



**Economic and Social
Council**

Distr.
GENERAL

ECE/MP.PP/C.1/2005/8
22 December 2005

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
Geneva, 5-7 December 2005

REPORT ON THE TENTH MEETING

1. The tenth meeting of the Compliance Committee took place in Geneva on 5 to 7 December 2005. Seven of the members were present. Mr. Gerhard Loibl sent his apologies. Representatives of the non-governmental organizations (NGOs) Earthjustice and Civil Society Development of Vlora (Albania), as well as one independent expert, participated as observers.
2. The meeting was opened by the Chairman, Mr. Veit Koester.

I. ADOPTION OF THE AGENDA AND ELECTION OF OFFICERS

3. The Committee adopted its agenda as set out in document ECE/MP.PP/C.1/2005/7.

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

4. The secretariat informed the Committee that the Working Group on Water and Health under the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes had agreed to put forward for adoption by the Meeting of the Parties to the Protocol on Water and Health a draft decision on review of compliance. The proposed mechanism bore important similarities to the Aarhus Convention compliance mechanism, involving an independent committee and the possibility for communications from the public.

5. Mr. Koester informed the Committee about an upcoming meeting on Compliance under Multilateral Environmental Agreements organized by the United Nations Environment Programme to take place in Sri Lanka on 21-22 January 2006.

6. The representative of Earthjustice provided information to the Committee about the progress in the ongoing reform of the United Nations human rights' bodies.

III. OTHER MATTERS ARISING FROM PREVIOUS MEETINGS

7. The secretariat informed the Committee that it was in the process of editing the existing document on the Committee's procedures to ensure consistency and logical flow of the document. The paper will then be forwarded into the UN publishing process.

IV. SUBMISSIONS BY PARTIES CONCERNING OTHER PARTIES

8. The secretariat informed the Committee that no new 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 problems with their own compliance.

VI. REFERRALS BY THE SECRETARIAT

10. No referrals had been made by the secretariat.

VII. COMMUNICATIONS FROM MEMBERS OF THE PUBLIC

11. The Committee discussed the comments on the draft findings and recommendations on communications ACCC/C/2004/06 (Kazakhstan) and ACCC/C/2004/08 (Armenia) that it had received from the respective communicants. No comments had been received from the Parties concerned by the deadline of 21 November 2005 or subsequently. The Committee noted, however, that upon the expiry of the deadline, both Parties concerned had notified the secretariat that they would not be in a position to provide comments on time, one citing delays caused by translation of the document, the other the need to consult with different bodies and stakeholders.

12. The Committee agreed to allow more time for the Parties concerned to consider the draft findings and recommendations, with a view to finalizing the documents at its next meeting. It maintained its preference to adopt recommendations with the agreement of each Party concerned but noted that a back-up option would be to reformulate the recommendations as 'advice' within the meaning of paragraph 37 (a) of the annex to decision I/7. If sufficient progress could be made during the intersessional period, this could obviate the need to refer any findings of non-

compliance to the Meeting of the Parties, which would clearly be in the Parties' interests. The secretariat was requested to contact the Parties concerned communicating the outcomes of the Committee's discussion and offering an extension of the commenting period up to 1 February 2006.

13. The Committee discussed draft findings and recommendations on communication ACCC/C/2005/11 (Belgium) in a closed session. It agreed that some further clarifications from the Party concerned were needed, notably concerning the meaning of several terms used to describe different types of decisions (e.g. building permits) in the context of the Belgian legal and institutional framework. The Committee mandated the Chairman, the curator and the secretariat to seek the necessary information with a view to completing the preparation of the draft findings and recommendations at its eleventh meeting and adopting the final version at its twelfth meeting following the commenting procedure.

14. As agreed at its ninth meeting, the Committee entered into discussions on communication ACCC/C/2005/12 submitted by the Albanian NGO, Alliance for the Protection of the Vlora Gulf, which concerned compliance by Albania with certain provisions of article 3, paragraph 2, article 6, paragraph 2, and article 7 of the Convention.

15. The Chairman explained that before proceeding to discuss the substance of the communication the Committee had to decide whether it could confirm its preliminary determination on admissibility in the light of information requested by it from the communicant and the Party concerned (ECE/MP.PP/C.1/2005/4, para. 24). The Committee discussed this issue in an open session. A representative of the communicant and some other observers participated in the session. No representative of the Party concerned attended the meeting. The Committee regretted the fact that the Party concerned had chosen not to be represented in the meeting, despite financial support for its participation having been offered. The Committee then deliberated the finding on admissibility in a closed session.

16. The Committee concluded that the information that it had received from the Party concerned and the communicant was not sufficient for it to determine, in the light of paragraph 21 of the annex to decision I/7, whether or not sufficient use of remedies had been made to justify the Committee proceeding with the substantive review of the communication. While it welcomed the participation of a representative of the communicant in its meeting, it noted with regret that the communicant had failed to provide clear and comprehensive answers to a series of questions which had been posed to it as long ago as April and May 2005, or to supply sufficient corroborating documentation. The Committee did, however note that some of the information available to it indicated possible problems with compliance. It therefore agreed to delay making the final determination on admissibility and to ask the communicant and the Party concerned to clarify specific issues, after which it would attempt to make a decision on the matter using its e-mail decision-making procedure. It agreed on a list of questions to be forwarded through the secretariat shortly after the meeting offering a relatively short period for response, with a view to resuming its discussion of the issue at its next meeting.

