

**PRELIMINARY DETERMINATION ON ADMISSIBILITY OF
COMMUNICATION CONCERNING CONSTRUCTION OF HIGH-
VOLTAGE POWER LINE (Kazakhstan, Ref. ACCC/C/2004/02)**

14 May 2004

Background to the determination

Before considering the substantive merits of any communication, the Committee needs to decide whether to accept the communication, taking into account the admissibility criteria set out in paragraph 20 of the annex to decision I/7. According to paragraph 20, the Committee must take into account whether the communication is:

- (a) anonymous,
- (b) an abuse of the right to make such a communication,
- (c) manifestly unreasonable, or
- (d) incompatible with the provisions of decision I/7 or with the Convention.

A further possible criterion is:

- (e) lack of relevance to the subject matter of the Convention

In addition, the Committee, in its paper on communications from the public, identified two further criteria for deeming a communication inadmissible:

- (f) when the communication is made with respect to a State which is not a Party to the Convention, or where the significant events with which the communication is concerned occurred before the Convention had entered into force for the Party, and
- (g) when the communication is made with respect to a Party which has opted out of having communications from the public concerning its compliance considered by the Committee.

Should the Committee find that a communication falls under one of these criteria, it may find it inadmissible.

Furthermore, in accordance with paragraph 21 of the annex to decision I/7, the Committee 'should at all relevant stages take into account any available domestic remedy unless the application of the remedy is unreasonably prolonged or obviously does not provide an effective and sufficient means of redress'. The Committee's view is that this provision does not imply any strict requirement that all domestic remedies must be exhausted, i.e. the Committee would not be precluded from considering a case even where the application of the remedy was not unreasonably prolonged. On the other hand, the failure by a communicant to make use of available domestic remedies might be grounds for the Committee to advise that the matter be pursued at the level of domestic procedures rather than (for the time being) through the compliance mechanism.

Preliminary determination

1. Having considered the communication and the supporting documentation, the preliminary view of the Committee is that it does not fall under any of the four criteria listed in paragraph 20 of the annex to decision I/7. With regard to the first criterion, the communication is not anonymous and the contact information for the communicant is provided. The Committee does not find that the communication represents an abuse of the right to make communications, or that it is manifestly

unreasonable. Nor does the content of the communication, or the process through which it has been submitted, appear to be incompatible with the provisions of decision I/7 or with the Convention.

2. While the Committee at this stage finds it premature to comment on the actual substance of the communication, it does relate to the procedures and obligations regulated by the provisions of the Aarhus Convention, and therefore the content of communication could not be considered to be irrelevant.

3. Kazakhstan deposited its instrument of ratification of the Convention on 11 January 2001, meaning that the Convention entered into force for Kazakhstan on 30 October 2001, i.e. the collective date of entry into force, and it appears that the significant events referred to in the communication occurred after that date. Furthermore, Kazakhstan has not opted out of the aspects of the compliance mechanism relating to communications from the public.

4. The Committee observed that there were some outstanding questions with respect to the possible availability of further domestic remedies. However, taking note of the lengthy appeal process involving various instances of court and other supervisory bodies on the national level, the Committee does not consider that paragraph 21 of the annex to decision I/7 provides any grounds for not proceeding to consider the communication.

5. Accordingly, the preliminary determination of the Committee, subject to review following any comments received from the Party concerned, is that the communication is admissible.