

# Case Law of the Aarhus Convention Compliance Committee

2004-2014



**Case Law  
of the Aarhus Convention  
Compliance Committee  
(2004-2014)**

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(2004-2014)

*Third edition*

**A. Andrusyevych, S. Kern (eds)**, Case Law of the Aarhus Convention Compliance Committee (2004-2014), 3<sup>rd</sup> Edition (RACSE, Lviv 2016)

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## INTRODUCTION

This is the third edition of the *Case Law of the Aarhus Convention Compliance Committee*. It attempts to summarize the practice of the Compliance Committee of the Aarhus Convention. Since its establishment in 2002 by the First Meeting of the Parties of the Aarhus Convention, the Committee has dealt with numerous issues related to the practical implementation of the Convention by the parties. In many cases, the Committee had to interpret and apply the Convention's provisions to specific situations brought to its attention by the public and parties, as well as its own rules of procedures. Therefore, a substantial body of case law was developed by the Committee during 2004-2014. Understanding this case law may help policymakers and practitioners apply and use the Convention in a more effective and uniform way, promoting common standards for the practical enforcement of environmental human rights in the UN ECE region.

This third edition updates the second edition of the *Case Law of the Aarhus Convention Compliance Committee* (which covered 2004-2011) with new interpretations by the Compliance Committee, as well as decisions adopted by the Meeting of the Parties (MOP) of the Aarhus Convention. The latter is new to this publication in that the decisions by MOP on compliance by parties are included now in their entirety (covering four sessions of the MOP: 2005, 2008, 2011 and 2014). *The Case Law of the Aarhus Convention Compliance Committee* was designed as a reference tool as explained below and comprises four parts, the first two representing a similar approach. The **first part** is the Aarhus Convention's text (without the GMO amendment) with inserted interpretations of its provisions by the Committee. The **second part** is Decision I/7 of the 1st Meeting of the Parties (establishing the compliance mechanism and setting its key procedural elements) with the Committee's case law on procedural issues (such as admissibility requirements). The **third part** includes decisions by MOP on compliance by parties with a view to reflecting measures adopted towards countries found in non-compliance with the provisions of the Aarhus Convention. Note that some countries addressed by compliance decisions of MOP were subject to follow-up processes and, therefore, such countries were addressed by compliance decisions of subsequent MOPs. When developing this publication it was decided not to provide any substantive comments on the interpretations made by the Committee except for a few explanatory notes providing brief context to some of the statements by the Committee. What is new for this edition that we offer keywords at the side of relevant paragraphs to guide the reader on the key issues addressed by the Committee's findings. The **fourth part** includes summaries of all cases (triggered by communications with one exception) referred to in this publication. These summaries aim to provide background information on the substantive issues submitted for the consideration by the Compliance Committee and, hopefully, will help the reader better understand the context of the Committee's interpretations of the Convention in specific cases.

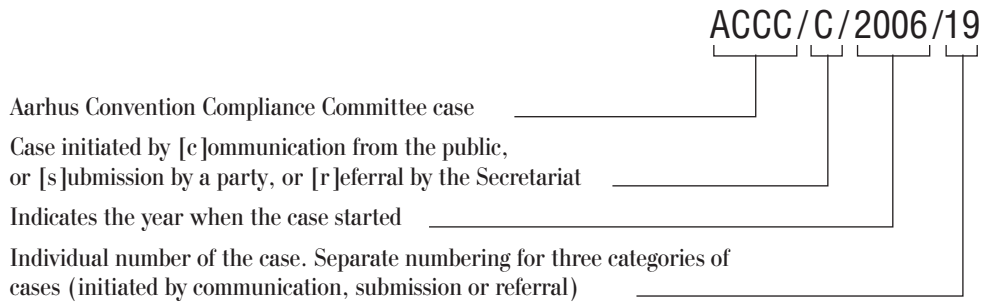
The publication covers all cases considered by the Compliance Committee until the 5<sup>th</sup> session of the Meeting of the Parties in 2014. It does not include pending cases. For those unfamiliar with the documentation details within UN ECE system, we provide a brief explanation of the reference numbers used in this publication. We hope this will help the reader to make further research when needed.

All documents used for this publication were taken from and can be accessed at the official website of the Aarhus Convention: [www.unece.org/env/pp](http://www.unece.org/env/pp).

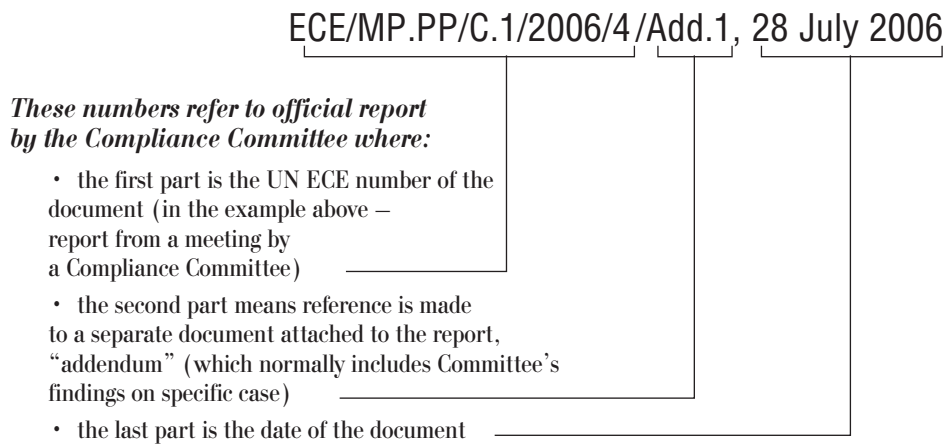
The third edition of the Case Law of the Aarhus Convention Compliance Committee was developed by the European ECO Forum legal team members: Andriy Andrushevych, Resource & Analysis Center "SOCIETY AND ENVIRONMENT" (Ukraine) and Summer Kern, OEKOBUERO (Austria). This publication is part of a project supported by the Sigrid Rausing Trust.

We wish to thank and acknowledge the valuable ideas provided by Thomas Alge, Yves Lador and Mara Silina since the very first edition of this book.

## CASES REFERENCE NUMBERS:



## DOCUMENT REFERENCE NUMBERS:



## CASES INCLUDED IN THIS PUBLICATION

Reference number	State Concerned
ACCC/S/2004/01	Ukraine (by Romania)
ACCC/C/2004/1	Kazakhstan
ACCC/C/2004/2	Kazakhstan
ACCC/C/2004/3	Ukraine
ACCC/C/2004/4	Hungary
ACCC/C/2004/5	Turkmenistan
ACCC/C/2004/6	Kazakhstan
ACCC/C/2004/8	Armenia
ACCC/C/2005/11	Belgium
ACCC/C/2005/12	Albania
ACCC/C/2005/15	Romania
ACCC/C/2006/16	Lithuania
ACCC/C/2006/17	European Community
ACCC/C/2006/18	Denmark
ACCC/C/2007/21	European Community
ACCC/C/2007/22	France
ACCC/C/2008/23	United Kingdom
ACCC/C/2008/24	Spain
ACCC/C/2008/26	Austria
ACCC/C/2008/27	United Kingdom
ACCC/C/2008/30	Moldova
ACCC/C/2008/31	Germany
ACCC/C/2008/32	European Community
ACCC/C/2008/33	United Kingdom
ACCC/C/2008/35	Georgia
ACCC/C/2009/36	Spain
ACCC/C/2009/37	Belarus
ACCC/C/2009/38	United Kingdom
ACCC/C/2009/41	Slovakia
ACCC/C/2009/43	Armenia
ACCC/C/2009/44	Belarus
ACCC/C/2010/45	United Kingdom
ACCC/C/2010/48	Austria
ACCC/C/2010/50	Czech Republic
ACCC/C/2010/51	Romania
ACCC/C/2010/53	United Kingdom
ACCC/C/2010/54	European Union
ACCC/C/2011/57	Denmark
ACCC/C/2011/58	Bulgaria
ACCC/C/2011/59	Kazakhstan



ACCC/C/2011/60	United Kingdom
ACCC/C/2011/61	United Kingdom
ACCC/C/2011/62	Armenia
ACCC/C/2011/63	Austria
ACCC/C/2012/66	Croatia
ACCC/C/2012/68	European Union and United Kingdom
ACCC/C/2012/70	Czech Republic

# PART I

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## **CONVENTION ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS (commented text)**

# CONVENTION ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS

The Parties to this Convention,

Recalling principle I of the Stockholm Declaration on the Human Environment,

Recalling also principle 10 of the Rio Declaration on Environment and Development,

Recalling further General Assembly resolutions 37/7 of 28 October 1982 on the World Charter for Nature and 45/94 of 14 December 1990 on the need to ensure a healthy environment for the well-being of individuals,

Recalling the European Charter on Environment and Health adopted at the First European Conference on Environment and Health of the World Health Organization in Frankfurt-am-Main, Germany, on 8 December 1989,

Affirming the need to protect, preserve and improve the state of the environment and to ensure sustainable and environmentally sound development,

Recognizing that adequate protection of the environment is essential to human well-being and the enjoyment of basic human rights, including the right to life itself,

Recognizing also that every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations,

Considering that, to be able to assert this right and observe this duty, citizens must have access to information, be entitled to participate in decision-making and have access to justice in environmental matters, and acknowledging in this regard that citizens may need assistance in order to exercise their rights,

Recognizing that, in the field of the environment, improved access to information and public participation in decision-making enhance the quality and the implementation of decisions, contribute to public awareness of environmental issues, give the public the opportunity to express its concerns and enable public authorities to take due account of such concerns,

Aiming thereby to further the accountability of and transparency in decision-making and to strengthen public support for decisions on the environment,

Recognizing the desirability of transparency in all branches of government and inviting legislative bodies to implement the principles of this Convention in their proceedings,

Recognizing also that the public needs to be aware of the procedures for participation in environmental decision-making, have free access to them and know how to use them,

Recognizing further the importance of the respective roles that individual citizens, non-governmental organizations and the private sector can play in environmental protection,

Desiring to promote environmental education to further the understanding of the environment and sustainable development and to encourage widespread public awareness of, and participation in, decisions affecting the environment and sustainable development,

Noting, in this context, the importance of making use of the media and of electronic or other, future forms of communication,

Recognizing the importance of fully integrating environmental considerations in governmental decision-making and the consequent need for public authorities to be in possession of accurate, comprehensive and up-to-date environmental information,

Acknowledging that public authorities hold environmental information in the public interest,

Concerned that effective judicial mechanisms should be accessible to the public, including organizations, so that its legitimate interests are protected and the law is enforced,

To the extent that a town planning permit should not be considered a permit for a specific activity as provided for in article 6 of the Convention, the decision is still an act by a public authority. As such it may contravene provisions of national law relating to the environment. Thus, Belgium is obliged to ensure that in these cases members of the public have access to administrative or judicial procedures to challenge the acts concerned, as set out in article 9, paragraph 3. This provision is intended to provide members of the public with access to adequate remedies against acts and omissions which contravene environmental laws, and with the means to have existing environmental laws enforced and made effective. When assessing the Belgian criteria for access to justice for environmental organizations in the light of article 9, paragraph 3, the provision should be read in conjunction with articles 1 to 3 of the Convention, and in the light of the purpose reflected in the preamble, that “effective judicial mechanisms should be accessible to the public, including organizations, so that its legitimate interests are protected and the law is enforced.”

*(Belgium ACCC/2005/11; ECE/MP.PP/C.1/2006/4/Add.2, 28 July 2006, para. 34)*

When evaluating the compliance of the Party concerned with article 9 of the Convention in each of these areas, the Committee pays attention to the general picture on access to justice, in the light of the purpose also reflected in the preamble of the Convention, that “effective judicial mechanisms should be accessible to the public, including organizations, so that its legitimate interests are protected and the law is enforced” (Convention, preambular para. 18; cf. also findings on communication ACCC/C/2006/18 concerning Denmark (ECE/MP.PP/2008/5/Add.4), para. 30). Therefore, in assessing whether the Convention’s requirement for effective access to justice is met by the Party concerned, the Committee looks at the legal framework in general and the different possibilities for access to justice, available to members of the public, including organizations, in different stages of the decision-making (“tiered” decision-making).

*(Bulgaria ACCC/C/2011/58; ECE/MP.PP/C.1/2013/4, 11 January 2013, para. 52)*

Noting the importance of adequate product information being provided to consumers to enable them to make informed environmental choices,

Recognizing the concern of the public about the deliberate release of genetically modified organisms into the environment and the need for increased transparency and greater public participation in decision-making in this field,

Convinced that the implementation of this Convention will contribute to strengthening democracy in the region of the United Nations Economic Commission for Europe (ECE),

Conscious of the role played in this respect by ECE and recalling, inter alia, the ECE Guidelines on Access to Environmental Information and Public Participation in Environmental Decision-making endorsed in the Ministerial Declaration adopted at the Third Ministerial Conference «Environment for Europe» in Sofia, Bulgaria, on 25 October 1995,

Bearing in mind the relevant provisions in the Convention on Environmental Impact Assessment in a Transboundary Context, done at Espoo, Finland, on 25 February 1991, and the Convention on the Transboundary Effects of Industrial Accidents and the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, both done at Helsinki on 17 March 1992, and other regional conventions,

Conscious that the adoption of this Convention will have contributed to the further strengthening of the «Environment for Europe» process and to the results of the Fourth Ministerial Conference in Aarhus, Denmark, in June 1998,

Have agreed as follows:

## Article 1 OBJECTIVE

In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.

The communication also includes the allegation as to non-compliance with article 1. The Committee notes that a non-compliance with the operative provisions of the Convention is not in conformity with the objective of the Convention as defined in article 1.

*(Ukraine ACCC/C/2004/3 and ACCC/S/2004/1; ECE/MP.PP/C.1/2005/2/Add.3, 14 March 2005, para. 36.)*

NOTE: There's nothing in the text of the Aarhus Convention defining part of it as "operative provisions". International law practice and studies normally use the term "operative" to distinguish main part of a treaty from, normally, preamble and annexes to it.

## Article 2 DEFINITIONS

For the purposes of this Convention,

1. «Party» means, unless the text otherwise indicates, a Contracting Party to this Convention;

The Committee is tasked with examining whether the Party concerned meets its obligations as a Party to the Convention. The Committee accordingly does not address the point raised by the communicants as to whether the Convention is directly applicable in the law of England and Wales by virtue of EU law and the ratification by the EU of the Convention (see annex I to the communication). The Party concerned is bound through its own ratification of the Convention to ensure full compliance of its legal system with the Convention's provisions, even if, as noted by the Committee, applicable EU law relating to the environment should be considered to be part of the domestic, national law of a member State (ACCC/C/2006/18 (Denmark), ECE/MP.PP/2008/5/Add.4, para. 27).

*(United Kingdom ACCC/C/2008/33; ECE/MP.PP/C.1/2010/6/Add.3, December 2010, para. 122)*

2. «Public authority» means:

- (a) Government at national, regional and other level;

The Almaty Sanitary-Epidemiological Department and the Almaty City Territorial Department on Environmental Protection both fall under the definition of a "public authority", as set out in article 2, paragraph 2 (a).

*(Kazakhstan ACCC/C/2004/6; ECE/MP.PP/C.1/2006/4/Add.1, 28 July 2006, para. 23)*

The agencies referred to in the communication with regard to provision of information and public participation in the decision-making process fall under the definition of "public authority" in article 2, paragraph 2 (a), of the Convention.

*(Armenia ACCC/C/2004/8; ECE/MP.PP/C.1/2006/2/Add.1, 10 May 2006, para. 19)*

NOTE: The information requests were sent to Chairperson of the State Real Estate Cadastre Committee and the Mayor of Yerevan.

It is therefore the opinion of the Committee that, as public authorities within the meaning of article 2, paragraph 2 (a), the State Real Estate Cadastre Committee and the Office of the Mayor of Yerevan were under an obligation to provide the environmental information requested by the communicants pursuant to article 4, paragraph 1, and that their failure to do so or to respond within the time limits indicated in the article was not in conformity with provisions of article 4, paragraphs 1 and 2.

*(Armenia ACCC/C/2004/8; ECE/MP.PP/C.1/2006/2/Add.1, 10 May 2006, para. 21)*

The Walloon Government as well as the Mayor and Deputy Mayors of the municipality of Grez-Doiceau constitute public authorities, in accordance with article 2, paragraph 2, of the Convention.

*(Belgium ACCC/2005/11; ECE/MP.PP/C.1/2006/4/Add.2, 28 July 2006, para. 25)*

The municipality of Hillerod constitutes a public authority, in accordance with article 2, paragraph 2, of the Convention, but the relevant decision to cull the juvenile rooks was made by the municipality not in its capacity of public authority, but as a landowner. Even so, article 9, paragraph 3, applies to the act by the Hillerod municipality to cull the juvenile rooks, regardless of whether it acted as public authority or landowner (and thus, in the same vein as a private person).

(Denmark ACCC/C/2006/18; ECE/MP.PP/2008/5/Add.4, 29 April 2008, para. 25)

- (b) Natural or legal persons performing public administrative functions under national law, including specific duties, activities or services in relation to the environment;

The National Atomic Company Kazatomprom is a legal person performing administrative functions under national law, including activities in relation to the environment, and performing public functions under the control of a public authority. The company is also fully owned by the State. Due to these characteristics, it falls under the definition of a “public authority”, as set out in article 2, paragraphs 2 (b) and 2 (c).

(Kazakhstan ACCC/C/2004/1; ECE/MP.PP/C.1/2005/2/Add.1, 11 March 2005, para. 17)

Establishment of a special company for construction of expressways does not in itself constitute a breach of obligations under the Convention, in the Committee’s view. In this regard, the Committee takes note of the fact that the company is established by the Act, is State-owned and would, therefore fall under the definition of the public authority in accordance with article 2, paragraphs 2 (b) and (c). In Committee’s view this in itself limits the scope of application of the commercial confidentiality exemption.

(Hungary ACCC/C/2004/4; ECE/MP.PP/C.1/2005/2/Add.4, 14 March 2005, para. 10)

- (c) Any other natural or legal persons having public responsibilities or functions, or providing public services, in relation to the environment, under the control of a body or person falling within subparagraphs (a) or (b) above;

The National Atomic Company Kazatomprom is a legal person performing administrative functions under national law, including activities in relation to the environment, and performing public functions under the control of a public authority. The company is also fully owned by the State. Due to these characteristics, it falls under the definition of a “public authority”, as set out in article 2, paragraphs 2 (b) and 2 (c).

(Kazakhstan ACCC/C/2004/1; ECE/MP.PP/C.1/2005/2/Add.1, 11 March 2005, para. 17)

The Committee considers that it is not conflicting with the Convention when national legislation delegates some functions related to maintenance and distribution of environmental information to private entities. Such private entities, depending on the particular arrangements adopted in the national law, should be treated for the purpose of access to information as falling under the definition of a “public authority”, in the meaning of article 2, paragraph 2 (b) or (c) of the Convention.

(Belarus ACCC/C/2009/37; ECE/MP.PP/2011/11/Add.2, 12 May 2011, para.67)

- (d) The institutions of any regional economic integration organization referred to in article 17 which is a Party to this Convention.

It has not been disputed during the deliberations before the Committee that the provisions of the Convention are applicable to EIB. This is affirmed by the relevant legal provisions of the European Community.

(European Community ACCC/C/2007/21; ECE/MP.PP/C.1/2009/2/Add.1, 11 December 2009, para. 26)

NOTE: the EIB is the European Investment Bank

The Communicant alleges that the Party concerned fails to comply with article 9, paragraphs 2-5, of the Convention. In order to determine whether the Party concerned fails to comply with article 9, paragraphs 2-5, it must be considered whether the challenged decisions, acts and omissions by the EU institutions or bodies are such as to be covered by the Convention, as under article 2, paragraph 2 (a) to (d), or whether they are made by the EU institutions or bodies when acting in a legislative capacity.

(European Union ACCC/C/2008/32 (Part I); ECE/MP.PP/C.1/2011/4/Add.1, May 2011, para. 69)

This definition does not include bodies or institutions acting in a judicial or legislative capacity;

**State companies**

**State companies**

**Delegation  
of functions**

**EIB**

As set out in article 2, paragraph 2, of the Convention, the EU institutions do not act as public authorities when they perform in their legislative capacity, with the effect that these forms of decision-making are not covered by article 9 of the Convention. Thus, in order to establish non-compliance in a specific case, the Committee will have to consider the form of decision-making challenged before the EU Courts.

*(European Union ACCC/C/2008/32 (Part I); ECE/MP.PP/C.1/2011/4/Add.1, May 2011, para. 61)*

As mentioned, the Convention imposes an obligation on the Parties to ensure access to review procedures with respect to various decisions, acts and omissions by public authorities, but not with respect to decisions, acts and omissions by bodies or institutions which act in a legislative capacity.

*(European Union ACCC/C/2008/32 (Part I); ECE/MP.PP/C.1/2011/4/Add.1, May 2011, para. 70)*

### label of decision

When determining how to categorize a decision, and act or an omission under the Convention, its label in the domestic law of a Party is not decisive (cf. ACCC/C/2005/11 (Belgium) (ECE/MP.PP/C.1/2006/4/Add.2, para 29)).

*(European Union ACCC/C/2008/32 (Part I); ECE/MP.PP/C.1/2011/4/Add.1, May 2011, para. 71)*

### legislative capacity

In this respect, the Committee also notes that the hybrid bill process is a process under the Parliament, the body that traditionally manifests the legislative powers in a democratic state. Article 2, paragraph 2, of the Convention, excludes from the definition of a public authority “bodies or institutions acting in a ... legislative capacity”. In the present case, however, the Parliament is no longer “acting” in a legislative capacity, but rather as the “public authority” authorizing a project. The fact that the Party concerned has in place an integrated procedure for “hybrid bills” in order for the Government to secure all powers and consents necessary for the authorization of major projects, instead of having fragmented procedures going through a number of different public authorities, central and/or regional, does not change the nature of the act as a decision permitting the project. The Committee observes that if all large-scale projects were subject to parliamentary authorizations procedure and evoked article 2, paragraph 2, of the Convention, then there is a risk that important projects would never be subject to the public participation requirements of the Convention and this would run counter its objectives.

*(United Kingdom ACCC/C/2011/61; ECE/MP.PP/C.1/2013/13, 23 October 2013, para. 54)*

It is noted that processes similar to the hybrid bill process, under a different label, exist under the jurisdictions of other Parties to the Convention (see, e.g., the recent jurisprudence of the Court of Justice of the EU concerning Belgium: *Boxus and others v. Région wallonne*, C-128/09 (2012) and *Solvay v. Région wallonne*, C-182/10 (2012)). While such processes are a reasonable way for Governments to deal with permitting large projects of significant national and also transboundary impact (e.g., the Channel Tunnel), the Committee underlines that the process of adopting projects by such means still have to be considered within the provisions of the Aarhus Convention, and thus that the Party concerned has to ensure adequate opportunities for public participation. Although the Party concerned refers in the case of the Crossrail Act to a “specific legislative act”, the Committee holds that the process adopting the Crossrail Act by means of a hybrid bill falls within the scope of article 6 of the Aarhus Convention as it serves as a decision to permit a specific activity.

*(United Kingdom ACCC/C/2011/61; ECE/MP.PP/C.1/2013/13, 23 October 2013, para. 56)*

3. «Environmental information» means any information in written, visual, aural, electronic or any other material form on:

With respect to the points made in paragraphs 30 (b) and (c) and 31 (c) above, given that the information requested was eventually provided to the requester, the Committee has not considered it necessary to examine in detail the documents which were the subject of the information requests. It consequently does not reach any conclusion on how much of the documentation could be considered as containing “environmental information” or to what extent any “environmental information” contained in the documentation could have been considered as falling within an exempt category.

*(European Community ACCC/C/2007/21; ECE/MP.PP/C.1/2009/2/Add.1, 11 December 2009, para. 32)*

- (a) The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

The broad understanding of “environment” under the Convention is drawn from the broad definition of “environmental information” under article 2, paragraph 3, which also extends

to “biodiversity and its components, including genetically modified organisms”. The fact that components of biodiversity have been removed from their habitat does not necessarily mean that they lose their property as biodiversity components.

(Austria ACCC/C/2011/63; ECE/MP.PP/C.1/2014/3, 13 January 2014, para. 54)

The definition and scope of “environmental information” under the Convention is broad. Article 2, paragraph 3, provides an indicative list of what would constitute environmental information and mentions that environmental information means any information, without qualifying the form of the information or whether such information may be in the form of “raw” or “processed” data.

(United Kingdom ACCC/C/2010/53; ECE/MP.PP/C.1/2013/3, 11 January 2013, para. 74)

The Committee finds that raw data on the state of the air and the atmosphere constitute environmental information according to article 2, paragraph 3 (a), of the Convention. Accordingly, public authorities should ensure access to the requested information as required by article 4 of the Convention.

(United Kingdom ACCC/C/2010/53; ECE/MP.PP/C.1/2013/3, 11 January 2013, para. 75)

**raw data**

- (b) Factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment within the scope of subparagraph (a) above, and cost-benefit and other economic analyses and assumptions used in environmental decision-making;

Information requested from Kazatomprom, in particular the feasibility study of the draft amendments, falls under the definition of article 2, paragraph 3 (b), of the Convention.

(Kazakhstan ACCC/C/2004/1; ECE/MP.PP/C.1/2005/2/Add.1, 11 March 2005, para.18)

**feasibility studies**

NOTE: The feasibility study (of technical and economic issues) was preceding legislative proposal to import radioactive wastes for their disposal in Kazakhstan.

The issuing of government decrees on land use and planning constitutes “measures” within the meaning of article 2, paragraph 3 (b), of the Convention. In the Committee’s opinion, the information referred to in paragraph 13 above clearly falls under the definition of “environmental information” under article 2, paragraph 3.

(Armenia ACCC/C/2004/8; ECE/MP.PP/C.1/2006/2/Add.1, 10 May 2006, para. 20)

**government decrees**

The contracts for rent of lands of the State Forestry Fund, to which access was requested by the communicant, constitute “environmental information” as defined in article 2, paragraph 3 (b), of the Convention.

(Moldova ACCC/C/2008/30; ECE/MP.PP/C.1/2009/6/Add.3, 8 February 2011, para.29)

**land contracts**

- (c) The state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures referred to in subparagraph (b) above;

[...] (b) The argument of the Party concerned that almost none of the finance contract constitutes environmental information in the sense of the Convention appears to be based on a narrow interpretation of the definition of “environmental information”. That definition includes “factors ... and activities or measures ... affecting or likely to affect the elements of the environment...” A list of examples of types of “activities or measures” that fall within the definition (“administrative measures, environmental agreements, policies, legislation, plans and programmes”) is preceded by the word “including”, implying that this is a non-exhaustive list and recognizing that other types of activities or measures that affect or are likely to affect the environment are covered by the definition. Thus, financing agreements, even though not listed explicitly in the definition, may sometimes amount to “measures ... that affect or are likely to affect the elements of the environment”. For example, if a financing agreement deals with specific measures concerning the environment, such as the protection of a natural site, it is to be seen as containing environmental information. Therefore, whether the provisions of a financing agreement are to be regarded as environmental information cannot be decided in a general manner, but has to be determined on a case-by-case basis;

(European Community ACCC/C/2007/21; ECE/MP.PP/C.1/2009/2/Add.1, 11 December 2009, para. 30)

**finance contracts**

4. «The public» means one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups;



The communicant is a non-governmental organization working in the field of environmental protection and falls under the definitions of the public and the public concerned as set out in article 2, paragraphs 4 and 5, of the Convention. Foreign or international non-governmental environmental organizations that have similarly expressed an interest in or concern about the procedure would generally fall under these definitions as well.

*(Ukraine ACCC/C/2004/3 and ACCC/S/2004/1; ECE/MP.PP/C.1/2005/2/Add.3, 14 March 2005, para. 26)*

NOTE: Foreign organizations mentioned here are in fact organizations established and operating in another country.

The communicant is a non-governmental organization working in the field of environmental protection and falls under the definition of “the public”, as set out in article 2, paragraph 4, of the Convention.

*(Kazakhstan ACCC/C/2004/1; ECE/MP.PP/C.1/2005/2/Add.1, 11 March 2005, para. 16)*

In order to define the nature of the complaint, the Committee examines the role of community councils in Scotland. Although community councils have statutory duties in terms of licensing and planning, they have no regulatory decision-making functions and are essentially voluntary bodies established within a statutory framework. They mainly act to further the interests of the community and take action in the interest of the community as appears to be expedient and practicable, including representing the view of the community regarding planning applications. In addition, community councils rely on grants from local authorities and voluntary donations. Community Council members furthermore operate on a voluntary basis and do not receive payment for their services.

*(European Union and United Kingdom ACCC/C/2012/68; ECE/MP.PP/C.1/2014/5, 13 January 2014, para. 81)*

The Committee was also informed by the Party concerned (United Kingdom) that the representations from the Avich and Kilchrenan Community Council with regard to the projects at stake were recorded under the same section as representations from members of the public and non-governmental organizations (NGOs).

*(European Union and United Kingdom ACCC/C/2012/68; ECE/MP.PP/C.1/2014/5, 13 January 2014, para. 82)*

Based on the above, in particular the role of the council in representing the interests of the community in planning matters and the fact that council members provide their services on a voluntary basis and have no regulatory decision-making functions, the Committee concludes that community councils in Scotland qualify as “the public” within the definition of article 2, paragraph 4, of the Convention. It thus decides to consider the present complaint as a communication under paragraph 18 of the annex to decision I/7, as submitted by Ms. Metcalfe on behalf of the Avich and Kilchrenan Community Council.

*(European Union and United Kingdom ACCC/C/2012/68; ECE/MP.PP/C.1/2014/5, 13 January 2014, para. 83)*

5. «The public concerned» means the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.

The communicants are NGOs that fall under the definition of “the public” as set out in article 2, paragraph 4, of the Convention. The Committee considers that all the communicants, being registered NGOs and having expressed an interest in the decision-making process, fall within the definition of “the public concerned” as set out in article 2, paragraph 5.

*(Armenia ACCC/C/2004/8; ECE/MP.PP/C.1/2006/2/Add.1, 10 May 2006, para. 18)*

The communicant is a non-governmental organization working in the field of environmental protection and falls under the definitions of the public and the public concerned as set out in article 2, paragraphs 4 and 5, of the Convention. Foreign or international non-governmental environmental organizations that have similarly expressed an interest in or concern about the procedure would generally fall under these definitions as well.

*(Ukraine ACCC/C/2004/3 and ACCC/S/2004/1; ECE/MP.PP/C.1/2005/2/Add.3, 14 March 2005, para. 26)*

[...] Whether or not an NGO promotes environmental protection can be ascertained in a variety of ways, including, but not limited to, the provisions of its statutes and its activi-

ties. Parties may set requirements under national law, but such requirements should not be inconsistent with the principles of the Convention.

*(Armenia ACCC/C/2009/43; ECE/MP.PP/2011/11/Add.1, April 2011, para.81)*

The public participation provisions in article 6 of the Convention mostly refer to the “public concerned”, i.e., a subset of the public at large. The members of the public concerned are defined in article 2, paragraph 5, of the Convention on the basis of the criteria of “affected or likely to be affected by”, or “having an interest in”, the environmental decision-making. Hence, the definition of the Convention is partly based on the concept of “being affected” or “having an interest”, concepts which are also found in the Czech legal system.

*(Czech Republic ACCC/C/2010/50; ECE/MP.PP/C.1/2012/11, 2 April, 2012, para. 65)*

While narrower than the definition of “the public”, the definition of “the public concerned” under the Convention is still very broad. Whether a member of the public is affected by a project depends on the nature and size of the activity. For instance, the construction and operation of a nuclear power plant may affect more people within the country and in neighbouring countries than the construction of a tanning plant or a slaughterhouse. Also, whether members of the public have an interest in the decision-making depends on whether their property and other related rights (in rem rights), social rights or other rights or interests relating to the environment may be impaired by the proposed activity. Importantly, this provision of the Convention does not require an environmental NGO as a member of the public to prove that it has a legal interest in order to be considered as a member of the public concerned. Rather, article 2, paragraph 5, deems NGOs promoting environmental protection and meeting any requirements under national law to have such an interest.

*(Czech Republic ACCC/C/2010/50; ECE/MP.PP/C.1/2012/11, 2 April, 2012, para. 66)*

A tenant is a person who holds, or possesses for a time, land, a house/apartment/office or the like, from another person (usually the owner), usually for rent. An activity may affect the social or environmental rights of the tenants, especially if they have been or will be tenants for a long period of time. In that case, to a certain extent, the interests of the tenants would amount to the interests of the owners. Although the relationship of the tenant to the object is always intermediated, since tenants, even short-term tenants, may be affected by the proposed activity, they should generally be considered to be within the definition of the public concerned under article 2, paragraph 5, of the Convention and should therefore enjoy the same rights as other members of the public concerned.

*(Czech Republic ACCC/C/2010/50; ECE/MP.PP/C.1/2012/11, 2 April, 2012, para. 67)*

While Czech law provides for wide public participation at the EIA stage, it limits opportunities for public participation after the conclusion of the EIA. The Committee stresses that environmental decision-making is not limited to the conduct of an EIA procedure, but extends to any subsequent phases of the decision-making, such as land-use and building permitting procedures, as long as the planned activity has an impact on the environment. Czech law limits the rights of NGOs to participate after the EIA stage, and individuals may only participate if their property rights are directly affected. This means that individuals who do not have any property rights, but may be affected by the decision, are excluded. Although the Party concerned contends that the results of the EIA procedure are taken into account in the subsequent phases of the decision-making, members of the public must also be able to examine and to comment on elements determining the final building decision throughout the land planning and building processes. Moreover, public participation under the Convention is not limited to the environmental aspects of a proposed activity subject to article 6, but extends to all aspects of those activities. In addition, even if, as the Party concerned contends, the scope of stakeholders with property rights is interpreted widely to include the most distant owners of land plots and other structures, individuals with other rights and interests are still excluded from the public participation process. Therefore, the Committee finds that through its restrictive interpretation of “the public concerned” in the phases of the decision-making to permit activities subject to article 6 that come after the EIA procedure, the Czech legal system fails to provide for effective public participation during the whole decision-making process. Thus the Party concerned is not in compliance with article 6, paragraph 3, of the Convention.

*(Czech Republic ACCC/C/2010/50; ECE/MP.PP/C.1/2012/11, 2 October 2012, para. 70)*

It follows from article 2, paragraph 5, that NGOs “promoting environmental protection” shall be deemed to have an interest in environmental decision-making. According to article 9, paragraph 2, of the Convention, any NGO meeting the requirements referred to

***being affected/  
having interest***

***being affected***

***tenants***

***EIA  
property rights  
scope of public  
participation***

***objective of wide  
access to justice***

in article 2, paragraph 5, should be deemed to have sufficient interest and thus granted standing in the review procedure. Hence, a criterion in national law that NGOs, to have standing for judicial review, must promote the protection of the environment is not inconsistent with the Convention per se. However, in order to be in accordance with the spirit and principles of the Convention, such requirements should be decided and applied “with the objective of giving the public concerned wide access to justice” (see findings on communications ACCC/C/2006/11 (Belgium) (ECE/MPPP/C.1/2006/4/Add.2), para. 27, and ACCC/C/2009/43 (Armenia) (ECE/MPPP/2011/11/Add.1), para. 81). This means that any requirements introduced by a Party should be clearly defined, should not cause excessive burden on environmental NGOs and should not be applied in a manner that significantly restricts access to justice for such NGOs.

*(Germany ACCC/C/2008/31; ECE/MP.PP/C.1/2014/8, 4 June 2014, para. 71)*

### *excessive burden*

The criterion in the law of the Party concerned that environmental NGOs must demonstrate that their objectives are affected by the challenged decision amounts to a “requirement under national law”, as set out in article 2, paragraph 5, of the Convention. The criterion is sufficiently clear and does not seem to put an excessive burden on environmental NGOs, since this can be easily proven by the objectives stated in its by-laws. Moreover, NGOs have the possibility to (re-)formulate their objectives from time to time as they see fit. No information was submitted to the Committee to show that the authorities and courts of the Party concerned use this criterion in such a manner so as to effectively bar environmental NGOs from access to justice.

*(Germany ACCC/C/2008/31; ECE/MP.PP/C.1/2014/8, 4 June 2014, para. 72)*

Since the application of this requirement by the Party concerned does not seem to contravene the objective of giving the public concerned wide access to justice, the Party concerned does not fail to comply with article 9, paragraph 2, of the Convention in this respect.

*(Germany ACCC/C/2008/31; ECE/MP.PP/C.1/2014/8, 4 June 2014, para. 73)*

## Article 3 GENERAL PROVISIONS

1. Each Party shall take the necessary legislative, regulatory and other measures, including measures to achieve compatibility between the provisions implementing the information, public participation and access-to-justice provisions in this Convention, as well as proper enforcement measures, to establish and maintain a clear, transparent and consistent framework to implement the provisions of this Convention.

The Committee considers that the underlying reason for non-compliance with the requirements of articles 4 and 9, paragraph 1, as described in paragraphs 16 to 19 and 21 to 22 above, was a failure by the Party concerned to establish and maintain, pursuant to the obligation established in article 3, paragraph 1, a clear, transparent and consistent framework to implement these provisions of the Convention, e.g. by providing clear instructions on the status and obligations of bodies performing functions of public authorities, or regulating the issue of standing in cases on access to information in procedural legislation.

*(Kazakhstan ACCC/C/2004/1; ECE/MP.PP/C.1/2005/2/Add.1, 11 March 2005, para. 23)*

### *judicial independence*

With regard to the argument presented by the representatives of the Party concerned that they do not have authority over courts (paragraph 5 above), the Committee notes that judicial independence, both individual and institutional, is one of the preconditions in ensuring fairness in the access to justice process. Such independence, however, can only operate within the boundaries of law. When a Party takes on obligations under an international agreement, all the three branches are necessarily involved in the implementation. Furthermore, a system of checks and balances of the three branches is a necessary part of any separation of powers. In this regard, the Committee wishes to point out that, the three branches of power need each to make efforts to facilitate compliance with an international agreement. So, for example, bringing about compliance in the field of access to justice might entail analysis and possible additions or amendments to the administrative or civil procedural legislation by bodies usually mandated with such tasks, such as, for example, ministries of justice. Should such legislation be of primary nature, the legislature would have to consider its adoption. In the same way judicial bodies might have to carefully analyze its standards and tests in the context of the Party’s international obligations and apply them accordingly.

