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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

Nineteenth meeting  
Geneva, 5–7 March 2008

**REPORT OF THE COMPLIANCE COMMITTEE  
ON ITS NINETEENTH MEETING**

**INTRODUCTION**

1. The nineteenth meeting of the Compliance Committee took place from 5 to 7 March 2008 in Geneva. All members were present. In addition, representatives of the Government of Ukraine and of the non-governmental organization Earthjustice, as well as three individuals, participated as observers during the open sessions.
2. The Chairperson, Mr. Veit Koester, opened the meeting.

**I. ADOPTION OF THE AGENDA**

3. The Committee adopted its agenda as set out in document ECE/MP.PP/C.1/2008/1.

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

4. Members of the Committee exchanged information on various meetings and conferences related to the Convention or compliance issues that had taken place since its previous meeting.

## **III. OTHER MATTERS ARISING FROM THE PREVIOUS MEETING**

5. No other matters were discussed by the Committee under this item.

## **IV. SUBMISSIONS BY PARTIES CONCERNING OTHER PARTIES**

6. 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**

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

## **VI. REFERRALS BY THE SECRETARIAT**

8. No referrals had been made by the secretariat.

## **VII. COMMUNICATIONS FROM MEMBERS OF THE PUBLIC**

9. The Committee proceeded to finalize its findings and recommendations on communications ACCC/C/2005/15 (Romania), ACCC/C/2006/16 (Lithuania) and ACCC/C/2006/18 (Denmark) in a closed session taking into account comments provided by the respective Parties concerned and communicants as required under paragraph 34 of the annex to decision I/7.

10. The Committee finalized its findings and recommendations with regard to communications ACCC/C/2005/15 and ACCC/C/2006/16 and agreed to produce them as addenda to its report to the third meeting of the Parties (ECE/MP.PP/2008/5/Add.7 and 6, respectively).

11. With regard to communication ACCC/C/2007/18, the Committee took note of the notification from the Party concerned that there would be a delay in providing its comments to the draft that had been sent to both the Party concerned and the communicant on 1 February 2008. The Committee amended the draft as necessary in the light of the comments received from the communicant. It noted that the draft had been sent to the Party concerned and the communicant more than one month ago and, in order to reduce any further delay, agreed that if

no comments were received from the Party concerned by 14 March 2008, the changes agreed upon at the meeting would be considered as adopted. If comments were received from the Party concerned by that date, it would finalize its findings through its electronic decision-making procedure on the basis of the information available to it. The Committee requested the secretariat to notify the Party concerned accordingly.

12. The draft findings and recommendations with regard to communication ACCC/C/2006/17 (European Community) had been prepared by the Committee through its electronic consultation procedure and circulated to the Party concerned and the communicant for comments on 27 February 2008. Both the Party concerned and the communicant had indicated that they would not be in a position to provide their comments in time for the Committee's nineteenth meeting. The Committee agreed that it would extend the period for the Party concerned and the communicant to provide comments up to 28 March 2008 and would defer finalizing the document until then. It requested the secretariat to inform the Party concerned and the communicant accordingly.

13. Regarding the procedure for finalizing the findings and recommendations with respect to communications ACCC/C/2006/17 and ACCC/C/2006/18, the Chairperson was mandated to draw up, in consultation with the curator and with the assistance of the secretariat, a proposal for dealing with the comments, if any, received from the Parties concerned or the communicant. The Chairperson was further mandated to decide, on the basis of the content of the comments received and in consultation with the curator, whether the electronic procedure for finalizing the findings and, if any, recommendations should be based on the explicit agreement of all Committee members or on the basis of the lack of any objections being made during a reasonable commenting period following circulation of the proposals. The Committee agreed that the findings, and if relevant, recommendations with regard to these communications would be produced as addenda to the Committee's report to the Meeting of the Parties (ECE/MP.PP/2008/5/Add.4 and 10).

14. With regard to communication ACCC/C/2007/20 (Kazakhstan), in accordance with its earlier decision (ECE/MP.PP/C.1/2007/4, paras. 20–21), the Committee discussed the matter in connection with communication ACCC/C/2004/06 (see para. 22 below) and under the agenda item on follow-up to specific cases of non-compliance on the basis of the report on the implementation of decision II5/a submitted by Kazakhstan and the national implementation report of Kazakhstan for 2005–2007 (ECE/MP.PP/IR/2008/KAZ).