17. With regard to communication ACCC/C/2005/13 (Hungary), on 29 November 2005, the Committee had received a response from the Party concerned addressing the issues raised in the communication. In addition, on 18 November 2005, the Committee had received a letter from the communicant requesting to extend the fact-finding period of consideration of the communication

and to refrain from preparing the final findings and recommendations until practical experience with the application of the regulations which were subject of the communication had accumulated. Commenting on the request, the Party concerned had indicated its opposition to such a deferral and its preference that the communication be addressed by the Committee as soon as practicable. The Committee, taking into account the proximity of the deadline for response to its tenth meeting and wishing to discuss procedural considerations related to the communicant's request, had agreed through e-mail that it would not engage in the review of the subject matter of the communication at its December meeting as previously planned, but would discuss at that meeting how to proceed with the file. The Party concerned and the communicant had been notified accordingly.

18. The Committee discussed how to proceed with the case. It did not accept the communicant's argument for deferring discussion of the communication until further experience had accrued, as it considered this could set a bad precedent. It agreed to proceed to the discussion phase at its eleventh meeting.

19. The communicant's request prompted the Committee to discuss the possibility that a communicant might wish to withdraw its communication, noting that decision I/7 did not address this contingency. It concluded on a preliminary basis that in such an event, the Committee would have the option either to proceed with consideration of the communication, or not to do so. The choice would depend upon the extent to which it considered that important compliance issues needed to be looked into. It would seek the opinion of the Party concerned but the opinion of the Party would not be decisive. This preliminary conclusion was based on the understanding that communications from the public serve as a trigger for review of compliance in specific cases but that it is not the Committee's role to provide a redress procedure. It was noted, that the Committee has a broad mandate to look into compliance issues on its own initiative, including under paragraph 14 of the annex to decision I/7.

20. With regard to communication ACCC/C/2005/14 (Poland), the Committee noted that no further information had been received from the communicant in response to the additional questions put forward by the Committee at its last meeting (ECE/MP.PP/C.1/2005/6, para. 23). Noting the requirement in paragraph 19 of the annex to decision I/7 that communications be supported by corroborating information, the Committee agreed that if the communicant failed to provide it with information sufficient to determine the admissibility of the communication by 1 March 2006, it might decide not to proceed with the determination and close the file. The Committee requested the secretariat to inform the communicant accordingly.

21. The secretariat informed the Committee that no response had been as yet received from the Party concerned with regard to communication ACCC/C/2005/15 (Romania). The Party concerned was due to submit to the Committee, no later than 27 March 2006, written explanations or statements clarifying the matter and describing any response that it may have made.

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

22. The Committee had received no additional information relevant to possible cases of non-compliance.

IX. FOLLOW-UP ON SPECIFIC CASES OF NON-COMPLIANCE

23. The secretariat informed the Committee that it had not as yet received the strategies for implementing the Convention requested by the Meeting of the Parties through decisions II/5a (para. 5) and II/5b (para. 3). Under those decisions the Governments of Kazakhstan and Ukraine were requested to submit such strategies by the end of 2005. Nor had any response been received as yet from the Government of Turkmenistan to the letter from the Chairman of the Committee with regard to implementation of decision II/5c and matters raised by the Party in earlier correspondence (ECE/MP.PP/C.1/2005/6, para. 32).

24. The Committee agreed to consider how to further proceed with follow-up on decisions II/5a, II/5b and II/5c at its next meeting, taking into account any responses received from the Parties concerned.

X. MODUS OPERANDI

25. The Committee agreed to make an adjustment to its modus operandi to the effect that draft findings and recommendations drawn up by the Committee would be publicly available upon request once they had been transmitted to the Party or Parties concerned and, where applicable, to the communicant. Similarly, any comments provided by the Party or Parties concerned or the communicant would be publicly available upon request, unless the body submitting the comments requested that they remain embargoed up to the end of the commenting period, in which case they would only be forwarded to the Committee members and would not be made available to the other parties or put in the public domain during that period. At the end of the commenting period, subject to chapter VIII of the annex to decision I/7, both the draft findings and recommendations and any comments thereon would be in the public domain.

XI. REVIEW OF COMPLIANCE WITH REPORTING REQUIREMENTS AND PROCEDURES FOR ADDRESSING COMPLIANCE ISSUES ARISING FROM THE IMPLEMENTATION REPORTS

26. The Chairman reminded the Committee members of the importance of using the information contained in the national implementation reports when considering communications.

27. Mr. Sandor Fülöp presented informal papers on the use of implementation reports as a source of information on compliance and on the establishment of a compliance database. He offered to continue further work on identifying key lessons emerging from the reports with a view to presenting more specific proposals at the next meeting. The Committee thanked Mr. Fülöp for the work done and welcomed his offer. It agreed to consider, on the basis of his

proposals, whether and how thematic compliance issues emerging from the reports might need to be addressed in its next report to the Meeting of the Parties.

28. The secretariat informed the Committee that it was further developing the way in which information on the status of implementation was presented in the Clearing House. It invited the Committee to provide feedback once the system was operational.

XII. PROGRAMME OF WORK AND CALENDAR OF MEETINGS

29. The Committee confirmed that it would hold its tenth meeting in Geneva on 29 to 31 March 2006.

XIII. ADOPTION OF THE REPORT AND CLOSURE OF THE MEETING

30. The Committee adopted the draft report prepared by the Chairman and the secretariat. The Chairman then closed the meeting.