*(Kazakhstan ACCC/C/2004/6; ECE/MP.PP/C.1/2006/4/Add.1, 28 July 2006, para. 24)*

In this context, the Committee notes that the Party concerned, in its reply, makes two points that concern a State's internal law and constitutional structure in relation to its obligation under international law to observe and comply with a treaty. A similar argument was made in its written additional points in response to the questions asked by the Committee. First, the Party concerned holds that the federal structure of the Belgian State sometimes complicates the implementation of the Convention. Second, it argues that the separation of powers between the legislative, executive and judicial branches of government, as a fundamental part of the Belgian State, should be taken into account. The Committee therefore wishes to stress that its review of the Parties' compliance with the Convention is an exercise governed by international law. As a matter of general international law of treaties, codified by article 27 of the 1969 Vienna Convention on the Law of Treaties, a State may not invoke its internal law as justification for failure to perform a treaty. This includes internal divisions of powers between the federal government and the regions as well as between the legislative, executive and judicial branches of government. Accordingly, the internal division of powers is no excuse for not complying with international law.

*(Belgium ACCC/2005/11; ECE/MP.PP/C.1/2006/4/Add.2, 28 July 2006, para. 41)*

An independent judiciary must operate within the boundaries of law, but in international law the judicial branch is also perceived as a part of the state. In this regard, within the given powers, all branches of government should make an effort to bring about compliance with an international agreement. Should legislation be the primary means for bringing about compliance, the legislature would have to consider amending or adopting new laws to that extent. In parallel, however, the judiciary might have to carefully analyse its standards in the context of a Party's international obligation, and apply them accordingly.

*(Belgium ACCC/2005/11; ECE/MP.PP/C.1/2006/4/Add.2, 28 July 2006, para. 42)*

The Committee also recalls that according to article 3, paragraph 1, the Parties shall take the necessary legislative, regulatory and other measures to establish and maintain a clear, transparent and consistent framework to implement the provisions of the Convention. This too reveals that the independence of the judiciary, which is indeed presumed and supported by the Convention, cannot be taken as an excuse by a Party for not taking the necessary measures. In the same vein, although the direct applicability of international agreements in some jurisdictions may imply the alteration of established court practice, this does not relieve a Party from the duty to take the necessary legislative and other measures, as provided for in article 3, paragraph 1.

*(Belgium ACCC/2005/11; ECE/MP.PP/C.1/2006/4/Add.2, 28 July 2006, para. 43)*

The Committee further finds that the lack of clear regulation and guidance with regard to the obligations of bodies performing public functions to provide information to the public and with regard to the implementation of article 9, paragraph 1, constitutes non-compliance with the obligations established in article 3, paragraph 1, of the Convention.

*(Kazakhstan ACCC/C/2004/1; ECE/MP.PP/C.1/2005/2/Add.1, 11 March 2005, para. 27)*

While noting that the Convention has direct effect according to Kazakh law, the Committee also notes the obligation under article 3, paragraph 1, on each Party to take the necessary legislative, regulatory and other measures to establish and maintain a clear, transparent and consistent framework to implement the provisions of the Convention. Regulations implementing the Convention's provisions, including timely, adequate and effective notification of the public concerned, early and effective opportunities for participation, and the taking of due account of the outcome of the public participation, would help to avoid ambiguity in the future. Such regulations could be developed with input from the public. The content of such regulations should also be communicated effectively to public authorities.

*(Kazakhstan ACCC/C/2004/2; ECE/MP.PP/C.1/2005/2/Add.2, 14 March 2005, para. 28)*

Lack of clarity or detail in domestic legislative provisions, in particular, with regard to issues discussed in paragraphs 30 and 31 above, demonstrate, in the view of the Committee, that the Party concerned has not taken the necessary measures to establish and maintain a clear, transparent and consistent framework to implement the provisions of the Convention, as required by article 3, paragraph 1.

*(Ukraine ACCC/C/2004/3 and ACCC/S/2004/1; ECE/MP.PP/C.1/2005/2/Add.3, 14 March 2005, para. 34)*

The Committee also finds that the lack of clarity with regard to public participation requirements in EIA and environmental decision-making procedures for projects, such as time frames and modalities of a public consultation process, requirements to take its

### **1969 Vienna Convention**

#### **judicial branch as part of the state**

#### **direct effect of AC**

#### **lack of clarity**

outcome into account, and obligations with regard to making available information in the context of article 6, indicates the absence of a clear, transparent and consistent framework for the implementation of the Convention and constitutes non-compliance with article 3, paragraph 1, of the Convention.

*(Ukraine ACCC/C/2004/3 and ACCC/S/2004/1; ECE/MP.PP/C.1/2005/2/Add.3, 14 March 2005, para. 40)*

The Committee notes that article 2 of the Act establishes precedence of the international agreements over its provisions. The Committee is, however, of the opinion that by enacting, after the entry into force of the Convention, an Act containing provisions that do not comply with the requirements of the Convention, the Party has not ensured that the provisions of the Convention will be complied with. Thus, it has not established the clear, transparent and consistent framework to implement the provisions of the Convention, as required by article 3, paragraph 1, rather the opposite. This opinion is reinforced by the fact that in practice national authorities and courts are often reluctant to directly apply provisions of an international treaty.

*(Turkmenistan ACCC/C/2004/5; ECE/MP.PP/C.1/2005/2/Add.5, 14 March 2005, para. 22)*

In conclusion, the Committee finds that by enacting provisions that are not in compliance with article 3, paragraph 9, and article 3, paragraph 4, of the Convention, the Party concerned is not in compliance with the requirement of article 3, paragraph 1, to establish and maintain a clear, transparent and consistent framework to implement the provisions of the Convention.

*(Turkmenistan ACCC/C/2004/5; ECE/MP.PP/C.1/2005/2/Add.5, 14 March 2005, para. 27)*

By failing to establish a clear, transparent and consistent framework to implement the provisions of the Convention in Albanian legislation, the Party concerned was not in compliance with article 3, paragraph 1, of the Convention.

*(Albania ACCC/C/2005/12; ECE/MP.PP/C.1/2007/4/Add.1, 31 July 2007, para. 94)*

### EU law

The Committee notes the Party's statement that the Convention as an agreement concluded by the Council is binding on the Community's institutions and Member States and takes precedence over the legal acts adopted under the EC Treaty (secondary legislation), which also means that the Community law texts should be interpreted in accordance with such an agreement.

*(European Community ACCC/C/2006/17; ECE/MP.PP/2008/5/Add.10, 2 May 2008, para. 35)*

The Committee decides to focus its attention on the substantive issues identified in section I B above (paras. 17–33). In addition to alleging non-compliance with respect to the European Commission's co-financing of the landfill, the communicant alleges a general failure on the part of the European Community to correctly implement articles 6 and 9 of the Convention. In its examination, the Committee therefore also considers some issues of a general character with respect to the implementation of the Convention into Community law. However, this general examination is limited to the type of activity here in question, i.e. landfills. This approach is in line with the Committee's understanding, set out in its first report to the Meeting of the Parties (ECE/MP.PP/2005/13, para. 13), that decision I/7 does not require the Committee to address all facts and/or allegations raised in a communication. This procedural decision by the Committee to focus on these issues does not prevent it from addressing other aspects of the case.

*(European Community ACCC/C/2006/17; ECE/MP.PP/2008/5/Add.10, 2 May 2008, para. 36)*

The Committee notes the point made by the Party concerned (para. 23) that under European Community law, an international agreement concluded by the Community is binding on the Community institutions and the Member States, and takes precedence over legal acts adopted by the Community. According to the Party concerned, this means that Community law texts should be interpreted in accordance with such an agreement. In this context, the Committee wishes to stress that the fact that an international agreement may be given a superior rank to directives and other secondary legislation in European Community law should not be taken as an excuse for not transposing the Convention through a clear, transparent and consistent framework into European Community law (cf. article 3, paragraph 1, of the Convention).

*(European Community ACCC/C/2006/17; ECE/MP.PP/2008/5/Add.10, 2 May 2008, para. 58)*

### EU law

Notwithstanding the distinctive structure of the European Community, and the nature of the relationship between the Convention and the EC secondary legislation, as outlined in paragraph 35, the Committee notes with concern the following general features of the

Community legal framework:

(a) Lack of express wording requiring the public to be informed in an “adequate, timely and effective manner” in the provisions regarding public participation in the EIA and IPPC Directives;

(b) Lack of a clear obligation to provide the public concerned with effective remedies, including injunctive relief, in the provisions regarding access to justice in the EIA and IPPC Directives.

While the Committee is not convinced that these features amount to a failure to comply with article 3, paragraph 1, it considers that they may adversely affect the implementation of article 6 of the Convention. Moreover, having essentially limited its examination to decision-making relating to landfills, the Committee does not make any conclusions with regard to other activities listed in annex I of the Convention. Nor does it make any conclusions concerning the precise correlation between the list of activities contained in annex I of the Convention and those contained in the respective annexes to the EIA and IPPC Directives.

*(European Community ACCC/C/2006/17; ECE/MP.PP/2008/5/Add.10, 2 May 2008, para. 59)*

It has not been disputed during the deliberations before the Committee that the provisions of the Convention are applicable to EIB. This is affirmed by the relevant legal provisions of the European Community.

*(European Community ACCC/C/2007/21; ECE/MP.PP/C.1/2009/2/Add.1, 11 December 2009, para 26)*

According to the communicant, because of the lack of clear legislation in conformity with the provisions of the Convention, the Party concerned failed to comply with article 3, paragraph 1, of the Convention. However, the Committee finds that there is no information provided in this case that substantiates such a violation by the Party concerned.

*(France ACCC/C/2007/22; ECE/MP.PP/C.1/2009/4/Add.1, 8 February 2011, para. 31)*

The communicant raised a number of issues in relation to article 3, paragraph 1. Regarding the EIP panel's observation that some of the Department's earlier replies were rather vague and evasive, the Committee finds that it has no evidence before it to establish that the correspondence complained of occurred after the Convention's entry into force for the Party concerned. Nor does the Committee have sufficient evidence to consider the communicant's allegation that the use of a “private” Planning Agreement by the Party concerned to control operations at Belfast City Airport is a breach of article 3, paragraph 1. The Committee therefore finds no breach of article 3, paragraph 1 in this case.

*(United Kingdom ACCC/C/2008/27; ECE/MP.PP/C.1/2010/6/Add.2, November 2010, para. 46)*

Having concluded that the Party concerned fails to comply with article 9, paragraph 4, with respect to costs as well as time limits by essentially relying on the discretion of the judiciary, the Committee also concludes that the Party concerned fails to comply with article 3, paragraph 1, by not having taken the necessary legislative, regulatory and other measures to establish a clear, transparent and consistent framework to implement the provisions of the Convention.

*(United Kingdom ACCC/C/2008/33; ECE/MP.PP/C.1/2010/6/Add.3, December 2010, para. 140)*

The Committee finds that the adoption of article 48 (e) of the Government Regulation No. 187 of 20 February 2008 on Rent of Forestry Fund for Hunting and Recreational Activities setting out a broad rule with regard to the confidentiality of the information received from the rent holders and the refusal for access to information on the grounds of its large volume constitute a failure by the Party concerned to comply with article 3, paragraph 1, and article 4, paragraph 4, of the Convention.

*(Moldova ACCC/C/2008/30; ECE/MP.PP/C.1/2009/6/Add.3, 8 February 2011, para.38).*

The Committee also observes that the EIA Law lacks clarity. The distribution of tasks between the public authorities and the developer with respect to public participation (information from the Ministry channelled to the authorities for further distribution to the public, distribution of the documentation, organization of the hearings, etc.) may create duplication of effort or a confusion on the responsibilities to be borne by each actor. Also, the determination of the deadlines for the public authorities and/or the developer to organize hearings and give public notice are not consistent.

*(Armenia ACCC/C/2009/43; ECE/MP.PP/2011/11/Add.1, April 2011, para.53)*

**EIA/IPPC  
directives**

**EIB**

**clarity  
of legislation**

For the intention to carry out a planned activity (art. 6 of the EIA Law) and the EIA documentation (art. 8 of the EIA Law), the law does not specify how many days in advance of the public hearings, organized by the public authorities/developer, the public notice should take place, whereas for the public hearings organized for the expertise conclusions (art. 10 of the EIA Law), the law specifies that the public notice should be in written form, should indicate the date and place and should be given at least seven days before the meetings.

*(Armenia ACCC/C/2009/43; ECE/MP.PP/2011/11/Add.1, April 2011, para.54)*

The Committee also notes the lack of clarity in Armenian legislation with respect to the exact stage of the mining permitting procedure at which the EIA procedure should be carried out (see para. 14 above). The 2002 Law on Concessions (art. 60) implies that the EIA procedure should be carried out before the issuance of the licence. However, the facts of the present case indicate that the EIA procedure was carried out by the developer in 2005 after the issuance of the licence in 2001 (as renewed in 2004). In addition, according to Armenian legislation, any licence becomes valid from the date of signing of the licence agreement and the agreement should be signed within nine months after the issuance of the licence (see also para. 13 above). According to the facts presented by the parties, the licence (renewal) was issued on 23 March 2004 and the licence agreement was signed on 8 October 2007, which means that the agreement was actually signed almost two-and-a-half years after the licence was issued. If the law defines that “a special licence is a written permit to carry out mining activities on a certain site” (art. 3 of the Law on Concessions), this implies that the special licence already is a permit to carry out activities. However, it is not clear what the consequences are if the licence agreement is never signed. These features of Armenian legislation and practice create uncertainty as to when the public participation process would take place.

*(Armenia ACCC/C/2009/43; ECE/MP.PP/2011/11/Add.1, April 2011, para.55)*

For these reasons, the Committee, while it notes with appreciation the progress inferred in the Armenian legislation further to the recommendation of decision III/6b of the Meeting of the Parties, finds the Party concerned failed to maintain a clear, transparent and consistent framework for implementation of the public participation provisions of the Convention, as required by article 3, paragraph 1.

*(Armenia ACCC/C/2009/43; ECE/MP.PP/2011/11/Add.1, April 2011, para.56)*

With regard to the timing of the public notice and in relation also to the finding of non-compliance with article 3, paragraph 1, (see para. 56 above), the Committee finds that there is a systemic failure in the Armenian EIA law, as it does not provide for any indication on when the public notice for the EIA documentation hearing should be given, and thus the implementation of its article 8 may be arbitrary.

*(Armenia ACCC/C/2009/43; ECE/MP.PP/2011/11/Add.1, April 2011, para.68)*

**EU structure**

Taking into account the distinctive structure of the Party concerned and the allocation of responsibilities between the EU and its member States, the only way for the Party concerned to implement article 7 by means other than legislative measures would be to provide a clear regulatory framework and/or clear instructions to member States on how to ensure public participation with respect to NREAPs, to be enforced through appropriate measures by the Party concerned. Based on the considerations regarding the lack of an appropriate regulatory framework or evidence of other measures to ensure that public participation takes place in accordance with the Convention, the Committee finds that the Party concerned is also in non-compliance with article 3, paragraph 1, of the Convention, in relation to the adoption of NREAPs by member States on the basis of Directive 2009/28/EC.

*(European Union ACCC/C/2010/54; ECE/MP.PP/C.1/2012/12, 2 October 2012, para. 87)*

[T]he Committee notes that the EPA (art. 142, para. 3), as well as the Regulation on Information and Public Participation (art. 14, para. 3), stipulate that the list of plans relating to the environment which are not subjected to SEA, but for which public participation is required, will be determined by law/regulation. According to the information submitted to the Committee, there is yet no law/regulation in place as to this type of plans, and this creates uncertainty as to the application of the public participation procedures.

*(Croatia ACCC/C/2012/66; ECE/MP.PP/C.1/2014/4, 13 January 2014, para. 49)*

In addition, according to the English translation of the laws provided to the Committee, there is no consistency as to whether the public participates before the first draft of the plan or only once there is a draft available (see text of the EPA (art. 142, para. 2), and the Regulation on Information and Public Participation (art. 14, para. 1), referring to the “draft

proposal of the plans”, as compared with the general principle for public participation in the development of plans enshrined in the EP A (art. 16, para. 3)).

*(Croatia ACCC/C/2012/66; ECE/MP.PP/C.1/2014/4, 13 January 2014, para. 50)*

Based on the considerations above, the Committee finds that the legislation in force in the Party concerned fails to provide for a consistent and uniform application throughout the territory and is not clear as regards public participation in the preparation of municipality waste management plans, and therefore is not in compliance with article 3, paragraph 1, of the Convention.

*(Croatia ACCC/C/2012/66; ECE/MP.PP/C.1/2014/4, 13 January 2014, para. 53)*

The Committee also considers that the relationship between the legal regimes of the Party concerned with respect to general access to information, access to environmental information and classified information, in particular the apparent broad discretion of public authorities to classify information as a “professional secret”, give rise to concerns as to whether there is a clear, transparent and consistent framework to implement the respective provisions of the Convention. However, based on the information before it in the context of the current communication, the Committee does not go so far as to find the Party concerned to be in non-compliance with article 3, paragraph 1, of the Convention

*(Romania ACCC/C/2010/51; ECE/MP.PP/C.1/2014/12, 14 July 2014, para.96)*

2. Each Party shall endeavour to ensure that officials and authorities assist and provide guidance to the public in seeking access to information, in facilitating participation in decision-making and in seeking access to justice in environmental matters.

Although it was not raised by the communicants, the Committee considers that the United Kingdom’s compliance with article 3, paragraph 2, of the Convention warrants scrutiny in this case. Article 3, paragraph 2, states that “each Party shall endeavour to ensure that officials and authorities assist and provide guidance to the public in, inter alia, seeking access to justice in environmental matters”. While not going so far as to make a finding of non-compliance on this ground, the Committee has some doubts that the conduct of the Party concerned in this matter meets its obligation to endeavour to ensure that officials and authorities assist the public in seeking access to justice in environmental matters. The communication was forwarded to the Party concerned in April 2008. It was thus already aware of this case by the time the authorities sought immediate payment of the costs awarded to them rather than accepting the communicants’ offer to place them in an interest-bearing account pending the outcome of the substantive proceeding. The authorities’ demand for immediate payment did not assist the communicants in seeking access to justice. It was open to the Party concerned to intervene in this matter to assist the communicants, e.g., by asking the authorities to accept the costs be paid into an interestbearing account, but there is no evidence before the Committee that they did so.

*(United Kingdom ACCC/C/2008/23; ECE/MP.PP/C.1/2010/6/Add.1, October 2010, para. 54)*

In respect of the communicant’s allegations that the Report to Inform Appropriate Assessment was not fit for purpose, and thus in breach of the preamble and article 3, paragraph 2 of the Convention, the Committee notes that the preamble, while being an important aid to interpreting the Convention, does not in itself create binding legal obligations. With respect to the communicant’s allegations in respect of article 3, paragraph 2, the Committee is not in a position to assess the factual accuracy of the Report to Inform Appropriate Assessment. It does not consider that the communicant’s allegations give rise to a breach of article 3, paragraph 2 of the Convention.

*(United Kingdom ACCC/C/2009/38; ECE/MP.PP/C.1/2011/2/Add.10, April 2011, para. 68)*

The communicant alleges non-compliance with article 3, paragraph 2, of the Convention in relation to the decision-making for the proposed NPP, because the public authorities did not make any effort to assist, provide guidance or encourage members of the public in Romania and abroad to be informed and participate in the decision-making.

*(Romania ACCC/C/2010/51; ECE/MP.PP/C.1/2014/12, 14 July 2014, para.75)*

Article 3, paragraph 2, of the Convention contains a general obligation for the Party to endeavour to ensure that its officials and public authorities assist and provide guidance to the public in exercising its rights under the Convention. This provision follows the guidance of the eighth preambular paragraph, which acknowledges that “citizens may need assistance in order to exercise their rights”.

*(Romania ACCC/C/2010/51; ECE/MP.PP/C.1/2014/12, 14 July 2014, para.76)*

*classifying  
information*

*preamble*



**manifestly misleading guidance**

The information provided to the Committee, in particular in annex 6 to the communication, shows that the authorities provided some guidance to the public regarding the nature of the relevant information and the legal framework for the respective decision-making concerning the NPP. Moreover, there was no evidence provided to the Committee that the guidance, although not meeting the expectations of the communicant, was manifestly and intentionally misleading. The allegations of the communicant are not substantiated and therefore the Committee does not find that the Party concerned failed to comply with article 3, paragraph 2, of the Convention.

*(Romania ACCC/C/2010/51; ECE/MP.PP/C.1/2014/12, 14 July 2014, para. 77)*

According to the communicant the public authorities failed to encourage the public, within the country and in neighbouring countries, to participate in the procedures regarding the Energy Strategy. Yet, the communicant did not sufficiently substantiate how the lack of such efforts in relation to this particular procedure should be seen as evidence of a systematic failure of the Party concerned to assist the public and facilitate its participation in decision-making. Therefore, the Committee does not find that the Party concerned failed to comply with article 3, paragraph 2, of the Convention.

*(Romania ACCC/C/2010/51; ECE/MP.PP/C.1/2014/12, 14 July 2014, para.104)*

3. Each Party shall promote environmental education and environmental awareness among the public, especially on how to obtain access to information, to participate in decision-making and to obtain access to justice in environmental matters.
4. Each Party shall provide for appropriate recognition of and support to associations, organizations or groups promoting environmental protection and ensure that its national legal system is consistent with this obligation.

[...] the Committee observes that the Convention does not exclude the possibility for Parties to regulate and monitor to a certain degree activities of non— governmental organizations within their jurisdiction, and that there is no requirement in it to either regulate or de-regulate activities of non-registered organizations. Thus the matter is within the sovereign powers of each Party. However, any such regulation should be done in a way that does not frustrate the objective of the Convention or conflict with its provisions. Having regard to the arguments set out in paragraph 16 above, it should not prevent members of the public from more effectively exercising their rights under the Convention by forming or participating in NGOs.

*(Turkmenistan ACCC/C/2004/5; ECE/MP.PP/C.1/2005/2/Add.5, 14 March 2005, para. 20)*

**non-registered NGOs**

In this regard, the combination of a prohibition of non-registered associations with overly difficult registration procedures and requirements existing under the Turkmen Act on Public Associations does appear to present a genuine obstacle to the full exercise of the rights of the public. Indeed, it is difficult to see how this combination is compatible with the requirement under article 3, paragraph 4, of the Convention on each Party to provide for appropriate recognition of and support to associations, organizations or groups promoting environmental protection and ensure that its national legal system is consistent with this obligation. Taking into account the facts presented in paragraph 12 above, the Committee finds sufficient evidence that article 17, paragraph 3, of the Act and the way in which it has been implemented are not in compliance with article 3, paragraph 4, of the Convention.

*(Turkmenistan ACCC/C/2004/5; ECE/MP.PP/C.1/2005/2/Add.5, 14 March 2005, para. 21)*

5. The provisions of this Convention shall not affect the right of a Party to maintain or introduce measures providing for broader access to information, more extensive public participation in decision-making and wider access to justice in environmental matters than required by this Convention.
6. This Convention shall not require any derogation from existing rights of access to information, public participation in decision-making and access to justice in environmental matters.

Notwithstanding this conclusion, the Committee notes with some concern the fact that while not falling below the level of the Convention, the Act substantially reduces the level and quality of public participation in decision-making of this category in comparison with previous Hungarian legislation. It also appears to provide public participation opportunities, which compare poorly with those established by administrative *lex generalis*. While certain special provisions might be required due to specifics of various types of decision-making, the rights of the public should not be compromised to accommodate other interests, whether private or public, in particular with regard to projects of such potential

environmental significance. The Committee, having in mind the objective of the Convention and the provisions of article 3, paragraphs 5 and 6, expresses its concern about such a tendency.

*(Hungary ACCC/C/2004/4; ECE/MP.PP/C.1/2005/2/Add.4, 14 March 2005, para. 17)*

The Committee does not exclude the possibility when determining issues of noncompliance to take into consideration general rules and principles of international law, including international environmental and human rights law, which might be relevant in context of interpretation and application of the Convention. However, there is an existing provision in the Convention, demonstrating that negotiating parties considered the issue of the relationship between the existing rights and the rights provided by the Convention itself (art. 3, para. 6) but that they did not wish to completely exclude a possibility of reducing existing rights as long as they did not fall below the level granted by the Convention. However, the wording of article 3, paragraph 6, especially taken together with article 1 and article 3, paragraph 5, also indicates that such reduction was not generally perceived to be in line with the objective of the Convention.

*(Hungary ACCC/C/2004/4; ECE/MP.PP/C.1/2005/2/Add.4, 14 March 2005, para. 18)*

7. Each Party shall promote the application of the principles of this Convention in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment.
8. Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalized, persecuted or harassed in any way for their involvement. This provision shall not affect the powers of national courts to award reasonable costs in judicial proceedings.

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.

*(Spain ACCC/C/2009/36; ECE/MP.PP/C.1/2010/4/Add.2, 08 February 2011, para.64)*

NOTE: The Mayor of a small town published articles in a newspaper describing local environmental activists as "new inquisitors", "manipulators", "ignorant" and "promoting scandal".

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 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.

*(United Kingdom ACCC/C/2008/23; ECE/MP.PP/C.1/2010/6/Add.1, October 2010, para. 53)*

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.

*(United Kingdom ACCC/C/2008/27; ECE/MP.PP/C.1/2010/6/Add.2, November 2010, para. 47)*

The allegations concerning harassment are serious, and the alleged facts, if sufficiently substantiated, would amount to harassment in the sense of article 3, paragraph 8, and would

**general rules  
and principles of  
international law**

**insulting the public**

**costs of  
penalization**

therefore constitute non-compliance with the provisions of the Convention. However, on the basis of the information provided, the Committee could not assess with sufficient certainty what happened exactly and therefore the Committee refrains from making a finding on this issue.

*(Belarus ACCC/C/2009/44; ECE.MP.PP/C.1/2011/6/Add.1, 19 September 2011, para. 65)*

NOTE: The communicants alleged (1) the dissemination of defamatory leaflets representing environmental activists as “gay” and manifestly unreasonable, including contact details, (2) the detention and house search of an activist, to search for leaflets and printing materials and (3) the detention and subsequent arrest of a Russian expert who tried to bring copies of a document critical of the EIA process to public hearings.

9. Within the scope of the relevant provisions of this Convention, the public shall have access to information, have the possibility to participate in decision-making and have access to justice in environmental matters without discrimination as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities.

**foreign citizens  
and NGOs**

As described in paragraph 11 (a) above, the Act in its article 5 largely limits membership in Turkmen public associations to citizens of Turkmenistan. Non-governmental organisations, by bringing together expertise and resources, generally have greater ability to effectively exercise their rights under the Convention than individual members of the public. Furthermore, certain rights accorded to the ‘public concerned’ (e.g. under art. 6, paras. 2, 5 and 6, and art. 9, para. 2) are guaranteed to a greater extent with respect to registered environmental NGOs than they are for individual members of the public, who might have to demonstrate that, for example, their material interests are directly affected in order to be recognized as the ‘public concerned’. Thus the exclusion of foreign citizens and persons without citizenship from the possibility to found and participate in an NGO might constitute a disadvantageous discrimination against them. The Committee is, therefore, of the opinion that article 5 of the Act is not in compliance with article 3, paragraph 9, of the Convention.

*(Turkmenistan ACCC/C/2004/5; ECE/MP.PP/C.1/2005/2/Add.5, 14 March 2005, para. 16)*

The communicant is a non-governmental organization working in the field of environmental protection and falls under the definitions of the public and the public concerned as set out in article 2, paragraphs 4 and 5, of the Convention. Foreign or international non-governmental environmental organizations that have similarly expressed an interest in or concern about the procedure would generally fall under these definitions as well.

*(Ukraine ACCC/C/2004/3 and ACCC/S/2004/1; ECE/MP.PP/C.1/2005/2/Add.3, 14 March 2005, para. 26)*

**translation of  
documents**

The communicant claims that the authorities discriminated against foreign members of the public (i.e., Greenpeace CEE Austria), because they refused to grant information in English. While article 3, paragraph 9, is intended to prevent not only formal discrimination but also factual discrimination, this provision cannot be interpreted as generally requiring the authorities to provide a translation of the information into any requested language. If, on the other hand, national law provides for translations to different official languages or sets criteria also for other translations, article 3, paragraph 9, of the Convention implies that these criteria must be applied in a non-discriminatory way. Moreover, if the authority at the time of the request was in possession of such a translation, it would have been obliged under article 4 of the Convention to disclose the translated version to the public. In the present case, however, the Party concerned confirmed that at that time the public authorities did not hold such a translation, and the communicant did not provide evidence to the contrary.

*(Romania ACCC/C/2010/51; ECE/MP.PP/C.1/2014/12, 14 July 2014, para.105)*

In this situation the fact that the Party concerned did not provide English translations of the requested information cannot be considered as discrimination, and therefore the Committee finds that the Party concerned did not fail to comply with article 3, paragraph 9, of the Convention.

*(Romania ACCC/C/2010/51; ECE/MP.PP/C.1/2014/12, 14 July 2014, para.106)*

## Article 4 ACCESS TO ENVIRONMENTAL INFORMATION

The Committee considers that the underlying reason for non-compliance with the requirements of articles 4 and 9, paragraph 1, as described in paragraphs 16 to 19 and 21 to 22 above, was a failure by the Party concerned to establish and maintain, pursuant to the obligation established in article 3, paragraph 1, a clear, transparent and consistent framework to implement these provisions of the Convention, e.g. by providing clear instructions on the status and obligations of bodies performing functions of public authorities, or regulating the issue of standing in cases on access to information in procedural legislation.

*(Kazakhstan ACCC/C/2004/1; ECE/MP.PP/C.1/2005/2/Add.1, 11 March 2005, para. 23)*

The Committee finds that, by having failed to ensure that bodies performing public functions implement the provisions of article 4, paragraphs 1 and 2, of the Convention, Kazakhstan was not in compliance with that article.

*(Kazakhstan ACCC/C/2004/1; ECE/MP.PP/C.1/2005/2/Add.1, 11 March 2005, para 25)*

The Committee finds that, by failing to ensure that information was provided by the responsible public authorities upon request, Ukraine was not in compliance with article 4, paragraph 1, of the Convention.

*(Ukraine ACCC/C/2004/3 and ACCC/S/2004/1; ECE/MP.PP/C.1/2005/2/Add.3, 14 March 2005, para. 39)*

The Committee finds that by failing to ensure that bodies performing public functions implement the provisions of article 4, paragraphs 1 and 2, of the Convention, Armenia was not in compliance with that article.

*(Armenia ACCC/C/2004/8; ECE/MP.PP/C.1/2006/2/Add.1, 10 May 2006, para. 41)*

The Committee considers it important to point out the aforementioned deficiencies in the handling of the information requests in order to clarify the obligations under the Convention with regard to environmental information and thereby contribute to better implementation of its provisions. However, it does not consider that in every instance where a public authority of a Party to the Convention makes an erroneous decision when implementing the requirements of article 4, this should lead the Committee to adopt a finding of non-compliance by the Party, provided that there are adequate review procedures. The review procedures that each Party is required to establish in accordance with article 9, paragraph 1, are intended to correct any such failures in the processing of information requests at the domestic level, and as a general rule, it is only when the Party has failed to do so within a reasonable period of time that the Committee would consider reaching a finding of non-compliance in such a case. Decisions on such a question need to be made on a case-by-case basis. In the present case, the requested information was provided, albeit with some delay, and thus the matter was resolved even before there was any recourse to the review procedures available to the communicant.

*(European Community ACCC/C/2007/21; ECE/MP.PP/C.1/2009/2/Add.1, 11 December 2009, para. 33)*

As regards the alleged non-compliance in regard to article 4 of the Convention, the Committee finds that the European Community is not in a state of non-compliance. The requests for information covered, inter alia, copies of the Framework Agreement and the Loan Agreement. The Committee notes that even though the requests were of a rather general nature and did not specify that environmental information was being sought, EIB provided (albeit with some delay) the requested information in full, including information that was not environmental information, and thus the matter was resolved before recourse to any review procedures was taken.

*(European Community ACCC/C/2007/21; ECE/MP.PP/C.1/2009/2/Add.1, 11 December 2009, para. 37)*

As the Committee has already stated in previous findings (on communication ACCC/C/2010/54, para. 89), “the Committee is not in a position to ascertain whether the technical information disseminated by the Party concerned, or the communicant for that matter, is correct”. In the present case, the communicant seems to advocate a method for the calculation of the merits of wind energy that is different from what the decision-making bodies accept. The Committee has neither the mandate nor the capacity to assess the environmental information in question as to its accuracy or adequacy.

*(European Union and United Kingdom ACCC/C/2012/68; ECE/MP.PP/C.1/2014/5, 13 January 2014, para. 86)*

*clear instructions*

*erroneous decision*

Based on the above, the Committee is not in a position to conclude that the Parties concerned failed to comply with the provisions of articles 4 and 5 of the Convention.

*(European Union and United Kingdom ACCC/C/2012/68; ECE/MP.PP/C.1/2014/5, 13 January 2014, para. 87)*

1. Each Party shall ensure that, subject to the following paragraphs of this article, public authorities, in response to a request for environmental information, make such information available to the public, within the framework of national legislation, including, where requested and subject to subparagraph (b) below, copies of the actual documentation containing or comprising such information:

**general exemption  
of EIA studies**

The Committee stated in its findings and recommendations with regard to communication ACCC/C/2004/3 and submission ACCC/S/2004/1 that article 6, paragraph 6, aimed at providing the public concerned with an opportunity to examine relevant details to ensure that public participation is informed and therefore more effective. It is certainly not limited to a requirement to publish an environmental impact statement. Although that provision allows that requests from the public for certain information may be refused in certain circumstances related to intellectual property rights, this may happen only where in an individual case the competent authority considers that disclosure of the information would adversely affect intellectual property rights. Therefore, the Committee doubts very much that this exemption could ever be applicable in practice in connection with EIA documentation. Even if it could be, the grounds for refusal are to be interpreted in a restrictive way, taking into account the public interest served by disclosure. Decisions on exempting parts of the information from disclosure should themselves be clear and transparent as to the reasoning for non-disclosure. Furthermore, disclosure of EIA studies in their entirety should be considered as the rule, with the possibility for exempting parts of them being an exception to the rule. A general exemption of EIA studies from disclosure is therefore not in compliance with article 4, paragraph 1, in conjunction with article 4, paragraph 4, and article 6, paragraph 6, in conjunction with article 4, paragraph 4, of the Convention.

*(Romania ACCC/C/2005/15; ECE/MP.PP/2008/5/Add.7, 16 April 2008 para. 30)*

**clear reference  
to environmental  
information**

Another issue under discussion is whether the request made concerns “environmental information” or other information, as this determines whether the provisions of the Convention apply at all. Indeed, at a more general level this distinguishes the issue of whether or not the information requested from a public authority is environmental information from other issues (e.g. whether it falls within an exempt category, or has been provided within the relevant time frame). If a request is made for information that does not obviously fall within the definition of environmental information and the request does not indicate that the information that is being requested is environmental information, the public authority may not recognize it as such, and therefore may be unaware of the associated legal obligations, or the potential legal obligations.

*(European Community ACCC/C/2007/21; ECE/MP.PP/C.1/2009/2/Add.1, 11 December 2009, para 34.)*

**reference to  
convention or  
legislation**

Therefore, while the Convention does not require a person making an information request to explicitly refer to (a) the Convention itself, (b) the implementing national legislation or (c) even the fact that the request is for environmental information, any or all such indications in the request would, in practice, facilitate the work of the responsible public authorities and help in avoiding delays. This is particularly so where only part of the requested information constitutes environmental information as defined in article 2, paragraph 3, of the Convention, or where the relevance of the requested information to the environment might not be obvious at first glance.

*(European Community ACCC/C/2007/21; ECE/MP.PP/C.1/2009/2/Add.1, 11 December 2009, para 35.)*

**formulation  
of requests**

The Committee acknowledges that not all information provided concerning the facts and the interpretation of the Convention were accurate and complete. Nevertheless, the information provided might have reflected the current knowledge of the authorities. The requests were formulated in a manner that assumed a certain level of interpretation of facts, and the replies reflected this interpretation. Thus the authorities provided the information that was held by them at that time and there is no evidence that they knowingly provided inaccurate or incomplete information. Therefore, in these instances, the Committee does not find that the Party concerned failed to comply with article 4, paragraph 1.

*(Belarus ACCC/C/2009/44; ECE/MP.PP/C.1/2011/6/Add.1, 19 September 2011, para. 67)*

The general obligation of the public authorities to respond to requests of members of the public to access environmental information is enshrined in article 4, paragraph 1, of the

Convention. In addition, authorities have to respond to a request within one month after the request was submitted (art. 4, para. 2) and, in case of a refusal, this should be in writing (art. 4, para. 7), giving the reasons for the refusal, and as soon as possible, but at the latest within one month, unless the complexity of the information justifies an extension of up to two months after the request.

*(Romania ACCC/C/2010/51; ECE/MP.PP/C.1/2014/12, 14 July 2014, para.79)*

In the present case, the Party concerned has not provided any evidence to substantiate its claims that the authorities duly addressed all requests for information despite the Committee's request. The Committee thus considers that the allegation of the communicant that its first and second requests for information were ignored represent the actual facts. Therefore, since the authorities did not respond at all to two of the three information requests submitted by the communicant in relation to the decision-making process regarding the proposed construction of a new NPP, the Committee finds that the Party concerned failed to comply with article 4, paragraph 1, in conjunction with paragraphs 2 and 7, of the Convention.

*(Romania ACCC/C/2010/51; ECE/MP.PP/C.1/2014/12, 14 July 2014, para.80)*

The Committee concludes that in the present case the Party concerned has not been able to show that any of the grounds for refusal referred to in article 4 provide a sufficient basis for not disclosing the information requested regarding the possible locations for the NPP. Although part of the information originally requested was eventually declassified and made available to the public, the rest of the information requested, in particular the information requested by the communicant in its third request for information, was not disclosed without giving sufficient reasons and without demonstrating that consideration had been given to the public interest in disclosure. Thus, with respect to the communicant's third information request, by not ensuring that the requested information regarding the possible locations for the NPP was made available to the public, and by not adequately justifying its refusal to disclose the information requested under one of the grounds set out in article 4, paragraph 4, of the Convention, taking into account the public interest served by disclosure, the Party concerned failed to comply with article 4, paragraphs 1 and 4, of the Convention.

*(Romania ACCC/C/2010/51; ECE/MP.PP/C.1/2014/12, 14 July 2014, para.95)*

The communicant also claims that the authorities were under the obligation to provide the Energy Strategy in "the form requested", i.e., in English, to a member of the public from abroad, i.e., Greenpeace CEE Austria. The Committee clarifies that article 4, paragraph 1, of the Convention relates to the material form of the requested information, such as paper, electronic media, videotape, recording, etc., and does not include an obligation to translate the document into another language. Thus, failing to provide the English translation of the requested document (the Energy Strategy), since such translation was not already available with the authorities, does not constitute non-compliance with article 4, paragraph 1 (b), of the Convention.

