

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

Task Force on Access to Justice

Tenth meeting

Geneva, 27-28 February 2017

Item 2 of the provisional agenda

**Thematic focus: Enabling effective access
to justice without persecution and harassment**

Information paper N3

SELECTED CONSIDERATIONS, FINDINGS AND REPORTS OF THE AARHUS CONVENTION COMPLIANCE COMMITTEE RELATING TO THE IMPLEMENTATION OF ARTICLE 3, PARAGRAPH 8, OF THE AARHUS CONVENTION

Prepared by the secretariat¹

This background paper is not intended to be exhaustive but to outline a selection of considerations, findings and reports of the Aarhus Convention Compliance Committee² (hereinafter – the Committee) in regard to item 2 of the agenda of the tenth meeting of the Task Force on Access to Justice under the auspices of the Aarhus Convention.

Specifically, it lists the relevant information with respect to the implementation of article 3, paragraph 8, of the Aarhus Convention and participants are invited to consult this document in advance of the meeting in order to gain an overview of the relevant considerations, findings and reports of the Aarhus Convention Compliance Committee.

Participants will be invited to share challenges, good practices, lessons learned and information on recent legislative and practical developments as well as identify needs in relation to this subject.

¹ The document was not formally edited

² Available from <http://www.unece.org/env/pp/cc.html>

Case/Report	Consideration and evaluation by the Committee (for cases) / Comments (for Committee Reports to MOP)	Findings and recommendations of the Committee
Reports of the Compliance Committee to the Meeting of the Parties		
<p>Report by the Committee to the second session of the Meeting of the Parties ECE/MP.PP/2005/13</p> <p><i>Protection of confidentiality to prevent possible penalization, persecution or harassment</i></p>	<p>In view 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 might be penalized, persecuted, or harassed but out of his or her concern that another person or persons might be so treated</p> <p>(See paragraph 14 of document ECE/MP.PP/2005/13)</p>	
Relevant considerations, findings and recommendations of the Compliance Committee		
<p>ACCC/C/2004/05 (Document ECE/MP.PP/C.1/2005/2/Add.5)</p>	<p>Finally, the Committee notes that while some of the provisions analysed are not in compliance with the requirements of the Convention, it is not possible to analyze many other provisions of the Act without more information on how they are being interpreted and implemented. This applies to whether responses from the authorities to non-compliance with the provisions of the Act could lead or are leading to non-compliance with article 3, paragraph 8, of the Convention. The Committee emphasizes in this regard that it has not been possible for it to enter into a dialogue with the Government of the Party concerned, which the Committee deeply regrets.</p> <p>(See paragraph 23 of document ECE/MP.PP/C.1/2005/2/Add.5)</p>	
<p>ACCC/C/2008/23 (Document ECE/MP.PP/C.1/2010/6/Add.1)</p> <p><i>Pursuing costs</i></p>	<p>With regard to the communicant's allegation under article 3, paragraph 8, the Committee has taken into consideration the events leading up to the application for the interim injunction, the order for the interim injunction dated 7 November 2008, the judgement of 21 December 2007 discharging the interim injunction, correspondence between the communicants and the Environment Agency in the period from November 2008 to January 2009, the judgement and order of the Court of Appeal dated 2 March 2009 and the correspondence between the Civil Appeals Office and the communicants and the Environment Agency of March 2009. In the light of the agreement between the communicants and the Environment Agency recorded in the correspondence of 14 and 16 January 2009, the Court of Appeal's judgement of 2 March 2009 (notably, para. 53), and the order of the court as amended on 19 March 2009, the Committee finds</p>	<p>With regard to the communicants' allegation under article 3, paragraph 8, the Committee finds that the seeking of the costs by the Environment Agency did not amount to the communicants being penalized within the meaning of article 3, paragraph 8, in this case.</p> <p>(See paragraph 56 of document ECE/MP.PP/C.1/2010/6/Add.1)</p>

