

Compliance Committee to the Convention on  
Access to Information, Public Participation  
in Decision-making and Access to Justice  
in Environmental Matters (Aarhus Convention)

**First progress review of the implementation of decision VI/8a  
on compliance by Armenia with its  
obligations under the Convention**

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## **I. Introduction**

1. At its sixth session (Budva, Montenegro, 11-13 September 2017), the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) adopted decision VI/8a on compliance by Armenia with its obligations under the Convention (see ECE/MP.PP/2017/2/Add.1).

## **II. Summary of follow-up**

2. On 12 February 2018, Armenia provided an update on recent legislative developments.

3. At its sixtieth meeting (Geneva, 12-15 March 2018), the Committee reviewed the implementation of decision VI/8a in open session with the participation by audio conference of a representative of Armenia. Though invited, no communicants or registered observers took part in the open session.

4. On 12 March 2018, Ecological Right, a non-governmental organization, submitted a statement as an observer. It submitted an updated version of its statement on 14 March 2018.

5. On 15 March 2018, the communicant of communications ACCC/C/2004/8 and ACCC/C/2009/43 submitted a written statement.

6. On 1 October 2018, Armenia submitted its first progress report on decision VI/8a on time.

7. On 5 October 2018, the secretariat forwarded the first progress report to the communicants of communications ACCC/C/2004/8, ACCC/C/2009/43 and ACCC/C/2011/62 and the observer, Ecological Right, inviting their comments by 1 November 2018. No comments were received.

8. After taking into account the information received from Armenia, communicants and the observer, the Committee prepared its first progress review and adopted it through its electronic decision-making procedure on 18 February 2019. The Committee thereafter requested the secretariat to forward the first progress review to Armenia, the communicants of communications ACCC/C/2004/8, ACCC/C/2009/43 and ACCC/C/2011/62 and the registered observer.

## **III. Considerations and evaluation by the Committee**

9. In order to fulfil the requirements of paragraph 3 of decision VI/8a, Armenia would need to provide the Committee with evidence that it had taken the necessary legislative, regulatory and administrative measures and practical arrangements to ensure that:

(a) Thresholds for activities subject to an environmental impact assessment procedure, including public participation, are set in a clear manner;

(b) Reasonable time frames that are significantly longer than those currently provided for are set for the public to consult and comment on project-related documentation;

(c) Its legislation, including the law on non-governmental organizations and administrative procedures, complies with article 9(2) of the Convention with regard to standing;

(d) It has continued its efforts to raise awareness of the judiciary to promote implementation of domestic legislation in accordance with the Convention.

## **General observations**

10. The Committee notes that the amendments to the Administrative Procedure Code and the new Law on NGOs reported on by Armenia in its first progress report were each adopted in 2016 and were in force in 2017 and thus pre-date the adoption of decision VI/8a, more than one year ago.<sup>1</sup> Similarly, Armenia has reported on certain amendments to the draft EIA and Expertise Law which appear to be the same as it reported upon in the previous intersessional period, though the lack of detail in the first progress report makes this difficult to say with certainty.<sup>2</sup>

11. The Committee expresses its disappointment that Armenia in its first progress report refers again to drafts and adopted legislation which the Committee already examined in the last intersessional period. In both its third progress review and its report on decision V/9a to the sixth session of the Meeting of the Parties, the Committee had made clear that these legislative measures did not meet the requirements of the Convention.<sup>3</sup> The Committee accordingly expresses its concern about the apparent lack of progress by Armenia since the sixth session of the Meeting of the Parties to implement the recommendations contained in paragraph 3(a)-(d) of decision VI/8a.

### **Paragraph 3(a) of decision VI/8a**

12. With regard to paragraph 3(a) of decision VI/8a, in its first progress report Armenia merely states that it “is in the process of reviewing its existing legislation on EIA and Expertise.” It states that the amended legislation “will touch problems such as the thresholds for activities subject to an environmental impact assessment procedure.”<sup>4</sup> More substantively, in its update of 12 February 2018, Armenia reports that a draft law containing changes to the list of activities in article 14 of the Law on EIA and Expertise had been submitted to the Government in December 2017.<sup>5</sup> The Committee regrets that Armenia’s first progress report contains no information regarding the current status of the draft Law “On the Amendments to the Law on Environmental Impact Assessment and Expertise” and whether any progress has been made towards the finalization of the draft law in the year since it was submitted to the Government.

