



**Economic and Social
Council**

Distr.
GENERAL

MP.PP/C.1/2004/4
19 July 2004

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

REPORT ON THE FOURTH MEETING

1. The fourth meeting of the Compliance Committee took place in Geneva on 13-14 May 2004. All members of the Committee were present. A representative of the non-governmental organization Earthjustice participated as an observer.
2. The meeting was opened by the Chairman, Mr. Veit Koester.

I. ADOPTION OF THE AGENDA

3. The Committee adopted its agenda as set out in document MP.PP/C.1/2004/3.

**II. RELEVANT DEVELOPMENTS
SINCE THE PREVIOUS MEETING OF THE COMMITTEE**

4. The Chairman presented the main points raised in connection with his report on the compliance mechanism to the Working Group of the Parties at its second meeting (3-4 May 2004), including with respect to the reporting mechanism. He also brought to the attention of the Committee the draft report of the meeting.
5. The Chairman further informed the Committee about to establish compliance mechanisms under two other multilateral environmental agreements, namely the Cartagena Protocol on Biosafety and the UNECE/World Health Organization Protocol on Water and Health.

6. The secretariat informed the Committee of the meeting on disenfranchisement organized in June 2004 by the United Nations University and the International Institute for Applied Systems Analysis.

II. OTHER MATTERS ARISING FROM THE PREVIOUS MEETING

7. The Committee further discussed the contents of the envisaged informal publication on the main aspects of the compliance mechanism. It was agreed that the paper on NGOs and the Compliance Committee should be included in the compilation. The Committee mandated the secretariat to edit it.

IV. SUBMISSIONS BY PARTIES CONCERNING OTHER PARTIES

8. The secretariat informed the Committee that no submissions had been made by Parties concerning compliance by other Parties.

V. SUBMISSIONS BY PARTIES CONCERNING THEIR OWN COMPLIANCE

9. The secretariat informed the Committee that no submissions had been made by Parties concerning their own compliance.

VI. REFERRALS BY THE SECRETARIAT

10. No referrals had been made by the secretariat regarding compliance by the Parties.

VII. COMMUNICATIONS FROM MEMBERS OF THE PUBLIC

11. Five communications had been submitted to the Committee by members of the public pursuant to paragraph 18 of the annex to decision I/7. Three of these had reached the secretariat only during the week before the meeting.

12. The Committee discussed each of the cases in turn, addressing the following points:

- Whether the information contained in the data sheet was accurate or needed modifying;
- Whether any of its members had a conflict of interest;
- Whether, on preliminary examination, the communication appeared to fulfill the admissibility criteria; and
- Which points should be raised with the Party concerned.

13. Communication ACCC/C/2004/01 submitted by the Kazakh NGO Green Salvation concerned compliance by Kazakhstan with the provisions of articles 4, 6 and 9 of the Convention. The communicant alleged that its right to information was violated when an information request submitted to Kazatomprom National Atomic Company was not answered. The NGO had requested information purporting to substantiate a proposal to import and dispose of foreign radioactive waste.

Subsequent appeal procedures in courts of various jurisdictions and instances had failed, in the communicant's view, to meet the requirements of article 9, paragraph 1, of the Convention, in particular through failing to recognize rights of NGOs to have a standing in court.

14. Communication ACCC/C/2004/02, also from the Kazakh NGO Green Salvation, alleged that Kazakhstan had failed to provide for public participation in accordance with article 6 of the Convention in a permitting procedure for the construction of high-voltage overhead electric power lines.

15. Communication ACCC/C/2004/03 concerned a proposal to construct a navigation canal in the Danube Delta, passing through an internationally recognized wetlands area in Ukraine. The communicant, the NGO Ecopravo-Lviv, claimed that, by failing to provide for proper public participation in a decision-making process on the state 'environmental expertise' (a procedure linked with the technical and economic assessment of a proposed project) and to provide access to documentation relevant to the process, Ukraine had failed to comply with its obligations under article 6 of the Convention.