	<p>that the seeking of the costs by the Environment Agency does not amount to the communicants being penalized within the meaning of article 3, paragraph 8, of the Convention in this case. The Committee does not exclude, however, that pursuing costs in certain contexts may be unreasonable and amount to penalization or harassment within the meaning of article 3, paragraph 8.</p> <p>(See paragraph 53 of document ECE/MP.PP/C.1/2010/6/Add.1)</p>	
<p>ACCC/C/2008/27 (Document ECE/MP.PP/C.1/2010/6/Add.2)</p> <p><i>Pursuing costs</i></p>	<p>The communicant alleges that the Party concerned, by pursuing the full costs of defending the judicial review proceedings, has penalized the communicant in breach of article 3, paragraph 8, of the Convention. The Committee notes that article 3, paragraph 8, does not affect the powers of national courts to award reasonable costs in judicial proceedings. The Committee takes the view that, based on the evidence before it, neither the pursuit of costs by the Party concerned or the Court's order for such costs amounted to a penalization under article 3, paragraph 8. The Committee does not exclude that pursuing costs in certain contexts may amount to penalization or harassment within article 3, paragraph 8.</p> <p>(See paragraph 47 of document ECE/MP.PP/C.1/2010/6/Add.2)</p>	<p>The Committee finds that, based on the evidence before it, neither the pursuit of costs by the Party concerned or the Court's order for such costs amounted to a penalization under article 3, paragraph 8. The Committee does not exclude that pursuing costs in certain contexts may amount to penalization or harassment within article 3, paragraph 8.</p> <p>(See paragraph 52 of document ECE/MP.PP/C.1/2010/6/Add.2)</p>
<p>ACCC/C/2009/36 (Document ECE/MP.PP/C.1/2010/4/Add.2)</p> <p><i>Public insult through the local mass media</i></p>	<p>The communicant alleged that it was insulted and harassed by local authorities in the mass media. The communicant provided copies of press articles in support of its allegation (see para. 29 above and annexes 8–10 to the communication). Also, the communicant stressed the weight such insults may have for the individual in a small community, compared to bigger cities, to the extent that the private life of the individual is seriously attacked and his/her job may be jeopardized. The Party concerned in general stated that such behaviour from the public authorities constitutes a criminal act, but did not specifically respond to the allegations.</p> <p>The Committee finds that by insulting the communicant publicly in the local press and mass media for its interest in activities with potentially negative effects on the environment and health of the local population, the public authorities, and thus the Party concerned, failed to comply with article 3, paragraph 8, of the Convention.</p> <p>(See paragraphs 63 and 64 of document ECE/MP.PP/C.1/2010/4/Add.2)</p>	<p>The Committee also finds that local authority officials insulted the communicant publicly in the local mass media for its interest in activities with potentially negative effects on the environment, and thus that the Party concerned failed to comply with article 3, paragraph 8 of the Convention (...)</p> <p>(See paragraph 73 of document ECE/MP.PP/C.1/2010/4/Add.2)</p>
<p>ACCC/C/2009/37 (Document ECE/MP.PP/2011/11/Add.2)</p> <p><i>Restrictions on freedom of associations</i></p>	<p>The communicant and the amicus inform the Committee that one may face criminal charges and be prosecuted for the act of engaging in the activities of a group that is not registered. Furthermore, they argue that the current regulatory framework for the establishment of NGOs and associations is very restrictive.</p> <p>The communicant, in its communication, did not submit any allegation of noncompliance with article 3, paragraph 8, of the Convention and the Committee has not received any evidence to support such</p>	

	<p>allegation, in particular any copies of the relevant provisions restricting freedom of associations or providing for criminal charges in case of involvement in group initiatives with peaceful objectives, if the group is not registered. Although in this situation the Committee is not in a position to assess whether there is any non-compliance with article 3, paragraph 8, of the Convention, the Committee, sympathizes with the communicant, who has requested that its identity be kept strictly confidential for the fear that it may be penalized, prosecuted or otherwise harassed.</p> <p>(See paragraphs 100 and 101 of document ECE/MP.PP/2011/11/Add.2)</p>	
<p>ACCC/C/2009/44 (Document ECE/MP.PP/C.1/2011/6/Add.1)</p> <p><i>Defamation, detention and house search, arrest</i></p>	<p>The allegations concerning harassment are serious [see para. 22. - defamation, detention and house search, arrest], and the alleged facts, if sufficiently substantiated, would amount to harassment in the sense of article 3, paragraph 8, and would therefore constitute non-compliance with the provisions of the Convention. However, on the basis of the information provided, the Committee could not assess with ECE/MP.PP/C.1/2011/6/Add.1 15 sufficient certainty what happened exactly and therefore the Committee refrains from making a finding on this issue.</p> <p>(See paragraph 65 of document ECE/MP.PP/C.1/2011/6/Add.1)</p>	