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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

Twentieth meeting
Riga, 8–10 June 2008

REPORT OF THE COMPLIANCE COMMITTEE ON ITS TWENTIETH MEETING

INTRODUCTION

1. The twentieth meeting of the Compliance Committee was held from 8 to 10 June 2008 in Riga. Seven members were present. Mr. Vadim Ni sent his apologies. In addition, representatives of the Governments of Finland, Turkmenistan and Ukraine as well as a number of non-governmental organizations (NGOs) participated as observers during the open sessions.

2. The Chair, 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.1/2008/3.

II. RELEVANT DEVELOPMENTS SINCE THE PREVIOUS MEETING OF THE COMMITTEE

4. The Committee agreed to postpone to its twenty-first meeting the exchange of information on various meetings and conferences related to the Convention or compliance issues that had taken place since its nineteenth 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 secretariat reported that correspondence had been received from the European Commission notifying the Committee that the European Community would require additional time to prepare its response with regard to communication ACCC/C/2007/21 (European Community). The correspondence did not indicate specific date on which the response would be provided. The Committee took note of this information as well as of the fact that the original mailing of the communication did not reach the focal point of the Party concerned until 14 January 2007 for technical reasons. It agreed that the timing for the response should be calculated from 14 January 2008 and the response would therefore normally be due from the Party concerned on 14 June 2008. It also understood that the delay was caused, inter alia, by the need to coordinate the preparation of the response between several different institutions of the Community involved. The Committee was aiming to have a discussion on the subject matter of the communication at its twenty-first meeting (17–19 September 2008). For the discussion to take place at that meeting, the Committee would ideally need to receive the Party's response at the latest by 10 August 2008. It therefore requested the secretariat to ask the Party concerned to provide its response by that time.

10. No further information had been received with regard to communications ACCC/C/2007/22 (France) and ACCC/C/2008/23 (United Kingdom).

11. Two new communications had been received since the previous meeting, concerning compliance by Spain and Albania respectively.

12. Communication ACCC/C/2008/24 had been submitted by the Association for Environmental Justice, Spain, with regard to compliance by Spain with article 4, paragraph 8, article 6, paragraphs 1 (a), 2 (a) and (b), 4 and 6, and article 9, paragraphs 2 to 5, of the Convention. The communication concerned decision-making on a residential development project in the city of Murcia, Spain. The communicant alleged that by imposing a fee for providing environmental information related to decision-making, the Party concerned was not in compliance with article 4, paragraph 8, and article 6, paragraph 6, of the Convention, and that decision-making processes related to land-use planning and construction were not in compliance with article 6, paragraphs 1 (a), 2 (a) and (b), and 4, of the Convention. The communicant also alleged that denial by the courts to suspend administrative decisions taken without an environmental impact assessment and the length of the related judicial review procedure were not in compliance with article 9, paragraph 4. The communicant further alleged that the imposition on a non-profit organization of costs in a court proceeding related to suspension of an administrative measure, in the absence of assistance mechanisms available to the members of the public, was in violation of the requirements of article 9, paragraphs 4 and 5, in connection with paragraphs 2 and 3.

13. Communication ACCC/C/2008/25 was submitted by the Civic Alliance for the Protection of Vlora Bay, Albania, with regard to compliance by Albania with article 5, article 6, paragraph 1 (a), and article 7 of the Convention, in connection with decision-making on an oil storage terminal and port infrastructure in Vlora, Albania. The communicant had referred the matter to the Committee for reconsideration following the review by the Committee of communication ACCC/C/2005/12 (Albania). In its findings and recommendations with regard to that communication, the Committee had addressed the issue of public participation in decision-making on the oil storage terminal (ECE/MP.PP/C.1/2007/4/Add.1, para. 83). The Committee did not reach specific findings in connection with this particular decision-making process when considering communication ACCC/C/2005/12 due to lack of information forthcoming from both parties concerned and because the issues raised in connection with this decision-making process appeared to closely resemble those related to the Vlora Power Plant, for which the Committee reached its findings.