16. Communication ACCC/C/2004/04 from the Hungarian NGO Clean Action Air Group asserted that the Hungarian Act on Public Interest and Development of the Expressway Network did not comply with the Aarhus Convention. The alleged non-compliance related to the special process of decision-making established by the Act for the construction of expressways.

17. Communication ACCC/C/2004/05, submitted by the Moldovan NGO Biotica, alleged non-compliance by the Government of Turkmenistan with the Convention. The communicant asserted that, by introducing in the Law on Public Associations of November 2003 a new regime for registration, operation and liquidation of non-governmental organizations, the Party was in breach of article 3, paragraph 4, of the Convention. It also alleged non-compliance by the Party with its obligations under article 3, paragraph 9.

18. The Committee determined on a preliminary basis that all the communications were admissible but did not at this stage draw any conclusions on the compliance issues raised in them. The Committee also agreed on a set of issues to be raised with each Party.

19. Three members of the Committee declared possible conflicts of interest with respect to communications ACCC/C/2004/01, ACCC/C/2004/03 and ACCC/C/2004/04 respectively.

20. The Committee discussed the implications for the workload both of its members and of secretariat staff if the recent rate at which communications had been received should prove to be indicative of a new trend. It agreed to allocate certain responsibilities for each communication to a one member, generally familiar with the type of case or national situation but not from the country concerned. For the first round of communications, the following distribution was agreed upon:

- ACCC/C/2004/01: Mr. Merab Barbakadze;
- ACCC/C/2004/02: Ms. Svitlana Kravchenko;
- ACCC/C/2004/03: Ms. Eva Kruzikova;
- ACCC/C/2004/04: Mr. Vadim Nee;
- ACCC/C/2004/05: Mr. Sándor Fülöp.

With respect to secretariat resources, it was agreed that it would be important to keep this question under close review in the light of the rate at which communications were received in the coming months.

VIII. OTHER INFORMATION RECEIVED BY THE COMMITTEE RELEVANT TO POSSIBLE CASES OF NON-COMPLIANCE

21. The secretariat informed the Committee that, following the notification to the Committee at its previous meeting, it had sent a letter of inquiry to the Government of Turkmenistan on 15 March 2004. The Party acknowledged receipt of the letter on 26 March 2004. It was agreed that, when forwarding communication ACCC/C/2004/05 to the Government of Turkmenistan, the secretariat should make a cross reference to the earlier letter to avoid any misunderstanding about the two processes.

IX. PROCEDURES IN THE INITIAL STAGES OF PROCESSING COMMUNICATIONS

22. The Committee discussed and agreed upon procedures for the secretariat forwarding communications it. It also agreed upon its own initial actions leading to the forwarding of communications to the Parties concerned. It further discussed and agreed upon procedures for making decisions electronically. It agreed that the procedures set out in the following paragraphs would be additional to those that it had already agreed, and would be incorporated in the *modus operandi* and the envisaged informal publication.

Procedure for forwarding communications to the Committee

23. When forwarding any communication to the Committee, the secretariat will add a data sheet providing basic information about the communication. The data sheet will include a 150-word summary of the communication.

24. The secretariat will post the data sheet on the web site at the same time as it forwards the communication. The Committee may subsequently make changes to the data sheet, which will then be updated accordingly. The communication and the supporting documentation will not be placed on the web site, or made available to the public upon request, until they have been sent to the Party concerned.

25. If the secretariat notes that a communication is incomplete (e.g. supporting documentation which the communication implies is enclosed is actually missing), or if there are technical problems with receiving the communication (e.g. some attachments require unusual software), the secretariat is mandated to resolve such problems through dialogue with the communicant before forwarding the communication to the Committee.

26. The secretariat should not wait for the signed copy of the communication to arrive before

forwarding it to the Committee in electronic form. The Committee will, however, normally wait for the signed copy of the communication to arrive before forwarding it to the Party concerned.

