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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, 29–31 March 2006

REPORT ON THE ELEVENTH MEETING

1. The eleventh meeting of the Compliance Committee took place in Geneva on 29–31 March 2006. All the members were present. Representatives of the Governments of Hungary and Romania and the non-governmental organizations (NGOs) Clean Air Action Group (Hungary), Earthjustice, Environmental Law Alliance Worldwide (United States), International Human Rights Law Clinic and the University of Oregon School of Law (United States), as well as one independent expert, participated as observers during certain parts of the meeting.

2. The meeting was opened by the Chairperson, 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.1/2006/1.

* Reissued for technical reasons.

II. RELEVANT DEVELOPMENTS SINCE THE PREVIOUS MEETING OF THE COMMITTEE

4. Mr. Koester informed the Committee about the UNEP High-Level Meeting on Compliance with and Enforcement of Multilateral Environmental Agreements which had taken place on 21–22 January 2006 in Sri Lanka. Information on the meeting was available at www.iisd.ca/ymb/unepmea.

5. Mr. Koester also informed the Committee about the meeting of the Compliance Committee established under the Cartagena Protocol on Biosafety which had taken place in February 2006. The report of that meeting had been presented to the Conference of the Parties to the Convention on Biodiversity serving as the Meeting of the Parties to the Protocol which had taken place in Curitiba, Brazil, on 13–17 March 2006.

6. Mr. Jonas Ebbesson informed the Committee about a forthcoming International Conference on Environmental Law and Justice which would take place in Stockholm on 4–9 September 2006 and would include a session on Environmental Justice and Legal Processes. Further information on the Conference was available from <http://www.juridicum.su.se/EnvJusticeConf/>.

7. The representative of Earthjustice reported to the Committee on the final session of the Commission on Human Rights, which had ended the previous week, and about progress towards establishing a Human Rights Council in its place.

III. OTHER MATTERS ARISING FROM THE PREVIOUS MEETING

8. There were no matters arising from the previous meeting.

IV. SUBMISSIONS BY PARTIES CONCERNING OTHER PARTIES

9. 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

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

VI. REFERRALS BY THE SECRETARIAT

11. No referrals had been made by the secretariat.

VII. COMMUNICATIONS FROM MEMBERS OF THE PUBLIC

12. The Committee revised its draft findings and recommendations on communication ACCC/C/2004/06 (Kazakhstan), taking into account comments provided by the Party concerned and the communicant as required under paragraph 34 of the annex to decision I/7. The Committee noted that in its comments on the draft findings and recommendations, the Party concerned had expressed the view that the facts, findings and recommendations would have more impact if supported by further details. The Committee agreed to invite the Party concerned to identify which specific details it considered useful to include, and to reply to the Committee by 15 May 2006. While the Committee would not change the substance of its findings and recommendations, it would consider making further clarifications in the text with a view to adopting it at its next meeting. The secretariat was requested to contact the Party concerned in order to convey the outcome of the Committee's discussion and at the same time give the Party concerned an opportunity to inform the Committee if it was not in agreement with the Committee's proposal to make recommendations.

13. The Committee finalized and adopted its findings and recommendations on communication ACCC/C/2004/08 (Armenia), taking into account comments provided by the Party concerned and the communicant as required under paragraph 34 of the annex to decision I/7. The findings and recommendations of the Committee are contained in the addendum to this report (ECE/MP.PP/C.1/2006/2/Add.1). The Committee requested the secretariat to make these publicly available and to ensure that they were distributed to the Party concerned and the communicant as soon as feasible.

14. The Committee completed its work on draft findings and recommendations on communication ACCC/C/2005/11 (Belgium) in a closed session. These would be sent to the Party concerned for consideration and to seek its agreement with regard to the making of recommendations. They would also be sent to the communicants for comments (decision I/7, annex, paras. 34 and 36 (b)). The Committee would take into account any comments when finalizing the draft findings and recommendations at its twelfth meeting.

15. As agreed at its tenth meeting, the Committee resumed the discussion on communication ACCC/C/2005/12 (Albania). The communicant had provided further information in response to the request made by the secretariat on the Committee's behalf. A similar request had been forwarded to the Party concerned, but it had failed to provide further information. Having considered the information available to it, the Committee confirmed its earlier determination of the admissibility of the communication and proceeded to deliberate on its subject matter. The Committee found that, while the information available to it was sufficient to reach conclusions on some issues raised in the communication, it still fell short of providing a good basis for a comprehensive review. The Committee therefore decided to seek further information both from the Party concerned and from the communicant and agreed on a set of issues it wanted to clarify. At the same time, it would convey its preliminary conclusions regarding non-compliance with respect to issues mentioned in the communication for which sufficient information was available. The Committee requested the secretariat to communicate its considerations to the Party concerned and the communicant, and to invite them to provide the required information.