*(Romania ACCC/C/2010/51; ECE/MP.PP/C.1/2014/12, 14 July 2014, para.107)*

**(a) Without an interest having to be stated;**

The Committee has noted the information provided by the Party concerned that it is a general practice for an information request to include reasons for which such information is requested. Article 4, paragraph 1 (a), of the Convention explicitly rules out making such justification a requirement. In this regard, the Committee notes with appreciation the Memo on Processing Public Requests for Environmental Information, prepared by the Ministry of the Environment of Kazakhstan and the Organization for Security and Co-operation in Europe (OSCE), issued in 2004. The Memo clearly states that a request for information does not need to be justified. In the Committee's opinion, practical implementation of the Memo would be important for changing the current practice and, furthermore, might bring about compliance with all the provisions of article 4.

*(Kazakhstan ACCC/C/2004/1; ECE/MP.PP/C.1/2005/2/Add.1, 11 March 2005, par 20)*

**(b) In the form requested unless:**

The Committee finds that by failing to ensure that the public authority provided the environmental information in the form requested (in the form of a CD for a cost of 13 Euros, instead of paper copies of the documentation of 600 pages for a cost of 2.05 Euros/page), Spain failed to comply with article 4, paragraph 1 (b), of the Convention.

*(Spain ACCC/C/2008/24; ECE/MP.PP/C.1/2009/8/Add.1, 30 September 2010, para.70)*

*justifying refusal*

*language  
as form  
of information*

*electronic form*

***copies/  
remote access  
to information***

The Committee recognizes that article 6, paragraph 6, refers to giving “access for examination” of the information that is relevant to decision-making, but the Committee notes that article 4, paragraph 1, requires that “copies” of environmental information be provided. In the Committee’s view “copies” does, in fact, require that the whole documentation be close to the place of residence of the requester or entirely in electronic form, if the requester lives in another town or city.

*(Spain ACCC/C/2009/36; ECE/MP.PP/C.1/2010/4/Add.2, 08 February 2011, para.61)*

NOTE: The information related to a proposed project was made available at two computers located in another city, without a possibility to copy it.

- (i) It is reasonable for the public authority to make it available in another form, in which case reasons shall be given for making it available in that form; or
- (ii) The information is already publicly available in another form.

With regard to the communicant’s request of 5 April 2006 for (inter alia) a copy of the finance contract:

(a) The request made for the finance contract concerned the disclosure of the full document and did not mention “environmental information” as such. The Committee notes that the grounds for refusing the request provided by EIB in its message of 28 April 2006, namely that the document was confidential, were incorrect as the document was already in the public domain. It has to be noted in the context that the documents requested are in general not environmental information and only some parts of the documents – as the Party concerned stated in its response – relate to the environment.

*(European Community ACCC/C/2007/21; ECE/MP.PP/C.1/2009/2/Add.1, 11 December 2009, para 30.)*

With regard to the communicant’s request of 9 September 2007 for a copy of the Framework Agreement:

(a) The grounds for refusing the request provided by EIB in its message of 8 October 2007, namely that the document was already in the public domain, turned out to be erroneous, as the Bank subsequently acknowledged. However, even if the document had not been in the public domain, this would not have been a legitimate ground under the Convention for the Bank to refuse to provide environmental information.

*(European Community ACCC/C/2007/21; ECE/MP.PP/C.1/2009/2/Add.1, 11 December 2009, para 31.)*

***copies/  
remote access  
to information***

Emphasizing that overall economic interests, as such, are not sufficient in order to reasonably restrict access to environmental information, and considering that the Party concerned did not successfully invoke any of the exemptions referred to in article 4, paragraph 4, to justify why this information was restricted, as well as the fact that a significant part of the information was not available in the form requested, the Committee recalls its findings in communication ACCC/C/2009/36 (paras. 60–61), where, although it recognized that article 6, paragraph 6, refers to giving “access for examination” of the information that is relevant to decision-making, it also noted that article 4, paragraph 1, requires that “copies” of environmental information be provided. In the Committee’s view “copies” does, in fact, require that the whole documentation be available close to the place of residence of the person requesting information, or entirely in electronic form, if this person lives in another town or city. According to the facts presented in this case, access to information was restricted to the site of the Directorate of the NPP in Minsk only and no copies could be made. For these reasons, the Committee finds that the Party concerned failed to comply with article 6, paragraph 6, and article 4, paragraph 1 (b), of the Convention.

*(Belarus ACCC/C/2009/44; ECE/MP.PP/C.1/2011/6/Add.1, 19 September 2011, para. 69)*

***raw data***

In respect to the requested data, the Committee finds that the Party concerned, by not disclosing the raw data at the request of the communicant, failed to comply with article 4, paragraph 1, of the Convention. Should the authority have any concerns about disclosing the data, they should provide the raw data and advise that they were not processed according to the agreed and regulated system of processing raw environmental data. The same applies for the processed data, in which case the authorities should also advise on how these data were processed and what they represent.

*(United Kingdom ACCC/C/2010/53; ECE/MP.PP/C.1/2013/3, 11 January 2013, para. 77)*

2. The environmental information referred to in paragraph 1 above shall be made available as soon as possible and at the latest within one month after the request has been submitted, unless the volume and the complexity of the information justify an extension of this period up to two

months after the request. The applicant shall be informed of any extension and of the reasons justifying it.

The Committee notes that article 4, paragraph 2, providing for an extension where justified by the volume and complexity of the information, means that irrespective of the number of extensions, the total time of all extensions provided cannot exceed two months after the submission of the request for environmental information. Upon lapse of this two-month period, the Party concerned should either grant access to the requested information or deny access on the basis of the exceptions of article 4, paragraphs 3 and 4, of the Convention.

*(Spain ACCC/C/2008/24; ECE/MP.PP/C.1/2009/8/Add.1, 30 September 2010, para.74)*

***2 months total***

The Committee is also of the opinion that, while in many instances, in particular where enjoyment of certain rights depends upon prior agreement of the public authorities, the silence of public authorities may be considered as “tacit agreement” and therefore an acceptable legal technique, the concept of “positive silence” cannot be applied in relation to access to information. The right to information can be fulfilled only if public authorities actively respond to the request and provide information within the time and form required. Even establishment of a system which assumes that the basic form of provision of information is by putting all the available information on publicly accessible websites does not mean that Parties are not obliged to ensure that any request for information should be individually responded to by public authorities, at least by referring them to the appropriate website.

*(Spain ACCC/C/2009/36; ECE/MP.PP/C.1/2010/4/Add.2, 08 February 2011, para.57)*

***each request  
must be  
responded to***

Furthermore, the Committee would like to underline that article 4, paragraph 7, of the Convention specifically prohibits a Party from using the concept of “positive silence” for information requests. It provides that a “refusal of a request shall be in writing if the request was in writing [...] A refusal shall state the reasons for the refusal [...]”.

*(Spain ACCC/C/2009/36; ECE/MP.PP/C.1/2010/4/Add.2, 08 February 2011, para.58)*

***no silent refusal***

Regarding the NPP project, on 31 July 2009, an advance public notice was issued on the website of three public authorities (see paras. 20 (a) and (b) above), for the public hearings which were to take place in fall 2009. Later that year, on 9 September 2009, the public notice was published in printed media at the national and local level and on the Internet (on websites of the relevant public authorities, such as ministries responsible for the environment and for energy) and it was announced that the public hearing would take place on 9 October 2009.

*(Belarus ACCC/C/2009/44; ECE/MP.PP/C.1/2011/6/Add.1, 19 September 2011, para. 71)*

The Committee examined the public notices (see annexes 5 and 6 to the communication) and finds that they contained most of the elements prescribed in article 6, paragraph 2, of the Convention, including a brief description of the planned activity (location, potential transboundary impact, schedule of implementation, time frame for the preparation of the EIA documentation and for the public discussions), the communication point for public participation (where the public concerned could send their comments), and information on the participation process (time frame for participation, consultations and submission of the comments, and where the EIA documents could be accessed by the public (i.e., on the websites of public authorities and at the Power Plant Construction Office in Ostrovets)).

*(Belarus ACCC/C/2009/44; ECE/MP.PP/C.1/2011/6/Add.1, 19 September 2011, para. 72)*

In the present case, the Party concerned has not provided any evidence to substantiate its claims that the authorities duly addressed all requests for information despite the Committee’s request. The Committee thus considers that the allegation of the communicant that its first and second requests for information were ignored represent the actual facts. Therefore, since the authorities did not respond at all to two of the three information requests submitted by the communicant in relation to the decision-making process regarding the proposed construction of a new NPP, the Committee finds that the Party concerned failed to comply with article 4, paragraph 1, in conjunction with paragraphs 2 and 7, of the Convention.

*(Romania ACCC/C/2010/51; ECE/MP.PP/C.1/2014/12, 14 July 2014, para.80)*

### 3. A request for environmental information may be refused if:

[...] (b) One of the grounds for refusing the request provided by the Bank in its message of 8 November 2007, namely that a third party, the Albanian authorities, had not authorized the release of the document, does not constitute a legitimate basis under the Convention for



failing to provide environmental information, and no linkage was made between the lack of such authorization and one or other of the exemptions permitted under the Convention in regard to environmental information.

(c) A second argument put forward by EIB in its message of 8 November 2007 to justify not providing the information was that the document requested did not concern environmental information which would be covered by the Convention. It has to be noted that the Party concerned in its response stated that the Finance Contract of 2004 and the Framework Agreement of 1998 do not contain “environmental information” with the possible exceptions of Article 6.08 of the Finance Contract and Schedule A.1 (technical description of the project). Thus, according to the Party concerned, the overwhelming part of the requested documentation did not contain environmental information, and only two provisions could be considered to fall within the scope of article 4 of the Convention. It should be noted in this context that the handling of the request was complicated by it being a request for the disclosure of the above mentioned document in full without specifying that environmental information was being sought. Although EIB did not disclose the requested document at once, the full document was disclosed before the communicant sought to use any of the available review procedures with respect to the initial refusal of environmental information.

*(European Community ACCC/C/2007/21; ECE/MP.PP/C.1/2009/2/Add.1, 11 December 2009, para. 31)*

**large volume & confidentiality**

The large volume of the information to which the communicant requested access and the confidential character attributed to this information, by a law that came into force after the submission of the request by the communicant, are reasons for refusal of access to information that go beyond the limits established by article 4, paragraphs 3 and 4, of the Convention. By refusing access to the contracts, as requested by the communicant, Moldsilva did not take into account the public interest served by disclosure.

*(Moldova ACCC/C/2008/30; ECE/MP.PP/C.1/2009/6/Add.3, 8 February 2011, para.31).*

- (a) The public authority to which the request is addressed does not hold the environmental information requested;
- (b) The request is manifestly unreasonable or formulated in too general a manner; or
- (c) The request concerns material in the course of completion or concerns internal communications of public authorities where such an exemption is provided for in national law or customary practice, taking into account the public interest served by disclosure.

The Committee considers whether public authorities may refuse a request for access to raw environmental data on the basis of an exception listed in article 4, paragraphs 3 and 4. The Convention does not provide a clear definition of the “materials in the course of completion”. Domestic legislation may provide for specific guidance on how air quality data should be collected, ingested and processed before they are further considered and studied. This guidance has been developed with a view to mitigating the effect of various factors that might impact on the values collected, and to allowing for the calculation of representative average values on the basis of the multiple values — collected at different times over a long period of time — which might have fluctuated significantly due to the presence of diverse conditions and factors (heat, pressure, etc.).

*(United Kingdom ACCC/C/2010/53; ECE/MP.PP/C.1/2013/3, 11 January 2013, para. 76)*

In respect to the requested data, the Committee finds that the Party concerned, by not disclosing the raw data at the request of the communicant, failed to comply with article 4, paragraph 1, of the Convention. Should the authority have any concerns about disclosing the data, they should provide the raw data and advise that they were not processed according to the agreed and regulated system of processing raw environmental data. The same applies for the processed data, in which case the authorities should also advise on how these data were processed and what they represent.

*(United Kingdom ACCC/C/2010/53; ECE/MP.PP/C.1/2013/3, 11 January 2013, para. 77)*

**legal ground for exemptions**

With respect to article 4, paragraph 3 (c), the Committee notes that authorities may refuse to grant access to material which is in the course of completion only if this exemption is provided under national law or customary practice. Indeed, the legislation of the Party concerned specifies that public authorities may refuse a request for environmental information if the request concerns material in the course of completion of unfinished documents or data (Government Decision 878/2005, art. 11, para. 1).

*(Romania ACCC/C/2010/51; ECE/MP.PP/C.1/2014/12, 14 July 2014, para.82)*

The Committee recalls that even if not mentioned under article 4, paragraph 3 (c), as a principle of law exemptions are to be interpreted restrictively. This is particularly important in view of the public interest served by the disclosure and the aims and objectives of the Convention.

*(Romania ACCC/C/2010/51; ECE/MP.PP/C.1/2014/12, 14 July 2014, para.83)*

The study which included the information requested by the communicant was prepared by the Centre of Designing and Engineering for Nuclear Projects under the Romanian Authority for Nuclear Activities (RAAN-SITON), a specialized agency of the central public administration, acting as a legal person, coordinated by the Ministry of Economy and responsible for providing technical assistance to the Government in nuclear matters. Although the agency is somehow related to the Ministry of Economy, it is not an internal unit of that Ministry and is formally independent.

*(Romania ACCC/C/2010/51; ECE/MP.PP/C.1/2014/12, 14 July 2014, para.84)*

The Convention does not define the “material in the course of completion”. The Committee considers that the phrase “material in the course of completion” relates to the process of preparation of information or a document and not to an entire decision-making process for the purpose of which given information or documentation has been prepared.

*(Romania ACCC/C/2010/51; ECE/MP.PP/C.1/2014/12, 14 July 2014, para.85)*

The Party concerned also argues that this information constituted internal communications of public authorities.

*(Romania ACCC/C/2010/51; ECE/MP.PP/C.1/2014/12, 14 July 2014, para.86)*

The Committee finds that when a study that had been commissioned by a ministry from a somehow-related-to-it-but-separate entity has been completed, submitted to and approved by this ministry, such a study can neither be considered as “material in the course of completion” nor as “internal communications”, but rather as a final document which could and should be publicly available. Therefore, the authorities could not refuse information on this ground.

*(Romania ACCC/C/2010/51; ECE/MP.PP/C.1/2014/12, 14 July 2014, para.87)*

#### 4. A request for environmental information may be refused if the disclosure would adversely affect:

With regard to the facts described in paragraph 14 above, public authorities should possess information relevant to its functions, including that on which they base their decisions, in accordance with article 5, paragraph 1, and should make it available to the public, subject to exemptions specified in article 4, paragraphs 3 and 4. The issue of ownership is not of relevance in this matter, as information is used in a decision—making by a public authority and should be provided to it for that purpose by the developer. The fact that such misinterpretation took place again points to a lack of clear regulatory requirements in the national legislation.

*(Ukraine ACCC/C/2004/3 and ACCC/S/2004/1; ECE/MP.PP/C.1/2005/2/Add.3, 14 March 2005, para. 31)*

The Committee stated in its findings and recommendations with regard to communication ACCC/C/2004/3 and submission ACCC/S/2004/1 that article 6, paragraph 6, aimed at providing the public concerned with an opportunity to examine relevant details to ensure that public participation is informed and therefore more effective. It is certainly not limited to a requirement to publish an environmental impact statement. Although that provision allows that requests from the public for certain information may be refused in certain circumstances related to intellectual property rights, this may happen only where in an individual case the competent authority considers that disclosure of the information would adversely affect intellectual property rights. Therefore, the Committee doubts very much that this exemption could ever be applicable in practice in connection with EIA documentation. Even if it could be, the grounds for refusal are to be interpreted in a restrictive way, taking into account the public interest served by disclosure. Decisions on exempting parts of the information from disclosure should themselves be clear and transparent as to the reasoning for non-disclosure. Furthermore, disclosure of EIA studies in their entirety should be considered as the rule, with the possibility for exempting parts of them being an exception to the rule. A general exemption of EIA studies from disclosure is therefore not in compliance with article 4, paragraph 1, in conjunction with article 4, paragraph 4, and article 6, paragraph 6, in conjunction with article 4, paragraph 4, of the Convention.

*(Romania ACCC/C/2005/15; ECE/MP.PP/2008/5/Add.7 16 April 2008 para. 30)*

**materials in  
the course  
of completion**

**ownership  
of information**

**exempting  
EIA studies**

**3rd party's  
confidentiality**

With regard to the communicant's request of 5 April 2006 for (inter alia) a copy of the finance contract (a). The request made for the finance contract concerned the disclosure of the full document and did not mention "environmental information" as such. The Committee notes that the grounds for refusing the request provided by EIB in its message of 28 April 2006, namely that the document was confidential, were incorrect as the document was already in the public domain. It has to be noted in the context that the documents requested are in general not environmental information and only some parts of the documents – as the Party concerned stated in its response – relate to the environment;

*(European Community ACCC/C/2007/21; ECE/MP.PP/C.1/2009/2/Add.1, 11 December 2009, para. 30)*

The Committee finds that the adoption of article 48 (e) of the Government Regulation No. 187 of 20 February 2008 on Rent of Forestry Fund for Hunting and Recreational Activities setting out a broad rule with regard to the confidentiality of the information received from the rent holders and the refusal for access to information on the grounds of its large volume constitute a failure by the Party concerned to comply with article 3, paragraph 1, and article 4, paragraph 4, of the Convention.

*(Moldova ACCC/C/2008/30; ECE/MP.PP/C.1/2009/6/Add.3, 8 February 2011, para.38).*

The Committee concludes that in the present case the Party concerned has not been able to show that any of the grounds for refusal referred to in article 4 provide a sufficient basis for not disclosing the information requested regarding the possible locations for the NPP. Although part of the information originally requested was eventually declassified and made available to the public, the rest of the information requested, in particular the information requested by the communicant in its third request for information, was not disclosed without giving sufficient reasons and without demonstrating that consideration had been given to the public interest in disclosure. Thus, with respect to the communicant's third information request, by not ensuring that the requested information regarding the possible locations for the NPP was made available to the public, and by not adequately justifying its refusal to disclose the information requested under one of the grounds set out in article 4, paragraph 4, of the Convention, taking into account the public interest served by disclosure, the Party concerned failed to comply with article 4, paragraphs 1 and 4, of the Convention.

*(Romania ACCC/C/2010/51; ECE/MP.PP/C.1/2014/12, 14 July 2014, para.95)*

- (a) The confidentiality of the proceedings of public authorities, where such confidentiality is provided for under national law;

According to article 4, paragraph 4 (a), of the Convention, a public authority may refuse a request for environmental information when the disclosure may adversely affect the confidentiality of proceedings of a public authority, and this is provided for under national law. Indeed, the legislation of the Party concerned (Government Decision 878/2005, art. 12) provides for such an exception.

*(Romania ACCC/C/2010/51; ECE/MP.PP/C.1/2014/12, 14 July 2014, para.88)*

**"proceedings" /  
restrictive  
information  
principle**

Yet, the Committee considers that the term "proceedings" in article 4, paragraph 4 (a), relates to concrete events such as meetings or conferences and does not encompass all the actions of public authorities. While national legislation may, according to this provision of the Convention, provide for the possibility to consider the minutes of a number of meetings held in order to select feasible locations for an NPP, as confidential, it cannot under this provision treat as confidential all the actions undertaken by public authorities in relation to selecting feasible locations for an NPP, including all the related studies and documents. In particular, national legislation may provide for the confidentiality of operational and internal procedures of an authority. The criteria in legislation for such exceptions should be as clear as possible, so as to reduce the discretionary power of authorities to select which proceedings should be confidential, because this might lead to arbitrary application of the exemption. This is in line with the principle that all exemptions to the requirement to provide access to requested environmental information are subject to a restrictive interpretation and must take into account the public interest served by the disclosure. Therefore, the authorities in this case could not refuse information on this ground.

*(Romania ACCC/C/2010/51; ECE/MP.PP/C.1/2014/12, 14 July 2014, para.89)*

- (b) International relations, national defence or public security;

Finally, according to article 4, paragraph 4 (b), public authorities may withhold information when the release would adversely affect international relations, national defence or public

security. Thus national law, generally, or the administration, in specific cases, may define information as involving State secrets if the release may harm State security and defence. The law of the Party concerned specifies that information of “scientific, technological or economic activities and investments related to the national security or defence or which are of utmost importance for the economic, technical and scientific interests of Romania” and “scientific research in the field of nuclear technologies, excepting fundamental research, as well as the programmes for the protection and security of nuclear materials and facilities” (Law 182/2002, art. 17, paras. (k) and (l), respectively) may qualify as “State secrets”, and provides for the criteria and the procedures to be followed for the classification of the information.

(Romania ACCC/C/2010/51; ECE/MP.PP/C.1/2014/12, 14 July 2014, para.93)

The Committee finds that the study aiming at the selection of possible locations for the NPP can be a “State secret” under national law, and public authorities may thus refuse access to information on the basis of the exemption of article 4, paragraph 4 (b), of the Convention. However, the exemption is to be interpreted narrowly, taking into account the public interest served by the disclosure. In the present case, the Party concerned has not convinced the Committee that, in refusing access to the requested information on the ground that disclosure could adversely affect international relations, national defence or public security, the Party concerned interpreted the grounds for refusal in a restrictive way, so as to take account of the public interest served by disclosure, as set out in the final subparagraph of article 4, paragraph 4. The Committee notes that the reply of the Ministry of Environment to the third request for information submitted by the communicant (see para. 33 above) is limited to indicating that the decision regarding location of the NPP in question has not been taken yet and therefore according to applicable Romanian legislation the requested information should be considered as secret. The Committee also notes that neither in this document nor in any other document submitted by the Party concerned is there any mention of taking into account the public interest served by the disclosure, or about balancing the interests for and against the disclosure of the information requested by the communicant in its third request for information. In its reply of 14 March 2011 to the questions of the Committee (see para. 7 above) the Party concerned indicates only that such information regarding pre-decisional studies is “of no relevance for the public”. Furthermore, the Committee notes that the only official document presented to the Committee which includes an attempt to consider the public interest served by disclosure is the judgement of the Bucharest Court (see para. 34 above), which notably decided in favour of the communicant and ordered the Ministry to provide the requested information. The Committee also notes that the judgement of the Court of Appeal which overturned the above judgement of the Bucharest Court does not include any discussion in this respect except for stating that pre-decisional studies should not be disclosed until authorities decide that the issue is ready to be submitted for public debate required by applicable procedures. In this respect, the Committee considers that access to information under article 4 of the Convention should not be identified with access to information in the context of public participation procedures. The obligation under article 4 to make available environmental information to the public upon request is not limited to matters being subject to public participation procedures and — unless legitimate reasons for refusal are being applied according to appropriate procedures — covers all environmental information which is held by public authorities, not least the information which public authorities themselves, in press releases or elsewhere, reveal that they hold (as was true in the present case, see para. 32).

(Romania ACCC/C/2010/51; ECE/MP.PP/C.1/2014/12, 14 July 2014, para.94)

- (c) The course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature;
- (d) The confidentiality of commercial and industrial information, where such confidentiality is protected by law in order to protect a legitimate economic interest. Within this framework, information on emissions which is relevant for the protection of the environment shall be disclosed;

Establishment of a special company for construction of expressways does not in itself constitute a breach of obligations under the Convention, in the Committee’s view. In this regard, the Committee takes note of the fact that the company is established by the Act, is State-owned and would, therefore fall under the definition of the public authority in accordance with article 2, paragraphs 2 (b) and (c). In Committee’s view this in itself limits the scope of application of the commercial confidentiality exemption.

(Hungary ACCC/C/2004/4; ECE/MP.PP/C.1/2005/2/Add.4, 14 March 2005, para. 10)

**nuclear power  
plant siting  
studies/  
balancing  
interests/  
AtoI is not limited  
to PP procedure**

**state companies**

**legitimate  
economic interest**

(c) In paragraph 23 of its submission of 5 August 2008, the position of the Party concerned implies that the condition for environmental information to be released is that no harm to the interests concerned is identified. The Party concerned apparently bases this statement on article 4, paragraph 4 (d), of the Convention, which states that a request for information may be refused if the disclosure would adversely affect “the confidentiality of commercial and industrial information, where such confidentiality is protected by law in order to protect a legitimate economic interest”. The Committee wishes to point out that this exemption may not be read as meaning that public authorities are only required to release environmental information where no harm to the interests concerned is identified. Such a broad interpretation of the exemption would not be in compliance with article 4, paragraph 4, of the Convention which requires interpreting exemptions in a restrictive way, taking into account the public interest served by disclosure. Thus, in situations where there is a significant public interest in disclosure of certain environmental information and a relatively small amount of harm to the interests involved, the Convention would require disclosure.

*(European Community ACCC/C/2007/21; ECE/MP.PP/C.1/2009/2/Add.1, 11 December 2009, para. 30)*

**commercial  
information**

Article 4, paragraph 4 (d), of the Convention allows authorities to refuse access to commercial and industrial information, where such information is protected by law in order to protect legitimate economic interests. The Convention does not define which information is “commercial and industrial”, but the criteria and the process for characterization of information as confidential on this basis should be clearly defined by law, so as to prevent authorities from withholding information in an arbitrary manner.

*(Romania ACCC/C/2010/51; ECE/MP.PP/C.1/2014/12, 14 July 2014, para.90)*

**legitimate  
economic interest**

The Convention does not define “legitimate economic interests” either. While the exemption from the obligation to disclose information in article 4, paragraph 4 (d), is predominantly focused on protecting legitimate economic interests of private entities, it may also be used to protect legitimate economic interests of public bodies, for example those referred to in article 2, paragraph 2 (b) and (c), or, in certain exceptional circumstances, even of entire States, provided, however, that the requested information is of a commercial or industrial nature, according to the criteria and the process described in the law.

*(Romania ACCC/C/2010/51; ECE/MP.PP/C.1/2014/12, 14 July 2014, para.91)*

Even so, in the present case the Committee does not find that a study, prepared by an entity which is closely related to the public administration and aimed at selecting the possible locations for an NPP could be considered as “commercial or industrial information”, as referred to in article 4, paragraph 4 (d), of the Convention. Therefore, in practice the authorities in this case could not refuse information on this ground, even if the exemptions stipulated in the legislation for refusal of the authorities to provide information of public interest are broadly aligned to the exemptions under article 4 of the Convention.

*(Romania ACCC/C/2010/51; ECE/MP.PP/C.1/2014/12, 14 July 2014, para.92)*

**(e) Intellectual property rights;****intellectual  
property v.  
public file**

EIA studies are prepared for the purposes of the public file in administrative procedure. Therefore, the author or developer should not be entitled to keep the information from public disclosure on the grounds of intellectual property law.

*(Romania ACCC/C/2005/15; ECE/MP.PP/2008/5/Add.7, 16 April 2008 para. 28)*

**EIA studies**

The Committee wishes to stress that in jurisdictions where copyright laws may be applied to EIA studies that are prepared for the purposes of the public file in the administrative procedure and available to authorities when making decisions, it by no means justifies a general exclusion of such studies from public disclosure. This is in particular so in situations where such studies form part of “information relevant to the decision-making” which, according to article 6, paragraph 6, of the Convention, should be made available to the public at the time of the public participation procedure.

*(Romania ACCC/C/2005/15; ECE/MP.PP/2008/5/Add.7, 16 April 2008 para. 29)*

- (f) The confidentiality of personal data and/or files relating to a natural person where that person has not consented to the disclosure of the information to the public, where such confidentiality is provided for in national law;
- (g) The interests of a third party which has supplied the information requested without that party being under or capable of being put under a legal obligation to do so, and where that party does not consent to the release of the material; or
- (h) The environment to which the information relates, such as the breeding sites of rare species.

As a result of the Commissioner's decision that all information except the locations of the mussels should be released, the Committee's now only needs to consider whether the withholding of the remaining redacted information is in compliance with article 4, paragraph 4 (h) of the Convention.

*(United Kingdom ACCC/C/2009/38; ECE/MP.PP/C.1/2011/2/Add.10, April 2011, para. 70)*

Having not seen the redacted information, for present purposes the Committee must assume that the redacted information indeed relates to the location of the freshwater pearl mussels. The Committee notes the Party concerned's submission that the mussels have been subject to illegal fishing in the past.

*(United Kingdom ACCC/C/2009/38; ECE/MP.PP/C.1/2011/2/Add.10, April 2011, para. 71)*

On that basis, the Committee finds that the redacted information relates to the "breeding sites of rare species" under article 4, paragraph 4 (h), being in this case the breeding sites of rare freshwater pearl mussels.

*(United Kingdom ACCC/C/2009/38; ECE/MP.PP/C.1/2011/2/Add.10, April 2011, para. 72)*

However, that is only the first step. Article 4, paragraph 4, requires the grounds for refusal to be "interpreted in a restrictive way, taking into account the public interest served by disclosure".

*(United Kingdom ACCC/C/2009/38; ECE/MP.PP/C.1/2011/2/Add.10, April 2011, para. 73)*

The Committee notes that article 4 of the Convention refers to the "public", whereas article 6 of the Convention to the "public concerned". However, the Convention makes no further distinction between members of the public concerned. Thus, all members of the public concerned are equally entitled to enjoy the rights under the Convention.

*(United Kingdom ACCC/C/2009/38; ECE/MP.PP/C.1/2011/2/Add.10, April 2011, para. 76)*

Thus, if the exception in article 4, paragraph 4(h) is to be read restrictively to allow Mr. Hawkins to have access to the redacted information in order that he might exercise his right to participate under article 6, then other members of the public concerned would be entitled to the same right. The problem is that while SNH does not question Mr. Hawkins' suitability to receive the redacted information, there may be others among the public concerned who would be less trustworthy. However, disclosing the redacted information to Mr. Hawkins would mean that all members of the public concerned would be entitled to such disclosure. Recognizing the possibility that disclosure to the wider public concerned may result in adverse effects on the breeding sites of the mussels, the Committee finds that the Party concerned was not in non-compliance with article 4 by withholding the redacted information in the circumstances of this case.

*(United Kingdom ACCC/C/2009/38; ECE/MP.PP/C.1/2011/2/Add.10, April 2011, para. 77)*

**The aforementioned grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment.**

The large volume of the information to which the communicant requested access and the confidential character attributed to this information, by a law that came into force after the submission of the request by the communicant, are reasons for refusal of access to information that go beyond the limits established by article 4, paragraphs 3 and 4, of the Convention. By refusing access to the contracts, as requested by the communicant, Moldsilva did not take into account the public interest served by disclosure.

*(Moldova ACCC/C/2008/30; ECE/MP.PP/C.1/2009/6/Add.3, 8 February 2011, para.31)*

The Committee considers whether public authorities may refuse a request for access to raw environmental data on the basis of an exception listed in article 4, paragraphs 3 and 4. The Convention does not provide a clear definition of the "materials in the course of completion". Domestic legislation may provide for specific guidance on how air quality data should be collected, ingested and processed before they are further considered and studied. This guidance has been developed with a view to mitigating the effect of various factors that might impact on the values collected, and to allowing for the calculation of representative average values on the basis of the multiple values — collected at different times over a long period of time — which might have fluctuated significantly due to the presence of diverse conditions and factors (heat, pressure, etc.).

*(United Kingdom ACCC/C/2010/53; ECE/MP.PP/C.1/2013/3, 11 January 2013, para. 76)*

***individual disclosure***

***raw data***

In respect to the requested data, the Committee finds that the Party concerned, by not disclosing the raw data at the request of the communicant, failed to comply with article 4, paragraph 1, of the Convention. Should the authority have any concerns about disclosing the data, they should provide the raw data and advise that they were not processed according to the agreed and regulated system of processing raw environmental data. The same applies for the processed data, in which case the authorities should also advise on how these data were processed and what they represent.

*(United Kingdom ACCC/C/2010/53; ECE/MP.PP/C.1/2013/3, 11 January 2013, para. 77)*

5. Where a public authority does not hold the environmental information requested, this public authority shall, as promptly as possible, inform the applicant of the public authority to which it believes it is possible to apply for the information requested or transfer the request to that authority and inform the applicant accordingly.

#### ***onward referral***

The Committee notes that the requests for information concerning the HPP project were originally submitted to the competent authorities, but they were all forwarded to the developer. In this context, the Committee would like to observe that while the “onward referral” is a legitimate practice under article 4, paragraph 5, of the Convention, this practice is allowed provided that certain conditions are met.

*(Belarus ACCC/C/2009/37; ECE/MP.PP/2011/11/Add.2, 12 May 2011, para.65)*

The first condition for “onward referral” under article 4, paragraph 5, is that the request for information is referred to another “public authority”. The Committee notes that in Belarus, the OVOS process, including public participation, is carried out by the developer, which may be a privately owned legal entity, and that the OVOS outcome constitutes the basis for the environmental expertiza, the final decision of permitting nature, which is issued by the public authorities. While reliance on the developer in the context of public participation may raise doubts as to the compliance with the Convention (see paras. 75 et seq. below), the issue may be seen differently in the context of access to information.

*(Belarus ACCC/C/2009/37; ECE/MP.PP/2011/11/Add.2, 12 May 2011, para.66)*

#### ***delegation of functions***

The Committee considers that it is not conflicting with the Convention when national legislation delegates some functions related to maintenance and distribution of environmental information to private entities. Such private entities, depending on the particular arrangements adopted in the national law, should be treated for the purpose of access to information as falling under the definition of a “public authority”, in the meaning of article 2, paragraph 2 (b) or (c) of the Convention.

*(Belarus ACCC/C/2009/37; ECE/MP.PP/2011/11/Add.2, 12 May 2011, para.67)*

#### ***role of developer***

In this context, the Committee notes that in Belarus the Environmental Expertiza Law and the relevant Instructions make the developer responsible for maintaining the OVOS- and expertiza-related documentation. Therefore, for the purpose of access to information issues, which are the subject of the present communication, the developer should be treated as a public authority under the obligation to provide access to environmental information in compliance with the requirements of article 4 of the Convention.

*(Belarus ACCC/C/2009/37; ECE/MP.PP/2011/11/Add.2, 12 May 2011, para.68)*

#### ***onward referral***

The possibility to delegate some functions related to the maintenance and distribution of environmental information to private entities should be seen in the context of article 5; in particular the obligation to ensure that public authorities possess environmental information which is relevant to their functions and the obligation to establish practical arrangements to ensure that environmental information is effectively accessible to the public, as required in article 5, paragraphs 2 (a) and 2 (b), respectively. Thus, the second condition to be met under article 4, paragraph 5, is that an onward referral does not compromise compliance with the above obligations under article 5

*(Belarus ACCC/C/2009/37; ECE/MP.PP/2011/11/Add.2, 12 May 2011, para.69)*

The Committee does not have sufficient information about the national framework for recordkeeping and distribution of environmental information in Belarus, but it is concerned that the Environmental Expertiza Law and the relevant Instructions bestow the whole responsibility for maintaining the OVOS- and expertiza-related documentation, including the documents evidencing public participation, upon the developer only, and do not include any obligation in this respect for the authorities which are competent to examine the results of the OVOS and for issuing the expertiza conclusions.

*(Belarus ACCC/C/2009/37; ECE/MP.PP/2011/11/Add.2, 12 May 2011, para.70)*

6. Each Party shall ensure that, if information exempted from disclosure under paragraphs 3 (c) and 4 above can be separated out without prejudice to the confidentiality of the information exempted, public authorities make available the remainder of the environmental information that has been requested.

The communicant claims that the Party concerned failed to comply with article 4, paragraph 6, of the Convention, by not separating and disclosing part of the information that could be separated without prejudice to its possible confidentiality, so as to make available the remainder of the information requested. The Committee observes that this provision is clearly reflected in Romanian legislation (Government Decision No. 878/2008 on public access to environmental information, art. 15). The Committee also notes that part of the study was declassified and made available to the public, although this was done with some delay.

*(Romania ACCC/C/2010/51; ECE/MP.PP/C.1/2014/12, 14 July 2014, para.97)*

The Committee is concerned about the clarity, transparency and consistency of the relevant legal framework, in particular the fact that it includes broadly defined categories of information that can be classified as confidential, which may lead to the classification of the whole information; and the fact that the authorities classified the information evoking different grounds. Furthermore, there are indications that article 4, paragraph 6, may not be regularly observed in practice by the public authorities of the Party concerned (e.g., information and documents submitted by the communicant, such as the Constanta Court Civil sentence No. 1359, file no 6584/118/2008). Nevertheless the Committee has not been provided with sufficient information to ascertain whether the above-mentioned features of the Romanian legal framework and practice amount to systemic noncompliance with article 4, paragraph 6, of the Convention.

*(Romania ACCC/C/2010/51; ECE/MP.PP/C.1/2014/12, 14 July 2014, para.98)*

7. A refusal of a request shall be in writing if the request was in writing or the applicant so requests. A refusal shall state the reasons for the refusal and give information on access to the review procedure provided for in accordance with article 9. The refusal shall be made as soon as possible and at the latest within one month, unless the complexity of the information justifies an extension of this period up to two months after the request. The applicant shall be informed of any extension and of the reasons justifying it.

[...] (d) When refusing to provide environmental information, a public authority is required under the Convention (art. 4, para. 7) to provide information on access to the review procedures available in accordance with article 9. As EIB did not treat the request as concerning environmental information as such, it appears that the Bank did not provide such information to the communicant. The fact that the communicant approached the European Ombudsman – rather than the Bank’s Inspector General, which would have been the more appropriate next step – was presumably a consequence of this. The European Ombudsman did not find sufficient reasons to investigate the broad allegations made by the communicant concerning misconduct (including corruption) by EIB. Nevertheless, EIB supplied the requested documents to the communicant in full and did not limit them to “environmental information” at a later stage.

*(European Community ACCC/C/2007/21; ECE/MP.PP/C.1/2009/2/Add.1, 11 December 2009, para 31.)*

The Committee finds that the failure of the public authority Moldsilva to state lawful grounds for refusal of access to information in its letters No. 01-07/130 and No. 01-07/362 of 31 January 2008 and 14 March 2008 respectively, and the failure of the same public authority to give in its letters of refusal information on access to the review procedure provided for in accordance with article 9, constitute a failure by the Party concerned to comply with article 3, paragraph 2, and article 4, paragraph 7, of the Convention.

*(Moldova ACCC/C/2008/30; ECE/MP.PP/C.1/2009/6/Add.3, 8 February 2011, para.39).*

Furthermore, the Committee would like to underline that article 4, paragraph 7, of the Convention specifically prohibits a Party from using the concept of “positive silence” for information requests. It provides that a “refusal of a request shall be in writing if the request was in writing [...] A refusal shall state the reasons for the refusal [...]”.

*(Spain ACCC/C/2009/36; ECE/MP.PP/C.1/2010/4/Add.2, 08 February 2011, para.58)*

According to article 4, paragraph 7, of the Convention, a refusal in writing shall be made as soon as possible and at the latest within one month. It should also state the reasons for the refusal and give information on access to the review procedure provided for in accordance

***positive silence***

***written refusal***



with article 9. It follows that one of the purposes of the refusal in writing is to provide the basis for a member of the public to have access to justice under article 9, paragraph 1, and to ensure that the applicants can do so on an “effective” and “timely” basis, as required by article 9, paragraph 4. The possibilities for a review procedure seem to be significantly delayed by the system envisaged under Austrian law, i.e., that a separate request is necessary to obtain an “official notification” that would enable the applicant to seek the remedies under article 9. Moreover, if this request is not satisfied due to failure of authorities to provide an official notification, a further request (devolution request) has to be submitted. The Committee finds that the Party concerned, by maintaining this system, where a specific form (“official notification”) must be requested in order to be used before the courts, and where authorities may fail to comply with such a request, is not in compliance with article 4, paragraph 7, of the Convention.