13. Moreover, the Committee regrets that Armenia has not to date provided the Committee with the text of the proposed amendment to article 14 of the Law on EIA and Expertise, nor an English translation thereof. The Committee is thus not in a position to advise Armenia on whether, if adopted, the proposed amendment would address the omissions identified by the Committee in paragraph 32(a)-(n) of its report on decision V/9a to the sixth session of the Meeting of the Parties.<sup>6</sup> Should these omissions remain in the proposed amendment once adopted, Armenia would fail to meet the requirements in paragraph 3(a) of decision VI/8a. However, lacking an English translation of the proposed amendment, the Committee is not yet in a position to assess whether, if passed and entered into force, Armenia would meet the requirements of paragraph 3(a) of decision VI/8a.

### **Paragraph 3(b) of decision VI/8a**

14. Concerning paragraph 3(b) of decision VI/8a, in its first progress report Armenia merely states that it is in the “process of reviewing the existing legislation on EIA and Expertise” and this “will touch problems such as [...] time frames set for the public to consult and comment on project-related documentation and other issues.”<sup>7</sup> In its February 2018

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<sup>1</sup> Party’s first progress report, 1 October 2018, p. 1.

<sup>2</sup> Update on legislative developments from the Party concerned, 12 February 2018.

<sup>3</sup> Third progress review of the Committee of the implementation of decision V/9a, 3 January 2017, para. 42, and ECE/MP.PP/2017/33, paras. 45-46 and 58-60.

<sup>4</sup> Party’s first progress report, 1 October 2018, p. 2.

<sup>5</sup> Update on legislative developments from the Party concerned, 12 February 2018.

<sup>6</sup> ECE/MP.PP/2017/33.

<sup>7</sup> Party’s first progress report, 1 October 2018, p. 2.

update, Armenia provides more concrete information regarding the timeframes for public participation proposed in the draft Law “On the Amendments to the Law on Environmental Impact Assessment and Expertise” submitted to the Government in December 2017, namely:

“The public hearings and consultations at the phase of the expertise will be carried out not sooner than 12 days (at present it is 7 working days) after the notification. The recommendations of the public are submitted (i) within 10 days after the notification at the stage of the application submission, (ii) in the case of baseline documents and Category A documents within 18 days after the notification at the reporting stage and for the Category B projects within 12 days after the notification at the reporting stage.”<sup>8</sup>

15. It is not clear to the Committee how the above proposed timeframes would differ from those in paragraph 15 of Decision N1325, which the Committee examined in its report on decision V/9a to the sixth session of the Meeting of the Parties. In that report, the Committee noted that paragraph 15 of Decision N1325 provided the public with 12 working days to submit comments at the preliminary stage of expertise, and at each of the stages of preliminary assessment, basic assessment and basic expertise, 18 working days to submit comments on category A activities and 13 working days for category B activities, both calculated from the date of notification. With respect to those timeframes, in its report the Committee found that:

“while it may be appropriate to provide for different time frames for different kinds of activities, the current time frames are not reasonable and should in fact be significantly longer with respect to larger or more complex projects within each category.”<sup>9</sup>

16. The Committee considers the above remarks to be equally relevant to the proposed timeframes Armenia cites in its February 2018 update. In particular, the proposed timeframes for category A and B activities appear to apply to all projects within each category, with no possibility for longer timeframes to be set for larger or more complex projects within each category.

17. Moreover, while welcoming the information provided in the February 2018 update, the Committee regrets that Armenia has provided no information since, either in the first progress report or otherwise, as to the current status of the draft legislation and the timeframes for public participation proposed therein. The Committee emphasises the need for Armenia to provide more detailed information in its progress reports, including the text of any draft legislation intended to fulfil the requirements of decision VI/8a, together with an English translation thereof.

18. In light of the above, the Committee finds that Armenia has not yet met the requirements of paragraph 3(b) of decision VI/8a.

### **Paragraph 3(c) of decision VI/8a**

19. With respect to paragraph 3(c) of decision VI/8a, in its first progress report, Armenia refers back to the amendments to the Administrative Procedure Code and new Law on NGOs which were adopted in 2016 and which entered into force in 2017 prior to the sixth session of the Meeting of the Parties. In both its third progress review on decision V/9a<sup>10</sup> and its report on decision V/9a to the sixth session of the Meeting of the Parties,<sup>11</sup> the Committee already examined whether these legislative changes meet the requirements of article 9(2) of the Convention. In both, the Committee made clear that the requirement in both the Administrative Procedure Code and the Law on NGOs that, in order to have standing, an NGO must have previously participated in public discussions of “fundamental documents” or planned activities, or have been denied the opportunity to do so, did not comply with article

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<sup>8</sup> Update on legislative developments from the Party concerned, 12 February 2018.

<sup>9</sup> ECE/MP.PP/2017/33, para. 45.

<sup>10</sup> Third progress review, 3 January 2017, paras. 38-44, and ECE/MP/PP/2017/33, paras. 57-60.