16. Mr. Sandor Fülöp informed the Committee about his scheduled visit to Albania in early June 2006. The Committee agreed that while in Albania, Mr. Fülöp would be in a good position to gather information related to a review of the communication in accordance with paragraph 25 (b) of the annex to decision I/7. It therefore requested the secretariat to communicate with the Party concerned seeking its consent to such information gathering by Mr. Fülöp on behalf of the Committee, in accordance with paragraph 25 (b) of the annex to decision I/7. The Committee indicated that it would be desirable for Mr. Fülöp to be supported in this task by the secretariat.

17. The Committee took note of the fact that the decision-making processes referred to in the communication were also subject to procedures of the World Bank and the European Bank for Reconstruction and Development (EBRD). Given the need to avoid duplication of effort and enhance synergies, it agreed to inform these institutions that it was considering a communication on the matter and to inquire about their involvement in the proposed projects and about whether their respective inspection panels were addressing the issue. The correspondence to the two institutions would be copied to the Government of Albania and the institutions would be copied on the correspondence to the Government.

18. As had been agreed at its tenth meeting, the Committee entered into discussions on communication ACCC/C/2005/13 (Hungary) submitted by Clean Air Action Group and concerning compliance by Hungary with certain provisions of articles 6, paragraphs 4 and 7, and article 9, paragraphs 2 and 3, of the Convention. The communication alleged that the Hungarian Act XII/2005 on the amendment of Act CXXVIII/2003 on Public Interest and Development of the Expressway Network in the Republic of Hungary went further in reducing opportunities for public participation than the original Act challenged earlier in communication ACCC/C/2004/04. The allegation related in particular to the opportunities for public participation and access to justice with regard to decisions on the designation of expressway tracks and decision-making on special extraction sites (areas within which road construction material such as clay, sand and gravel may be extracted).

19. In general, discussions on the communication proceeded in accordance with the form decided on by the Committee at its fifth meeting (MP.PP/C.1/2004/6, para. 40). They included interventions by the representative of the Government of Hungary, the communicant and observers.

20. The Committee confirmed that the communication was admissible. After the discussion of the communication, the Committee deliberated the matter in closed session (decision I/7, annex, para. 33). Because Mr. Fülöp had declared a possible conflict of interest with regard to the communication, he did not participate in the deliberations.

21. The Committee did not find that the changes made to the Hungarian legislation since the Committee had reached its findings with respect to ACCC/C/2004/04 had altered the possibilities for the public to exercise its rights under the Convention in such a way that Hungary was no longer in compliance with the Convention. However, the consequences of the changes in the legislation for compliance with the Convention might depend on their practical application. The Committee therefore agreed to recommend that the Government of Hungary keep the matter under review.

22. The Committee presented its conclusions in an open session with the Party concerned and the communicant present. The Chairperson proposed that, in the interest of making the most effective use of the Committee's time and given the similarities with its findings with respect to communication ACCC/C/2004/04, the further procedure with regard to the review of the communication be limited to the reflection of this finding in the report of the meeting. The representative of the Government of Hungary agreed with this approach. Taking into account the fact that the special extraction sites were subject to an environmental impact assessment procedure, as is stated in paragraph 17 of the response provided by the Government of Hungary, the representative of the communicant also agreed that there was no need for the Committee to develop a formal paper with evaluations and findings. He added, however, that this fact would be more apparent if it were clearly reflected in the Act on Public Interest and Development of the Expressway Network.

23. With regard to communication ACCC/C/2005/14 (Poland), the Committee noted that no further information had been received from the communicant. Noting the requirement in paragraph 19 of the annex to decision I/7 that communications be supported by corroborating information, the Committee determined that the communication was inadmissible.

24. The Committee noted the response provided by the Government of Romania regarding communication ACCC/C/2005/15. It agreed to enter into discussion on the substance of the communication at its twelfth meeting, which would take place on 14–16 June 2006. It requested the secretariat to notify the Party concerned and the communicant of this and of their right to participate (decision I/7, annex, para. 32). The communicant should be asked to indicate by 15 May 2006 why it considered the Convention had been violated, taking into account the information provided by the Government of Romania.

25. One new communication had been received since the previous meeting. Communication ACCC/C/2005/16 had been submitted by Association Kazokiskes Community (Lithuania), represented by its lawyers, regarding compliance by Lithuania with the provisions of article 6 and article 9, paragraph 2, of the Convention. The communication alleged that the Lithuanian authorities had failed to comply with certain provisions of article 6 of the Convention in decision-making regarding the establishment of a landfill in Kazokiskes. The communicants further alleged that they had had no opportunity to challenge the decision on establishment of the landfill, particularly since they had not received the relevant decisions.

