Convention will be much more difficult. Moldova needs to adopt a law to specifically address access to environmental information. A chapter in the general Law on Environmental Protection could also be a solution. In addition, measures to raise awareness of judges on the Aarhus Convention are needed.

In accordance with the Plan of Action “Moldova-EU”, the Republic of Moldova should harmonize its national legislation in field of the Aarhus Convention (Art. 69): “... – *Establish procedures regarding access to environmental information and public participation, including implementation of the Aarhus Convention, particularly by establishing structures and procedures for ensuring an acceptable level of service to those wishing to have access to information ...*”. No procedures including structures and procedures have been established until now. Moreover, the draft of the Action Plan on Human Rights which is being revised in the moment, does not include any reference to the Aarhus Convention and related rights in its chapter 5, dedicated the right to healthy environment.

5. To the best of your knowledge, does Moldovan legislation or its practical application by public authorities provide for the possibility to request an applicant to state his or her interest in receiving the requested information?

The Law on Access to Information (2000) in Article 10(3) makes it clear that any person, who would like to receive the access to information in accordance with this law, is free from the duty

to explain the interest in requested information. The same law limits the right to request of information 5(3) only by persons – residents of Moldova, which contradicts the Aarhus Convention. No measures to avoid this contradiction in national legislation are taken till present.

6. Are you aware of any existing practice by the Moldovan public authorities regarding separating out information exempted from disclosure and making available the remainder of the requested environmental information, as set out in article 4, paragraph 6, of the Convention?

The Law on Access to Information (2000) in Article 7 (3) provides for the obligation of the public authorities to separate out information exempted from disclosure and make available the remainder of the requested environmental information. However we are unaware of any preexisting practice of this kind in relation to the provision of environmental information.

7. According to the communication, the decision of the Civil Chamber of Chisinau Court of Appeal (dated 23.06.2008, Case No. 3 – 2039/2008) was not executed by 20 October 2008. Please provide the Committee with information on any subsequent enforcement of the decision.

For the date of May 20, 2009, the decision of the Civil Chamber of Chisinau Court of Appeal (dated 23.06.2008, Case No. 3 – 2039/2008) in part of presentation of requested environmental information was not executed. In November 2008 “Moldsilva” has however reimbursed Eco-TIRAS the advocate services’ costs (one of points of the Court decision).

In the beginning of January 2009, Eco-TIRAS has sent a letter to “Moldsilva” with a request to provide copies of all contracts on rent of State Forestry Fund valid for the date of January 1, 2009. No reaction was received so far.

All letters were sent to “Moldsilva” by registered mail and for all of them “Eco-TIRAS” received the successful delivery confirmation.

Sincerely yours,



Ilya Trombitsky
Executive Director