*(Austria ACCC/C/2010/48; ECE/MP.PP/C.1/2012/4, 17 April 2012, para. 56)*

The general obligation of the public authorities to respond to requests of members of the public to access environmental information is enshrined in article 4, paragraph 1, of the Convention. In addition, authorities have to respond to a request within one month after the request was submitted (art. 4, para. 2) and, in case of a refusal, this should be in writing (art. 4, para. 7), giving the reasons for the refusal, and as soon as possible, but at the latest within one month, unless the complexity of the information justifies an extension of up to two months after the request.

*(Romania ACCC/C/2010/51; ECE/MP.PP/C.1/2014/12, 14 July 2014, para.79)*

In the present case, the Party concerned has not provided any evidence to substantiate its claims that the authorities duly addressed all requests for information despite the Committee’s request. The Committee thus considers that the allegation of the communicant that its first and second requests for information were ignored represent the actual facts. Therefore, since the authorities did not respond at all to two of the three information requests submitted by the communicant in relation to the decision-making process regarding the proposed construction of a new NPP, the Committee finds that the Party concerned failed to comply with article 4, paragraph 1, in conjunction with paragraphs 2 and 7, of the Convention.

*(Romania ACCC/C/2010/51; ECE/MP.PP/C.1/2014/12, 14 July 2014, para.80)*

The Committee observes that, apart from the cases where the requests for information were ignored, reasons for the refusals have been stated. While it is a different matter, dealt with above, as to whether the reasons given were accurate and in compliance with the Convention, and while the Committee has already expressed concerns as to the clarity of the legal framework concerning access to information, the Committee does not find that the evidence submitted demonstrates that the Party concerned failed to comply with article 4, paragraph 7, of the Convention.

*(Romania ACCC/C/2010/51; ECE/MP.PP/C.1/2014/12, 14 July 2014, para.99)*

8. Each Party may allow its public authorities to make a charge for supplying information, but such charge shall not exceed a reasonable amount. Public authorities intending to make such a charge for supplying information shall make available to applicants a schedule of charges which may be levied, indicating the circumstances in which they may be levied or waived and when the supply of information is conditional on the advance payment of such a charge.

*volume of  
information*

Finally, information within the scope of article 4 should be provided regardless of its volume. In cases where the volume is large, the public authority has several practical options: it can provide such information in an electronic form or inform the applicant of the place where such information can be examined and facilitate such examination, or indicate the charge for supplying such information, in accordance with article 4, paragraph 8, of the Convention.

*(Ukraine ACCC/C/2004/3 and ACCC/S/2004/1; ECE/MP.PP/C.1/2005/2/Add.3, 14 March 2005, para. 33)*

*reasonable  
costs*

In considering the issue, the Committee took note of decisions by the Court of the European Community and national courts and appeal bodies on the meaning of reasonable costs. Although the Committee is not bound by decisions of these courts and appeal bodies, their jurisprudence can shed light on how the term “reasonable” of the Convention may be understood and applied at the domestic level.

*(Spain ACCC/C/2008/24; ECE/MP.PP/C.1/2009/8/Add.1, 30 September 2010, para.77)*

The Committee notes that the Party concerned has failed to provide any argument justifying why the fees charged for making the planning documents in question available in copies differ from the fees charged for copying other documents. Given that the commercial fee for copying in Murcia is 0.03 Euros per page, which seems to be generally equivalent to the standard commercial fee for copying in the UNECE countries, the Committee concludes that the charge of 2.05 Euros perpage for copying cannot be considered reasonable and constitutes non-compliance with article 4, paragraph 8, of the Convention.

*(Spain ACCC/C/2008/24; ECE/MP.PP/C.1/2009/8/Add.1, 30 September 2010, para.79)*

**copying  
fees**

## Article 5 COLLECTION AND DISSEMINATION OF ENVIRONMENTAL INFORMATION

### 1. Each Party shall ensure that:

With regard to the facts described in paragraph 14 above, public authorities should possess information relevant to its functions, including that on which they base their decisions, in accordance with article 5, paragraph 1, and should make it available to the public, subject to exemptions specified in article 4, paragraphs 3 and 4. The issue of ownership is not of relevance in this matter, as information is used in a decision-making by a public authority and should be provided to it for that purpose by the developer. The fact that such misinterpretation took place again points to a lack of clear regulatory requirements in the national legislation.

*(Ukraine ACCC/C/2004/3 and ACCC/S/2004/1; ECE/MP.PP/C.1/2005/2/Add.3, 14 March 2005, para. 31)*

Article 5, paragraph 1, of the Convention requires public authorities to possess and update information relevant to their functions, and requires Parties to establish mandatory systems ensuring an adequate flow of information about proposed and existing activities which may significantly affect the environment. It is the understanding of the Committee that as a minimum this should include EIA studies in their entirety, including specific methodologies of assessment and modeling techniques used in their preparation.

*(Romania ACCC/C/2005/15; ECE/MP.PP/2008/5/Add.7 16 April 2008 para. 27)*

**EIA studies**

#### (a) Public authorities possess and update environmental information which is relevant to their functions;

As the Committee has already stated in previous findings (on communication ACCC/C/2010/54, para. 89), “the Committee is not in a position to ascertain whether the technical information disseminated by the Party concerned, or the communicant for that matter, is correct”. In the present case, the communicant seems to advocate a method for the calculation of the merits of wind energy that is different from what the decision-making bodies accept. The Committee has neither the mandate nor the capacity to assess the environmental information in question as to its accuracy or adequacy.

*(European Union and United Kingdom ACCC/C/2012/68; ECE/MP.PP/C.1/2014/5, 13 January 2014, para. 86)*

Based on the above, the Committee is not in a position to conclude that the Parties concerned failed to comply with the provisions of articles 4 and 5 of the Convention.

*(European Union and United Kingdom ACCC/C/2012/68; ECE/MP.PP/C.1/2014/5, 13 January 2014, para. 87)*

The Committee, however, notes that different methods are currently available for calculating the CO<sub>2</sub> reductions generated by wind energy projects and that the outcomes of these methods vary considerably. The Committee considers that, based on article 5, paragraph 1 (a), of the Convention, each Party is to ensure that “public authorities possess and update environmental information which is relevant to their functions”. For public authorities engaged in decision-making regarding wind energy, this includes data arising from the application of different methods for calculating the CO<sub>2</sub> reductions generated by wind energy projects, including data from actual measurements.

*(European Union and United Kingdom ACCC/C/2012/68; ECE/MP.PP/C.1/2014/5, 13 January 2014, para. 88)*

**measurement  
data**

**obligation  
to possess**

As the Committee held in its findings on communication ACCC/C/2009/37 concerning compliance by Belarus (ECE/MP.PP/2011/11/Add.2, para. 69), the Party concerned is obliged to ensure that each public authority possesses the environmental information which is relevant to its functions. The Committee considers that, given that the Party concerned does not have in place a proper regulatory framework for the implementation of article 7 of the Convention with respect to NREAPs, it might well not have possessed the relevant environmental information. However, the Committee considers that the communicant, due to the unstructured manner of the information provided, has insufficiently substantiated which of the allegations related to article 4 or article 5 of the Convention are attributable to the Party concerned.

*(European Union ACCC/C/2010/54; ECE/MP.PP/C.1/2012/12, 2 October 2012, para. 90)*

- (b) Mandatory systems are established so that there is an adequate flow of information to public authorities about proposed and existing activities which may significantly affect the environment;
- (c) In the event of any imminent threat to human health or the environment, whether caused by human activities or due to natural causes, all information which could enable the public to take measures to prevent or mitigate harm arising from the threat and is held by a public authority is disseminated immediately and without delay to members of the public who may be affected.

With respect to the communicant's allegations under article 5, paragraph 1(c), this provision conveys an obligation on Parties to actively disseminate information on imminent threats to members of the public that may be affected by that threat, rather than to respond to information requests, which is the subject of article 4. The Committee finds that the communicant has not substantiated that the elements set out in article 5, paragraph 1(c) are met in the circumstances of this case.

*(United Kingdom ACCC/C/2009/38; ECE/MP.PP/C.1/2011/2/Add.10, April 2011, para. 78)*

2. Each Party shall ensure that, within the framework of national legislation, the way in which public authorities make environmental information available to the public is transparent and that environmental information is effectively accessible, inter alia, by:
  - (a) Providing sufficient information to the public about the type and scope of environmental information held by the relevant public authorities, the basic terms and conditions under which such information is made available and accessible, and the process by which it can be obtained;
  - (b) Establishing and maintaining practical arrangements, such as:
    - (i) Publicly accessible lists, registers or files;
    - (ii) Requiring officials to support the public in seeking access to information under this Convention; and
    - (iii) The identification of points of contact; and

The possibility to delegate some functions related to the maintenance and distribution of environmental information to private entities should be seen in the context of article 5; in particular the obligation to ensure that public authorities possess environmental information which is relevant to their functions and the obligation to establish practical arrangements to ensure that environmental information is effectively accessible to the public, as required in article 5, paragraphs 2 (a) and 2 (b), respectively. Thus, the second condition to be met under article 4, paragraph 5, is that an onward referral does not compromise compliance with the above obligations under article 5

*(Belarus ACCC/C/2009/37; ECE/MP.PP/2011/11/Add.2, 12 May 2011, para.69)*

- (c) Providing access to the environmental information contained in lists, registers or files as referred to in subparagraph (b) (i) above free of charge.
3. Each Party shall ensure that environmental information progressively becomes available in electronic databases which are easily accessible to the public through public telecommunications networks. Information accessible in this form should include:
    - (a) Reports on the state of the environment, as referred to in paragraph 4 below;
    - (b) Texts of legislation on or relating to the environment;
    - (c) As appropriate, policies, plans and programmes on or relating to the environment, and environmental agreements; and
    - (d) Other information, to the extent that the availability of such information in this form would

**obligation  
to possess**

facilitate the application of national law implementing this Convention, provided that such information is already available in electronic form.

4. Each Party shall, at regular intervals not exceeding three or four years, publish and disseminate a national report on the state of the environment, including information on the quality of the environment and information on pressures on the environment.
5. Each Party shall take measures within the framework of its legislation for the purpose of disseminating, inter alia:
  - (a) Legislation and policy documents such as documents on strategies, policies, programmes and action plans relating to the environment, and progress reports on their implementation, prepared at various levels of government;
  - (b) International treaties, conventions and agreements on environmental issues; and
  - (c) Other significant international documents on environmental issues, as appropriate.
6. Each Party shall encourage operators whose activities have a significant impact on the environment to inform the public regularly of the environmental impact of their activities and products, where appropriate within the framework of voluntary eco-labelling or eco-auditing schemes or by other means.
7. Each Party shall:
  - (a) Publish the facts and analyses of facts which it considers relevant and important in framing major environmental policy proposals;
  - (b) Publish, or otherwise make accessible, available explanatory material on its dealings with the public in matters falling within the scope of this Convention; and
  - (c) Provide in an appropriate form information on the performance of public functions or the provision of public services relating to the environment by government at all levels.
8. Each Party shall develop mechanisms with a view to ensuring that sufficient product information is made available to the public in a manner which enables consumers to make informed environmental choices.
9. Each Party shall take steps to establish progressively, taking into account international processes where appropriate, a coherent, nationwide system of pollution inventories or registers on a structured, computerized and publicly accessible database compiled through standardized reporting. Such a system may include inputs, releases and transfers of a specified range of substances and products, including water, energy and resource use, from a specified range of activities to environmental media and to on-site and off-site treatment and disposal sites.
10. Nothing in this article may prejudice the right of Parties to refuse to disclose certain environmental information in accordance with article 4, paragraphs 3 and 4.

## Article 6 PUBLIC PARTICIPATION IN DECISIONS ON SPECIFIC ACTIVITIES

The decisions have in common that they are crucial for the entire decision-making in relation to these sites, constructions and activities. The Committee will first have to consider whether the relevant decisions amount to decisions on specific activities under article 6 of the Convention, or decisions on plans under article 7. In one of its earlier decisions, the Committee, pointed out that “When determining how to categorize a decision under the Convention, its label in the domestic law of a Party is not decisive. Rather, [...it is determined by the legal functions and effects of a decision...” (ECE/MP.PP/C.1/2006/4/Add.2, para. 29). Also, as previously observed by the Committee (ECE/MP.PP/C.1/2006/2/Add.1, para. 28), the Convention does not establish a precise boundary between article 6-type decisions and article 7-type decisions.

*(Albania ACCC/C/2005/12; ECE/MP.PP/C.1/2007/4/Add.1, 31 July 2007, para. 65)*

**NOTE:** The two decisions the Committee referred to are the decisions made by the Council of Territorial Adjustment of the Republic of Albania on 19 February 2003, namely Decision No. 8 (approving the site of the proposed industrial and energy park) and Decision No. 20 (approving the construction site).

***no precise boundaries between Art. 6 and Art. 7 decisions***

Decision No. 20 simply designates the site where the specific activity will take place and a number of further decisions to issue permits of various kinds (e.g. construction, environmental and operating permits) would be needed before the activities could proceed. Nevertheless, on balance, it is more characteristic of decisions under article 6 than article 7, in that they concern the carrying out of a specific annex I activity in a particular place by or on behalf of a specific applicant.

(Albania ACCC/C/2005/12; ECE/MP.PP/C.1/2007/4/Add.1, 31 July 2007, para. 67)

NOTE: Decision No 20 concerns the approval of a construction site for a thermal electric power station (TES)

The Committee finds that, by failing to provide for public participation of the kind required by article 6 of the Convention, Ukraine was not in compliance with article 6, paragraph 1 (a), and, in connection with this, article 6, paragraphs 2 to 8, and article 6, paragraph 9 (second sentence).

(Ukraine ACCC/C/2004/3 and ACCC/S/2004/1; ECE/MP.PP/C.1/2005/2/Add.3, 14 March 2005, para. 38)

The Committee considers it to be beyond the scope of its mandate to examine the claim by the communicant and other expert bodies that other regulations were breached through the construction of the power line (see para. 17). However, it notes that if the local residents had had the full opportunities to be involved in the decision-making process as they should have had if article 6 of the Convention had been properly applied, they might then have been better placed to exercise their right to ‘challenge the substantive and procedural legality’ of the decision in accordance with article 9, paragraph 2, of the Convention. In this sense, therefore, the possibility that the decision itself breached other regulations has some relevance, but the violation of those regulations, if established, would not necessarily constitute non-compliance with the Convention.

(Kazakhstan ACCC/C/2004/2; ECE/MP.PP/C.1/2005/2/Add.2, 14 March 2005, para. 29)

**exclusion of  
environmental  
authorities from  
the decision-making**

Exclusion of environmental authorities from the decision-making on construction permits for expressways, as referred in paragraph 8 (g) above, can potentially have negative effect on the environmental quality of the final decision and various aspects of the construction, moreover as this exclusion also entails a de— facto exclusion of the rights of NGOs under the Hungarian Environmental Protection Act to represent the public concerned vis-à-vis environmental authorities. However, the matter as such falls outside of the scope of the Convention.

(Hungary ACCC/C/2004/4; ECE/MP.PP/C.1/2005/2/Add.4, 14 March 2005, para. 15)

Regarding the allegation of the communicant that article 6 of the Convention is applicable to the decision to fund the project in question, the Committee, on account of the fact that such a decision was taken well before the European Community ratified the Convention, and having regard to the fact that the general matter of decisions on funding is under consideration in connection with another communication (ACCC/C/2007/21), decides not to consider the allegation.

(European Community ACCC/C/2006/17; ECE/MP.PP/2008/5/Add.10, 2 May 2008, para. 39)

**multiple permitting  
decisions**

The first issue to be examined with regard to article 6 of the Convention refers to multiple permitting decisions for landfills. The Committee does not consider that article 6 necessarily requires that the full range of public participation requirements set out in paragraphs 2 to 10 of the article be applied for each and every decision on whether to permit an activity of a type covered by paragraph 1. First, the very title of the Convention (ending with the words “in environmental matters”) implies that even though it is not spelled out in article 6, the permitting decisions should at the very least be environment-related. Second, even within the environment-related permitting decisions that might be required before a given activity may proceed, there may be large variations in their significance and/or environmental relevance. Some such decisions might be of minor or peripheral importance, or be of limited environmental relevance, therefore not meriting a full-scale public participation procedure.

(European Community ACCC/C/2006/17; ECE/MP.PP/2008/5/Add.10, 2 May 2008, para. 41)

**N.B.**

On the other hand, nor does the Committee consider that where several permitting decisions are required in order for an activity covered by article 6, paragraph 1, to proceed, it is necessarily sufficient for the purposes of meeting the requirements of article 6 to apply the public participation procedure set out in just one of those permitting decisions. Where one permitting decision embraces all significant environmental implications of the activ-

ity in question, it might be sufficient. However, where significant environmental aspects are dispersed between different permitting decisions, it would clearly not be sufficient to provide for full-fledged public participation only in one of those decisions. Whether a system of several permitting decisions, where public participation is provided with respect to only some of those decisions, amounts to non-compliance with the Convention will have to be decided on a contextual basis, taking the legal effects of each decision into account. It is of crucial importance in this regard to examine to what extent such a decision indeed “permits” the activity in question.

*(European Community ACCC/C/2006/17; ECE/MP.PP/2008/5/Add.10, 2 May 2008, para. 42)*

The Committee is well aware that Parties to the Convention in their national legal frameworks provide a variety of approaches to regulatory control of activities listed in annex I of the Convention. Not all decisions required within national frameworks of regulatory control should necessarily be considered as “decisions on whether to permit proposed activities”. On the other hand, this does not mean that there is necessarily only one such a decision “to permit proposed activities”. In fact, many national frameworks require more than one such permitting decision. The Committee therefore considers that some kind of significance test, to be applied at the national level on a case-by-case basis, is the most appropriate way to understand the requirements of the Convention. The test should be: does the permitting decision, or range of permitting decisions, to which all the elements of the public participation procedure set out in article 6, paragraphs 2 to 10, apply embrace all the basic parameters and main environmental implications of the proposed activity in question? If, despite the existence of a public participation procedure or procedures with respect to one or more environment-related permitting decisions, there are other environment-related permitting decisions with regard to the activity in question for which no full-fledged public participation process is foreseen but which are capable of significantly changing the above basic parameters or which address significant environmental aspects of the activity not already covered by the permitting decision(s) involving such a public participation process, this could not be said to meet the requirements of the Convention.

*(European Community ACCC/C/2006/17; ECE/MP.PP/2008/5/Add.10, 2 May 2008, para. 43)*

Article 6 of the Convention obliges the Parties to meet the minimum requirements for public participation in decision-making related to all activities listed in annex I (and other activities determined by the Parties). While this applies to the Party concerned too, the structure of the European Community and its legislation differs from those of all other Parties to the Convention in the sense that while relevant Community legislation has been adopted to ensure public participation in various cases of environmental decision-making, it is the duty of its Member States to implement Community directives. This is the case also with the EIA Directive and the IPPC Directive, both of which apply to decision-making concerning landfills. Because of this distribution of power between the European Community and its Member States, the aforementioned significance test cannot be applied, and the assessment must take a slightly different approach.

*(European Community ACCC/C/2006/17; ECE/MP.PP/2008/5/Add.10, 2 May 2008, para. 44)*

The question to be considered is whether the EIA Directive and IPPC Directive allow the Member States to make the relevant decisions for landfills without a proper notification and opportunities for participation. Neither the EIA Directive nor the IPPC Directive seems to prevent multiple permit decisions in the Member States. The communicant has alleged that not all activities covered by annex I of the Convention are subject to both the EIA and IPPC procedures in European Community law. The Committee does not rule out the possibility that with respect to activities in annex I other than landfills, the Party concerned fails to comply with the Convention.

*(European Community ACCC/C/2006/17; ECE/MP.PP/2008/5/Add.10, 2 May 2008, para. 45)*

Bearing in mind the above characteristic features of the Community law and the fact that under EIA and IPPC directives public participation is mandatory in case of the two main permitting decisions applicable to landfills covered by annex I to the Convention, the Committee is of the opinion that as far as application of article 6 of the Convention in relation to multiple permits applicable to landfills is concerned, the Community legal framework in principle properly assures achievement of the respective goals of the Convention.

*(European Community ACCC/C/2006/17; ECE/MP.PP/2008/5/Add.10, 2 May 2008, para. 46)*

Notwithstanding the distinctive structure of the European Community, and the nature of the relationship between the Convention and the EC secondary legislation, as outlined in

***significance test  
in tiered  
decision-making***

***significance  
test and the EU***

***EIA/IPPC  
directives***

***EIA/IPPC  
directives***

paragraph 35, the Committee notes with concern the following general features of the Community legal framework:

(a) Lack of express wording requiring the public to be informed in an “adequate, timely and effective manner” in the provisions regarding public participation in the EIA and IPPC Directives;

(b) Lack of a clear obligation to provide the public concerned with effective remedies, including injunctive relief, in the provisions regarding access to justice in the EIA and IPPC Directives.

While the Committee is not convinced that these features amount to a failure to comply with article 3, paragraph 1, it considers that they may adversely affect the implementation of article 6 of the Convention. Moreover, having essentially limited its examination to decision-making relating to landfills, the Committee does not make any conclusions with regard to other activities listed in annex I of the Convention. Nor does it make any conclusions concerning the precise correlation between the list of activities contained in annex I of the Convention and those contained in the respective annexes to the EIA and IPPC Directives.

*(European Community ACCC/C/2006/17; ECE/MP.PP/2008/5/Add.10, 2 May 2008, para. 59)*

For the Committee, when examining whether the Party concerned complied with the Convention, it is essential to consider the legal implications of the resolutions adopted by CUMPM on 20 December 2003 and on 13 May 2005 in order to establish whether they amounted to decisions under article 6 or 7 of the Convention. The Committee also needs to examine whether the authorization by the Prefect on 12 January 2006, in accordance with the Environmental Code, meets the requirements of article 6 of the Convention. However, the Committee will not consider whether the procedure before the National Commission for Public Debate (CNDP) as such satisfies the requirements of the Convention in cases when it is applied. The reason for not doing so is that, as stated below, compliance by the Party concerned in the given case does not depend on that participatory procedure. The relevance of examining whether the judicial procedures fulfilled the criteria of article 9, paragraphs 2 and 5, depends on the assessments of the examination of the 2003 resolutions and the 2006 authorization. The Committee limits its review concerning access to justice to the decisions that fall under the scope of article 6 of the Convention.

*(France ACCC/C/2007/22; ECE/MP.PP/C.1/2009/4/Add.1, 8 February 2011, para. 29)*

#### **scope of options**

Having considered the above, the Committee does not find that the matters examined by it in response to the communication establish non-compliance by France with its obligations under the Convention. However, as stated in paragraph 39, the Committee notes that, while the Committee does not find that the Party concerned failed to comply with the Convention, it notes that the French decision-making procedures, as reflected in the present case, involve several other types of decisions and acts that may de facto affect the scope of options to be considered in a permitting decision under article 6 of the Convention.

*(France ACCC/C/2007/22; ECE/MP.PP/C.1/2009/4/Add.1, 8 February 2011, para. 50)*

#### **categorizing decision under Art. 6 or Art. 7**

The communication refers to a number of consecutive decisions and decision-making processes. Whether any one of these decisions amount to a permitting decision under article 6, or a decision to adopt a plan, programme or policy under article 7 of the Convention, must be determined on a contextual basis, taking into account the legal effects of each decision.

*(Austria ACCC/C/2008/26; ECE/MP.PP/C.1/2009/6/Add.1, 8 February 2011, para. 50)*

#### **EIA/SEA role for PP**

The Committee, however, in principle acknowledges the importance of environmental assessment, whether in the form of EIA or in the form of strategic environmental assessment (SEA), for the purpose of improving the quality and the effectiveness of public participation in taking permitting decisions under article 6 of the Convention or decisions concerning plans and programmes under article 7 of the Convention.

*(Spain ACCC/C/2008/24; ECE/MP.PP/C.1/2009/8/Add.1, 30 September 2010, para. 83)*

The Committee notes that the EIA Law subjects decisions for planned activities and “concepts” (see paras. 15–18 above) to an EIA procedure. The distinction between a planned activity and a concept in the EIA Law appears to reflect the distinction between decisions for specific activities under article 6 of the Convention, and plans and programmes under article 7 of the Convention. The Convention does not clearly define what the plans, programmes and policies of article 7 encompass, and leaves it to the national legislature to detail the specificities of the decisions within the general framework of the Convention.

*(Armenia ACCC/C/2009/43; ECE/MP.PP/2011/11/Add.1, April 2011, para. 49)*

[...] The Committee has not been provided with information on whether any threshold is applicable in the mining activity in question. It notes that the EIA Law appears to defer broad discretion to the executive and the administration on the setting of such thresholds without giving any further guidance, and that therefore there is a risk that the setting of thresholds may be arbitrary and decided on a case-by-case basis.

*(Armenia ACCC/C/2009/43; ECE/MP.PP/2011/11/Add.1, April 2011, para.50)*

The Concept for the exploitation of the Teghout deposits may be considered a regional development strategy and sectoral planning which falls under article 15 of the EIA Law and article 7 of the Convention, as a plan relating to the environment; or it may be the first phase (expressed as an “intention”) for a planned activity under article 6 of the EIA Law and article 6 of the Convention. While Armenian law provides for public participation in different phases of an activity and as early as possible, it does not indicate with precision the particular features of an “intention to carry out a planned activity”, a “planned activity” or a “concept”. It is further not clear what the legal effects of the approval of the concept on 30 September 2005 by the inter-agency commission were. As already observed in the past, it is sometimes difficult to determine *prima facie* whether a decision falls under article 6 or 7 of the Convention, but in all cases the requirements of paragraphs 3, 4 and 8 of article 6 apply (see ACCC/C/2005/12, (Albania), ECE/MP.PP/C.1/2007/4/Add.1, para. 70) for plans and programmes. However, it is important to identify what the legal effects of an act are — whether an act constitutes a decision under article 7 or a first phase/intention for a planned activity under article 6, because only some of the public participation provisions of article 6 apply to decisions under article 7.

*(Armenia ACCC/C/2009/43; ECE/MP.PP/2011/11/Add.1, April 2011, para.52)*

Each Party to the Convention has certain discretion to design the decision-making procedures covered by article 6 of the Convention. Also, in tiered decision-making procedures, each Party can decide which range of options is to be discussed at each stage of the decision-making. Yet, within each and every such procedure where public participation is required, it should be provided early in the procedure so as to ensure that indeed all options are open and effective participation can take place (ACCC/C/2006/16 (Lithuania) ECE/MP.PP/2008/5/Add.6, paras. 57 and 71).

*(Slovakia ACCC/C/2009/41; ECE/MP.PP/2011/11/Add.3, 12 May 2011, para. 62)*

Based on the information received from the Party concerned and the communicant, the Committee understands that the General Spatial Plans provide a basis for the overall planning of spatial development of municipalities or their sections: they determine the general structure and the prevailing purpose of the spatial development of the area and provide the framework for the future development of the respective areas.

*(Bulgaria ACCC/C/2011/58; ECE/MP.PP/C.1/2013/4, 11 January 2013, para. 62)*

On the basis of these characteristics, the Committee concludes that the General Spatial Plans do not have such legal functions or effects so as to qualify as “decisions on whether to permit a specific activity” in the sense of article 6, and thus are not subject to article 9, paragraph 2, of the Convention.

*(Bulgaria ACCC/C/2011/58; ECE/MP.PP/C.1/2013/4, 11 January 2013, para. 63)*

As the Committee understands, the Detailed Spatial Plans provide details for the development of specific areas. These Plans are mandatory for the development projects and the permits which are necessary for the implementation of such projects.

*(Bulgaria ACCC/C/2011/58; ECE/MP.PP/C.1/2013/4, 11 January 2013, para. 67)*

Under the law of the Party concerned, the Detailed Spatial Plans do not have the legal nature of “decisions on whether to permit a specific activity” in the sense of article 6 of the Convention, as a specific permit (construction and/or exploitation permit) is needed to implement the activity (project). Therefore, article 9, paragraph 2, of the Convention, is not applicable.

*(Bulgaria ACCC/C/2011/58; ECE/MP.PP/C.1/2013/4, 11 January 2013, para. 68)*

The Committee first examines the nature of the hybrid bill and whether it falls under article 6 or article 8 of the Convention. As already established in previous findings, this must be determined on a contextual basis, taking into account the legal effects of the act, while its label under the domestic law of the Party concerned is not decisive (cf. the Committee’s findings concerning communication ACCC/C/2005/11 (Belgium), ECE/MP.PP/C.1/2006/4/Add.2, para. 29; and concerning communication ACCC/C/2006/17

***tiered  
decision-making***

***spatial planning***

***hybrid bill***



(European Community), ECE/MP.PP/C.1/2008/5/Add.10, para. 42).

(United Kingdom ACCC/C/2011/61; ECE/MP.PP/C.1/2013/13, 23 October 2013, para. 52)

**permitting acts  
by parliament**

The legal effect of the Crossrail Act, following the hybrid bill procedure, is the authorization of a project, the Crossrail. The Act is processed as a “hybrid bill” because of the magnitude of the project, affecting national interests in general. Had it been an executive regulation or an act introducing legislative changes applicable to all, it would have been processed following the public bill process. As such, it does not fall under article 8 of the Convention, because, while the system of the Party concerned — recognizing the cross-cutting impact of such a large project on various spheres of national policy, including transport, economy, employment, etc. — opts for a procedure that passes through Parliament, the act ultimately permits a specific activity. Therefore, the Act is a decision falling under article 6 of the Convention.

(United Kingdom ACCC/C/2011/61; ECE/MP.PP/C.1/2013/13, 23 October 2013, para. 53)

**permitting through  
legislative acts**

It is noted that processes similar to the hybrid bill process, under a different label, exist under the jurisdictions of other Parties to the Convention (see, e.g., the recent jurisprudence of the Court of Justice of the EU concerning Belgium: *Boxus and others v. Région wallonne*, C-128/09 (2012) and *Solvay v. Région wallonne*, C-182/10 (2012)). While such processes are a reasonable way for Governments to deal with permitting large projects of significant national and also transboundary impact (e.g., the Channel Tunnel), the Committee underlines that the process of adopting projects by such means still have to be considered within the provisions of the Aarhus Convention, and thus that the Party concerned has to ensure adequate opportunities for public participation. Although the Party concerned refers in the case of the Crossrail Act to a “specific legislative act”, the Committee holds that the process adopting the Crossrail Act by means of a hybrid bill falls within the scope of article 6 of the Aarhus Convention as it serves as a decision to permit a specific activity.

(United Kingdom ACCC/C/2011/61; ECE/MP.PP/C.1/2013/13, 23 October 2013, para. 56)

**size & impact  
of project**

The assessment of whether a Party concerned is in compliance with article 6 of the Convention depends on whether the steps taken to ensure public participation are commensurate with the size and possible environmental impact of the project. If, for instance, the project concerns the construction of a nuclear power plant, then there is clearly an obligation for the public notice to be advertised widely in national and local media. However, if a project is of local significance, such as the opening of a forest road, a public notice in local media may suffice for informing the public concerned (see also findings on communication ACCC/C/2006/16 (Lithuania) (ECE/MP.PP/C.1/2008/5/Add.6), para. 67).

(European Union and United Kingdom ACCC/C/2012/68; ECE/MP.PP/C.1/2014/5, 13 January 2014, para. 97)

In this case, the Committee finds that the public concerned, including the communicant, had ample opportunity in more than one instance to participate in the consultation process and to submit comments. In this respect the Committee notes the following aspects. First, the way the notice for the project was advertised in the local press fits the local significance of the project and meets the requirements of article 6, paragraph 2, of the Convention. Second, the time frames provided for public consultations (almost one month each time for the original and revised versions of the environmental statement) were reasonable and therefore in line with article 6, paragraph 3, of the Convention. Third, the public concerned was involved from the beginning of the process. The process was therefore in conformity with article 6, paragraph 4, of the Convention. Fourth, the comments submitted by the public were addressed, in particular the main point of concern regarding the protection of the Golden Eagle, entailing that the Party complied with the requirements of article 6, paragraph 6, of the Convention.

(European Union and United Kingdom ACCC/C/2012/68; ECE/MP.PP/C.1/2014/5, 13 January 2014, para. 98)

**state aid decisions**

Prior to engaging in these considerations and without examining the legal nature of REFIT I, the Committee finds that in this case the decisions taken by the Party concerned to approve State aid for REFIT I and to approve financial assistance for the interconnector, on their own, do not amount to decisions under articles 6 or 7 of the Convention. Therefore, the Committee decides to focus on NREAP, and to deal with allegations concerning articles 4, 5 and 9 of the Convention only.

(European Union ACCC/C/2010/54; ECE/MP.PP/C.1/2012, 2 October 2012, para. 74)

**categorizing decision  
under Art. 6 or Art. 7**

The Convention provides for somewhat differentiated requirements for public participa-

tion in the framework of decisions on specific activities (art. 6), plans, programmes (art.7) and policies (art. 7), or executive regulations and generally applicable legally binding normative instruments (art. 8). Whether the Traffic Regulation Order falls within the scope of article 6, article 7 or article 8 of the Convention must be determined on a contextual basis, taking into account the legal effects of the Order (cf. the findings on communication ACCC/C/2006/1 concerning Lithuania (ECE/MP.PP/2008/5/Add.6), para. 57).

(United Kingdom ACCC/C/2010/53; ECE/MP.PP/C.1/2013/3, 11 January 2013, para. 82)

Here, the Committee recalls its observations with regard to the nature of the OVOS/expertiza system as a development control mechanism followed in many countries of Eastern Europe, the Caucasus and Central Asia (cf., findings on communication ACCC/C/2009/37 concerning compliance by Belarus (ECE/MP.PP/2011/11/Add.2, para. 74)). In the view of the Committee, the OVOS and the expertiza in this system should be considered jointly as the decision-making process constituting a form of environmental impact assessment procedure.

(Kazakhstan ACCC/C/2011/59; ECE/MP.PP/C.1/2013/9, 16 July 2013, para. 44)

Considering the role of the developer in the OVOS, including in the public participation procedure, under the legislation of the Party concerned, the Committee stresses that the developers or the consultants hired by them, as “project proponents” may not ensure all the conditions necessary to guarantee the proper conduct of the public participation. The Committee thus draws the attention of the Party concerned to the fact that reliance solely on the developer to provide for public participation is not in line with the provisions of the Convention (cf. ECE/MP.PP/2011/11/Add.2, para. 80; and findings on communication ACCC/C/2006/16 concerning Lithuania (ECE/MP.PP/2008/5/Add.6, para. 78)), and that due responsibility must be undertaken by the public authorities during the public participation procedure. As noted earlier by the Committee, “these observations regarding the role of the developers (project proponents) shall not be read as excluding their involvement, under the control of the public authorities, into the organization of the public participation procedure (for example conducting public hearings) or imposing on them special fees to cover the costs related to public participation” (ECE/MP.PP/2011/11/Add.2, para. 81).

(Kazakhstan ACCC/C/2011/59; ECE/MP.PP/C.1/2013/9, 16 July 2013, para. 45)

The Committee notes that the right of an applicant to appeal to the Secretary of State for Communities and Local Government or to the Secretary of State’s Planning Inspectors are not procedures under article 9, paragraph 2, of the Convention. They are instead procedures by way of which an applicant whose planning decision has been refused may appeal that decision before an executive body, not constituting a court of law or independent and impartial body established by law. This is so even though in the course of such an appeal members of the public concerned may be heard. If the procedure results in a retaking of the decision at stake, then, depending on the proposed activity under consideration, it engages article 6 of the Convention. Similarly, the latter would be the case if the Secretary of State calls in an application for its own determination.

(United Kingdom ACCC/C/2010/45 and ACCC/C/2011/60; ECE/MP.PP/C.1/2013/12, 23 October 2013, para. 84)

The distinction between “national” and “local” activities, for the purpose of public participation, as such, is not contrary to the Convention. However, the designation of a project as “national” or “local” should be the responsibility of the public authorities and not of the developer. Moreover, a project of such a magnitude and potential environmental impact as the NPP at issue can by no means be subjected to participatory procedures designed for the local level only.’

(Belarus ACCC/C/2009/44; ECE/MP.PP/C.1/2011/6/Add.1, 19 September 2011, para. 62)

Furthermore, bearing in mind its findings and recommendations for communication ACCC/C/2009/37, the Committee notes that there is considerable uncertainty as to the participatory procedures applicable in cases involving nuclear activities. In this respect, it is of the utmost importance that in amending its legislative, regulatory and other measures the Party concerned ensure the compatibility of and coherence between the general framework for public participation in decisions on specific activities and the framework for public participation applicable to nuclear activities.

(Belarus ACCC/C/2009/44; ECE/MP.PP/C.1/2011/6/Add.1, 19 September, para. 63)

In the above context, and reiterating its findings in ACCC/C/2009/37 concerning the role of the developer in the procedure, the Committee stresses that it is not in compliance with

**OVOS/expertiza**

**role of developer**

**local v. national projects**

**uncertainty of procedures**

**summarizing comments from public**

the Convention for the authority responsible for taking the decision (including the authorities responsible for the expertiza conclusions) to be provided only with the summary of the comments submitted by the public. The Convention requires that the full content of all the comments made by the public (whether those claimed to be accommodated by the developer or those which are not accepted) be submitted to such authorities.

*(Belarus ACCC/C/2009/44; ECE/MP.PP/C.1/2011/6/Add.1, 19 September 2011, para.64)*

**nuclear power  
plant siting studies**

The Committee was requested by the communicant to examine the decision concerning the details on the construction of the NPP (location, technology, etc.) as an activity under article 6, and the decision to construct a new NPP as a plan under article 7. The Committee notes, however, that the only document acknowledged by both the communicant and the Party concerned to have been issued in relation to the project is a study for the selection of possible locations for the NPP, and the Committee has not been provided with any further information to prove that any decision in this respect has been taken. The Committee does not consider a study aiming at examining possible locations for a project, according to certain criteria (geographical, scientific, etc.), and making proposals for the preferred location(s) to be a decision under article 6, or as a plan, programme or policy under article 7, of the Convention. Nor is there any other evidence provided to the Committee that there was a decision taken to permit the NPP. Therefore, in relation to the study for the possible locations, the Committee will not examine any allegations of non-compliance with the public participation provisions of articles 6 and 7 of the Convention.

*(Romania ACCC/C/2010/51; ECE/MP.PP/C.1/2014/12, 14 July 2014, para.73)*

The Committee recalls that article 9, paragraph 2, of the Convention is directly linked to article 6, which grants the rights of the public concerned to participate in permitting procedures for specific activities. The Parties must ensure that in such procedures, members of the public concerned can fully exercise their participatory procedural rights set out in article 6 of the Convention.