9(2) of the Convention. Armenia has put no evidence before the Committee to show that this requirement has now been removed.

20. Consequently, the Committee expresses concern that Armenia is again putting before the Committee legislation which the Committee had already clearly found in the previous intersessional period did not meet the requirement for standing under article 9(2) of the Convention.

21. With respect to the submissions of the observer Ecological Right dated 12 March 2018 that Armenia's non-compliance with article 9 of the Convention has lasted for over ten years,<sup>12</sup> the Committee notes that, while indeed Armenia was first found to be in non-compliance with article 9(2)-(4) in its findings on communication ACCC/C/2004/8 adopted in March 2006,<sup>13</sup> the outstanding point of non-compliance in decision VI/8a relates to the Committee's findings on communication ACCC/C/2011/62, which were adopted in 2013.<sup>14</sup> The Committee nonetheless shares the observer's view that Armenia's progress with respect to paragraph 3(c) of decision VI/8a is far too slow.

22. In order to fulfil paragraph 3(c), Armenia will need to show to the Committee that it has removed the requirement from the Administrative Procedure Code and the Law on NGOs that to have standing an environmental NGO must have previously participated in public discussions of "fundamental documents" or planned activities or denied the opportunity to do so. The Committee accordingly finds Armenia has not yet met the requirements of paragraph 3(c) of decision VI/8a.

#### **Paragraph 3(d) of decision VI/8a**

23. With regard to paragraph 3(d) of decision VI/8a, in its first progress report, Armenia reports on trainings it has carried out for advocates in various regions and towns in Armenia.<sup>15</sup> While welcoming such trainings as a useful initiative to increase awareness of environmental justice among Armenian advocates, the Committee points out that these trainings are not relevant to the implementation of paragraph 3(d) which specifically concerns the judiciary. Training advocates is not the same as raising the awareness of the judiciary. With respect to the judiciary, in its first progress report Armenia briefly states that "it is anticipated to improve the knowledge of judges on environmental justice and introduce environmental educational programs for them at the Academy of Justice of the Republic of Armenia, which carries out the training of judges."<sup>16</sup> Armenia has given no indication of the content of the proposed environmental education programmes for judges or even when they will be carried out.

24. As the Committee explained to Armenia during the last intersessional period in both its second and third progress reviews on decision V/9a, in order to fulfil paragraph 3(d) of decision VI/8d, Armenia will need to provide the Committee with detailed information about the judicial trainings once carried out. Such information should include (a) the specific content of the trainings, including the detailed programme with the titles of the presentations delivered, (b) the organizers of the trainings and professions and relevant experience of trainers and speakers, and (c) the number of judges and judicial candidates who have attended the trainings and in which court and town or region each judge sits.

25. In light of the above, the Committee finds that Armenia has not yet met the requirements of paragraph 3(d) of decision VI/8a.

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<sup>12</sup> Statement of observer Ecological Right, 12 March 2018, p. 2.

<sup>13</sup> ECE/MP.PP/C.1/2006/2/Add.1, para. 44.

<sup>14</sup> ECE/MP.PP/C.1/2013/14, para. 36.

<sup>15</sup> Party's first progress report, 1 October 2018, pp. 1-2.

<sup>16</sup> *Ibid.*, p. 2.

## IV. Conclusions

26. While welcoming Armenia's first progress report, which was submitted on time, the Committee regrets the brief and general nature of that report. Most importantly, Armenia has provided no evidence to show that it has taken any concrete steps since the sixth session of the Meeting of the Parties to implement the recommendations contained in paragraphs 3(a)-(d) of decision VI/8a.

27. The Committee accordingly finds that Armenia has not yet fulfilled the requirements of decision VI/8a and expresses its concern at the apparent lack of progress in that direction.

28. The Committee invites Armenia, together with its second progress report due on 1 October 2019 to provide:

(a) The text of any legislative, regulatory and administrative measures, together with English translations thereof, and information concerning any practical arrangements, it has by that date put in place to meet each of the requirements in paragraphs 3(a)-(d) of decision VI/8a;

(b) The texts of any proposed regulatory and administrative measures intended to meet the requirements of paragraphs 3(a)-(c) of decision VI/8a, together with English translations thereof and the envisaged timeframe by when each proposed will be adopted;

(c) Article 16 of the Law on NGOs and Article 216.6 of the Administrative Procedure Code as currently in force, together with English translations thereof;

(d) Detailed information about the judicial trainings that have by that date been carried out or are proposed to be carried out. Such information should include: (a) the specific content of the trainings, including the detailed programme with the titles of the presentations delivered, (b) the organizers of the trainings and professions and relevant experience of trainers and speakers, and (c) the number of judges and judicial candidates who have attended the trainings and in which court and town or region each judge sits.

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