14. The secretariat informed the Committee that the communicant in each case had been notified that the preliminary admissibility of the relevant communication would be discussed at the meeting. In addition, having consulted with the Chair, it had written to each of the Parties concerned in advance of the meeting notifying them of the respective communications and that the discussion on preliminary admissibility was being scheduled for this meeting of the Committee. Such notification was done taking into account the very public nature of this Committee meeting, which was being held in parallel with the tenth meeting of the Working Group of the Parties and immediately before the third meeting of the Parties and for which many members of the public had registered as observers. Both Parties were informed that, in accordance with the Committee’s procedures, the discussions on preliminary admissibility of the communications would be held in an open session, and that they would be welcome to attend as

observers and to participate in the discussion on the preliminary admissibility of the communication. Neither Party concerned availed of this invitation.

15. The communicant in communication ACCC/C/2008/24 (Spain) was present at the discussion on the preliminary admissibility of the communication and provided several clarifications to the Committee with regard to facts related to the admissibility of the communication, including with regard to the timing of the events referred to in the communication and the issue of the use of domestic remedies.

16. 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, if any, should be raised with the Parties concerned and/or with the communicants.

17. The Committee determined on a preliminary basis that communication ACCC/C/2008/24 (Spain) was admissible, but did not draw any conclusions regarding the compliance issues raised in it.

18. To ensure due process in the review, the Committee requested the communicant to provide to the Committee in writing by 23 June 2008 a summary of the information it had provided at the meeting, so that this could be forwarded to the Party concerned together with the communication to be sent pursuant to paragraph 22 of the annex to decision I/7.

19. With regard to communication ACCC/C/2008/25 (Albania), the Committee considered that the issues raised had already been considered by it in the course of the review of communication ACCC/C/2005/12, and would therefore also be considered by Albania in the course of implementation of recommendations of the Committee made in connection with that communication. The role of the Committee was to facilitate and advance compliance with the Convention and the Committee did not see how this could be further achieved by reviewing this matter again. Taking also into account the admissibility criteria as set out in paragraph 20 of the annex to decision I/7, the Committee therefore decided not to proceed with the review of this communication, and requested the secretariat to inform both parties concerned about its decision.

20. The Committee agreed that a curator should not be appointed for communication ACCC/C/2008/24 (Spain) for the time being, until the new composition of the Committee had been agreed on by the Meeting of the Parties.

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

21. The Committee discussed the action plan presented by the Government of Ukraine in lieu of the implementation strategy referred to in decision II/5b (see para. 16 of the Committee's report on compliance by Ukraine (ECE/MP.PP/2008/5/Add.9)). The Committee discussed the document with a view to making recommendations to the Meeting of the Parties in the light of

the Committee's report and the draft decision on compliance by Ukraine prepared by the Bureau (ECE/MP.PP/2008/L.8/Add. 6).

22. Representatives of the Government of Ukraine who took part in the discussion outlined a number of measures taken by Ukraine with a view to facilitating the implementation of the Convention in general. They also presented their views on how the action plan of the Ministry of Environment submitted to the Committee would facilitate the implementation process.

23. The Committee expressed its dissatisfaction with the action plan presented, in particular in the light of the fact that activities proposed in the plan failed to address specific problems identified and recommendations made by the Committee in its findings and recommendations with regard to compliance by Ukraine (ECE/MP.PP/C.1/2005/2/Add.3) as endorsed by decision II/5b of the Meeting of the Parties. The Committee also regretted that the action plan was only applicable to the Ministry of Environment itself and did not appear to have the endorsement of the Government, nor to be applicable to other ministries and agencies. It welcomed the fact, however, that Ukraine appeared to have now engaged with the process. The Committee recommended that the action plan be transposed through a normative act by the Government ensuring the action plan's implementation by all ministries and other relevant agencies, and that it be amended in order to:

(a) Incorporate clear activities to resolve the problems identified by the Committee in its findings and recommendations (ECE/MP.PP/C.1/2005/2/Add.3), and in particular in paragraphs 29 to 35 of that document (including with respect to issues of clear domestic regulation of time frames and procedures for public consultation, public commenting and making available to the public the information on which decisions are based);

(b) Also incorporate capacity-building activities, in particular training of the judiciary and of public officials involved in environmental decision-making;

(c) Establish a procedure which ensures its implementation in a transparent manner and in full consultation with civil society.

24. The representatives of the Government of Ukraine participating in the discussions expressed Ukraine's commitment to implement the above recommendations.

25. The Committee also discussed a letter received on 7 June 2008 from the Government of Turkmenistan which expressed disagreement with draft decision III/6e prepared by the Bureau on compliance by Turkmenistan with its obligations under the Convention.. The letter outlined a number of activities carried out in Turkmenistan in order to implement the Convention in general. The Committee noted with appreciation the information on the general implementation of the Convention in Turkmenistan. It also noted, however, that the information contained in the letter did not indicate that any activities had been taken to address the specific recommendations contained in decision II/5c of the Meeting of the Parties. It was in particular concerned that over the three years since the second meeting of the Parties, the Government of Turkmenistan had engaged in extensive correspondence with the Committee, providing a range of legal analyses of its legislation, and that while it consistently maintained its commitment to implement the Convention, the Committee was not aware of any activities undertaken by the Party to implement decision II/5c.

26. The Committee considered that the matter could only be dealt with by the Meeting of the Parties. It therefore requested the secretariat to make the letter available to the tenth meeting of the Working Group, which was going to discuss the draft decision prepared by the Bureau.

27. At the request of the Chair of the Working Group, the Committee also provided its advice on some of the textual amendments to draft decisions III/6e and III/6f. It limited its advice to preparing drafting solutions without wanting to engage in any kind of political deliberations on the options for further actions in connection with the two decisions.

IX. COMMITTEE'S REPORT TO THE MEETING OF THE PARTIES

28. Members of the Committee put forward issues which might be raised in the presentation by the Chair to the Meeting of the Parties.

X. PROGRAMME OF WORK AND CALENDAR OF MEETINGS

29. The Committee confirmed that it intended to hold its twenty-first meeting from 17 to 19 September 2008 in Geneva and that its twenty-second meeting was provisionally scheduled to be held from 17 to 19 December 2008. It agreed to provisionally schedule its twenty-third meeting from 25 to 27 March 2009 and its twenty-fourth meeting from 24 to 26 June 2009. The exact dates of those meetings would be confirmed at a later stage, taking into account the availability of the incoming new members of the Committee.

XI. ANY OTHER BUSINESS

30. With regard to the composition of the Committee, four Committee members were due to reach the end of their respective terms of office at the end of the upcoming third meeting of the Parties. In accordance with paragraph 12 of decision II/5, the number of seats on the Committee was due to be increased to nine as of the end of the third meeting of the Parties. The secretariat provided information on the nominations for election to the Committee made by the Parties and other stakeholders pursuant to paragraph 4 of the annex to decision I/7. The election of five new members was due to take place at the upcoming meeting of the Parties.

31. Mr. Sandor Fülöp informed the Committee that his candidature was not put forward for re-election to the Committee, in the light of the prospective workload in his capacity as the newly appointed Hungarian Ombudsman for Future Generations. The Committee expressed its gratitude to Mr. Fülöp for his valuable contribution to its work in the course of the past five-and-a-half years, and congratulated him on his appointment to the post of Ombudsman.

XII. ADOPTION OF THE REPORT AND CLOSURE OF THE MEETING

32. The Committee adopted the draft report prepared by the Chair and the secretariat. The Chair then closed the meeting.

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