*(Germany ACCC/C/2008/31; ECE/MP.PP/C.1/2014/8, 4 June 2014, para. 82)*

**procedural errors**

Article 9, paragraph 2, in conjunction with article 9, paragraph 4, of the Convention requires Parties to provide members of the public concerned with access to effective judicial protection should their procedural rights under article 6 be violated. Therefore, it would not be compatible with the Convention to allow members of the public to challenge the procedural legality of the decisions subject to article 6 of the Convention in theory, while such actions were systematically refused by the courts in practice, as either not admissible or not well founded, on the grounds that the alleged procedural errors were not of importance for the decisions (i.e., that the decision would not have been different, if the procedural error had not taken place).

*(Germany ACCC/C/2008/31; ECE/MP.PP/C.1/2014/8, 4 June 2014, para. 83)*

**procedural rights**

On the basis of the above, the Committee examines the information provided by the communicant and the Party concerned as to whether the courts of the Party concerned systematically refuse review applications as non-admissible or ill-founded when the applicants allege that procedural rights under article 6 of the Convention have been infringed.

*(Germany ACCC/C/2008/31; ECE/MP.PP/C.1/2014/8, 4 June 2014, para. 84)*

EAA section 2 does not establish any criteria for determining when a contravention of a legal provision could be “of importance” for a challenged decision. EAA section 4 specifies that the reversal of a decision can be requested if (a) an EIA, or (b) a preliminary assessment of a project concerning the requirement for an EIA, required in accordance with the EIA Act, was not carried out. The Committee notes that there is disagreement between the communicant and the Party concerned as to whether the errors listed in EAA section 4 “can” lead to reversal of the challenged decision, as the communicant asserts, or “must” have this effect, which is the position of the Party concerned.

*(Germany ACCC/C/2008/31; ECE/MP.PP/C.1/2014/8, 4 June 2014, para. 85)*

Based on the information provided to it, the Committee understands that for its appeal to be admissible, an NGO must assert that the allegedly violated provision “could be” of importance for the contested decision, while to find an appeal justified, the court must conclude that the violated provisions “are” of importance for the decision.

*(Germany ACCC/C/2008/31; ECE/MP.PP/C.1/2014/8, 4 June 2014, para. 86)*

The possibility for national courts to evaluate whether the allegedly infringed provisions could be of any importance for the merits of the case, is not, in general, contrary to the

requirements of article 9, paragraph 2, and to the objectives of the Convention. This possibility, as such, would not prevent environmental NGOs from challenging both substantive and procedural legality of the decisions.

*(Germany ACCC/C/2008/31; ECE/MP.PP/C.1/2014/8, 4 June 2014, para. 87)*

The information provided by the communicant and the Party concerned relating to the scope of judicial review for alleged procedural errors raises doubts as to whether the legal system of the Party concerned ensures adequate access for environmental NGOs to review the procedural legality of the decisions subject to article 6 of the Convention. This is so namely because the question of the possible “importance of the provision for the contested decision” is, according to section 2, paragraph 1, of the EAA, considered by the court already when deliberating on the admissibility of the case, i.e., not in the full judicial review procedure.

*(Germany ACCC/C/2008/31; ECE/MP.PP/C.1/2014/8, 4 June 2014, para. 88)*

The Party concerned has submitted relevant recent case law showing that German courts consider violations of procedural rights granted under article 6 of the Convention as fundamental errors of procedure that would require review and eventually annulment of the decision, and that courts are ready to apply the Convention directly in that respect (“direct effect of article 9, paragraph 2, of the Convention supplements the provisions of section 2, paragraphs 1 and 5, of the EAA”). The request for a preliminary ruling made by the Federal Administrative Court to CJEU in the Altrip case (see para 35 above) indicates that there may be uncertainty as to how German courts should deal with procedural errors concerning decisions subject to article 6 of the Convention. The communicant has not, however, sufficiently substantiated, e.g., by reference to recent case law, that the courts when applying the EAA in practice refuse to deal with appeals and/or arguments of environmental NGOs concerning alleged procedural errors with respect to decisions subject to article 6 of the Convention. Moreover, it follows from the CJEU ruling in Altrip that the German courts should take procedural errors into account in environmental cases. Therefore, the Committee does not conclude that the Party concerned fails to comply with article 9, paragraph 2, of the Convention with respect to the scope of judicial review regarding the procedural legality of decisions subject to article 6 of the Convention.

*(Germany ACCC/C/2008/31; ECE/MP.PP/C.1/2014/8, 4 June 2014, para. 89)*

The Committee nevertheless raises a concern about the lack of clarity of the legal system of Party concerned as to whether a violation of the procedural rights prescribed under article 6 would be considered as a fundamental error of procedure to allow for fulfilment of the rights prescribed under article 9, paragraph 2, of the Convention. The Committee emphasizes that if German courts in practice were to deny review of the appeals and/or arguments of members of the public concerned, including environmental NGOs, regarding the procedural legality of decisions subject to article 6, this would amount to non-compliance with article 9, paragraph 2.

*(Germany ACCC/C/2008/31; ECE/MP.PP/C.1/2014/8, 4 June 2014, para. 90)*

***lack of clarity***

### 1. Each Party:

Taking into account the fact that different interpretations are possible with respect to these issues, the Committee chooses to focus on those aspects of the case where the obligations of the Party concerned are most clear-cut. In this respect, it notes that the public participation requirements for decision-making on an activity covered by article 7 are a subset of the public participation requirements for decision-making on an activity covered by article 6. Regardless of whether the decisions are considered to fall under article 6 or article 7, the requirements of paragraphs 3, 4 and 8 of article 6 apply. Since each of the decisions is required to meet the public participation requirements that are common to article 6 and article 7, the Committee has decided to examine the way in which those requirements have or have not been met.

*(Albania ACCC/C/2005/12; ECE/MP.PP/C.1/2007/4/Add.1, 31 July 2007, para. 70)*

The extent to which the provisions of article 6 apply in this case depends inter alia on the extent to which the decrees (or some of them) can be considered “decisions on specific activities”, that is, decisions that effectively pave the way for specific activities to take place. While the decrees are not typical of article 6–type decisions on the permitting of specific activities, some elements of them are (as is mentioned in paragraphs 12 and 23 above) more specific than a typical decision on land use designation would normally be. The Convention does not establish a precise boundary between article 6–type decisions and article

7-type decisions. Notwithstanding that, the fact that some of the decrees award leases to individual named enterprises to undertake quite specific activities leads the Committee to believe that, in addition to containing article 7-type decisions, some of the decrees do contain decisions on specific activities.

(Armenia ACCC/C/2004/8; ECE/MP.PP/C.1/2006/2/Add.1, 10 May 2006, para. 28)

- (a) Shall apply the provisions of this article with respect to decisions on whether to permit proposed activities listed in annex I;

The landfill in question belongs to activities covered by annex I, paragraph 5, of the Convention. The full range of public participation procedures under article 6 of the Convention applies to decisions whether to permit such activities. Furthermore, the Vilnius County Waste Management Plan belongs to plans “relating to the environment” to which article 7 of the Convention applies.

(Lithuania ACCC/2006/16; ECE/MP.PP/2008/5/Add.6, 4 April 2008, para. 55)

### **waste management plans**

As stated above, detailed plans in Lithuanian law have the function of the principal planning permission authorizing a project to be located in a particular site and setting the basic parameters of the project. This suggests that, despite the label in Lithuanian law and the fact that detailed plans are treated as plans under article 7 of the Convention in the Lithuanian national implementation report of 2005, the detailed plan for the Kazokiskes landfill generates such legal effects as to constitute a permit decision under article 6 rather than a decision to adopt a plan under article 7 of the Convention. Considering the function and legal effects of the EIA decision and the IPPC decision, these decisions too constitute permitting decisions under article 6 of the Convention. However, bearing in mind that the decision concerning the detailed plan was taken on 5 April, that is, prior to the Convention entry into force for Lithuania, the Committee has evaluated only the EIA and IPPC decisions for the Kazokiskes landfill in the light of article 6 of the Convention.

(Lithuania ACCC/2006/16; ECE/MP.PP/2008/5/Add.6, 4 April 2008, para. 58)

Regarding the allegation of the communicant that article 6 of the Convention is applicable to the decision to fund the project in question, the Committee, on account of the fact that such a decision was taken well before the European Community ratified the Convention, and having regard to the fact that the general matter of decisions on funding is under consideration in connection with another communication (ACCC/C/2007/21), decides not to consider the allegation.

(European Community ACCC/C/2006/17; ECE/MP.PP/2008/5/Add.10, 2 May 2008, para. 39)

### **EIA/IPPC directives**

Notwithstanding the distinctive structure of the European Community, and the nature of the relationship between the Convention and the EC secondary legislation, as outlined in paragraph 35, the Committee notes with concern the following general features of the Community legal framework:

(a) Lack of express wording requiring the public to be informed in an “adequate, timely and effective manner” in the provisions regarding public participation in the EIA and IPPC Directives;

(b) Lack of a clear obligation to provide the public concerned with effective remedies, including injunctive relief, in the provisions regarding access to justice in the EIA and IPPC Directives.

While the Committee is not convinced that these features amount to a failure to comply with article 3, paragraph 1, it considers that they may adversely affect the implementation of article 6 of the Convention. Moreover, having essentially limited its examination to decision-making relating to landfills, the Committee does not make any conclusions with regard to other activities listed in annex I of the Convention. Nor does it make any conclusions concerning the precise correlation between the list of activities contained in annex I of the Convention and those contained in the respective annexes to the EIA and IPPC Directives.

(European Community ACCC/C/2006/17; ECE/MP.PP/2008/5/Add.10, 2 May 2008, para. 59)

### **financing decisions**

In regard to the alleged non-compliance with article 6 of the Convention, the decisions in question are decisions concerning the financing of a specific project. The decision on whether to permit a proposed activity listed in annex I was taken by the Albanian authorities. The Committee has held with respect to communication ACCC/C/2005/12 that the EIA procedure undertaken by the Albanian authorities was not in compliance with the pro-

visions of article 6 of the Convention. EIB has no legal authority of its own to undertake its own EIA procedure on the territory of a State, as this would constitute an administrative act falling under the territorial sovereignty of the respective State. The Bank has to rely on the procedures undertaken by the responsible authorities of the State. The Committee considers that in general a decision of a financial institution to provide a loan or other financial support is legally not a decision to permit an activity, as is referred to in article 6 of the Convention. Moreover, it is to be noted that the decisions on financial transactions were taken by EIB before the Convention entered into force for the European Community.

*(European Community ACCC/C/2007/21; ECE/MP.PP/C.1/2009/2/Add.1, 11 December 2009, para. 36)*

Waste treatment installations such as the one in Fos-sur-Mer are listed in annex I, paragraph 5, of the Convention and thus decisions on whether to permit such installations are subject to the requirement for public participation in article 6 of the Convention. Moreover, decisions, acts and omissions related to permit procedures for such installations are subject to the review procedure set out in article 9, paragraph 2, of the Convention.

*(France ACCC/C/2007/22; ECE/MP.PP/C.1/2009/4/Add.1, 8 February 2011, para. 28)*

By the two resolutions of 20 December 2003, CUMPM chose the method of processing its household wastes and the location for the installations, and decided to resort to the public service concession procedure, i.e. to a tender in order to have a private operator carry out public services. While the resolutions to choose modalities and location were instrumental to the formation of the installation and for the municipality's work on the management of household wastes, in no way did they as such permit the waste treatment centre. Nor did the resolution to launch a tender procedure imply a permit for the installation or the operator in spe. Rather, for such classified installations, the Environmental Code sets out that a permit is required by the Prefect. Thus, while there may be many good reasons to provide for public participation before adopting municipal resolutions of this kind, they did not amount to decisions on whether to permit the activity, as set out in article 6 and annex I of the Convention. The Committee is fully aware that different types of decisions and acts, regardless of whether they amount to a decision under article 6, may narrow down the scope of options for the final decision. Whether that is the situation in this case will be considered when examining the 2006 authorization by the Prefect. In any case, the Party concerned did not fail to comply with article 6 of the Convention, by not ensuring public participation before the adoption of the resolutions of 20 December 2003.

*(France ACCC/C/2007/22; ECE/MP.PP/C.1/2009/4/Add.1, 8 February 2011, para. 32)*

When the resolutions were adopted, on 20 December 2003, there was already a land-use plan of 1991 and a zone development plan of the industrial and port zone of 1993 in force for the location in Fos-sur-Mer. According to the information given to the Committee, none of these plans forbade the construction of the waste treatment centre. The resolutions neither had any legal effect on these plans, nor conferred any right to construct or operate the waste treatment centre or to use the site, nor in any other respect did they entail legal effects amounting to that of the applicable planning instruments. Moreover, they did not take the form of programmes or policies. Thus, the Party concerned did not fail to comply with article 7 of the Convention either, by not ensuring public participation before the 2003 resolutions were adopted.

*(France ACCC/C/2007/22; ECE/MP.PP/C.1/2009/4/Add.1, 8 February 2011, para. 33)*

The resolution adopted by CUMPM on 13 May 2005 approved the municipality's choice of concessionaire for the waste treatment project. In the resolution, the municipality also defined the modalities for the processing of the waste. While this resolution was also instrumental for the formation of the installation as well as for the permit application to be examined at a later stage by the Prefect, it did not imply or amount to a permit for the waste treatment plant or the means of processing the waste that would fall within the scope of article 6 of the Convention. Thus, the adoption of the resolution as such without public participation did not result in a violation of article 6 of the Convention. As stated in paragraph 32, the Committee realises that different formal and informal decisions, regardless of whether they amount to a decision under article 6 of the Convention, may narrow down the scope of options for the final decision. This issue will be considered when examining the 2006 authorization by the Prefect, however.

*(France ACCC/C/2007/22; ECE/MP.PP/C.1/2009/4/Add.1, 8 February 2011, para. 34)*

According to the Committee, the decision of the Prefect of Bouches-du-Rhône on 12 January 2006 to authorize the application for the waste treatment centre in Fos-sur-Mer amounts to a decision on a specific activity according to article 6 in conjunction with

**tender v. permit**

annex I of the Convention. Thus, the procedure leading to the authorization must fulfil all the requirements of article 6 of the Convention.

*(France ACCC/C/2007/22; ECE/MP.PP/C.1/2009/4/Add.1, 8 February 2011, para. 35)*

As shown by the communicant, the authorization by the Prefect was preceded by several acts by CUMPM and the private operator. Leaving aside the plans from 1991 and 1993, respectively, the resolutions by CUMPM had the effect of narrowing down what was considered by CUMPM as only relevant method and site for treatment of household wastes. When deciding to establish a public tender, to approve the choice of concessionaire and to enter into a contract with the private operator, CUMPM in practice also narrowed down its scope of considerations of relevant forms of waste treatment. However, the question is whether any of these steps and decisions, together or in isolation, had the effect of “closing” different options in the decision-making process. As stated by the Committee in its findings with regard to communication ACCC/C/2006/17 (European Community), where several permit decisions are required in order for an activity covered by article 6, paragraph 1, to proceed, it is not necessarily sufficient to apply the public participation procedures of article 6 to just one of the permitting decisions (ECE/MPPP/2008/5/Add.10, para. 42). When deciding whether public participation is required in several procedures for one activity, the legal effects of each decision, and whether it amounts to a permit, must be taken into account.

*(France ACCC/C/2007/22; ECE/MP.PP/C.1/2009/4/Add.1, 8 February 2011, para. 37)*

Related to this question is whether any of the other decisions referred to by the communicant were such that they would also require public participation in accordance with article 6, paragraph 1, of the Convention. As held in paragraphs 28 and 29, the CUMPM resolutions of 20 December 2003 did not entail such legal effects that they amounted to permit decisions. Nor was the resolution of 13 May 2005 by the municipality to choose the concessionaire such as to entail the legal effects of a permit for the concessionaire. While it was not for the Prefect to try the application on its usefulness, in the Committee’s view the decision-making procedure before the Prefect appears as a single act that covers all aspects of the location, design and operation of the installation. Thus, the fact that no provision was made for public participation with respect to the other decisions referred to does not constitute failure to comply with article 6, paragraph 1, of the Convention. However, while the Committee does not find that the Party concerned failed to comply with article 6 of the Convention, it notes that the French decision-making procedures, as reflected in the present case, involve several other types of decisions and acts that may de facto affect the scope of options to be considered in a permitting decision under article 6 of the Convention.

*(France ACCC/C/2007/22; ECE/MP.PP/C.1/2009/4/Add.1, 8 February 2011, para. 40)*

As for the consideration of alternative transport solutions in the Enns Valley, taking into account the advisory nature of the Regional Planning Council, the Committee concludes that the decision taken by the Regional Planning Council on 25 April 2005 does not amount to a permitting decision which authorizes a proposed activity listed in annex I of the Convention. Furthermore, taking into account the fact that the decision taken by the Styrian Provincial Government on 21 April 2008 does not authorize the construction of a road, the strategic assessment still to be conducted based on the SP-V Act and the EIA still to be conducted on the basis of the EIA Act 2000, the Committee concludes that the decision taken by the Styrian Provincial Government of 21 April 2008 does not amount to a permitting decision which authorize a proposed activity that is covered by any of the categories listed in annex I of the Convention.

*(Austria ACCC/C/2008/26; ECE/MP.PP/C.1/2009/6/Add.1, 8 February 2011, para. 54)*

The Committee concludes that not introducing the 7.5 tonnage restriction for lorries on route B 320 does not amount to a decision to permit a proposed activity listed in annex I of the Convention.

*(Austria ACCC/C/2008/26; ECE/MP.PP/C.1/2009/6/Add.1, 8 February 2011, para. 60)*

### **EIA and PP**

The Committee notes that it cannot address the adequacy or result of an EIA screening procedure, because the Convention does not make the EIA a mandatory part of public participation; it only requires that when public participation is provided for under an EIA procedure in accordance with national legislation (paragraph 20 of annex I to the Convention), such public participation must apply the provisions of its article 6. Thus, under the Convention, public participation is a mandatory part of the EIA, but an EIA is not necessarily a part of public participation. Accordingly, the factual accuracy, impartiality and legality of screening decisions are not subject to the provisions of the Convention, in particular

the decisions that there is no need for environmental assessment, even if such decisions are taken in breach of applicable national or international laws related to environmental assessment, and cannot thus be considered as failing to comply with article 6, paragraph 1, of the Convention.

*(Spain ACCC/C/2008/24; ECE/MP.PP/C.1/2009/8/Add.1, 30 September 2010, para.82)*

In the view of the Committee, the conclusions of the environmental expertiza shall be considered as a decision whether to permit the HPP project; OVOS and the expertiza in Belarus shall be considered jointly as the decision-making process constituting a form of an EIA procedure: the procedure starts with the developer submitting to the competent authorities the “declaration of intent” (zajavka), which includes the development of the EIA documentation and the carrying out of the public participation process (see also paras. 22 and 23 above), and ends with the issuance of the conclusions by the competent authorities, which, together with the construction permit, is the decision of permitting nature.

*(Belarus ACCC/C/2009/37; ECE/MP.PP/2011/11/Add.2, 12 May 2011, para.74)*

**NOTE:** The Committee was analyzing the EIA legislation in force as of 2009. In 2010 a completely new legal framework for EIA was introduced in Belarus.

The Committee has already noted (ACC/C/2006/16 Lithuania, para. 78) that such a reliance on the developer in providing for public participation raises doubts as to whether such an arrangement is fully in line with the Convention because it is implicit in certain provisions of article 6 of the Convention that the relevant information should be available directly from a public authority, and that comments should be submitted to the relevant public authority (art. 6, paras. 2 (d) (iv)–(v) and 6).

*(Belarus ACCC/C/2009/37; ECE/MP.PP/2011/11/Add.2, 12 May 2011, para.77)*

The above observations do not mean, however, that the responsibility for performing some or even all the above functions related to public participation should always be placed on the authority competent to issue a decision whether to permit a proposed activity. In fact, in many countries the above functions are being delegated to various bodies or even private persons. Such bodies or persons, performing public administrative functions in relation to public participation in environmental decision-making, should be treated, depending on the particular arrangements adopted in the national law, as falling under the definition of a “public authority” in the meaning of article 2, paragraph 2 (b) or (c).

*(Belarus ACCC/C/2009/37; ECE/MP.PP/2011/11/Add.2, 12 May 2011, para.78)*

To ensure proper conduct of the public participation procedure, the administrative functions related to its organization are usually delegated to bodies or persons which are quite often specializing in public participation or mediation, are impartial and do not represent any interests related to the proposed activity being subject to the decision-making.

*(Belarus ACCC/C/2009/37; ECE/MP.PP/2011/11/Add.2, 12 May 2011, para.79)*

While the developers (project proponents) may hire consultants specializing in public participation, neither the developers themselves nor the consultants hired by them can ensure the degree of impartiality necessary to guarantee proper conduct of the public participation procedure. Therefore, the Committee in this case finds that, similarly to what it has already observed in the past “reliance solely on the developer for providing for public participation is not in line with these provisions of the Convention” (ACCC/C/2006/16 Lithuania, para. 78).

*(Belarus ACCC/C/2009/37; ECE/MP.PP/2011/11/Add.2, 12 May 2011, para.80)*

These observations regarding the role of the developers (project proponents) shall not be read as excluding their involvement, under the control of the public authorities, into the organization of the public participation procedure (for example conducting public hearings) or imposing on them special fees to cover the costs related to public participation. Furthermore, any arrangements requiring or encouraging them to enter into public discussions before applying for a permit are well in line with article 6, paragraph 5, provided the role of such arrangements is supplementary to the mandatory public participation procedures.

*(Belarus ACCC/C/2009/37; ECE/MP.PP/2011/11/Add.2, 12 May 2011, para.81)*

Because the amended Planning Agreement does not fit within any of the activities listed in annex I to the Convention, the Committee finds that the adoption of the amended Planning Agreement is not a decision within the scope of article 6, paragraph 1 (a) of the Convention. Paragraph 8 (a) of annex I is the only paragraph of the annex relating to airports,

***environmental  
expertiza  
conclusions***

***role of developer***

***delegation  
of functions***

***impartiality  
in organizing PP***

***role of developer***



but it concerns the construction of airports with a basic runway length of 2,100 metres or more. At the time of the events in question, the Belfast City Airport's runway was 1,829 metres, which is below the threshold set out in annex I. The amended Planning Agreement of 14 October 2008 concerned an increase in the number of permitted seats for sale. As noted in paragraph 22 above, the amended Planning Agreement did not change the existing runway length of the airport.

*(United Kingdom ACCC/C/2008/27; ECE/MP.PP/C.1/2010/6/Add.2, November 2010, para. 38)*

The Committee finds that the AWPR is an activity covered by annex I of the Convention and thus subject to article 6, paragraph 1(a) of the Convention for two reasons. First, the AWPR involves the construction of a new road of four lanes of more than 10 kilometres in length (paragraph 8(c) of Annex I). Second, the AWPR is an activity regarding which national legislation (section 20A of the Roads (Scotland) Act 1984) requires that public participation be provided under the environmental impact assessment procedure (paragraph 19 of Annex I).

*(United Kingdom ACCC/C/2009/38; ECE/MP.PP/C.1/2011/2/Add.10, April 2011, para. 80)*

Nuclear power plants, such as the Mochovce NPP, are activities covered by article 6, paragraph 1, and annex I, paragraph 1, of the Convention, for which public participation shall be provided in permit procedures. The Committee notes that the original construction permit for Mochovce NPP Units 3 and 4 was issued in 1986, long before the Convention entered into force for Slovakia. This does not, as such, prevent the Convention from being applicable to subsequent reconsiderations and updates by public authorities of the conditions for the activity in question, and to possible permits given for extensions of the activity, after the entry into force of the Convention for the Party concerned.

*(Slovakia ACCC/C/2009/41; ECE/MP.PP/2011/11/Add.3, 12 May 2011, para. 44)*

The project concerns the construction of a high-frequency railway, from east to west, across London and with connections to the underground rail network. The legislation of the Party concerned (Standing Order 27A) requires an EIA procedure and the deposit of an Environmental Statement. Therefore, the project is an activity under article 6, paragraph 1 (a), in conjunction with paragraph 20 of annex I to the Convention.

*(United Kingdom ACCC/C/2011/61; ECE/MP.PP/C.1/2013/13, 23 October 2013, para. 55)*

- (b) Shall, in accordance with its national law, also apply the provisions of this article to decisions on proposed activities not listed in annex I which may have a significant effect on the environment. To this end, Parties shall determine whether such a proposed activity is subject to these provisions; and

The Committee similarly finds that the amended Planning Agreement of 14 October 2008 is not within the scope of article 6, paragraph 1 (b), of the Convention. There has been no determination by the Party concerned that the proposed activity in question is subject to the provisions of article 6. Thus, the amended Planning Agreement of 14 October 2008, which increased the permitted seats for sale from 1.5 million to 2 million, is not subject to either article 6, paragraph 1 (a), or paragraph 1 (b), of the Convention.

*(United Kingdom ACCC/C/2008/27; ECE/MP.PP/C.1/2010/6/Add.2, November 2010, para. 40)*

### **EIA screening decisions**

With respect to the communicant's allegations that the Czech legal system fails to provide for judicial review of EIA screening conclusions, article 6, paragraph 1 (b), of the Convention requires Parties to determine whether an activity which is outside the scope of annex I, and which may have a significant effect on the environment, should nevertheless be subject to the provisions of article 6. Therefore, when this is determined for each case individually, the competent authority is required to make a determination which will have the effect of either creating an obligation to carry out a public participation procedure in accordance with article 6 or exempting the activity in question from such an obligation. Under Czech law, that determination is in practice made through the EIA screening conclusions. As such, the Committee considers the outcome of the EIA screening process to be a determination under article 6, paragraph 1 (b). Article 9, paragraph 2, of the Convention requires Parties to provide the public access to a review procedure to challenge the procedural and substantive legality of any decision, act or omission subject to the provisions of article 6. This necessarily also includes decisions and determinations subject to article 6, paragraph 1 (b). The Committee thus finds that, to the extent that the EIA screening process and the relevant criteria serve also as the determination required under article 6, paragraph 1 (b), members of the public concerned shall have access to a review procedure to challenge the legality of the outcome of the EIA screening process. Since this is not the case under Czech

law, the Committee finds that the Party concerned fails to comply with article 9, paragraph 2, of the Convention.

*(Czech Republic ACCC/C/2010/50; ECE/MP.PP/C.1/2012/11, 2 October 2012, para. 82)*

Article 6, paragraph 1 (b), of the Convention requires Parties, in accordance with national law, to apply the provisions of article 6 to decisions on proposed activities not listed in annex I to the Convention which may have a significant effect on the environment. Parties to this end are to determine whether the proposed activity is subject to article 6 of the Convention. As the Committee found in communication ACCC/C/2010/50 (ECE/MP.PP/C.1/2012/11, para. 82), the outcome of an EIA screening decision is a determination under article 6, paragraph 1 (b), of the Convention.

*(United Kingdom ACCC/C/2010/45 and ACCC/C/2011/60; ECE/MP.PP/C.1/2013/12, 23 October 2013, para. 75)*

Communication ACCC/C/2010/45 refers to the EIA screening decision of 2 June 2009 by the Shepway District Council regarding the superstore. On the basis of the information before it in relation to the store, as well as other situations raised in communications ACCC/C/2010/45 and ACCC/C/2011/60, the Committee finds that the communicants fail to substantiate that the authorities misapplied their discretionary power under article 6, paragraph 1 (b), of the Convention.

*(United Kingdom ACCC/C/2010/45 and ACCC/C/2011/60; ECE/MP.PP/C.1/2013/12, 23 October 2013, para. 76)*

- (c) May decide, on a case-by-case basis if so provided under national law, not to apply the provisions of this article to proposed activities serving national defence purposes, if that Party deems that such application would have an adverse effect on these purposes.
2. The public concerned shall be informed, either by public notice or individually as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and effective manner, *inter alia*, of:

The Committee is aware that at least one of the two decisions that it has chosen to focus on would need to be followed by further decisions on whether to grant environmental, construction and operating permits (and possibly other types of permits) before the activities in question could legitimately commence. However, public participation must take place at an early stage of the environmental decision-making process under the Convention. Therefore, it is important to consider whether public participation has been provided for at a sufficiently early stage of the environmental decision-making processes in these cases.

*(Albania ACCC/C/2005/12; ECE/MP.PP/C.1/2007/4/Add.1, 31 July 2007, para.71)*

The Committee considers that the procedures followed by the Almaty Territorial Environmental Protection Board in January 2002 and July 2002 were not in line with the requirements of article 6, paragraph 2, of the Convention. The residents living along the proposed route of the power line were obviously among the “public concerned” and, as such, they should have received notice of the hearings, including all the details required under article 6, paragraph 2. Despite this, it appears that they were not invited to the July hearings.

*(Kazakhstan ACCC/C/2004/2; ECE/MP.PP/C.1/2005/2/Add.2, 14 March 2005, para. 23)*

Aside from any consequential problems arising from a failure to implement paragraph 2, some other provisions of article 6 may have been breached even with respect to those members of the public that did receive notification of the hearings in accordance with the requirements of paragraph 2. For example, the fact that construction started before the July hearings were held is clearly not in conformity with the requirement under article 6, paragraphs 3 and 4, for “reasonable time frames” and “early public participation, when all options are open.” Furthermore, it appears that the responsible authorities treated the outcome of the hearings as if it were the outcome of public participation. This would have been more acceptable if the hearings had genuinely involved all key groupings within the public concerned. As it was, the views of those who were not invited to participate in the hearings, which apparently were expressed in other ways and were well known to the authorities, do not appear to have been taken into account.

*(Kazakhstan ACCC/C/2004/2; ECE/MP.PP/C.1/2005/2/Add.2, 14 March 2005, para. 25)*

Considering the nature of the project and the interest it has generated, notification in the nation-wide media as well as individual notification of organizations that explicitly expressed their interest in the matter would have been called for. The Party, therefore,

**early stage**

**hearings in PP**

**public notice/  
foreign public  
Espoo Convention**

failed to provide for proper notification and participation in the meaning of article 6 of civil society and specifically the organizations, whether foreign or international, that indicated their interest in the procedure. With regard to the Romanian NGOs and individuals, such notification and participation could have been undertaken by Ukraine via the Romanian authorities, as there is sufficient evidence to suggest that the Ukrainian Government was well aware of the concerns expressed to the Romanian authorities by citizens and organizations in Romania. The Committee, however, notes that, generally speaking, there are no provisions or guidance in or under article 6, paragraph 2, on how to involve the public in another country in relevant decision-making, and that such guidance, seems to be needed, in particular, in cases where there is no requirement to conduct a transboundary EIA and the matter is therefore outside the scope of the Espoo Convention.

*(Ukraine ACCC/C/2004/3 and ACCC/S/2004/1; ECE/MP.PP/C.1/2005/2/Add.3, 14 March 2005, para. 28)*

It is not clear from the information provided to the Committee whether the public was properly notified about the possibility to participate in the “designing the EIA programme” (i.e. the scoping stage) as envisaged in the Lithuanian law. At the same time, it has been clearly shown that what the public concerned was informed about were possibilities to participate in a decision-making process concerning “development possibilities of waste management in the Vilnius region” rather than a process concerning a major landfill to be established in their neighbourhood. Such inaccurate notification cannot be considered as “adequate” and properly describing “the nature of possible decisions” as required by the Convention.

*(Lithuania ACCC/2006/16; ECE/MP.PP/2008/5/Add.6, 4 April 2008, para. 66)*

### ***effective informing***

The requirement for the public to be informed in an “effective manner” means that public authorities should seek to provide a means of informing the public which ensures that all those who potentially could be concerned have a reasonable chance to learn about proposed activities and their possibilities to participate. Therefore, if the chosen way of informing the public about possibilities to participate in the EIA procedure is via publishing information in local press, much more effective would be publishing a notification in a popular daily local newspaper rather than in a weekly official journal, and if all local newspapers are issued only on a weekly basis, the requirement of being “effective” established by the Convention would be met by choosing rather the one with the circulation of 1,500 copies rather than the one with a circulation of 500 copies.

*(Lithuania ACCC/2006/16; ECE/MP.PP/2008/5/Add.6, 4 April 2008, para. 67)*

The Committee thus concludes that by not properly notifying the public about the nature of possible decisions, and by failing to inform the public in an effective manner, Lithuania has failed to comply with article 6, paragraph 2 of the Convention.

*(Lithuania ACCC/2006/16; ECE/MP.PP/2008/5/Add.6, 4 April 2008, para. 68)*

### ***role of developer***

However, the above reliance on the developer in providing for public participation in fact raises doubts as to whether such an arrangement is fully in line with the Convention. Indeed, it is implicit in certain provisions of article 6 of the Convention that the relevant information should be available directly from public authority, and that comments should be submitted to the relevant public authority (article 6, paragraph 2 (d) (iv) and (v), and article 6, paragraph 6). Accordingly, reliance solely on the developer for providing for public participation is not in line with these provisions of the Convention.

*(Lithuania ACCC/2006/16; ECE/MP.PP/2008/5/Add.6, 4 April 2008, para. 78)*

### ***EIA/IPPC directives***

The provisions concerning notification in both EIA and IPPC Directives provide for early and effective notification within the envisaged scope of both procedures which play slightly different roles in the decision-making under the Community law.

*(European Community ACCC/C/2006/17; ECE/MP.PP/2008/5/Add.10, 2 May 2008, para. 47)*

While neither the EIA Directive nor the IPPC Directive expressly sets out that the public must be informed in an “adequate, timely and effective manner”, they both include certain specific requirements aiming to ensure that the public is informed effectively and in a timely manner.

*(European Community ACCC/C/2006/17; ECE/MP.PP/2008/5/Add.10, 2 May 2008, para. 48)*

This may have some consequences for the implementation of the Convention, as most Member States seem to rely on Community law when drafting their national legislation aiming to implement international obligations stemming from a treaty to which the Community is also a Party. Moreover, the provisions of the EIA Directive, including those relating

to public participation, are being directly invoked in some legal acts concerning provision of Community funding, for example in Annex XXI to Commission Regulation (EC) No 1828/2006 of 8 December 2006 setting out rules for the implementation of Council Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and of Regulation (EC) No 1080/2006 of the European Parliament and of the Council on the European Regional Development Fund. Thus in practice they may be applied directly by European Community institutions when monitoring compliance with the EIA Directive on the occasion of taking decisions concerning Community funding for certain activities.

*(European Community ACCC/C/2006/17; ECE/MP.PP/2008/5/Add.10, 2 May 2008, para. 49)*

As pointed out in paragraph 44, when examining compliance by the Party concerned, the Committee must take into account the structural difference between the European Community and other Parties, and the general division of powers between the Community and its Member States in implementing Community directives. The Committee notes that the IPPC Directive obliges the Member States to ensure early and effective public participation in permitting procedures concerning landfills. It also notes that the EIA Directive obliges the Member States to ensure that the public shall be informed early in environmental decision-making procedures concerning landfills. Thus, the relevant Community legislation does indeed provide for early information and participation. Moreover, although a similar formulation in the Directives as in the Convention could probably help to ensure adequate implementation of the Convention, bearing in mind the specificity of European Community directives, the fact that the terms “adequate, timely and effective manner” are not used in the Directives does not in itself amount to non-compliance with the Convention.

*(European Community ACCC/C/2006/17; ECE/MP.PP/2008/5/Add.10, 2 May 2008, para. 50)*

Notwithstanding the distinctive structure of the European Community, and the nature of the relationship between the Convention and the EC secondary legislation, as outlined in paragraph 35, the Committee notes with concern the following general features of the Community legal framework:

- (a) Lack of express wording requiring the public to be informed in an “adequate, timely and effective manner” in the provisions regarding public participation in the EIA and IPPC Directives;
- (b) Lack of a clear obligation to provide the public concerned with effective remedies, including injunctive relief, in the provisions regarding access to justice in the EIA and IPPC Directives.

While the Committee is not convinced that these features amount to a failure to comply with article 3, paragraph 1, it considers that they may adversely affect the implementation of article 6 of the Convention. Moreover, having essentially limited its examination to decision-making relating to landfills, the Committee does not make any conclusions with regard to other activities listed in annex I of the Convention. Nor does it make any conclusions concerning the precise correlation between the list of activities contained in annex I of the Convention and those contained in the respective annexes to the EIA and IPPC Directives.

*(European Community ACCC/C/2006/17; ECE/MP.PP/2008/5/Add.10, 2 May 2008, para. 59)*

The next question is whether the public was duly informed about the decision-making procedures. According to article 6, paragraph 2, of the Convention, the public concerned shall be informed, either by public notice or individually as appropriate, “early in an environmental decision-making procedure and in an adequate, timely and effective manner”. The communicant alleges that the public notice of the decision-making before the Prefect did not meet the requirements of the Convention. While the public was informed about the project by CUMPM through the press in 2004, that was not related to the decision-making procedure before the Prefect. Provided that all options were open and effective participation could take place in the decision-making before the Prefect, the question is rather whether the public concerned was informed early enough about the authorization procedure. As held by the Committee with regard to communication ACCC/C/2006/16 (Lithuania) (ECE/MP.PP/2008/5/Add.6), the requirement for the public to be informed in an “effective manner” means that the public authorities should seek to provide a means for informing the public which ensures that all those who could potentially be concerned have a reasonable chance to learn about decision-making on proposed activities and their possibilities to participate.

*(France ACCC/C/2007/22; ECE/MP.PP/C.1/2009/4/Add.1, 8 February 2011, para. 41)*

## *Nature of EU*

## *EIA/IPP directives*

## *effective informing*

**means  
of informing**

In the present case, the Prefect informed the public by a public inquiry notice in two local daily newspapers, *la Provence* and *la Marseillaise*, on 30 August 2005. Information about the decision-making procedure was also put on the Internet site of the prefecture of Bouches-du-Rhône and Saint Martin-de-Crau. The notice contained information about the dates and locations for the inquiries in Fos-sur-Mer, Port-Saint-Louis-du-Rhône and Saint-Martin-de-Crau, as well as the places where the information was publicly available. It also provided information on the time frames. While the Committee stresses the importance of adequate public notice, based on the information provided by the communicant and the Party concerned, the Committee cannot conclude that the Party concerned failed to comply with the Convention. This form of public notice appears to the Committee to satisfy the requirements of article 6, paragraph 2, of the Convention.

*(France ACCC/C/2007/22; ECE/MP.PP/C.1/2009/4/Add.1, 8 February 2011, para. 42)*

**municipal contracts  
with private  
operators**

The Committee is not examining the agreement between the City of Murcia and the developer Joven Futura, and its role in further decision-making, on the merits because of the timing. It nevertheless recalls its previous findings whereby, in relation to the resolutions of local authorities allowing for contracts with private operators for the carrying out of public services, it held that such resolutions were not subject to the provisions of article 6 or 7 of the Convention, if they did not have any legal effect on these plans, confer any rights for the use of the sites or amount to the legal effect of a change in a planning instrument (findings for communication ACCC/C/2007/22, paras. 32 and 33 (France)).