Communications submitted in languages other than English

27. If communications and/or supporting documentation are received in languages other than English, the secretariat will arrange for at least the essential documentation to be translated into English. It has already contracted a professional translator to translate documents from French and Russian into English, to be financed through the Aarhus Convention trust fund. The contract requires the material to be translated within two weeks. No concrete plans have yet been made with respect to supportive documentation submitted in other languages. Any translation of such documents will probably have to be addressed on an ad hoc basis, implying possible delays.

28. If a communication, or an essential part of the supporting documentation, is not received in English, the secretariat will delay forwarding it to the Committee until an English version is available.

29. When a communication and/or supporting documentation, or parts thereof, have been translated into English, a copy of the translated texts will be sent to the communicant and, in due course, to the Party concerned. The communicant will be offered the opportunity to comment on the accuracy of the translation if s/he so wishes. A similar procedure will apply to responses received from the Party concerned in languages other than English. The Party concerned will also be invited to comment on the accuracy of translations of official documents originating from a different source, e.g. legal acts, letters from public authorities.

Confidential communications

30. If the secretariat receives a communication and/or supporting documentation parts of which are confidential, it will highlight this when forwarding the material to the Committee. The secretariat will prepare a redacted copy of the communication and/or supporting documentation for public use.

31. Taking full account of article 4 of the Convention, noting that a restrictive interpretation of the exemptions is required, but aware of the importance of protecting the interests of third parties, the Committee has construed paragraph 29 of the annex to decision I/7 to apply to information which the communicant has requested be kept confidential not only out of the communicant's concern that he or she may be penalized, persecuted, or harassed but out of his or her concern that another person or persons may be so treated.

Initial steps required of the Committee

32. The Committee should, in accordance with paragraph 22 of the annex to decision I/7, ensure that communications are brought to the attention of the Party concerned 'as soon as possible'. A communication received before any given meeting of the Committee should at the latest be forwarded before the following meeting of the Committee. Electronic decision-making will be used to expedite the processing of communications (see paras. 39 and 40 below).

33. When the Committee receives a communication from the secretariat, it will need to:

- Make a preliminary determination as to whether it fulfils the admissibility criteria;
- Decide upon which points, if any, should be raised with the Party concerned when forwarding the communication.

34. As would be the case during a meeting of the Committee, any Committee member who may have a conflict of interest with respect to a particular communication should declare this at the outset of any electronic discussions on the communication. Declaration of a conflict of interest by a member should not prevent that member from participating in the discussion and contributing information to it. However, the member in question should take the possible conflict of interest into account when participating in the discussion.

35. Upon receipt of a communication, the Chairperson may request individual members of the Committee to provide assistance. Any member may also offer the Chairperson to assist with the communication in question.

36. If the communicant has requested that part of the communication be kept confidential, the Committee will need to decide whether the information that has not been designated confidential is sufficient for it to be able to process the communication. It may decide to enter into a dialogue with the communicant concerning the request for confidentiality if it considers that this will facilitate the processing of the communication.

37. If translation of material is required, the Committee will need to decide on the extent to which further material, other than that which is already available in English, should be translated, taking into account both the costs of translation and the delay involved. The Committee may also request the communicant to provide an English translation of certain materials.

38. When the secretariat is relaying questions or requests from the Committee to the communicant, it should have the discretion to clarify unclear responses or pose further clarifying questions with a view to gathering more complete information for the Committee. This should also apply at a later stage when corresponding with the Party concerned.

Procedures for taking decisions by e-mail

39. The Committee recalled the tentative conclusion that it had reached at its first meeting that certain decisions could be taken by e-mail, but not at that stage 'for making important decisions of a substantive nature' (MP.PP.C.1.2003.2, para. 14). It had not at that time discussed in any detail what might fall within the scope of 'important decisions of a substantive nature', nor what 'at that stage' might mean. The Committee agreed that, with communications from the public having started to arrive, it had entered a different phase. At this point, some intersessional decision-making would be necessary, particularly having regard to the requirement under paragraph 22 of the annex to decision I/7 to bring communications from the public to the attention of the Party concerned 'as soon as possible' and to the fact that the Committee's meetings are envisaged to take place just three times per year.