15. No further information had been received with regard to communication ACCC/C/2007/21 (European Community).

16. Two new communications had been received since the previous meeting.

17. Communication ACCC/C/2007/22 was submitted by l'Association de Défense et de Protection du Littoral du Golfe de Fos-sur-Mer, le Collectif Citoyen Santé Environnement de Port-Saint-Louis-du-Rhône and la Fédération d'Action Régionale pour l'Environnement, regarding compliance by France with the provisions of article 3, paragraph 1, article 6, paragraphs 1 to 5 and 8, and article 9, paragraphs 2 and 5, of the Convention. The communicants allege that the French authorities failed to comply with article 6 of the Convention in respect of the decision-making process for a domestic waste disposal plant, and in particular decisions

regarding the location of the plant and the choice of incineration as the means of disposal. The communicants allege that their attempts to challenge the authorities' decisions were unsuccessful, and that the jurisprudence of the French Council of the State is in breach of article 9, paragraphs 2 and 5, of the Convention.

18. Communication ACCC/C/2008/23 was submitted by Mr. Morgan and Mrs. Baker of Keynsham, United Kingdom, represented by Mr. Paul Stookes of Richard Buxton Environmental & Public Law with regard to compliance by the United Kingdom with provisions of article 9, paragraph 4, of the Convention. The communicants allege that their rights under article 9, paragraph 4, were violated when they were ordered to pay costs amounting to approximately £25,000, which, in the opinion of the communicants, is prohibitively expensive. The costs order was issued following the discharge of an interim injunction obtained by them earlier in private nuisance proceedings for an injunction to prohibit offensive odours arising from Hinton Organics (Wessex) Ltd., operating a waste composting site. The communicants also allege that the costs order made by the Court, in circumstances where one month before it had agreed and made an order that there was a serious issue to be tried and that the claimants should enjoy interim injunctive relief, amounted to non-compliance with article 9, paragraph 4, of the Convention. An appeal of the costs order has been refused and an application to renew permission to appeal has been made. However, the communicants maintain that the costs of appeal are expensive in themselves.

19. The Committee requested Mr. Jonas Ebbesson to be the curator for communication ACCC/C/2007/22 and Mr. Vadim Ni the curator for communication ACCC/C/2008/23.

20. The Committee discussed the communications, addressing the following points:

- (a) Whether, on preliminary examination, the communications appeared to meet the criteria for admissibility;
- (b) Which points should be raised with the Parties concerned and/or with the communicants.

21. The Committee determined on a preliminary basis that both communications were admissible, but did not draw any conclusions regarding the compliance issues raised in them. It also agreed upon a set of issues to be raised with the communicants and the Parties concerned.

22. The Committee also reviewed progress made in the implementation of recommendations made with regard to communications ACCC/C/2004/06 (Kazakhstan), ACCC/C/2004/08 (Armenia), ACCC/C/2005/11 (Belgium) and ACCC/C/2005/12 (Albania), on the basis of the input provided by the Parties concerned in advance of the Committee's meeting.

23. The Committee proceeded to prepare updated findings and, as appropriate, recommendations reflecting the progress made. It agreed to circulate these, in draft form, to the Parties concerned and the communicants for comments. Taking into account the very tight deadlines for finalizing all the documentation being prepared for the Meeting of the Parties and that the findings and recommendations were essentially updates on the earlier versions, the Committee agreed that the comments should be provided within one week of circulation of the drafts. The procedure for finalizing the findings and, if any, recommendations following the

expiry of the commenting period would be the same as with respect to ACCC/C/2006/17 and 18 (see para. 13 above).

24. The Committee agreed that the final versions of the findings and, if any, recommendations with regard to the aforementioned communications would be produced in the form of addenda to its report to the meeting of the Parties (ECE/MP.PP/2008/5/Add. 1, 2, 3 and 5). The Committee requested the secretariat to ensure that its findings and recommendations be distributed to the Parties concerned and the communicants, and made publicly available, as soon as was feasible.