*(Spain ACCC/C/2008/24; ECE/MP.PP/C.1/2009/8/Add.1, 30 September 2010, para.85)*

**timing of public  
notice**

The requirement for early public notice in the environmental decision-making procedure is not detailed in article 6, paragraph 2, of the Convention. Article 6, paragraph 4, points to the purpose of giving notice early in the environmental decision-making procedure, that is, that the public has the possibility to participate when all options are open and participation may be effective. The timing needed from the moment of the notification until the hearing, in which the public concerned would be expected to participate in an informed manner, namely, after having had the opportunity to duly examine the project documentation, depends on the size and the complexity of the case.

*(Armenia ACCC/C/2009/43; ECE/MP.PP/2011/11/Add.1, April 2011, para.65)*

The Committee considers that one week to examine the EIA documentation relating to a mining project (first hearing) is not early notice in the meaning of article 6, paragraph 2, because it does not allow enough time to the public concerned to get acquainted with voluminous documentation of a technical nature and to participate in an effective manner. In general, the two-week public notice in the second hearing, after the expertise opinion, could be considered early public notice, mainly because a lot of the project-related documentation for the environmental decision-making is the same or is based on the documentation necessary to be consulted for the first meeting. However, through their comments to the draft findings, the Party concerned and the communicant informed the Committee that the project material under consideration for the second meeting was more voluminous than for the first hearing. The Party concerned added that the public did not raise the issue that the time was not sufficient to examine the project-related material. The Committee took note of the information submitted at a very late stage of the process for its attention, but observes that the fact that no objection was made in respect of the time to examine project-related documentation is not material as to whether the requirements on early and effective public participation have been met.

*(Armenia ACCC/C/2009/43; ECE/MP.PP/2011/11/Add.1, April 2011, para.67)*

With regard to the timing of the public notice and in relation also to the finding of non-compliance with article 3, paragraph 1, (see para. 56 above), the Committee finds that there is a systemic failure in the Armenian EIA law, as it does not provide for any indication on when the public notice for the EIA documentation hearing should be given, and thus the implementation of its article 8 may be arbitrary.

*(Armenia ACCC/C/2009/43; ECE/MP.PP/2011/11/Add.1, April 2011, para.68)*

**effective means  
of notification**

Whether the notification is effective depends on the particular means employed, which in this case include the national press, local TV and the Internet (websites of the Ministry and the Aarhus Centre). Sometimes, it may also be necessary to have repeated notifications so as to ensure that the public concerned has been notified. The Committee notes that the Teghout is one of the rural communities of the Lori region, close to the border with Georgia, approximately 180 km north from the capital Yerevan, while the nearest urban centre is at approximately 30 km. These circumstances make it obvious that the rural population in the area would not possibly have regular access to the Internet, while local newspapers may be

more popular than national newspapers. However, the use of local television may be a useful tool to inform the public concerned in an appropriate manner. Hence, the Committee does not find here that the Party concerned failed to give effective public notice.

*(Armenia ACCC/C/2009/43; ECE/MP.PP/2011/11/Add.1, April 2011, para.70)*

The Committee may assess the adequacy of the public notice on the basis of the information it received (public notices in the national newspapers, translation provided by the Party concerned). The notice is brief and not very clear about which public authority is responsible for the decision-making, but includes most elements of article 6, paragraph 2. Consequently, and since the Committee cannot assess the notice given through the TV and the Internet, there is not enough evidence to assert that the Party concerned failed to provide public notice reflecting the minimum features as provided in article 6, paragraph 2, of the Convention.

*(Armenia ACCC/C/2009/43; ECE/MP.PP/2011/11/Add.1, April 2011, para.71)*

With regard to the legislation and the general practice followed for public notification in Belarus, there is a legal obligation for the developer to notify the public about the conduct of public hearings, but the law fails to set the details to ensure that the public is informed in an adequate, timely and effective manner. The practice of publishing the OVOS Statement (in abridged or even full versions) cannot substitute for it. Also, in the view of the Committee, journalists' articles commenting on a project in the press or on television programmes (as referred to by the Party concerned), in general, do not per se constitute a public notice for the purpose of public participation, as required under article 6, paragraph 2, of the Convention. For this reason, the Committee finds that the Party concerned failed in the case of the HPP project to comply with article 6, paragraph 2; and also that there is a general failure of the Belarusian system to comply with these provisions of the Convention.

*(Belarus ACCC/C/2009/37; ECE/MP.PP/2011/11/Add.2, 12 May 2011, para.86)*

The Committee notes that the rules on public hearings, as amended in 2012, do not provide for any mandatory requirement for the public notification to be timely. In contrast, the previous regulation of 2007 established a 20-day period prior to the public hearing for the public notification to be made. Therefore the Committee finds that the new regulation of the Party concerned does not meet the requirements of article 6, paragraph 2, of the Convention, in terms of timely notification.

*(Kazakhstan ACCC/C/2010/59C/2011/59, ECE/MP.PP/C.1/2013/9, 16 July 2013, para. 48)*

The Committee further notes that there are different legislative arrangements for informing the public at the OVOS stage and at the expertiza stage.

*(Kazakhstan ACCC/C/2010/59C/2011/59, ECE/MP.PP/C.1/2013/9, 16 July 2013, para. 49)*

At the OVOS stage, Kazakh legislation does not provide for any detailed mandatory requirements regarding methods of informing the public about the public participation procedure other than publication of an announcement in the mass media. Other sources for public notification may be used on a voluntary basis. Although in the present case the public was informed about the project by the notice in two newspapers, and also through the information on the website of the developer, the Committee considers that the Party concerned failed to establish detailed mandatory requirements regarding public notice to ensure that the public is informed in an adequate, timely and effective manner (cf. ECE/MP.PP/2011/11/Add.2, paras. 83, 86).

*(Kazakhstan ACCC/C/2010/59C/2011/59, ECE/MP.PP/C.1/2013/9, 16 July 2013, para. 50)*

For the expertiza stage, the legislation of the Party concerned requires the developer to ensure publication of information in special environmental publication sources, as well as on the website of the Ministry of Environmental Protection, concerning the submission of the draft OVOS report to the State environmental expertiza.

*(Kazakhstan ACCC/C/2010/59C/2011/59, ECE/MP.PP/C.1/2013/9, 16 July 2013, para. 51)*

The Committee considers that, although the obligation of the developer to publish information on the website of the Ministry of Environmental Protection at the expertiza stage carries elements of public notification, it is not sufficient to ensure effective public participation. The submission of the draft OVOS report to the State environmental expertiza appears later in the decision-making procedure, and does not compensate for the insufficient public notification at the OVOS stage. Therefore, the Party concerned fails to comply with article 6, paragraph 2, of the Convention.

*(Kazakhstan ACCC/C/2010/59C/2011/59, ECE/MP.PP/C.1/2013/9, 16 July 2013, para. 52)*

**articles in press**

**OVOS/expertiza**

Regarding the NPP project, on 31 July 2009, an advance public notice was issued on the website of three public authorities (see paras. 20 (a) and (b) above), for the public hearings which were to take place in fall 2009. Later that year, on 9 September 2009, the public notice was published in printed media at the national and local level and on the Internet (on websites of the relevant public authorities, such as ministries responsible for the environment and for energy) and it was announced that the public hearing would take place on 9 October 2009.

*(Belarus ACCC/C/2009/44; ECE/MP.PP/2011/6/Add.1, 19 September 2011, para. 71)*

### *means of informing*

The Committee examined the public notices (see annexes 5 and 6 to the communication) and finds that they contained most of the elements prescribed in article 6, paragraph 2, of the Convention, including a brief description of the planned activity (location, potential transboundary impact, schedule of implementation, time frame for the preparation of the EIA documentation and for the public discussions), the communication point for public participation (where the public concerned could send their comments), and information on the participation process (time frame for participation, consultations and submission of the comments, and where the EIA documents could be accessed by the public (i.e., on the websites of public authorities and at the Power Plant Construction Office in Ostrovets)).

*(Belarus ACCC/C/2009/44; ECE/MP.PP/2011/6/Add.1, 19 September 2011, para. 72)*

The Committee notes that the public notice was published on the Internet and also in the national (*Respublika* and *Sovietskaya Belorussia*) and local printed media (*Ostrovetskaya Pravda* and *Grodnenskaya Pravda*). As for the use of Internet, according to statistic data, as of June 2010 there was a 46.2 per cent Internet penetration in the country,<sup>6</sup> considered to be the highest level of penetration in the Commonwealth of Independent States, after the Russian Federation. In addition, Internet access is widespread in the urban areas, where 75 per cent (2010) of the total population is concentrated. The fact that public notice was published in the local press and the project-related documentation could be accessed in Ostrovets compensates for the fact that Internet access is not widespread in rural areas. For these reasons, the Committee is not convinced that the Party concerned failed to comply with article 6, paragraph 2.

*(Belarus ACCC/C/2009/44; ECE/MP.PP/2011/6/Add.1, 19 September 2011, para. 73)*

- (a) The proposed activity and the application on which a decision will be taken;
- (b) The nature of possible decisions or the draft decision;

### *adequate notification*

At the same time, it has been clearly shown that what the public concerned was informed about were possibilities to participate in a decision-making process concerning “development possibilities of waste management in the Vilnius region” rather than a process concerning a major landfill to be established in their neighbourhood. Such inaccurate notification cannot be considered as “adequate” and properly describing “the nature of possible decisions” as required by the Convention.

*(Lithuania ACCC/2006/16; ECE/MP.PP/2008/5/Add.6, 4 April 2008, para. 66)*

- (c) The public authority responsible for making the decision;
- (d) The envisaged procedure, including, as and when this information can be provided:
  - (i) The commencement of the procedure;
  - (ii) The opportunities for the public to participate;
  - (iii) The time and venue of any envisaged public hearing;
  - (iv) An indication of the public authority from which relevant information can be obtained and where the relevant information has been deposited for examination by the public;

...Indeed, it is implicit in certain provisions of article 6 of the Convention that the relevant information should be available directly from public authority, and that comments should be submitted to the relevant public authority (article 6, paragraph 2 (d) (iv) and (v), and article 6, paragraph 6)...

*(Lithuania ACCC/2006/16; ECE/MP.PP/2008/5/Add.6, 4 April 2008, para. 78)*

- (v) An indication of the relevant public authority or any other official body to which comments or questions can be submitted and of the time schedule for transmittal of comments or questions; and

*N.B.*

*N.B.*

... Indeed, it is implicit in certain provisions of article 6 of the Convention that the relevant information should be available directly from public authority, and that comments should

be submitted to the relevant public authority (article 6, paragraph 2 (d) (iv) and (v), and article 6, paragraph 6)...

*(Lithuania ACCC/2006/16; ECE/MP.PP/2008/5/Add.6, 4 April 2008, para. 78)*

(vi) An indication of what environmental information relevant to the proposed activity is available; and

The Committee notes, however, that the public was not duly informed that in addition to the preliminary EIA Report (about 100 pages long), which was made available to the public, there was also the full version of the EIA Report (more than 1,000 pages long). In this respect, the Committee finds that the Party concerned failed to comply with article 6, paragraph 2 (d) (vi), of the Convention.

*(Belarus ACCC/C/2009/44; ECE/MP.PP/2011/6/Add.1, 19 September 2011, para. 74)*

(e) The fact that the activity is subject to a national or transboundary environmental impact assessment procedure.

It is not clear from the information provided to the Committee whether the public was properly notified about the possibility to participate in the “designing the EIA programme” (i.e. the scoping stage) as envisaged in the Lithuanian law. At the same time, it has been clearly shown that what the public concerned was informed about were possibilities to participate in a decision-making process concerning “development possibilities of waste management in the Vilnius region” rather than a process concerning a major landfill to be established in their neighbourhood. Such inaccurate notification cannot be considered as “adequate” and properly describing “the nature of possible decisions” as required by the Convention.

*(Lithuania ACCC/2006/16; ECE/MP.PP/2008/5/Add.6, 4 April 2008, para. 66)*

Considering the nature of the project and the interest it has generated, notification in the nation-wide media as well as individual notification of organizations that explicitly expressed their interest in the matter would have been called for. The Party, therefore, failed to provide for proper notification and participation in the meaning of article 6 of civil society and specifically the organizations, whether foreign or international, that indicated their interest in the procedure. With regard to the Romanian NGOs and individuals, such notification and participation could have been undertaken by Ukraine via the Romanian authorities, as there is sufficient evidence to suggest that the Ukrainian Government was well aware of the concerns expressed to the Romanian authorities by citizens and organizations in Romania. The Committee, however, notes that, generally speaking, there are no provisions or guidance in or under article 6, paragraph 2, on how to involve the public in another country in relevant decision-making, and that such guidance, seems to be needed, in particular, in cases where there is no requirement to conduct a transboundary EIA and the matter is therefore outside the scope of the Espoo Convention.

*(Ukraine ACCC/C/2004/3 and ACCC/S/2004/1; ECE/MP.PP/C.1/2005/2/Add.3, 14 March 2005, para. 28)*

With regard to the public notice, the Committee notes that information about the project and the elements of article 6, paragraph 2, of the Convention were available for the public early on during the permitting procedure, on the Internet (via the websites of the developer and the Parliament), in the press and also at the information centres set up along the route of the project. The number of petitions objecting to the project, including to the demolition of buildings, shows that members of the public were adequately informed. Therefore, the Committee finds that the Party concerned did not fail to comply with article 6, paragraph 2, of the Convention.

*(United Kingdom ACCC/C/2011/61; ECE/MP.PP/C.1/2013/13, 23 October 2013, para. 59)*

3. The public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making.

The Committee notes that the failure to notify members of the public concerned in accordance with article 2, paragraph 5, may also have effectively denied them the possibility to avail of the rights provided for under other provisions of article 6. If a key group of members of the public most directly affected by the activity was not informed of the process and not invited to participate in it, it follows that they did not receive notice in “sufficient time” as required under article 6, paragraph 3, and that in practice they did not have the opportunities for early and effective participation that should have been available in accor-

*reduced EIA*

*individual  
notification/  
foreign NGOs*

*sufficient time*



dance with paragraph 4 or to provide input in accordance with paragraph 7. Similarly, if no public notice of the planned hearings or other participation opportunities was given, and if affected local residents were not invited to the hearing, whatever views they might have had to offer could not have been taken into account as required by article 6, paragraph 8.

*(Kazakhstan ACCC/C/2004/2; ECE/MP.PP/C.1/2005/2/Add.2, 14 March 2005, para. 24)*

### **hearings & PP**

Aside from any consequential problems arising from a failure to implement paragraph 2, some other provisions of article 6 may have been breached even with respect to those members of the public that did receive notification of the hearings in accordance with the requirements of paragraph 2. For example, the fact that construction started before the July hearings were held is clearly not in conformity with the requirement under article 6, paragraphs 3 and 4, for “reasonable time frames” and “early public participation, when all options are open.” Furthermore, it appears that the responsible authorities treated the outcome of the hearings as if it were the outcome of public participation. This would have been more acceptable if the hearings had genuinely involved all key groupings within the public concerned. As it was, the views of those who were not invited to participate in the hearings, which apparently were expressed in other ways and were well known to the authorities, do not appear to have been taken into account.

*(Kazakhstan ACCC/C/2004/2; ECE/MP.PP/C.1/2005/2/Add.2, 14 March 2005, para. 25)*

### **reasonable timeframes**

The requirement to provide “reasonable time frames” implies that the public should have sufficient time to get acquainted with the documentation and to submit comments taking into account, inter alia, the nature, complexity and size of the proposed activity. A time frame which may be reasonable for a small simple project with only local impact may well not be reasonable in case of a major complex project.

*(Lithuania ACCC/2006/16; ECE/MP.PP/2008/5/Add.6, 4 April 2008, para. 69)*

The time frame of only 10 working days, set out in the Lithuanian EIA Law, for getting acquainted with the documentation, including EIA report, and for preparing to participate in the decision-making process concerning a major landfill, does not meet the requirement of reasonable time frames in article 6, paragraph 3. This finding is not negated by the fact that the fixed period of 10 working days is commonly approved by Lithuanian legislation and that until now, according to the Party concerned, no one has questioned such period as being unreasonable.

*(Lithuania ACCC/2006/16; ECE/MP.PP/2008/5/Add.6, 4 April 2008, para. 70)*

The communicant also alleges that by only providing for public inquiries in the three aforementioned communes in the decision-making before the Prefect, the Party concerned failed to provide for effective public participation. According to the Committee, however, whether effective participation can take place does not only depend on the number of inquiries. Provided that adequate information had been given about the inquiries and that they were held in an open and transparent manner, limiting the number of inquiries to three locations in this case does not as such amount to a failure to comply with the Convention. Based on the information given to the Committee, these three hearings seem to have been open to anybody and duly announced, so that they provided adequate opportunities for the public concerned to give its views about the project. Thus, the Committee cannot conclude that the Party concerned failed to comply with article 6, paragraphs 3, 4 or 7, on these grounds.

*(France ACCC/C/2007/22; ECE/MP.PP/C.1/2009/4/Add.1, 8 February 2011, para. 43)*

### **6 + 6 weeks for PP**

When examining the time frame, the Committee recalls that the 2003 resolutions did not amount to permit decisions under article 6 of the Convention, nor did the decision to choose the private operator or establish the contracts with the operator. Therefore, the timing for public participation cannot be related to the entire timespan since the 2003 CUMPM resolutions. Thus, the question is whether the time frames given in the decision-making before the Prefect as such were sufficient for allowing the public to prepare and participate effectively, and to allow the public to submit any comments, information, analyses or opinions it considered relevant, as set out in article 6, paragraphs 3 and 7, of the Convention. The Committee notes that the announcement of the public inquiry, made on 3 August, provided a period of approximately six weeks for the public to inspect the documents and prepare itself for the public inquiry. Furthermore, the public inquiry held from 19 September to 3 November 2005 provided 45 days for public participation and for the public to submit comments, information, analyses or opinions relevant to the proposed activity. The Committee is convinced that the provision of approximately six weeks for the public concerned to exercise its rights under article 6, paragraph 6, of the Convention and

approximately the same time relating to the requirements of article 6, paragraph 7, in this case meet the requirements of these provisions in connection with article 6, paragraph 3, of the Convention.

*(France ACCC/C/2007/22; ECE/MP.PP/C.1/2009/4/Add.1, 8 February 2011, para. 44)*

The communicant implies that the fact that the report of the inquiry commission was filed on 7 December 2005 and the authorization was made about a month later shows that there was no room for effective participation. The communicant also argues that the timespan during the procedure before the Prefect was too tight to ensure adequate public participation. In the view of the Committee, however, the fact that the authorization was made on 12 January 2006, about a month after the inquiry report was filed, does not as such amount to a failure to comply with the requirement for reasonable time frames as specified in article 6, paragraph 3, of the Convention. Nor is there any other information that shows that the timespan of the decision-making before the Prefect as such was too tight to ensure effective public participation. As already stated, it is also the impression of the Committee that all options were open at the stage of the decision-making before the Prefect, as required under article 6, paragraph 4.

*(France ACCC/C/2007/22; ECE/MP.PP/C.1/2009/4/Add.1, 8 February 2011, para. 45)*

The Committee concludes that, given the present phase of the decision-making process, the Party concerned has not failed to comply with the Convention. The Committee, however, notes that at least in part its conclusion is related to the fact that the planning process in the present case commenced well in advance of the entry into force of the Convention for the Party concerned. It is in this context that the Committee considers it important to reiterate its concern expressed in paragraph 57. The Committee emphasizes that participation in accordance with article 6 and article 7, in conjunction with article 6, paragraphs 3, 4 and 8, of the Convention, should take place and that such participation does not only require formal participation. Importantly, participation is to include public debate and the opportunity for the public to participate in such debate at an early stage of the decision-making process, when all options are open and when due account can be taken of the outcome of the public participation.

*(Austria ACCC/C/2008/26; ECE/MP.PP/C.1/2009/6/Add.1, 8 February 2011, para. 66)*

The Committee considers that the present case is slightly different from the two cases mentioned above [ACCC/C/2006/16 and ACCC/C/2007/22] with regard to article 6, paragraph 3, in that in the present case it is not only the time span itself which is questioned, but most importantly the timing of the commenting period, which was during the summer holiday season or during the Christmas holiday season. In that respect, the Committee is fully aware that in many countries of the UNECE region the period between 22 December and 6 January is considered as Christmas holiday season, despite the fact that officially many offices work during that time.

*(Spain ACCC/C/2008/24; ECE/MP.PP/C.1/2009/8/Add.1, 8 February 2011, para.90)*

Considering that, as already established in previous cases, the requirement for reasonable time-frames relates both to the time-frames for inspecting the relevant documentation and to those for submitting comments, the Committee assumes that in Spanish law the time-frame set for commenting includes the time-frame for inspecting the relevant documentation and is deemed to start immediately after the public notice.

*(Spain ACCC/C/2008/24; ECE/MP.PP/C.1/2009/8/Add.1, 8 February 2011, para.91)*

On the basis of the above, the Committee finds that a period of 20 days for the public to prepare and participate effectively cannot be considered reasonable, in particular if such period includes days of general celebration in the country. Moreover, the Committee notes that the initial proposal was made on 12 December 2005, and that the time span between this initial proposal and the public notice on 22 December 2005 was ten days, indicating that the authority was in an extraordinary rush to initiate the commenting period; this can indeed give reason to suspect that making the notice so fast was not a routine procedure, as also evidenced by other cases reported in the current communication. Therefore the Committee finds that the Spain was in non-compliance with article 6, paragraph 3.

*(Spain ACCC/C/2008/24; ECE/MP.PP/C.1/2009/8/Add.1, 30 September 2010, para.92)*

The Committee notes that public participation in decision-making for a specific project is inhibited when the conditions described by the communicant in the case of the oil refinery project are set by the public authorities. The Committee finds that, by requiring the public to relocate 30 or 200 kilometres, by allowing access to thousands of pages of documenta-

**public debate**

**Christmas &  
holidays season**

**30 or 200 km  
to access  
documents**

tion from only two computers without permitting copies to be made on CDROM or DVD, and by, in these circumstances, setting a time frame of one month for the public to examine all this documentation on the spot, the Spanish authorities failed to provide for effective public participation and thus to comply with article 6, paragraphs 6 and 3, respectively, of the Convention.

*(Spain ACCC/C/2009/36; ECE/MP.PP/C.1/2010/4/Add.2, 08 February 2011, para.62)*

### **30 days min**

In this context, the Committee appreciates a flexible approach to setting the time frames aiming to allow the public to access the relevant documentation and to prepare itself, and considers that while a minimum of 30 days between the public notice and the start of public consultations is a reasonable time frame, the flexible approach allows to extend this minimum period as may be necessary taking into account, inter alia, the nature, complexity and size of the proposed activity.

*(Belarus ACCC/C/2009/37; ECE/MP.PP/2011/11/Add.2, 12 May 2011, para.89)*

### **setting max timeframes**

The Committee, however, does not consider appropriate a flexible approach, whereby only the maximum time frame for public participation procedures is set, as this is the case in Belarus in relation to the time frames for public consultations and submitting of comments. Such an approach, regardless of how long the maximum time frame is, runs the risk that in individual cases time frames might be set which are not reasonable. Thus, such an approach, whereby only maximum time frames for public participation are set, cannot be considered as meeting the requirement of setting reasonable time frames under article 6, paragraph 3, of the Convention.

*(Belarus ACCC/C/2009/37; ECE/MP.PP/2011/11/Add.2, 12 May 2011, para.90)*

### **tiered decision-making**

Article 6, paragraph 3, of the Convention relates to “reasonable time frames” for the different phases of the decision-making, allowing sufficient time for the public to prepare and participate effectively during the environmental decision-making. By requiring “reasonable time frames” for effective public participation in the different phases of the decision-making, the Convention presupposes that in multi-phase environmental decision-making procedures, such as those provided for under Czech law, opportunities for the public to participate should be provided in each decision-making phase. With respect to tiered decision-making processes (whereby at each stage of decision-making certain options are discussed and selected with the participation of the public and each consecutive stage of decision-making addresses only the issues within the option already selected at the preceding stage), the Committee has held that:

### **range of options**

[T]aking into account the particular needs of a given country and the subject matter of the decision-making, each Party has a certain discretion as to which range of options is to be discussed at each stage of the decision-making. Such stages may involve various consecutive strategic decisions under article 7 of the Convention (policies, plans and programmes) and various individual decisions under article 6 of the Convention authorizing the basic parameters and location of a specific activity, its technical design, and finally its technological details related to specific environmental standards.

*(Czech Republic ACCC/C/2010/50; ECE/MP.PP/C.1/2012/11, 2 October 2012, para. 69)*

### **EIA & PP**

While Czech law provides for wide public participation at the EIA stage, it limits opportunities for public participation after the conclusion of the EIA. The Committee stresses that environmental decision-making is not limited to the conduct of an EIA procedure, but extends to any subsequent phases of the decision-making, such as land-use and building permitting procedures, as long as the planned activity has an impact on the environment. Czech law limits the rights of NGOs to participate after the EIA stage, and individuals may only participate if their property rights are directly affected. This means that individuals who do not have any property rights, but may be affected by the decision, are excluded. Although the Party concerned contends that the results of the EIA procedure are taken into account in the subsequent phases of the decision-making, members of the public must also be able to examine and to comment on elements determining the final building decision throughout the land planning and building processes. Moreover, public participation under the Convention is not limited to the environmental aspects of a proposed activity subject to article 6, but extends to all aspects of those activities. In addition, even if, as the Party concerned contends, the scope of stakeholders with property rights is interpreted widely to include the most distant owners of land plots and other structures, individuals with other rights and interests are still excluded from the public participation process. Therefore, the Committee finds that through its restrictive interpretation of “the public concerned” in the phases of the decision-making to permit activities subject to article 6 that come after the EIA procedure, the Czech legal system fails to provide for effective public participation

during the whole decision-making process. Thus the Party concerned is not in compliance with article 6, paragraph 3, of the Convention.

*(Czech Republic ACCC/C/2010/50; ECE/MP.PP/C.1/2012/11, 2 October 2012, para. 70)*

Regarding the allegation that no proper public participation was provided during the preparation of the Energy Strategy, the Committee notes that while it is undisputed that the Strategy is a document subject to article 7 of the Convention and some public participation took place during its preparation, there are different views in relation to the participation of NGOs in the working group drafting the Strategy.

*(Romania ACCC/C/2010/51; ECE/MP.PP/C.1/2014/12, 14 July 2014, para.108)*

In this context, it should be stressed that whether a particular NGO participated or not in the working group drafting the Strategy is irrelevant from the point of view of meeting the requirements of article 7 of the Convention, because the inclusion of representatives of NGOs and “stakeholders” in a closed advisory group cannot be considered as public participation under the Convention. Furthermore, whatever the definition of the “public concerned” in the law of a Party to the Convention, it must meet the following criteria under the Convention: it must include both NGOs and individual members of the public; and it must be based on objective criteria and not on discretionary power to pick individual representatives of certain groups. In this context, participation in closed advisory groups cannot be considered as public participation meeting the requirements of the Convention.

*(Romania ACCC/C/2010/51; ECE/MP.PP/C.1/2014/12, 14 July 2014, para.109)*

Furthermore, the Committee notes that, while indeed the draft 2007 Strategy was published on the websites of the Ministry of Economy and the Secretariat General of the Government, formally the general public had only 11 days to get acquainted with the draft and submit comments. Despite the fact that some members of the public had been able to submit comments also outside the scope of these 11 days, the Committee considers that the Party concerned failed to ensure a reasonable time frame for public participation in the case of such a document. Thus, by not providing sufficient time for the public to get acquainted with the draft and to submit comments thereon, the Party concerned failed to comply with article 7, in conjunction with article 6, paragraph 3, of the Convention.

*(Romania ACCC/C/2010/51; ECE/MP.PP/C.1/2014/12, 14 July 2014, para.110)*

The official consultation period for the application was from 19 to 26 August 2011. During the discussion with the Committee at its fortieth meeting, the Party concerned agreed that the one-week period was short, but submitted that overall there were plenty of opportunities for the public to participate.

*(Czech Republic ACCC/C/2012/70; ECE/MP.PP/C.1/2014/9, 4 June 2014, para. 54)*

During the discussion, the Party concerned also mentioned that the documentation relating to the application was available on the Ministry’s website from 3 December 2010. While indeed the documentation was published on 3 December 2010, formally the general public had only seven days for getting acquainted with the draft and submitting comments. Despite the fact that some members of the public had been able to submit comments outside the scope of these seven days, the Committee finds that the Party concerned failed to ensure a reasonable time frame for public participation in the case of such a document, since the general public was not aware of the ongoing consultation on the application.

*(Czech Republic ACCC/C/2012/70; ECE/MP.PP/C.1/2014/9, 4 June 2014, para. 55)*

It was further submitted that although the application was available from 19 August 2011, due to an error the national investment plan was only published on the website on 25 August 2011, without providing for an extension of the deadline for submission of comments. This meant that the public concerned had one day to study the plan, digest the information and provide comments.

*(Czech Republic ACCC/C/2012/70; ECE/MP.PP/C.1/2014/9, 4 June 2014, para. 56)*

The Committee considers that providing the public with seven days to get acquainted with the draft documents and to submit comments, let alone allowing it one day for the same purpose, cannot be considered a reasonable time frame for the public to prepare and participate effectively in the preparation of a document of the magnitude of the national investment plan. Therefore, the Committee considers that, by not providing sufficient time for the public to get acquainted with the draft and submit comments, the Party failed to comply with article 7, in conjunction with article 6, paragraph 3, of the Convention.

*(Czech Republic ACCC/C/2012/70; ECE/MP.PP/C.1/2014/9, 4 June 2014, para. 57)*

**working groups  
& PP**

**11 days  
to comment**

**7 days for PP**

4. Each Party shall provide for early public participation, when all options are open and effective public participation can take place.

### *closing options*

Another question that arises is whether a further, more detailed permitting process, with public participation, is envisaged for the various specific activities. The information available to the Committee on this point is somewhat ambiguous. The communicants maintain that Armenian legislation requires that an EIA be carried out, with public participation, for such activities (see para. 10). If this takes place, it would certainly help to mitigate the lack of public participation in the formulation of the decrees. However, even if public participation is included at that stage, the scope of the decision on which the public would be consulted would be more limited than should be the case for article 6-type decisions, in the sense that some options (such as the option of not building any watch factory at a particular location) would no longer be open for discussion (cf. article 6, para. 4).

*(Armenia ACCC/C/2004/8; ECE/MP.PP/C.1/2006/2/Add.1, 10 May 2006, para. 29)*

The Committee also finds that by failing to ensure effective public participation in decision-making on specific activities, the Government of Armenia did not comply fully with article 6, paragraph 1 (a); with annex I, paragraph 20, of the Convention; or, in connection with this, with article 6, paragraphs 2–5 and 7–9. It considers that the extent of non-compliance would be somewhat mitigated if public participation were to be provided for in further permitting processes for the specific activities in question, but it notes that the requirement under article 6, paragraph 4, to ensure that early public participation is provided for when all options are open would still have been breached. In this regard, the Committee notes, however, the information provided to it by the Government of Armenia regarding the new draft law on Environmental Impact Assessment and understands that the drafters of the new law will take this opportunity to ensure its approximation with the requirements of the Convention.

*(Armenia ACCC/C/2004/8; ECE/MP.PP/C.1/2006/2/Add.1, 10 May 2006, para. 42)*

### *EIA*

With regard to the issue of reduced environmental impact assessment procedure for modification of existing roads into expressways, the Committee notes that the Convention does not in itself clearly specify the exact phase from which the EIA should be subject to public participation. Indeed to do so would be particularly difficult, taking into account the great variety of approaches to conducting EIA that exist in the region. However, article 6, paragraph 4, requires early participation when all options are open and the participation can be effective. This requirement would clearly apply to the decision-making in question. Indeed, removing this phase might lead to removing the important opportunity for the public to participate in identifying the criteria on which to base the detailed EIA. However, in the absence of practice in implementing Section 4, paragraph 9, of the Act, it is difficult for the Committee to evaluate whether the new abridged procedure meets the requirements of article 6, paragraph 4.

*(Hungary ACCC/C/2004/4; ECE/MP.PP/C.1/2005/2/Add.4, 14 March 2005, para. 11)*

### *tiered decision-making*

The requirement for “early public participation when all options are open” should be seen first of all within a concept of tiered decision-making, whereby at each stage of decision-making certain options are discussed and selected with the participation of the public and each consecutive stage of decision-making addresses only the issues within the option already selected at the preceding stage. Thus, taking into account the particular needs of a given country and the subject matter of the decision-making, each Party has a certain discretion as to which range of options is to be discussed at each stage of the decision-making. Such stages may involve various consecutive strategic decisions under article 7 of the Convention (policies, plans and programmes) and various individual decisions under article 6 of the Convention authorizing the basic parameters and location of a specific activity, its technical design, and finally its technological details related to specific environmental standards. Within each and every such procedure where public participation is required, it should be provided early in the procedure, when all options are open and effective public participation can take place.

*(Lithuania ACCC/2006/16; ECE/MP.PP/2008/5/Add.6, 4 April 2008, para. 71)*

### *reducing options*

Lithuanian law envisages public participation in decision-making on plans and programmes. With this in mind and considering the structure of the consecutive decision-making and the legal effect of the different decisions in Lithuania, the fact that certain decisions took place when certain options were already decided upon (e.g. landfill or waste

incinerator) and when only two possible locations were discussed does not seem to exceed the above limits of discretion.

*(Lithuania ACCC/2006/16; ECE/MP.PP/2008/5/Add.6, 4 April 2008, para. 72)*

While the information available to the Committee is not sufficient to conclude whether indeed in this particular case the public had a chance to participate in the scoping (i.e. designing the EIA programme), the Committee welcomes the approach of the Lithuanian law which envisages public participation at the stage of scoping. This appears to provide for early public participation in EIA decision-making.

*(Lithuania ACCC/2006/16; ECE/MP.PP/2008/5/Add.6, 4 April 2008, para. 73)*

Bearing in mind the general considerations in paragraphs 73 to 75, a system whereby the IPPC permitting process starts after the construction is finalized, as is the case in Lithuania, need not of itself be in conflict with the requirements of Convention, though in certain circumstances it might be. Once an installation has been constructed, political and commercial pressures may effectively foreclose certain technical options that might in theory be argued to be open but which are in fact not compatible with the installed infrastructure. A key issue is whether the public has had the opportunity to participate in the decision-making on those technological choices at one or other stage in the overall process, and before the “events on the ground” have effectively eliminated alternative options. If the only opportunity for the public to provide input to decision-making on technological choices, which is subject to the public participation requirements of article 6, is at a stage when there is no realistic possibility for certain technological choices to be accepted, then this would not be compatible with the Convention.

*(Lithuania ACCC/2006/16; ECE/MP.PP/2008/5/Add.6, 4 April 2008, para. 74)*

The requirement for “early public participation, when all options are open” should be seen first of all within a concept of tiered decision-making, whereby at each stage of decision-making certain options are discussed and selected with the participation of the public and each consecutive stage of decision-making addresses only the issues within the option already selected at the preceding stage. Thus, according to the particular needs of a given country and the subject matter of the decision-making, Parties have a certain discretion as to which range of options is to be discussed at each stage of the decision-making. Such stages may involve various consecutive strategic decisions under article 7 of the Convention (policies, plans and programmes) and various individual decisions under article 6 of the Convention authorizing the basic parameters and location of a specific activity, its technical design, and finally its technological specifications related to specific environmental standards. Within each and every such procedure, where public participation is required, it should be provided early in the procedure when all options are open and effective public participation can take place.

*(European Community ACCC/C/2006/17; ECE/MP.PP/2008/5/Add.10, 2 May 2008, para. 51)*

Again, in its examination the Committee must consider the structural characteristics of the Party concerned, and the general division of powers between the European Community and its Member States in implementing Community directives. The communicant maintains that the EIA Directive and IPPC Directive fail to comply with the Convention because they fail to provide for “early public participation, when all options are open and effective public participation can take place” on account of the fact that the participation may take place after the construction has commenced. The allegations concerning the two directives have to be considered separately.

*(European Community ACCC/C/2006/17; ECE/MP.PP/2008/5/Add.10, 2 May 2008, para. 52)*

First, it appears to the Committee that for all activities involving construction, the EIA Directive requires public participation to be carried out before the actual construction starts. This requirement can be interpreted from the definitions of “project” and “development consent” in article 1, paragraph 2, of the EIA Directive taken in conjunction with the obligation set out in article 2, paragraph 1, to require development consent.

*(European Community ACCC/C/2006/17; ECE/MP.PP/2008/5/Add.10, 2 May 2008, para. 53)*

Second, the Committee notes that the IPPC Directive obliges the Member States to ensure early and effective opportunities for public participation in procedures for issuing a permit for new installations covered by the IPPC Directive. A system whereby the IPPC permitting process starts after the construction is finalised need not of itself be in conflict with the requirements of Convention, though in certain circumstances it might be. Once an installation has been constructed, political and commercial pressures may effectively foreclose

**IPPC/  
PP before  
construction**

**tiered  
decision-making**

**EIA/IPPC  
directives**

certain technical options that might in theory be argued to be open but which are in fact not compatible with the installed infrastructure. A key issue is whether the public has had the opportunity to participate in the decision-making on those technological choices at one or other stage in the overall process, and before the “events on the ground” have effectively eliminated alternative options. If a legal framework of a Party to the Convention is such that the only opportunity for the public to provide input to decision-making on technological choices which is subject to the public participation requirements of article 6 of the Convention is at a stage when there is no realistic possibility for certain technological choices to be accepted, then such a legal framework would not be compatible with the Convention.

*(European Community ACCC/C/2006/17; ECE/MP.PP/2008/5/Add.10, 2 May 2008, para. 54)*

It follows from the above that the provisions on public participation in both the EIA and the IPPC Directives, at least as far as decision-making for landfills is concerned, seem to be in line with the requirement of article 6, paragraph 4, of the Convention to provide “early public participation, when all options are open and effective public participation can take place”.

*(European Community ACCC/C/2006/17; ECE/MP.PP/2008/5/Add.10, 2 May 2008, para. 55)*

The Committee is not convinced that the matters examined by it in response to the communication establish any failure by the European Community to comply with the provisions of the Convention when transposing them through the EIA and IPPC Directives. The finding is based on the assumption that the IPPC Directive is interpreted in a way that allows an IPPC permit in relation to newly established installations to be granted after the construction is completed only if the public had an opportunity to participate at an earlier stage of the procedure when all options were open, in particular the options regarding those features that cannot realistically be altered after the construction is finalized.