40. In order to expedite the processing of communications from the public, the Committee agreed that preliminary decisions¹ on the admissibility of communications and on which points should be raised with the Party concerned when forwarding the communication will be taken by electronic mail according to the following procedure:

(a) With the assistance of the secretariat, the Chairperson will prepare a draft decision or decisions on either or both of the above issues. The secretariat will circulate these to the Committee by e-mail, specifying a deadline for response by Committee members. The Chairperson may ask any other Committee member to assist him/her with the task of preparing such draft decisions and more generally to take responsibility for engaging in the detail of the communication on behalf of the Committee. Any interested Committee member may also contact the Chairperson to volunteer his or her services in this regard. However, only the secretariat would circulate any draft decisions on behalf of the Chairperson to the other members of the Committee;

(b) Within the deadline specified, each Committee member, having carefully considered the communication, any supporting documentation and the proposed draft decision(s), should either indicate that he or she is satisfied with the text of the decision(s) proposed, or propose amendments (which may be in the form of an alternative text). Committee members may also comment on the earlier comments of other Committee members. All comments should be sent by e-mail to all other Committee members and copied to the secretariat;

(c) If one or more Committee members request an amendment to the Chairperson's text, the Chairperson will put forward an amended proposal with a view to reaching consensus. This may be in the form of an indication of support for an amendment, or a combination of amendments, put forward by other Committee members. The amended proposal will be circulated by the secretariat with a further deadline for commenting;

(d) If a deadline for commenting (first or subsequent) expires and all those who have responded have indicated their satisfaction with the Chairperson's (latest) proposal but some Committee members have failed to respond, the secretariat will make further efforts to contact those Committee members;

(e) Once all Committee members have indicated their satisfaction with the Chairperson's (latest) proposal, the proposal will be deemed to have been adopted by the Committee as a preliminary decision.;

(f) No preliminary decision may be adopted by e-mail without all Committee members having affirmed their support for it. The procedure outlined in subparagraph (c) may be repeated until this is the case;

(g) When the conditions in subparagraph (e) have been met, the secretariat will circulate a note to the Committee confirming that the preliminary decision has been adopted, and, if necessary, attaching the text of the preliminary decision;

¹ In this context, the term 'decisions' should be taken to encompass 'determinations'.

(h) The Chairperson may at any stage decide that differences of opinion can be resolved only through discussion at a meeting of the Committee, and abandon the attempt to make a preliminary decision through e-mail communication, in which case he or she should inform the Committee accordingly;

(i) Every preliminary decision on the admissibility of a communication or on points to be raised with the Party concerned that is taken by e-mail shall be recorded in the report of the next meeting of the Committee, at least in summary form;

(j) At the instigation of the Chairperson, the Committee may use other forms of communication, such as regular post or conference telephone calls, possibly in combination with e-mail;

(k) The Committee will apply the above procedures on a trial basis and keep them under review in the coming months. Given the difficulty in foreseeing all eventualities that may arise, the Committee may on the basis of experience decide to extend the procedure to other types of decisions, and it may decide to do so electronically, using the procedure itself.

Forwarding communications to the Party concerned

41. When the secretariat, on behalf of the Committee, forwards any communication to the Party concerned, the communicant should be copied on the correspondence.

XIII. PROGRAMME OF WORK AND CALENDAR OF MEETINGS FOR 2004

42. The Committee confirmed that it would hold its fifth meeting on 23-24 September 2004, and tentatively agreed to hold its sixth meeting on 16-17 December 2004. Tentative dates of 16-18 February 2005 were agreed for the seventh meeting. The possibility of holding a meeting in April or May 2005 before the second meeting of the Parties would be discussed in December, with the decision depending inter alia upon the number of communications from the public.

XIV. ADOPTION OF THE REPORT AND CLOSURE OF THE MEETING

43. The Committee adopted the draft report prepared by the Chairman and the secretariat, and requested the secretariat in cooperation with the Chairman to finalize it. The Chairman then thanked the secretariat for its support and closed the meeting.