### **VIII. FOLLOW-UP ON SPECIFIC CASES OF NON-COMPLIANCE**

25. The Committee discussed progress with regard to implementation of decisions II/5, II/5a, II/5b and II/5c of the Meeting of the Parties (ECE/MP.PP/2005/2/Add. 6–9).

26. The Committee received a report from the Government of Kazakhstan with regard to implementation of decision II/5a submitted pursuant to paragraph 8 of that decision. The Committee reviewed the implementation of the decision by Kazakhstan on the basis of this report, as well as on the basis of the national implementation report for 2005-2007. It also took into account issues related to implementation by Kazakhstan of its recommendations with regard to communication ACCC/C/2004/06 and issues raised by communication ACCC/C/2008/20 (see paras. 14 and 22 above). Mr. Ni was not present in the discussion on compliance by Kazakhstan. It was agreed, for practical reasons, to include the conclusions of the Committee on implementation by Kazakhstan of decision II/5a in the addendum to the report of the Committee to the Meeting of the Parties containing the updated findings and recommendations in relation to communication ACCC/C/2004/06 (ECE/MP.PP/2008/5/Add.5).

27. Discussion on the implementation by Ukraine of decision II/5b took place with the participation of the representatives of the Party concerned. The Committee agreed to present its conclusions on implementation by Ukraine of decision II/5b in an addendum to its report to the Meeting of the Parties (ECE/MP.PP/2008/5/Add.9).

28. The Committee also discussed the implementation by Turkmenistan of decision II/5c of the Meeting of the Parties on compliance by Turkmenistan. It agreed to present its conclusions on the matter in an addendum to its report to the Meeting of the Parties (ECE/MP.PP/2008/5/Add.8).

29. The Committee agreed that, in the present cases and as a general rule, it would forward its draft conclusions with regard to the implementation of decisions of the Meeting of the Parties on compliance by individual Parties to the Parties concerned for comments, as well as to the communicants whose communications initially triggered the review of compliance by the relevant Parties. It would also apply the same approach to its draft findings and, if any, recommendations, which would be updated on the basis of information on implementation by the Parties concerned of the Committee's recommendations made in accordance with paragraph 36 (b) of the annex to decision I/7, not only in relation to the present set of such findings and recommendations, but also in relation to those prepared for future meetings of the Parties.

## **IX. REPORTING REQUIREMENTS**

30. The Committee considered implementation by Parties of the reporting requirements under the Convention on the basis of the national implementation reports submitted by the Parties, and taking into account the analysis prepared by Mr. Sandor Fülöp as well as the draft synthesis report prepared by the secretariat. The Committee also relied to some extent on these sources of information in considering what general issues of compliance should be raised in its report to the Meeting of the Parties.

31. The Committee's conclusions on compliance with reporting requirements are reflected in its report to the Meeting of the Parties (ECE/MP.PP/2008/5, section V).

32. The Committee agreed that the paper prepared by Mr. Fülöp as an informal document for the meeting, which contained an extensive analysis of the information on practical aspects of implementation presented in the national implementation reports, was a useful source of information. It agreed to consider, on the basis of any proposals from the secretariat, the most effective ways of using this information.

## **X. PREPARATION OF THE COMMITTEE'S REPORT TO THE MEETING OF THE PARTIES**

33. The Committee prepared its report to the Meeting of the Parties on the basis of a draft prepared by the Chairperson with the assistance of the secretariat. Taking into account inter alia the fact that some of its findings had yet to be finalized, the Committee agreed to finalize the report following the meeting using its electronic decision-making procedure.

## **XI. PROGRAMME OF WORK AND CALENDAR OF MEETINGS**

34. The Committee confirmed that it would hold its twentieth meeting from 8 to 10 June 2008 in Riga. The members of the Committee also intended to attend the third meeting of the Parties to the Convention, which would take place from 11 to 13 June 2008 in Riga. The twenty-first meeting of the Committee would take place from 17 to 19 September 2008 in Geneva, and the twenty-second meeting was provisionally scheduled to be held from 17 to 19 December 2008.

## **XII. ADOPTION OF THE REPORT AND CLOSURE OF THE MEETING**

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

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