*(European Community ACCC/C/2006/17; ECE/MP.PP/2008/5/Add.10, 2 May 2008, para. 61)*

Whether all options were in fact open to the Prefect and effective public participation could take place in the decision-making procedure, as required under article 6, paragraph 4 of the Convention, depends on many factors. The first issue to consider is whether the Prefect was in any way constrained by earlier decisions, so that all options were no longer open and, for that reason, effective public participation could not take place.

*(France ACCC/C/2007/22; ECE/MP.PP/C.1/2009/4/Add.1, 8 February 2011, para. 36)*

As shown by the communicant, the authorization by the Prefect was preceded by several acts by CUMPM and the private operator. Leaving aside the plans from 1991 and 1993, respectively, the resolutions by CUMPM had the effect of narrowing down what was considered by CUMPM as only relevant method and site for treatment of household wastes. When deciding to establish a public tender, to approve the choice of concessionaire and to enter into a contract with the private operator, CUMPM in practice also narrowed down its scope of considerations of relevant forms of waste treatment. However, the question is whether any of these steps and decisions, together or in isolation, had the effect of “closing” different options in the decision-making process. As stated by the Committee in its findings with regard to communication ACCC/C/2006/17 (European Community), where several permit decisions are required in order for an activity covered by article 6, paragraph 1, to proceed, it is not necessarily sufficient to apply the public participation procedures of article 6 to just one of the permitting decisions (ECE/MPPP/2008/5/Add.10, para. 42). When deciding whether public participation is required in several procedures for one activity, the legal effects of each decision, and whether it amounts to a permit, must be taken into account.

*(France ACCC/C/2007/22; ECE/MP.PP/C.1/2009/4/Add.1, 8 February 2011, para. 37)*

**N.B.**

According to the communicant, when examining the application the Prefect is in no circumstance in the position of questioning the usefulness of the activity for which the permit is required. While in many national laws, the question of whether an application for a permit concerning an activity that is potentially harmful to the environment should be approved may, at least in part, depend on the usefulness of the project, this is not a requirement of the Convention. The Convention Parties may apply different criteria for approving and dismissing an application for authorization, for instance with regard to the standard of technology, the effects on health and the environment, and the usefulness of the activity in question. However, these issues are not addressed by the Convention. Rather, from the viewpoint of compliance with article 6, paragraph 4, of the Convention, the decisive issue is whether “all options are open and effective participation can take place” at the stage of

decision-making in question. This implies that when public participation is provided for, the permit authority must be neither formally nor informally prevented from fully turning down an application on substantive or procedural grounds. If the scope of the permitting authority is already limited due to earlier decisions, then the Party concerned should have also ensured public participation during the earlier stages of decision-making.

*(France ACCC/C/2007/22; ECE/MP.PP/C.1/2009/4/Add.1, 8 February 2011, para. 38)*

In the present case, to meet the criteria that all options are open and effective public participation can take place, it is not sufficient that there is a formal possibility, *de jure*, for the Prefect to turn down the application. If the practice in the jurisdiction of the Party concerned is such that, despite the possibility of the permit authority to reject an application, this never or hardly ever happens, then *de facto* all options would not be open at the stage in question. Thus, there would be no room for effective public participation as required by the Convention. The information given to the Committee does not suggest that this is the case with the authorization procedures before the French Prefects. According to the Party concerned, about 50 applications before the Prefects are refused in France each year. While the communicant argued that the Prefect could not question the usefulness of the activity, it neither confirmed nor contested the figure of refusals given by the Party concerned. It thus appears to the Committee that at the stage of deciding on the application, the Prefect indeed was in a position to reject the application on environmental or other grounds, as set out in French law. For that reason, the Committee cannot see that the Prefect was already constrained during the procedures for public participation or was unable to take due account of the views of members of the public on all aspects raised. Thus, the Party concerned did not fail to comply with article 6, paragraph 4, of the Convention on this ground.

*(France ACCC/C/2007/22; ECE/MP.PP/C.1/2009/4/Add.1, 8 February 2011, para. 39)*

The communicant also alleges that by only providing for public inquiries in the three aforementioned communes in the decision-making before the Prefect, the Party concerned failed to provide for effective public participation. According to the Committee, however, whether effective participation can take place does not only depend on the number of inquiries. Provided that adequate information had been given about the inquiries and that they were held in an open and transparent manner, limiting the number of inquiries to three locations in this case does not as such amount to a failure to comply with the Convention. Based on the information given to the Committee, these three hearings seem to have been open to anybody and duly announced, so that they provided adequate opportunities for the public concerned to give its views about the project. Thus, the Committee cannot conclude that the Party concerned failed to comply with article 6, paragraphs 3, 4 or 7, on these grounds.

*(France ACCC/C/2007/22; ECE/MP.PP/C.1/2009/4/Add.1, 8 February 2011, para. 43)*

The communicant implies that the fact that the report of the inquiry commission was filed on 7 December 2005 and the authorization was made about a month later shows that there was no room for effective participation. The communicant also argues that the timespan during the procedure before the Prefect was too tight to ensure adequate public participation. In the view of the Committee, however, the fact that the authorization was made on 12 January 2006, about a month after the inquiry report was filed, does not as such amount to a failure to comply with the requirement for reasonable time frames as specified in article 6, paragraph 3, of the Convention. Nor is there any other information that shows that the timespan of the decision-making before the Prefect as such was too tight to ensure effective public participation. As already stated, it is also the impression of the Committee that all options were open at the stage of the decision-making before the Prefect, as required under article 6, paragraph 4.

*(France ACCC/C/2007/22; ECE/MP.PP/C.1/2009/4/Add.1, 8 February 2011, para. 45)*

As to whether any one of the decisions and decision-making processes referred to by the communicant amount to the preparation of plans, programmes or policies within the purview of article 7 of the Convention, the Committee refers to its previous findings where it stated that, when it determines how to categorize the relevant decisions under the Convention, their labels under domestic law of the Party concerned are not decisive (ECE/MP.PP/C.1/2006/4/Add.2, para. 29). In this case, the Committee will thus have to determine whether any of the decisions taken amount to part of a decision-making process regarding the preparation of plans, programmes or policies, and if so, whether the conditions of article 7, in conjunction with article 6, paragraphs 3, 4 and 8 of the Convention, have been met.

*(Austria ACCC/C/2008/26; ECE/MP.PP/C.1/2009/6/Add.1, 8 February 2011, para. 55)*

**N.B.**

***label  
of decision under  
national law***



The Committee finds that the decision of the Styrian Provincial Government on 22 January 2004, well in advance of the entry into force of the Convention for the Party concerned, initiated a planning process which is still ongoing. Within that planning process, public participation, in the sense of public debate, has taken place through the so-called Round Tables, both before and after the Convention entered into force for the Party concerned. Whether these Round Tables as such amount to public participation in accordance with the article 7, in conjunction with article 6, paragraphs 3, 4 and 8, is not for the Committee to decide in this case, given that the relevant decision was taken and that no significant events relating to the decision-making process took place after the Convention entered into force for the Party concerned.

*(Austria ACCC/C/2008/26; ECE/MP.PP/C.1/2009/6/Add.1, 8 February 2011, para. 56)*

#### **public statements**

The Committee notes that the planning process is still ongoing. Important in this respect is the assurance of the Party concerned that during the strategic assessment, still to be conducted based on the SP-V Act, all options will be open and considered and participation in accordance with the Convention will be afforded. In this context, the Committee, however, expresses concern in respect of the motion adopted by Styrian Provincial Government of 21 April 2008 and the document dated 27 March 2008 which provides the basis for this motion. These documents express a strong presumption in favour of the 4-lane option (corroborated by information available on the website of the Styrian Government),\* which may de facto narrow down the available options and thus hamper participation at an early stage when all options are still open and due account can be taken of the outcome of the public participation. Similarly, the Committee expresses concern with respect to the statements of the member of the provincial government, Mag. Kristina Edlinger-Ploder on public television and in newspapers that the 4-lane road will be built, excluding the consideration of other options.\*\*

\* See <http://www.verkehr.steiermark.at/cms/beitrag/10930541/11163579/> (last accessed 17 June 2009).

\*\* See <http://oesterreich.orf.at/steiermark/stories/272397/> (last accessed on 23 September 2009).

*(Austria ACCC/C/2008/26; ECE/MP.PP/C.1/2009/6/Add.1, 8 February 2011, para. 57)*

As to the possible link between the two decision-making processes (see para. 2 (c) above), the Committee suggests that it would be logical to examine this possible link early on in the decision-making process, when all options are still open. The strategic assessment to be conducted pursuant to the SP-V Act might well provide opportunities in this respect.

*(Austria ACCC/C/2008/26; ECE/MP.PP/C.1/2009/6/Add.1, 8 February 2011, para. 64)*

#### **formal PP**

The Committee concludes that, given the present phase of the decision-making process, the Party concerned has not failed to comply with the Convention. The Committee, however, notes that at least in part its conclusion is related to the fact that the planning process in the present case commenced well in advance of the entry into force of the Convention for the Party concerned. It is in this context that the Committee considers it important to reiterate its concern expressed in paragraph 0. The Committee emphasizes that participation in accordance with article 6 and article 7, in conjunction with article 6, paragraphs 3, 4 and 8, of the Convention, should take place and that such participation does not only require formal participation. Importantly, participation is to include public debate and the opportunity for the public to participate in such debate at an early stage of the decision-making process, when all options are open and when due account can be taken of the outcome of the public participation.

*(Austria ACCC/C/2008/26; ECE/MP.PP/C.1/2009/6/Add.1, 8 February 2011, para. 66)*

#### **mining licence**

In this case, a special mining licence was issued for the developer to exploit deposits in the Teghout region in 2004, and the developer organized public participation in the framework of the EIA procedure in 2006. Providing for public participation only after the licence has been issued reduced the public's input to only commenting on how the environmental impact of the mining activity could be mitigated, but precluded the public from having input on the decision on whether the mining activity should be pursued in the first place, as that decision had already been taken. Once a decision to permit a proposed activity has been taken without public involvement, providing for such involvement in the other subsequent decision-making stages can under no circumstances be considered as meeting the requirement under article 6, paragraph 4, to provide "early public participation when all options are open". This is the case even if a full EIA is going to be carried out (ACCC/C/2005/12, para. 79). Therefore, the Committee finds that the Party concerned failed to provide for early public

participation as required in article 6, paragraph 4, of the Convention.

*(Armenia ACCC/C/2009/43; ECE/MP.PP/2011/11/Add.1, April 2011, para.76)*

In respect of the communicant's submission that, due to the fact that the Reporters' terms of reference did not require them to hear evidence regarding whether the road was needed, the Party concerned failed to meet the requirement of article 6, paragraph 4, that all options be open, the Committee notes that there has been an ongoing public participation process regarding the AWPR for more than a decade. In this respect, the Committee recalls its findings on communication ACCC/C/2006/16 (Lithuania): "The requirement for 'early public participation when all options are open' should be seen first of all within a concept of tiered decision-making whereby at each stage of decision-making certain options are discussed and selected with the participation of the public and each consecutive stage of decision-making addresses only the issues within the option already selected at the preceding stage."

*(United Kingdom ACCC/C/2009/38; ECE/MP.PP/C.1/2011/2/Add.10, April 2011, para. 81)*

In light of the above, the relevant issue is to ensure that there was public participation regarding all options, including the "zero option", at some previous stage. Considering the chronology set out in paragraphs 23 to 40 above, the Committee finds that at several stages, e.g. during the development of the Local Transport Strategies and Modern Transport Strategies and the Aberdeen & Aberdeenshire Structure Plan as well as the spring 2005 consultations, the public had opportunities to make submissions that the AWPR should not be built and to have those submissions taken into account. In this regard, the Committee notes that it is not empowered to examine events that, in some cases, significantly predate the entry into force of the Convention for the Party concerned. The Committee considers that the public had a number of opportunities during the ongoing participation process over the years to make submissions that the AWPR not be built, and to have those submissions taken into account. The Committee therefore finds that the Party concerned is not in non-compliance with article 6, paragraph 4.

*(United Kingdom ACCC/C/2009/38; ECE/MP.PP/C.1/2011/2/Add.10, April 2011, para. 82)*

It follows from article 6, paragraph 4, of the Convention that a core criterion for public participation in decisions on specific activities is that it is provided at an early stage "when all options are open and effective public participation can take place". While there was no opportunity for public participation in the decision-making leading to the three UJD decisions of August 2008, the EIA procedure that provided for public participation was carried out before the permit was given to put the Mochovce NPP into operation. In this context, the Committee recalls that under Slovak law, the EIA procedure is not a permitting procedure in itself, although the results of the EIA should be considered in the subsequent permitting procedures. The question is thus whether the opportunity for public participation in the EIA procedure after the construction permit was issued, but before the operation was permitted, was sufficient to meet the requirements of the Convention.

*(Slovakia ACCC/C/2009/41; ECE/MP.PP/2011/11/Add.3, 12 May 2011, para. 61)*

Providing for public participation after the construction permit can only be compatible with the requirements of the Convention if the construction permit does not preclude that all issues decided in the construction permit can be questioned in subsequent or related decision-making so as to ensure that all options remain open. Yet, a mere formal possibility, de jure, to turn down an application at the stage of the operation permit, when the installation is constructed, is not sufficient to meet the criteria of the Convention if, de facto, that would never or hardly ever happen (ACCC/C/2007/22 (France) ECE/MP.PP/2009/4/Add.1, para. 39). The risk is obvious that providing for public participation only after the construction permit precludes early and effective public participation when all options are open. Rather, it is likely that once an installation has been constructed in accordance with a construction permit, political and commercial pressures, as well as notions of legal certainty, effectively foreclose discussions concerning the construction itself, as well as options with regard to technology and infrastructure (ACCC/C/2006/16 (Lithuania) ECE/MP.PP/2008/5/Add.6, paras. 74–75).

*(Slovakia ACCC/C/2009/41; ECE/MP.PP/2011/11/Add.3, 12 May 2011, para. 63)*

In the present case, the Committee is convinced that, once the construction of the Mochovce NPP Units 3 and 4 is carried out, many of the conditions set in the construction permit are such that they can no longer be challenged by the public. Although the permit to commence the operation and the permit to continue the operation are to be given before the activity starts, there is a considerable risk that once the installation is constructed it is no

**N.B.**

**zero option**

**EIA**

**PP after  
construction**

longer a politically realistic option for the authority to block the operation on the basis of issues relating to the construction, to technology or to infrastructure. Moreover, it is not sufficient to provide for public participation only at the stage of the EIA procedure unless it is also part of the permitting procedure. For these reasons, the Party concerned failed to comply with article 6, paragraph 4, of the Convention in the decision-making for Mochovce NPP Units 3 and 4.

*(Slovakia ACCC/C/2009/41; ECE/MP.PP/2011/11/Add.3, 12 May 2011, para. 64)*

**OVOS/  
zero option**

The public participation process for the NPP was part of the EIA (OVOS) procedure undertaken by the developer. The question that arises is whether public participation at that stage was not limited, given that advance preparations for the project had been undertaken since at least 2007 and that the project site and the developer — which had established project offices near the site (project documentation was accessible there) — had been selected. It appears that the option of not building the NPP at the particular location was no longer open for discussion.

*(Belarus ACCC/C/2009/44; ECE/MP.PP/C.1/2011/6/Add.1, 19 September 2011, para.76)*

**EIA/  
OVOS/expertiza**

The Committee has not been provided with any evidence that the public was involved, in forms envisaged by the Convention, in previous decision-making procedures which decided on the need for NPP and selected its location. Once the decision to permit the proposed activity in the Ostrovets area had already been taken without public involvement, providing for such involvement at a following stage could under no circumstances be considered as meeting the requirement under article 6, paragraph 4, to provide for “early public participation when all options are open” (see also findings on communication ACCC/C/2005/12 concerning Albania, ECE/MP.PP/C.1/2007/4/Add.1, para. 79; and findings on communication ACCC/C/2009/41, ECE/MP.PP/2011/11/Add.3, paras. 61–63). This is the case even if a full EIA procedure is being carried out. Providing for public participation only at the stage of the EIA (OVOS) procedure for the NPP, with one hearing on 9 October 2009, effectively reduced the public’s input to only commenting on how the environmental impact of the NPP could be mitigated, and precluded the public from having any input on the decision on whether the NPP installation should be at the selected site in the first place, since the decision had already been taken. Therefore, the Committee finds that the Party concerned failed to comply with article 6, paragraph 4, of the Convention.

*(Belarus ACCC/C/2009/44; ECE/MP.PP/2011/6/Add.1, 19 September 2011, para. 78)*

The Committee emphasizes that article 6, paragraph 4, of the Convention requires “early public participation, when all options are open and effective public participation can take place”, both in relation to activities under article 6 of the Convention and in relation to plans and programmes under article 7 of the Convention. If the adoption of local investment plans, or other developments, were to prejudice public participation in the planning procedure as envisaged by article 6, paragraph 4, in relation to article 6 or 7 of the Convention, this would engage the responsibilities of the Party concerned under these provisions of the Convention. If this were the case, the Party concerned would also be obliged to ensure all-inclusive public participation, i.e., not limited to the involvement of private sector, in this early stage of planning.

*(United Kingdom ACCC/C/2010/45 and ACCC/C/2011/60; ECE/MP.PP/C.1/2013/12, 23 October 2013, para. 81)*

**EIA/  
tiered  
decision-making**

The EIA decisions, issued for the activities listed in annex I to the Convention and the subsequent decisions issued according to the SPA, form different stages of a tiered decision-making. The Committee has dealt with the concept of tiered decision-making in a number of its findings, with respect to the requirements in article 6, paragraph 4, of the Convention, regarding “early public participation when all options are open”. In that respect, the Committee holds that each Party has certain discretion as to which range of options is to be discussed at each stage of the decision-making. Nevertheless, as each consecutive stage of decision-making addresses only the issues within the option already selected at the preceding stage, the Parties must, to comply with the requirement of article 6, paragraph 4, of the Convention, provide for early public participation in every procedure where some decision concerning relevant options is taken (cf. findings on communication ACCC/C/2006/16 concerning Lithuania, para.71). A mere formal possibility, de jure, to turn down an application at the latter stage of the tiered decision-making is not sufficient to meet the criteria of the Convention if, de facto, that would never or hardly ever happen (cf. findings on communication ACCC/C/2007/22 concerning France (ECE/MP.PP/C.1/2009/4/Add.1), para. 39 and findings on communication ACCC/C/2009/41 concerning Slovakia (ECE/MP.PP/2011/11/Add.3), para. 63).

*(Bulgaria ACCC/C/2011/58; ECE/MP.PP/C.1/2013/4, 11 January 2013, para. 75)*

Given that the process to prepare the application was initiated on 31 October 2009 and that formally the general public had only seven days to get acquainted with the draft and submit comments, starting on 19 August 2011, that is, almost two years after the start of the application's preparation, the Committee finds that the Party concerned failed to comply with article 7, in conjunction with article 6, paragraph 4, of the Convention, because no early public participation was ensured, when all options were open.

*(Czech Republic ACCC/C/2012/70; ECE/MP.PP/C.1/2014/9, 4 June 2014, para. 58)*

In this respect, it is noted that article 7 provides that “the public which may participate shall be identified by the relevant public authority, taking into account the objectives of this Convention”. This provision should not be used by public authorities in a way so as to restrict public participation, but rather as a way of making public participation more effective. In the present case, it is accepted that the input by private stakeholders engaged in electricity production was essential in that it provided specific technical details indispensable for the preparation of the application. The Committee considers that there was a considerable span of time for participation of private stakeholders compared to that granted to other members of the public, to the extent that the authority exercised its discretion in a way that ran counter to the objectives of the Convention; in particular “to encourage widespread public awareness of, and participation in, decisions affecting the environment and sustainable development” by involving, among others, NGOs promoting environmental protection. While the closer inclusion of the private stakeholders in the process may have been justified, there was still an obligation on the public authority to act in accordance with the objectives of the Convention and not to abuse this provision to effectively bar or significantly reduce the effective public participation of other members of the public.

*(Czech Republic ACCC/C/2012/70; ECE/MP.PP/C.1/2014/9, 4 June 2014, para. 59)*

*private  
stakeholders/  
objectives of  
the Convention*

5. Each Party should, where appropriate, encourage prospective applicants to identify the public concerned, to enter into discussions, and to provide information regarding the objectives of their application before applying for a permit.

The Administrative Court of Marseille rejected the application to annul the authorization on the merits, stating that when considering which provisions have a direct effect according to French law, paragraphs 2 and 3 of article 6 have such effect, but that this is not the case with paragraphs 4 and 5 of article 6. The Committee notes that while the Parties may implement the Convention in different ways, e.g. by fully transforming the provisions through national legislation or by, to some extent relying on notions of direct effect, it is apparent that paragraph 5 of article 6 cannot be complied with unless it is fully reflected in the national law of the Parties.

*(France ACCC/C/2007/22; ECE/MP.PP/C.1/2009/4/Add.1, 8 February 2011, para. 49)*

6. Each Party shall require the competent public authorities to give the public concerned access for examination, upon request where so required under national law, free of charge and as soon as it becomes available, to all information relevant to the decision-making referred to in this article that is available at the time of the public participation procedure, without prejudice to the right of Parties to refuse to disclose certain information in accordance with article 4, paragraphs 3 and 4. The relevant information shall include at least, and without prejudice to the provisions of article 4:

Moreover, article 6, paragraph 6, of the Convention is aimed at providing the public concerned with an opportunity examine relevant details to ensure that public participation is informed and therefore more effective. It is certainly not limited to publication of an environmental impact statement. But had some of the requested information fallen outside the scope of article 6, paragraph 6, of the Convention, it would be still covered by the provisions of article 4, regulating access to information upon request.

*(Ukraine ACCC/C/2004/3 and ACCC/S/2004/1; ECE/MP.PP/C.1/2005/2/Add.3, 14 March 2005, para. 32)*

The Committee wishes to stress that in jurisdictions where copyright laws may be applied to EIA studies that are prepared for the purposes of the public file in the administrative procedure and available to authorities when making decisions, it by no means justifies a general exclusion of such studies from public disclosure. This is in particular so in situations where such studies form part of “information relevant to the decision-making” which, according to article 6, paragraph 6, of the Convention, should be made available to the public at the time of the public participation procedure.

*(Romania ACCC/C/2005/15; ECE/MP.PP/2008/5/Add.7, 16 April 2008 para. 29)*

*implementation*

*EIS*

*copyright law*

**exempting parts  
of EIA**

The Committee stated in its findings and recommendations with regard to communication ACCC/C/2004/3 and submission ACCC/S/2004/1 that article 6, paragraph 6, aimed at providing the public concerned with an opportunity to examine relevant details to ensure that public participation is informed and therefore more effective. It is certainly not limited to a requirement to publish an environmental impact statement. Although that provision allows that requests from the public for certain information may be refused in certain circumstances related to intellectual property rights, this may happen only where in an individual case the competent authority considers that disclosure of the information would adversely affect intellectual property rights. Therefore, the Committee doubts very much that this exemption could ever be applicable in practice in connection with EIA documentation. Even if it could be, the grounds for refusal are to be interpreted in a restrictive way, taking into account the public interest served by disclosure. Decisions on exempting parts of the information from disclosure should themselves be clear and transparent as to the reasoning for non-disclosure. Furthermore, disclosure of EIA studies in their entirety should be considered as the rule, with the possibility for exempting parts of them being an exception to the rule. A general exemption of EIA studies from disclosure is therefore not in compliance with article 4, paragraph 1, in conjunction with article 4, paragraph 4, and article 6, paragraph 6, in conjunction with article 4, paragraph 4, of the Convention.

*(Romania ACCC/C/2005/15; ECE/MP.PP/2008/5/Add.7, 16 April 2008 para. 30)*

When examining the time frame, the Committee recalls that the 2003 resolutions did not amount to permit decisions under article 6 of the Convention, nor did the decision to choose the private operator or establish the contracts with the operator. Therefore, the timing for public participation cannot be related to the entire timespan since the 2003 CUMPM resolutions. Thus, the question is whether the time frames given in the decision-making before the Prefect as such were sufficient for allowing the public to prepare and participate effectively, and to allow the public to submit any comments, information, analyses or opinions it considered relevant, as set out in article 6, paragraphs 3 and 7, of the Convention. The Committee notes that the announcement of the public inquiry, made on 3 August, provided a period of approximately six weeks for the public to inspect the documents and prepare itself for the public inquiry. Furthermore, the public inquiry held from 19 September to 3 November 2005 provided 45 days for public participation and for the public to submit comments, information, analyses or opinions relevant to the proposed activity. The Committee is convinced that the provision of approximately six weeks for the public concerned to exercise its rights under article 6, paragraph 6, of the Convention and approximately the same time relating to the requirements of article 6, paragraph 7, in this case meet the requirements of these provisions in connection with article 6, paragraph 3, of the Convention.

*(France ACCC/C/2007/22; ECE/MP.PP/C.1/2009/4/Add.1, 8 February 2011, para. 44)*

**examination  
v. access**

The Committee makes two general remarks/observations concerning this provision. First, the Committee notes that article 6, paragraph 6, does require authorities to give the public concerned access to the relevant information free of charge, but only “for examination”. Thus this provision does not allow making a charge for the examination of the information in situ but does not forbid making a charge for copying.

*(Spain ACCC/C/2008/24; ECE/MP.PP/C.1/2009/8/Add.1, 30 September 2010, para.95)*

Furthermore, this provision applies “at the time of the public participation procedure”. Therefore outside the time of public participation procedure, the right to examine information under article 6, paragraph 6, does not apply and the public needs to rely on the rights of access to information under article 4.

*(Spain ACCC/C/2008/24; ECE/MP.PP/C.1/2009/8/Add.1, 30 September 2010, para.96)*

**role of developer**

Belarusian legislation (the OVOS Instructions) provides that the obligation to provide the public with the relevant information rests only with the developer, an approach that in the view of the Committee is not in line with the Convention (see paras. 77 and 80 above).

*(Belarus ACCC/C/2009/37; ECE/MP.PP/2011/11/Add.2, 12 May 2011, para.92)*

Furthermore, Belarusian law envisages specifically that the OVOS Statement be made publicly available, but not that the OVOS Report shall be made available to the public. There is also no clear obligation to provide the public with the records of the hearings. Bearing in mind the significance of both documents as a basis for the decision, this seems to be a considerable shortcoming of the legislation; however, given that such documents seem to be covered by the definition of environmental information available to the public (see para. 64 above), this shortcoming does not necessarily amount to noncompliance with the Convention.

*(Belarus ACCC/C/2009/37; ECE/MP.PP/2011/11/Add.2, 12 May 2011, para.93)*

The Committee recognizes that article 6, paragraph 6, refers to giving “access for examination” of the information that is relevant to decision-making, but the Committee notes that article 4, paragraph 1, requires that “copies” of environmental information be provided. In the Committee’s view “copies” does, in fact, require that the whole documentation be close to the place of residence of the requester or entirely in electronic form, if the requester lives in another town or city.

(Spain ACCC/C/2009/36; ECE/MP.PP/C.1/2010/4/Add.2, 08 February 2011, para.61)

NOTE: The information related to a proposed project was made available at two computers located in another city, without a possibility to copy it.

The Committee notes that public participation in decision-making for a specific project is inhibited when the conditions described by the communicant in the case of the oil refinery project are set by the public authorities. The Committee finds that, by requiring the public to relocate 30 or 200 kilometres, by allowing access to thousands of pages of documentation from only two computers without permitting copies to be made on CDROM or DVD, and by, in these circumstances, setting a time frame of one month for the public to examine all this documentation on the spot, the Spanish authorities failed to provide for effective public participation and thus to comply with article 6, paragraphs 6 and 3, respectively, of the Convention.

(Spain ACCC/C/2009/36; ECE/MP.PP/C.1/2010/4/Add.2, 08 February 2011, para.62)

The Committee notes with some concern that the route finally selected, and the dual carriageway character of the Fast Link were not subject to the informal consultation process. It finds that the decision to increase the Fast Link from a single to a dual carriageway is not, as submitted by the Party concerned, a purely technical matter. It however finds that these aspects were ultimately subject to public participation through the statutory authorization process following the publication of the Draft Schemes and Orders in December 2006. In light of the subsequent statutory consultation that did provide for public participation on these aspects, the Committee can not conclude that the Party concerned is in non-compliance with article 6, paragraph 6 and 7.

(United Kingdom ACCC/C/2009/38; ECE/MP.PP/C.1/2011/2/Add.10, April 2011, para. 85)

Emphasizing that overall economic interests, as such, are not sufficient in order to reasonably restrict access to environmental information, and considering that the Party concerned did not successfully invoke any of the exemptions referred to in article 4, paragraph 4, to justify why this information was restricted, as well as the fact that a significant part of the information was not available in the form requested, the Committee recalls its findings in communication ACCC/C/2009/36 (paras. 60–61), where, although it recognized that article 6, paragraph 6, refers to giving “access for examination” of the information that is relevant to decision-making, it also noted that article 4, paragraph 1, requires that “copies” of environmental information be provided. In the Committee’s view “copies” does, in fact, require that the whole documentation be available close to the place of residence of the person requesting information, or entirely in electronic form, if this person lives in another town or city. According to the facts presented in this case, access to information was restricted to the site of the Directorate of the NPP in Minsk only and no copies could be made. For these reasons, the Committee finds that the Party concerned failed to comply with article 6, paragraph 6, and article 4, paragraph 1 (b), of the Convention.

(Belarus ACCC/C/2009/44; ECE/MP.PP/C.1/2011/6/Add.1, 19 September 2011, para. 69)

Article 6, paragraph 6 of the Convention aims at providing the public concerned with an opportunity to examine relevant details to ensure that public participation is informed and therefore effective. While active dissemination of certain documents by publishing them in newspapers (e.g., in the present case publishing a Brief EIA Overview, which is a non-technical summary of the EIA Report) is certainly a good practice, only by ensuring access to all documents relevant to the decision-making for examination can the requirement of this provision be fulfilled.

(Belarus ACCC/C/2009/44; ECE/MP.PP/C.1/2011/6/Add.1, 19 September 2011, para.79)

In addition, failing to inform the public about the possibility to examine the full EIA Report when notifying the public under article 6, paragraph 2, and informing it only during the hearing about this document, deprives the public in practice of its right under article 6, paragraph 6. Therefore, the Committee considers that by not informing the public in due time of the possibility of examining the full EIA Report, which is a critical document con-

**close to place  
of residence**

**examination  
v. access**

**access to  
all documents**

**full EIA report/  
informing**

taining important details about a proposed project, the Party did not comply with article 6, paragraph 6, of the Convention.

*(Belarus ACCC/C/2009/44; ECE/MP.PP/C.1/2011/6/Add.1, 19 September, 2011, para. 80)*

Under the law of the Party concerned, “interested persons” are able to access general information about the project — including the final OVOS report, as well as more specific information about issues relating to the environment and the acquisition of land — via the website of the project proponent only, and not via the website of the competent public authority. The Committee notes, in this connection, that the relevant information for the construction of the Temirlanovka by-pass segment of the Road Corridor Project was not made available in parallel on the website of the public authority responsible for decision-making, as required by article 6, paragraph 6, of the Convention.

*(Kazakhstan ACCC/C/2011/59; ECE/MP.PP/C.1/2013/9, 16 July 2013, para. 53)*

**role of developer**

The Committee further notes that the OVOS report was made available only on the website of the developer, which is not in accordance with the Convention, even if in this case the developer was a public authority, i.e., the Ministry of Transport and Communication. Rather, the OVOS report should have been made available to the public by the decision-making authority, which in this case was the Ministry of Environment. Therefore, the Committee finds that the Party concerned is not in compliance with article 6, paragraph 6, of the Convention.

*(Kazakhstan ACCC/C/2011/59; ECE/MP.PP/C.1/2013/9, 16 July 2013, para. 54)*

With respect to article 6, paragraph 6, of the Convention the communicant submitted that no or inadequate information was provided with regard to the figures for the calculation of the reduction of CO<sub>2</sub> emissions from wind energy and that therefore effective public participation was impeded. The matter of technical data deriving from different methods for the calculation of the reduction of CO<sub>2</sub> emissions from wind energy projects was discussed in paragraphs 84 to 88 above. In line with what was concluded above, the Committee cannot conclude that the Party concerned (United Kingdom) failed to comply with article 6, paragraph 6, of the Convention.

*(European Union and United Kingdom ACCC/C/2012/68; ECE/MP.PP/C.1/2014/5, 13 January 2014, para. 91)*

- (a) A description of the site and the physical and technical characteristics of the proposed activity, including an estimate of the expected residues and emissions;
- (b) A description of the significant effects of the proposed activity on the environment;

**environmental expertiza**

The Committee notes with some concern the fact that the EE [environmental expertiza] process, being limited to the consideration of waste and pollution issues (see para. 16), does not necessarily address all significant environmental effects. While it is a moot point whether this constitutes non-compliance with article 6, it is certainly within the spirit of article 6 that the permitting process (or the combination of permitting processes) for activities covered by article 6 should address all significant types of effects of such activities on the environment (see, for example, art. 6, para. 6 (b)). Limiting the (combined) scope of the permitting processes to just some types of environmental effects could significantly undermine the efficacy of that article.

*(Kazakhstan ACCC/C/2004/2; ECE/MP.PP/C.1/2005/2/Add.2, 14 March 2005, para. 30)*

- (c) A description of the measures envisaged to prevent and/or reduce the effects, including emissions;
- (d) A non-technical summary of the above;
- (e) An outline of the main alternatives studied by the applicant; and

With regard to the communicants’ allegations with respect to lack of certain information relevant to the decision-making (para. 45), the Committee does not consider itself in a position to analyse the accuracy of the data which form the basis for the decisions in question. The Convention, while requiring the main alternatives studied by the applicant to be made accessible, does not prescribe what alternatives should be studied. Thus, the role of the Committee is to find out if the data that were available for the authorities taking the decision were accessible to the public and not to check whether the data available were accurate.

*(Lithuania ACCC/2006/16; ECE/MP.PP/2008/5/Add.6, 4 April 2008, para. 79)*

- (f) In accordance with national legislation, the main reports and advice issued to the public authority at the time when the public concerned shall be informed in accordance with paragraph 2 above.

7. Procedures for public participation shall allow the public to submit, in writing or, as appropriate, at a public hearing or enquiry with the applicant, any comments, information, analyses or opinions that it considers relevant to the proposed activity.

Whereas the Convention requires in article 6, paragraph 7, that “public participation procedures shall allow the public to submit any comments, information, analyses or opinions”, Lithuanian legislation limits the right to submit comments to the public concerned, and these comments are required to be “motivated proposals”, i.e. containing reasoned argumentation. In this respect, Lithuanian law fails to guarantee the full scope of the rights envisaged by the Convention.

*(Lithuania ACCC/2006/16; ECE/MP.PP/2008/5/Add.6, 4 April 2008, para. 80)*

***motivated  
comments***

The communicant also alleges that by only providing for public inquiries in the three aforementioned communes in the decision-making before the Prefect, the Party concerned failed to provide for effective public participation. According to the Committee, however, whether effective participation can take place does not only depend on the number of inquiries. Provided that adequate information had been given about the inquiries and that they were held in an open and transparent manner, limiting the number of inquiries to three locations in this case does not as such amount to a failure to comply with the Convention. Based on the information given to the Committee, these three hearings seem to have been open to anybody and duly announced, so that they provided adequate opportunities for the public concerned to give its views about the project. Thus, the Committee cannot conclude that the Party concerned failed to comply with article 6, paragraphs 3, 4 or 7, on these grounds.

*(France ACCC/C/2007/22; ECE/MP.PP/C.1/2009/4/Add.1, 8 February 2011, para. 43)*

***public hearings***

When examining the time frame, the Committee recalls that the 2003 resolutions did not amount to permit decisions under article 6 of the Convention, nor did the decision to choose the private operator or establish the contracts with the operator. Therefore, the timing for public participation cannot be related to the entire timespan since the 2003 CUMPM resolutions. Thus, the question is whether the time frames given in the decision-making before the Prefect as such were sufficient for allowing the public to prepare and participate effectively, and to allow the public to submit any comments, information, analyses or opinions it considered relevant, as set out in article 6, paragraphs 3 and 7, of the Convention. The Committee notes that the announcement of the public inquiry, made on 3 August, provided a period of approximately six weeks for the public to inspect the documents and prepare itself for the public inquiry. Furthermore, the public inquiry held from 19 September to 3 November 2005 provided 45 days for public participation and for the public to submit comments, information, analyses or opinions relevant to the proposed activity. The Committee is convinced that the provision of approximately six weeks for the public concerned to exercise its rights under article 6, paragraph 6, of the Convention and approximately the same time relating to the requirements of article 6, paragraph 7, in this case meet the requirements of these provisions in connection with article 6, paragraph 3, of the Convention.

*(France ACCC/C/2007/22; ECE/MP.PP/C.1/2009/4/Add.1, 8 February 2011, para. 44)*

Belarusian legislation (the OVOS Instructions) provides that the main means of public consultation is the organization of the public discussion at the meeting (hearing) with the developer, OVOS consultant and the interested authorities. The developer is responsible for the organization of the hearings and shall conduct them together with the OVOS consultant who prepared the OVOS Statement. The comments can be submitted practically only during the hearings, and the law does not envisage the possibility for the public to submit the comments at the stage of expertiza directly to the authority competent to issue the conclusions of the expertiza. Although there is a requirement to record the comments submitted by the public at the OVOS stage, and to provide them to the authority competent to issue the expertiza conclusions, the Committee is of the view that the above arrangements do not ensure that the competent authority has direct access to all the comments submitted and is in a position to take due account of them. Bearing this in mind, and also the views about the role of the developer in the procedure (see paras. 77 and 80 above), the Committee is of the opinion that the arrangements in Belarusian law regarding public discussions and submission of comments are not in compliance with the requirements of article 6, paragraph 7, in conjunction with article 6, paragraph 2 (d) (v), of the Convention.

*(Belarus ACCC/C/2009/37; ECE/MP.PP/2011/11/Add.2, 12 May 2011, para.94)*

***OVOS/  
role of developer***



**TV & newspapers**

The Committee notes that, on the basis of the information submitted and the lack of any evidence to the contrary, it appears that the public did not have sufficient possibilities to submit any comments, information, analyses or opinions relevant for the HPP project, before a permit for the project was issued. The Committee is of the view that the organization of discussions on the proposed project in the newspapers and through TV programmes is not a sufficient way to assure compliance with article 6, paragraph 7, of the Convention.

*(Belarus ACCC/C/2009/37; ECE/MP.PP/2011/11/Add.2, 12 May 2011, para.95)*

Article 6, paragraph 7, aims at ensuring that the procedures for public participation allow for the submission of any comments, information, analyses or opinions from the public. It is for the public to judge the relevance of such comments for the activity.