26. The Committee discussed the communication, addressing the following points:

- Whether the information contained in the data sheet was accurate or needed modifying;
- Whether, on preliminary examination, the communication appeared to meet the criteria for admissibility; and
- Which points should be raised with the Party concerned or with the communicant.

27. The Committee determined on a preliminary basis that the communication was admissible, but it did not, at this stage, draw any conclusions regarding the compliance issues raised in them. The Committee also agreed on a set of issues to be raised with the communicant.

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

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

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

29. The Committee reviewed the implementation strategy submitted by the Government of Kazakhstan pursuant to decision II/5a of the Meeting of the Parties. It agreed on a preliminary set of comments on the Strategy, which would be further elaborated through electronic consultation within the Committee and communicated to the Party concerned.

30. The Committee noted with regret that the Government of Ukraine had not provided the strategy for implementing the Convention requested by the Meeting of the Parties through decisions II/5b (para. 3). The Meeting had requested the Government of Ukraine to submit such a strategy by the end of 2005. The Committee noted the complete failure of the Government of Ukraine to engage with the process and agreed that if the strategy was not submitted by the time of its next meeting, it would consider including in its report to the Meeting of the Parties a recommendation on possible further measures with regard to Ukraine. It mandated the Chairperson to communicate the outcome of the Committee's discussions to the Party.

31. The Committee noted the response received from the Government of Turkmenistan to the letter from the Chairperson of the Committee with regard to the implementation of decision II/5c and matters raised by the Party in earlier correspondence (ECE/MP.PP/C.1/2005/6, para. 32). The Committee agreed to invite a delegation from the Government of Turkmenistan to attend its next meeting (on 14–16 June 2006 in Geneva) to discuss measures and activities for implementation of the recommendations contained in decision II/5c of the Meeting of the Parties. The Committee mandated the Chairperson to communicate this invitation to the Party.

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

32. Mr. Fülöp presented two informal papers analysing how Parties were implementing article 9 of the Convention. He had chosen to focus on this area given the general conclusion emerging from the implementation reports that the access to justice pillar of the Convention posed the greatest implementation challenges.

33. The Committee agreed that the analysis could be used, *inter alia*, to highlight certain general compliance issues with regard to specific provisions of the Convention in its next report to the Meeting of the Parties or in another input document for the meeting of that body. With this in mind, the Committee agreed to discuss the paper at one of its next meetings and requested Mr. Fülöp to make specific proposals about how to present these issues to the Meeting of the Parties.

XI. PROGRAMME OF WORK AND CALENDAR OF MEETINGS

34. The Committee confirmed that it would hold its twelfth meeting in Geneva on 14–16 June 2006. The provisional dates of the Committee's thirteenth and fourteenth meetings remain as outlined in paragraph 41 of the report of the ninth meeting (ECE/MP.PP/C.1/2005/6). The Committee provisionally agreed to hold its fifteenth meeting on 21–23 March 2007.

XII. ANY OTHER BUSINESS

35. The secretariat informed the Committee that the first draft of a decision on review of compliance under the Convention's Protocol on Pollutant Release and Transfer Registers (PRTRs) had been prepared by the facilitator of the Contact Group on the Compliance Mechanism and Rules of Procedure under the Working Group on PRTRs. The draft would be discussed at the next meeting of the Working Group (on 17–19 May 2006 in Geneva). The Committee agreed to provide comments to the Working Group on its firsthand experience with the Convention's compliance mechanism, which might prove of interest to the Working Group if it were to opt to develop a mechanism broadly similar to that developed under the Convention. The text of the comments would be prepared after the Committee's meeting through the Committee's electronic decision-making process and submitted to the Working Group through the secretariat.

36. The Committee took note of Ms. Kruzikova's notice of her intention to stand down from the Committee due to her recent appointment as Director of the Department of Legislation in the Czech Ministry of Environment.

37. The procedure for replacing a Committee member who resigns mid-term is governed by paragraph 10 of the annex to decision I/7, which mandates the Bureau to appoint a new member for the remainder of the outgoing member's term, subject to the approval of the Committee.

38. The secretariat informed the Committee that, at the Bureau's request, an invitation to nominate candidates for Ms. Kruzikova's replacement had been circulated to the Parties, Signatories and NGOs falling within the scope of article 10, paragraph 5, of the Convention and promoting environmental protection. The Bureau was expected to select a candidate to replace Ms. Kruzikova at its next meeting, on 4 April 2006.

39. The Committee agreed to consider the Bureau's selected candidate using its electronic decision-making procedure, so that the substitution could be made before its twelfth meeting.

40. The Committee expressed its gratitude to Ms. Kruzikova for her excellent service and her important contribution to its work.

XIII. ADOPTION OF THE REPORT AND CLOSURE OF THE MEETING

41. The Committee adopted the draft report prepared by the Chairperson and the secretariat. The Chairperson then closed the meeting.