*(Belarus ACCC/C/2009/44; ECE/MP.PP/C.1/2011/6/Add.1, 19 September 2011, para. 81)*

**role of developer/  
restricting comments  
at hearings**

In the present case, members of the public were impeded in their attempts to submit comments and disseminate them to the public attending the hearing. The Party concerned claims the developer/organizer of the hearings did not accept the material. At this point, the Committee would like first to reiterate its finding in communication ACCC/C/2009/37 (para. 104 (d)), that by making the developers rather than the relevant public authorities responsible for organizing public participation, including the collection of comments, the Belarusian legal framework fails to comply with article 6, paragraph 7, of the Convention. Furthermore, while no provision of the Convention prevents organizers of the hearing from making arrangements to keep a certain order in distributing documents during the hearing, by no means are they entitled to be provided with the discretion as to whether to allow the public to submit their comments and corroborating documents in written form and to distribute them during the hearing.

*(Belarus ACCC/C/2009/44; ECE/MP.PP/C.1/2011/6/Add.1, 19 September 2011, para. 82)*

**hearings  
on a working day**

With regard to the timing of the public hearing, the Committee observes that organizing only one hearing on a work-day and during working hours indeed effectively limits the possibility of the public to participate and submit comments. If it was absolutely necessary to organize only one hearing on a work-day and during working hours, the Party concerned should have taken the measures to ensure that people who were prevented from participating due to their employment commitments would be able to participate otherwise, such as by viewing the recorded hearing and submitting comments later.

*(Belarus ACCC/C/2009/44; ECE/MP.PP/C.1/2011/6/Add.1, 19 September 2011, para. 83)*

**closed groups  
discussions**

The fact that, prior to the hearing of 9 October 2009, a significant number of employees from the private and public sector had been given the opportunity to discuss the Preliminary EIA Report and that the Public Coordination Committee on the Environment had also examined the EIA Report are not sufficient measures. In this respect, the Committee wishes to underline that any discussions in closed groups (for example, within certain professional groups or employees of certain enterprises) or in closed advisory groups can not be considered as public participation under the Convention and in particular cannot substitute for the procedure under article 6 of the Convention. In order to meet the requirements of article 6 such a procedure must be in principle open to all members of the public concerned, including NGOs, and subject only to technical restrictions based on objective criteria and not having any discriminatory nature.

*(Belarus ACCC/C/2009/44; ECE/MP.PP/C.1/2011/6/Add.1, 19 September 2011, para. 84)*

For these reasons, the Committee finds that the Party concerned failed to comply with article 6, paragraph 7, of the Convention in the NPP case and that this has mainly to do with the systemic issues relating to the prior legislation, as identified in the findings for communication ACCC/C/2009/37.

*(Belarus ACCC/C/2009/44; ECE/MP.PP/C.1/2011/6/Add.1, 19 September 2011, para. 85)*

According to the 2007 OVOS Instructions, comments by the public at the OVOS stage can be submitted during the public consultation period, which includes public hearings and the collection of written suggestions, including a survey of public opinion.

*(Kazakhstan ACCC/C/2011/59; ECE/MP.PP/C.1/2013/9, 16 July 2013, para. 56)*

**OVOS/  
commenting on all  
project documents**

According to the 2007 Rules on OVOS-related Environmental Information, at the stage when the final OVOS report along with project-related documentation is submitted to the competent authority for State environmental expertiza, interested persons may submit to the authority written suggestions and comments on the OVOS report. The public authority has to review the application and provide a response within 15 calendar days — or longer if

additional investigation is required. This regulation limits the right of the public, which may submit comments only on the OVOS report but not on all the project-related documentation relevant for decision-making which has a wider meaning than the OVOS report alone. Therefore, the current legal arrangements, which narrow the right of the public to submit comments only on the OVOS report, are not in line with the requirements of the article 6, paragraph 7, of the Convention.

*(Kazakhstan ACCC/C/2011/59; ECE/MP.PP/C.1/2013/9, 16 July 2013, para. 57)*

In addition, the Committee notes that the legislation of the Party concerned regulating the procedure for public hearings requires the public comments to be reasoned and based on the study of documentary information that has been legally received relevant to the matter. At the stage of State environmental expertiza the scope of written comments is also limited to reasoned ones. On this occasion, the Committee recalls its previous observation that when national legislation requires that comments are “motivated proposals”, i.e., containing reasoned argumentation, then the law fails to guarantee the full scope of the rights envisaged by the Convention (cf. ECE/MP.PP/2008/5/Add.6, para. 80).

*(Kazakhstan ACCC/C/2011/59; ECE/MP.PP/C.1/2013/9, 16 July 2013, para. 58)*

Considering the legislative arrangements of the Party concerned, both in terms of limiting the opportunity of the public to submit comments only on the final OVOS report at the expertiza stage and the application of criteria for the consideration of the comments submitted (i.e., they must be “reasoned”), the Committee finds that the Kazakh legislation fails to guarantee the full scope of the rights envisaged by the Convention and therefore, does not comply with article 6, paragraph 7, of the Convention.

*(Kazakhstan ACCC/C/2011/59; ECE/MP.PP/C.1/2013/9, 16 July 2013, para. 59)*

Nevertheless, the Committee notes that article 6, paragraph 7, of the Convention gives any member of the public the right to submit comments, information, analyses or opinions during public participation procedures, either in writing or, as appropriate, orally at a public hearing or inquiry with the applicant. The fact that some local authorities only provide for participation of members of the public at planning meetings via written submissions, as stressed in communication ACCC/C/2011/60, is not as such in non-compliance with article 6, paragraph 7, of the Convention.

*(United Kingdom ACCC/C/2010/45 and ACCC/C/2011/60; ECE/MP.PP/C.1/2013/12, 23 October 2013, para. 78)*

**8. Each Party shall ensure that in the decision due account is taken of the outcome of the public participation.**

The timeline, as reflected in paragraphs 15 and 16 above, failed to allow the public to study the information on the project and prepare and submit its comments. It also did not allow the public officials responsible for making the decision sufficient time to take any comments into account in a meaningful way, as required under article 6, paragraph 8.

*(Ukraine ACCC/C/2004/3 and ACCC/S/2004/1; ECE/MP.PP/C.1/2005/2/Add.3, 14 March 2005, para. 29)*

**NOTE:** The decision was taken seven days following publication of the environmental impact statement.

As to whether any one of the decisions and decision-making processes referred to by the communicant amount to the preparation of plans, programmes or policies within the purview of article 7 of the Convention, the Committee refers to its previous findings where it stated that, when it determines how to categorize the relevant decisions under the Convention, their labels under domestic law of the Party concerned are not decisive (ECE/MP.PP/C.1/2006/4/Add.2, para. 29). In this case, the Committee will thus have to determine whether any of the decisions taken amount to part of a decision-making process regarding the preparation of plans, programmes or policies, and if so, whether the conditions of article 7, in conjunction with article 6, paragraphs 3, 4 and 8 of the Convention, have been met.

*(Austria ACCC/C/2008/26; ECE/MP.PP/C.1/2009/6/Add.1, 8 February 2011, para. 55)*

The Committee finds that the decision of the Styrian Provincial Government on 22 January 2004, well in advance of the entry into force of the Convention for the Party concerned, initiated a planning process which is still ongoing. Within that planning process, public participation, in the sense of public debate, has taken place through the so-called Round Tables, both before and after the Convention entered into force for the Party concerned. Whether these Round Tables as such amount to public participation in accordance with the article 7, in conjunction with article 6, paragraphs 3, 4 and 8, is not for the Committee to decide in this case, given that the relevant decision was taken and that no significant

**reasoned  
comments**

**PP through written  
submissions**

**time for taking  
comments into  
account**

**label of decision  
under domestic  
law**

events relating to the decision-making process took place after the Convention entered into force for the Party concerned.

*(Austria ACCC/C/2008/26; ECE/MP.PP/C.1/2009/6/Add.1, 8 February 2011, para. 56)*

The Committee notes that the planning process is still ongoing. Important in this respect is the assurance of the Party concerned that during the strategic assessment, still to be conducted based on the SP-V Act, all options will be open and considered and participation in accordance with the Convention will be afforded. In this context, the Committee, however, expresses concern in respect of the motion adopted by Styrian Provincial Government of 21 April 2008 and the document dated 27 March 2008 which provides the basis for this motion. These documents express a strong presumption in favour of the 4-lane option (corroborated by information available on the website of the Styrian Government),\* which may de facto narrow down the available options and thus hamper participation at an early stage when all options are still open and due account can be taken of the outcome of the public participation. Similarly, the Committee expresses concern with respect to the statements of the member of the provincial government, Mag. Kristina Edlinger-Ploder on public television and in newspapers that the 4-lane road will be built, excluding the consideration of other options.\*\*

\* See <http://www.verkehr.steiermark.at/cms/beitrag/10930541/11163579/> (last accessed 17 June 2009).

\*\* See <http://oesterreich.orf.at/steiermark/stories/272397/> (last accessed on 23 September 2009).

*(Austria ACCC/C/2008/26; ECE/MP.PP/C.1/2009/6/Add.1, 8 February 2011, para. 57)*

The Committee concludes that, given the present phase of the decision-making process, the Party concerned has not failed to comply with the Convention. The Committee, however, notes that at least in part its conclusion is related to the fact that the planning process in the present case commenced well in advance of the entry into force of the Convention for the Party concerned. It is in this context that the Committee considers it important to reiterate its concern expressed in paragraph 0. The Committee emphasizes that participation in accordance with article 6 and article 7, in conjunction with article 6, paragraphs 3, 4 and 8, of the Convention, should take place and that such participation does not only require formal participation. Importantly, participation is to include public debate and the opportunity for the public to participate in such debate at an early stage of the decision-making process, when all options are open and when due account can be taken of the outcome of the public participation.

*(Austria ACCC/C/2008/26; ECE/MP.PP/C.1/2009/6/Add.1, 8 February 2011, para. 66)*

### ***no veto right***

The Committee recalls its earlier observation that the requirement in article 6, paragraph 8, of the Convention that public authorities take due account of the outcome of public participation does not amount to the right of the public to veto the decision, and that this provision should not be read as requiring that the final say about the fate and the design of the project rests with the local community living near the project, or that their acceptance is always needed.\*

\*See paragraph 29 of the report of the Compliance Committee at its twenty-fourth meeting in Geneva, 30 June – 3 July 2009 (ECE/MP.PP/C.1/2009/4).

*(Spain ACCC/C/2008/24; ECE/MP.PP/C.1/2009/8/Add.1, 30 September 2010, para.98)*

### ***accepting v. considering comments***

Furthermore, it is quite clear to the Committee that the obligation to take due account in the decision of the outcome of the public participation cannot be considered as a requirement to accept all comments, reservations or opinions submitted. However, while it is impossible to accept in substance all the comments submitted, which may often be conflicting, the relevant authority must still seriously consider all the comments received.

*(Spain ACCC/C/2008/24; ECE/MP.PP/C.1/2009/8/Add.1, 30 September 2010, para.99)*

### ***written explanations***

The Committee recalls that the obligation to take 'due account' under article 6, paragraph 8, should be seen in the light of the obligation of article 6, paragraph 9, to 'make accessible to the public the text of the decision along with the reasons and considerations on which the decision is based'. Therefore the obligation to take due account of the outcome of the public participation should be interpreted as the obligation that the written reasoned decision includes a discussion of how the public participation was taken into account.\*

\* See The Aarhus Convention Implementation Guide, United Nations, 2000 at 109.

*(Spain ACCC/C/2008/24; ECE/MP.PP/C.1/2009/8/Add.1, 30 September 2010, para.100)*

[...]Nevertheless, the Committee notes that a system where, as a routine, comments of the public were disregarded or not accepted on their merits, without any explanation, would not comply with the Convention.

(Spain ACCC/C/2008/24; ECE/MP.PP/C.1/2009/8/Add.1, 30 September 2010, para.101)

**explanation  
of rejecting  
comments**

[T]he Committee confirms that the requirement of article 6, paragraph 8, of the Convention that public authorities take due account of the outcome of public participation does not amount to a right of the public to veto the decision. In particular, this provision should not be read as requiring that the final say about the fate and design of the project rests with the local community living near the project, or that their acceptance is always required. Therefore the obligation to take due account of the outcome of the public participation should be interpreted as the obligation that the written reasoned decision includes a discussion of how the public participation was taken into account (see findings on communication ACCC/C/2008/24 (Spain) (ECE/MP.PP/C.1/2009/8/Add.1, para. 98), and ECE/MP.PP/C.1/2009/4, para. 29).

(European Union and United Kingdom ACCC/C/2012/68; ECE/MP.PP/C.1/2014/5, 13 January 2014, para. 93)

**due account**

Having considered the information submitted by the parties in this regard, the Committee finds that the Party concerned (United Kingdom) overall duly took into account the comments submitted by the communicant and did not fail to comply with article 6, paragraph 8, of the Convention.

(European Union and United Kingdom ACCC/C/2012/68; ECE/MP.PP/C.1/2014/5, 13 January 2014, para. 94)

Under Belarusian legislation, some obligations related to taking due account of the outcomes of public participation rest with the developer and the OVOS consultant, who are bound to consider all the comments and suggestions submitted by the public and to include them in the record of hearings, together with an indication of whether these comments were approved or rejected and the grounds for their rejection or approval. The applicable laws do not, however, envisage similar obligations in relation to the authorities (or the experts) competent for issuing the expertiza conclusions. They are bound only to consider the conclusions of the public expertiza, which, as a non-mandatory element of the procedure (see para. 32 above), cannot be considered as a measure implementing the provisions of article 6 of the Convention. Bearing the above in mind, the Committee is of the opinion that the law of Belarus fails to comply with the requirements of article 6, paragraph 8, of the Convention

(Belarus ACCC/C/2009/37; ECE/MP.PP/2011/11/Add.2, 12 May 2011, para.96)

**role of developer**

[T]he Committee finds that the Czech legal system fails to provide for effective public participation during all stages of the environmental decision-making process. Moreover, under article 6, paragraph 7, of the Convention, public participation must not be limited to the consideration of the environmental impact of a proposed activity, but entitles the public to submit any comments, information, analyses or opinions that it considers relevant to the proposed activity, including its views on aspects of the activity's permissibility and its compliance with environmental law. According to the Environmental Assessment Act (art. 10, sect. 1) the EIA opinion "is issued also based on the public comments". Furthermore, the same act (art. 10, sect. 4) provides that "without the opinion it is not possible to issue a decision needed for carrying out a project". However, Czech law does not require that the authorities issuing the permitting decision fully uphold the content of the EIA opinion. While the EIA procedure provides for public participation, the Committee considers that the above legal framework does not ensure that in the permitting decision due account is taken of the outcome of public participation. In the light of the above, the Committee finds that the Party concerned fails to comply with the requirement in article 6, paragraph 8, of the Convention to ensure that due account is taken in the decision of the outcome of the public participation.

(Czech Republic ACCC/C/2010/50; ECE/MP.PP/C.1/2012/11, 2 October 2012, para. 71)

**EIA & PP/  
EIA  
as a non-permitting  
procedure**

There is a clear obligation arising from article 7 on public authorities to seriously consider the outcome of public participation in the preparation of plans. However, the Convention does not specify how this should be done in practice.

(Czech Republic ACCC/C/2012/70; ECE/MP.PP/C.1/2014/9, 4 June 2014, para. 60)

It is recognized that the public authority preparing the plan is ultimately responsible for policymaking and has to consider a number of factors, including the comments of the

**accepting  
v. considering  
comments**

public. This may lead to a final plan that may not always be accepted by the public. However, the authority should be able to demonstrate how the comments were considered and why it did not follow the views expressed by the public. As already stated, “the requirement of article 6, paragraph 8, that public authorities take due account of the outcome of public participation, does not amount to the right of the public to veto the decision” (see Committee’s commentary on communication ACCC/C/2008/29 (Poland) in the report of its twenty-fourth meeting (Geneva, 30 June–3 July 2009) ECE/MP.PP/C.1/2009/4, para. 29). Yet, “while it is impossible to accept in substance all the comments submitted, which may often be conflicting, the relevant authority must still seriously consider all the comments received” (findings on communication ACCC/C/2008/24 (Spain) (ECE/MP.PP/C.1/2009/8/Add.1), para. 99).

*(Czech Republic ACCC/C/2012/70; ECE/MP.PP/C.1/2014/9, 4 June 2014, para. 61)*

The Committee notes that for decisions on specific activities, fulfilment of the requirement of article 6, paragraph 8, is to be proven through fulfilment of article 6, paragraph 9. In contrast, a requirement to make accessible the reasons and considerations on which the decision is based is not expressly provided for in article 7 of the Convention. Nevertheless, the Party concerned has the obligation to demonstrate that it has fulfilled its obligations under article 6, paragraph 8. The Committee notes that in the process of preparing a plan this obligation could be fulfilled by following the procedure set out in article 6, paragraph 9, or any other way the Party concerns chooses to demonstrate that it has taken “due account” of the outcome of the public participation.

*(Czech Republic ACCC/C/2012/70; ECE/MP.PP/C.1/2014/9, 4 June 2014, para. 62)*

#### ***tight deadlines***

In the present case, the Party concerned, in its application to the European Commission referred to in paragraph 22, mentions that “the Ministry of the Environment will thoroughly settle all duly submitted comments”. The Party concerned was not able to show through its written and oral submissions how the outcome of public participation was duly taken into account. The Committee appreciates that the Party concerned had to operate under extremely tight deadlines to ensure that its application to the Commission was submitted within the set deadline and that free allowances were eventually awarded for the transitional period 2013–2019 according to the new EU regime on ETS. Nevertheless, the Committee considers that the application at issue certainly did not constitute an emergency situation and that there would have been a possibility for enhanced openness and transparency of the process from its start in October 2009, so that public participation would not have been jeopardized. For these reasons, the Committee finds that, by failing to show through its written and oral submissions how the outcome of public participation was duly taken into account, the Party concerned failed to comply with article 6, paragraph 8, of the Convention.

*(Czech Republic ACCC/C/2012/70; ECE/MP.PP/C.1/2014/9, 4 June 2014, para. 63)*

9. Each Party shall ensure that, when the decision has been taken by the public authority, the public is promptly informed of the decision in accordance with the appropriate procedures. Each Party shall make accessible to the public the text of the decision along with the reasons and considerations on which the decision is based.

#### ***refusal to provide decision***

The Committee finds that by refusing to provide the text of the decision along with the reasons and considerations on which it is based and not indicating how the communicant could have access to it, the Party concerned did not comply with its obligations under the second part of article 6, paragraph 9, to make accessible to the public the text of the decision along with the reasons and considerations on which the decision is based.

*(Ukraine ACCC/C/2004/3 and ACCC/S/2004/1; ECE/MP.PP/C.1/2005/2/Add.3, 14 March 2005, para. 35)*

The Party concerned pointed out at the Committee’s eighth meeting that, even though the decrees in question had not been published, they could be now accessed through an electronic database. However, in the Committee’s view, such an approach does not satisfy the requirement of article 6, paragraph 9, of the Convention to promptly inform the public of the decision.

*(Armenia ACCC/C/2004/8; ECE/MP.PP/C.1/2006/2/Add.1, 10 May 2006, para. 31)*

#### ***publishing the decision***

With regard to the allegation as to the failure to publicize the final decision (para. 47), the Committee wishes to underline that the Convention does not require the decision itself to be published. It only requires that the public be informed about the decision and has the right to have access to the decision together with the reasons and considerations on which

it is based. The public shall be informed “promptly” and “in accordance with the appropriate procedures”. The Convention does not specify here, as opposed to article 6, paragraph 2, any further requirements regarding informing the public about taking the decision thus leaving to the Parties some discretion in designing “the appropriate procedures” in their national legal frameworks. Similarly, the Convention does not set any precise requirements as to documenting “the reasons and considerations on which the decision is based” except for the requirement to provide evidence of taking due account of “the outcome of public participation” as required under article 6, paragraph 8.

*(Lithuania ACCC/2006/16; ECE/MP.PP/2008/5/Add.6, 4 April 2008, para. 81)*

Whether informing the public 15 days after the adoption of the decision can be considered to be prompt depends on the specific circumstances (e.g. the kind of the decision, the type and size of the activity in question) and the relevant provisions of the domestic legal system (e.g. the relevant appeal procedures and their timing). Without sufficient knowledge about the Lithuanian legal system and its “appropriate procedures”, the Committee does not at this stage consider itself in a position to decide on whether or not notification about the decision in this particular case was prompt. The Committee takes note however that the public was informed about the decision, as it is not disputed by the communicant, in a manner that was in compliance with the applicable Lithuanian procedures.

*(Lithuania ACCC/2006/16; ECE/MP.PP/2008/5/Add.6, 4 April 2008, para. 82)*

Bearing the above in mind the Committee is not able to conclude whether article 6, paragraph 9, of the Convention was implemented correctly. The Committee wishes to note however that whatever time period for informing the public about the decision is granted by domestic legislation, it should be “reasonable” and in particular bearing in mind the relevant time frames for initiating review procedures under article 9, paragraph 2. Moreover, the manner in which the public is informed and the requirements for documenting the reasons and considerations on which the decision is based should be designed bearing in mind the relevant time frames and other requirements for initiating review procedures under article 9, paragraph 2, of the Convention.

*(Lithuania ACCC/2006/16; ECE/MP.PP/2008/5/Add.6, 4 April 2008, para. 84)*

The Committee recalls that the obligation to take ‘due account’ under article 6, paragraph 8, should be seen in the light of the obligation of article 6, paragraph 9, to ‘make accessible to the public the text of the decision along with the reasons and considerations on which the decision is based’. Therefore the obligation to take due account of the outcome of the public participation should be interpreted as the obligation that the written reasoned decision includes a discussion of how the public participation was taken into account.\*

\* See The Aarhus Convention Implementation Guide, United Nations, 2000 at 109.

*(Spain ACCC/C/2008/24; ECE/MP.PP/C.1/2009/8/Add.1, 30 September 2010, para.100)*

The legislation of Belarus does not envisage a clear requirement to inform the public about issuing the expertiza conclusions and possibilities to have access to the text of the conclusions along with the reasons and considerations on which they are based. In fact, there is no clear requirement to prepare such a statement of reasons, and no requirement for public authorities to keep the files of such conclusions. Thus, the Committee is of the opinion that Belarusian law fails to comply with the requirements of article 6, paragraph 9, of the Convention, in particular by not establishing appropriate procedures to promptly notify the public about the environmental expertiza conclusions and by not establishing appropriate arrangements to facilitate public access to such conclusions.

*(Belarus ACCC/C/2009/37; ECE/MP.PP/2011/11/Add.2, 12 May 2011, para.98)*

Furthermore, bearing in mind its findings and recommendations for communication ACCC/C/2009/37, the Committee notes that there is considerable uncertainty as to the participatory procedures applicable in cases involving nuclear activities. In this respect, it is of the utmost importance that in amending its legislative, regulatory and other measures the Party concerned ensure the compatibility of and coherence between the general framework for public participation in decisions on specific activities and the framework for public participation applicable to nuclear activities. Moreover, the Party concerned should ensure that the amended legal framework clearly designates which decision is considered to be the final decision permitting the activity in terms of article 6, paragraph 9, of the Convention.

*(Belarus ACCC/C/2009/44; ECE/MP.PP/C.1/2011/6/Add.1, 19 September 2011, para. 63)*

In the above context, and reiterating its findings in ACCC/C/2009/37 concerning the role of the developer in the procedure, the Committee stresses that it is not in compliance with

***prompt notification  
about decision***

***reasonable  
timeframes  
for informing***

***due account***

***keeping files  
of decisions***

***nuclear law***

***role of developer***

**expertiza  
conclusions**

the Convention for the authority responsible for taking the decision (including the authorities responsible for the expertiza conclusions) to be provided only with the summary of the comments submitted by the public. The Convention requires that the full content of all the comments made by the public (whether those claimed to be accommodated by the developer or those which are not accepted) be submitted to such authorities.

*(Belarus ACCC/C/2009/44; ECE/MP.PP/C.1/2011/6/Add.1, 19 September 2011, para. 64)*

The legislation of the Party concerned does not establish a clear requirement to inform the public of when the State environmental expertiza conclusions are issued and the possibilities for accessing the text of the conclusions along with the reasons and considerations upon which they are based. The Environmental Code provides that “after a decision has been made on the conclusion of the State environmental expertiza, all interested parties shall be granted the opportunity to receive information on the subject of the expertiza under the procedure set forth in the Code”. This provision does not meet the requirement of article 6, paragraph 9, of the Convention, which creates a straightforward obligation for public authorities to promptly inform the public of the decision and to make accessible to the public the text of the decision along with the reasons and considerations upon which the decision was made. The present communication shows that when the communicant requested information on the decision by letter of 25 November 2010, the authorities in their response of 7 December 2010, instead of facilitating access to the positive conclusion of the expertiza issued on that same day, did not disclose it, by referring to limitations set in the Environmental Code and the Civil Service Act.

*(Kazakhstan ACCC/C/2011/59; ECE/MP.PP/C.1/2013/9, 16 July 2013, para. 63)*

The Committee finds that by not establishing appropriate procedures to promptly notify the public about the environmental expertiza conclusions and by not establishing appropriate arrangements to facilitate public access to these decisions, the Party concerned fails to comply with article 6, paragraph 9, of the Convention.

*Kazakhstan ACCC/C/2011/59; ECE/MP.PP/C.1/2013/9, 16 July 2013, para. 64)*

**10. Each Party shall ensure that, when a public authority reconsiders or updates the operating conditions for an activity referred to in paragraph 1, the provisions of paragraphs 2 to 9 of this article are applied mutatis mutandis, and where appropriate.**

The licence of February 2001 was issued before the Convention entered into force. However, with its 2004 renewal the 2001 licence became a special licence under the 2002 Law on Concessions and this had a impact on the operating conditions of the activity as a special mining licence has a longer duration and it provides for the possibility of a concession agreement, while the law (art. 53, para. 1 of the 2002 Law of Concessions) sets out a number of operational conditions that can be established by a concession agreement on the basis of a special mining licence, such as the possibility of limited liability on environmental matters. Therefore, the Committee concludes that the 2004 renewal was not a mere formality and falls under article 6, paragraph 10, of the Convention. Thus, the Party concerned had to ensure that the public participation provisions of article 6, paragraphs 2 to 9, be applied, mutatis mutandis, and where appropriate for the renewal.

*(Armenia ACCC/C/2009/43; ECE/MP.PP/2011/11/Add.1, April 2011, para.58)*

If the 2008 construction permit implied a reconsideration or an update of the operating conditions of the Mochovce NPP, the Party concerned should have ensured that the provisions on public participation in article 6, paragraphs 2 to 9, of the Convention were applied, “mutatis mutandis, and where appropriate”.

*(Slovakia ACCC/C/2009/41; ECE/MP.PP/2011/11/Add.3, 12 May 2011, para. 51)*

As held in paragraph 49 above, the three decisions made in August 2008, while part of larger, tiered decision-making, were closely related. Thus, when determining whether the 2008 decision-making on the Mochovce NPP by UJD amounted to a reconsideration or an update of the operating conditions by a public authority, according to article 6, paragraph 10, of the Convention, or a change to or an extension in itself that met the criteria of annex I to the Convention, the Committee considers the legal effects of the three 2008 decisions together.

*(Slovakia ACCC/C/2009/41; ECE/MP.PP/2011/11/Add.3, 12 May 2011, para. 53)*

Based on the information given by the communicant and the Party concerned, including the translation of the three decisions in question, it is clear that UJD decision 246/2008 in itself — but even more so in combination with decision 266/2008 and decision

267/2008 — regardless of whether it involved any significant change or extension of the activity, amounted to a reconsideration and update of the operating conditions by a public authority of an activity (a nuclear power plant) referred to in article 6, paragraph 1 (a), of the Convention. Thus, in accordance with article 6, paragraph 10, of the Convention, the Party concerned was obliged to ensure that the provisions of article 6, paragraphs 2 to 9, were applied, “mutatis mutandis, and where appropriate”. In this context, the Committee wishes to stress that, although each Party is given some discretion in these cases to determine where public participation is appropriate, the clause “mutatis mutandis, and where appropriate” does not imply complete discretion for the Party concerned to determine whether or not it was appropriate to provide for public participation.

*(Slovakia ACCC/C/2009/41; ECE/MP.PP/2011/11/Add.3, 12 May 2011, para. 55)*

The Committee considers that the clause “where appropriate” introduces an objective criterion to be seen in the context of the goals of the Convention, recognizing that “access to information and public participation in decision-making enhance the quality and the implementation of decisions, contribute to public awareness of environmental issues, give the public the opportunity to express its concerns and enable public authorities to take due account of such concerns” and aiming to “further the accountability of and transparency in decision-making and to strengthen public support for decisions on the environment”. Thus, the clause does not preclude a review by the Committee on whether the above objective criteria were met and whether the Party concerned should have therefore provided for public participation in the present case.

*(Slovakia ACCC/C/2009/41; ECE/MP.PP/2011/11/Add.3, 12 May 2011, para. 56)*

The Committee finds that when the authority reconsidered or updated the operating conditions for an activity of such a nature and magnitude, and being the subject of such serious public concern, as this nuclear power plant, with the changes and increased potential impact on the environment as presented to the Committee, public participation would have been appropriate. This conclusion is not countered by the fact that most, if not all, changes in the 2008 construction permit lead to stricter requirements than those set in the 1986 permit. Thus, by failing to provide for public participation according to article 6, paragraphs 2 to 9, the Party concerned failed to comply with article 6, paragraph 10 of the Convention.

*(Slovakia ACCC/C/2009/41; ECE/MP.PP/2011/11/Add.3, 12 May 2011, para. 57)*

11. Each Party shall, within the framework of its national law, apply, to the extent feasible and appropriate, provisions of this article to decisions on whether to permit the deliberate release of genetically modified organisms into the environment.

## Article 7 PUBLIC PARTICIPATION CONCERNING PLANS, PROGRAMMES AND POLICIES RELATING TO THE ENVIRONMENT

Each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public. Within this framework, article 6, paragraphs 3, 4 and 8, shall be applied. The public which may participate shall be identified by the relevant public authority, taking into account the objectives of this Convention. To the extent appropriate, each Party shall endeavour to provide opportunities for public participation in the preparation of policies relating to the environment.

During the discussion on the case which took place at the Committee’s fourteenth meeting, the communicant indicated that the various decisions of the Albanian authorities referred to in the communication were parts of an overall construction and development plan, about the existence of which the public had not been informed. No evidence or further information to substantiate this allegation has been made available to the Committee. Consequently, the Committee has not addressed this issue in its findings and conclusions. However, it notes that where such overall plans exist, they might be subject to provisions of the Convention and that, in any event, meaningful public participation, generally speaking, implies that the public should be informed that the decisions subject to public participation form parts of an underlying overall plan where this is the case.

*(Albania ACCC/C/2005/12; ECE/MP.PP/C.1/2007/4/Add.1, 31 July 2007, para. 63)*

*where  
appropriate*

*nuclear  
installations*



The decisions have in common that they are crucial for the entire decision-making in relation to these sites, constructions and activities. The Committee will first have to consider whether the relevant decisions amount to decisions on specific activities under article 6 of the Convention, or decisions on plans under article 7. In one of its earlier decisions, the Committee, pointed out that “When determining how to categorize a decision under the Convention, its label in the domestic law of a Party is not decisive. Rather, [...it is determined by the legal functions and effects of a decision...” (ECE/MP.PP/C.1/2006/4/Add.2, para. 29). Also, as previously observed by the Committee (ECE/MP.PP/C.1/2006/2/Add.1, para. 28), the Convention does not establish a precise boundary between article 6-type decisions and article 7-type decisions.

*(Albania ACCC/C/2005/12; ECE/MP.PP/C.1/2007/4/Add.1, 31 July 2007, para. 65)*

NOTE: The two decisions the Committee referred to are decisions made by the Council of Territorial Adjustment of the Republic of Albania on 19 February 2003, namely Decision No. 8 (approving the site of the proposed industrial and energy park) and Decision No. 20 (approving the construction site) for a thermal electric power station (TES)

Decision No. 20 simply designates the site where the specific activity will take place and a number of further decisions to issue permits of various kinds (e.g. construction, environmental and operating permits) would be needed before the activities could proceed. Nevertheless, on balance, it is more characteristic of decisions under article 6 than article 7, in that they concern the carrying out of a specific annex I activity in a particular place by or on behalf of a specific applicant.

*(Albania ACCC/C/2005/12; ECE/MP.PP/C.1/2007/4/Add.1, 31 July 2007, para. 67)*

NOTE: Decision No 20 concerns the approval of a construction site for a thermal electric power station (TES)

Decision No. 8 on the industrial and energy park, on the other hand, has more the character of a zoning activity, i.e. a decision which determines that within a certain designated territory, certain broad types of activity may be carried out (and other types may not). This would link it more closely with article 7.

*(Albania ACCC/C/2005/12; ECE/MP.PP/C.1/2007/4/Add.1, 31 July 2007, para. 68)*

NOTE: Decision No 8 is the approval of the site of the proposed industrial and energy park

Taking into account the fact that different interpretations are possible with respect to these issues, the Committee chooses to focus on those aspects of the case where the obligations of the Party concerned are most clear-cut. In this respect, it notes that the public participation requirements for decision-making on an activity covered by article 7 are a subset of the public participation requirements for decision-making on an activity covered by article 6. Regardless of whether the decisions are considered to fall under article 6 or article 7, the requirements of paragraphs 3, 4 and 8 of article 6 apply. Since each of the decisions is required to meet the public participation requirements that are common to article 6 and article 7, the Committee has decided to examine the way in which those requirements have or have not been met.

*(Albania ACCC/C/2005/12; ECE/MP.PP/C.1/2007/4/Add.1, 31 July 2007, para. 70)*

### **local planning decisions**

The Party concerned has informed the Committee that there was “no complex decision taken on the development of industrial park as a whole”. It has emphasized that Decision No. 8 of the Council of Territorial Adjustment of the Republic of Albania “On the Approval of the Industrial and Energy Park – Vlore”, which approved the development of “The Industrial and Energy Park – Vlore”, was just a location (siting) decision. However, this does not detract from its importance, both in paving the way for more specific decisions on future projects and in preventing other potentially conflicting uses of the land. Several ministries were instructed to carry out this decision. The decision came into force immediately. It is clear to the Committee that this was a decision by a public authority that a particular piece of land should be used for particular purpose, even if further decisions would be needed before any of the planned activities could go ahead.

*(Albania ACCC/C/2005/12; ECE/MP.PP/C.1/2007/4/Add.1, 31 July 2007, para. 72)*

No evidence of any notification of the public concerned, or indeed of any opportunities for public participation being provided during the process leading up to this decision, has been presented to the Committee by the Party concerned, despite repeated requests. The documents provided by the Party concerned do not demonstrate that the competent authorities

have identified the public that may participate, as requested under article 7 of the Convention, and that they have undertaken the necessary measures to involve the members of the public in the decision-making. To the contrary, the evidence provided suggests that the opponents were not properly notified about the possibilities to participate. The Committee is therefore convinced that the decision was made without effective notification of the public concerned, which ruled out any possibility for the public to prepare and participate effectively during the decision-making process.

*(Albania ACCC/C/2005/12; ECE/MP.PP/C.1/2007/4/Add.1, 31 July 2007, para. 73)*

Given the nature of the decision as outlined in the previous paragraph, even if public participation opportunities were to be provided subsequently with respect to decisions on specific activities within the industrial and energy park, the requirement that the public be given the opportunity to participate at an early stage when all options are open was not met in this case. Because of the lack of adequate opportunities for public participation, there was no real possibility for the outcome of public participation to be taken into account in the decision. Thus the Party concerned failed to implement the requirements set out in paragraphs 3, 4 and 8 of article 6, and consequently was in breach of article 7.

*(Albania ACCC/C/2005/12; ECE/MP.PP/C.1/2007/4/Add.1, 31 July 2007, para. 74)*

The government decrees referred to in the communication, in particular decrees 503-A, 745-A (para.s 2 and 3) and 1281-A (para. 2), deal with the designation of land for a particular type of commercial activity. Typically, this would be considered as a type of decision falling within the scope of article 7 of the Convention. However, some of the decrees specify not only the general type of activity (e.g. manufacturing, agriculture) that may be carried out in the designated areas but also the specific activity (e.g. watch-making factory, construction of a diplomatic complex) and even the names of the companies or enterprises that would undertake these activities. These elements are more characteristic of a type of decision falling within the scope of article 6 of the Convention. The implications with respect to articles 7 and 6 are considered in turn in paragraphs 24–27 and 28–33 respectively.

*(Armenia ACCC/C/2004/8; ECE/MP.PP/C.1/2006/2/Add.1, 10 May 2006, para. 23)*

Decree 1941-A, provisions of paragraph 1 of decree 745-A and paragraph 1 of decree 1281-A, and decree 397-A, in the Committee's opinion, relate to land-use planning. The first three change the designation of land use in the existing zoning plan, while the fourth adopts the territorial zoning plan of the area and modifies the designated use of lands.

*(Armenia ACCC/C/2004/8; ECE/MP.PP/C.1/2006/2/Add.1, 10 May 2006, para. 24)*

In the Committee's view, such plans fall under article 7 of the Convention and are subject to the public participation requirements contained therein, including, inter alia, the application of the provisions in paragraphs 3, 4 and 8 of article 6. The Committee therefore finds that the failure to ensure public participation in the preparation of plans such as those referred to in paragraph 21 above constitutes non-compliance with article 7 of the Convention.

*(Armenia ACCC/C/2004/8; ECE/MP.PP/C.1/2006/2/Add.1, 10 May 2006, para. 25)*

The extent to which the provisions of article 6 apply in this case depends inter alia on the extent to which the decrees (or some of them) can be considered "decisions on specific activities", that is, decisions that effectively pave the way for specific activities to take place. While the decrees are not typical of article 6-type decisions on the permitting of specific activities, some elements of them are (as is mentioned in paragraphs 12 and 23 above) more specific than a typical decision on land use designation would normally be. The Convention does not establish a precise boundary between article 6-type decisions and article 7-type decisions. Notwithstanding that, the fact that some of the decrees award leases to individual named enterprises to undertake quite specific activities leads the Committee to believe that, in addition to containing article 7-type decisions, some of the decrees do contain decisions on specific activities.

*(Armenia ACCC/C/2004/8; ECE/MP.PP/C.1/2006/2/Add.1, 10 May 2006, para. 28)*

The Committee also finds that by failing to provide for public participation in decision-making processes for the designation of land use, the Government of Armenia was not in compliance with article 7 of the Convention.

*(Armenia ACCC/C/2004/8; ECE/MP.PP/C.1/2006/2/Add.1, 10 May 2006, para. 43)*

The communication refers to a number of consecutive decision-making procedures. In such cases, it is possible that more than one decision amounts to a permit decision

**early stage &  
all options**

**land designation**

**PP in land use  
planning**

under article 6 or a decision to adopt a plan under article 7 of the Convention. This must be determined on a contextual basis, taking into account the legal effects of each decision. Moreover, as stated by the Committee in previous findings, when it determines how to categorize the relevant decisions under the Convention, their labels in the domestic law of the Party concerned are not decisive (cf. the findings concerning Belgium, ECE/MPPP/C.1/2006/4/Add.2, para. 29). In the present case, while the Vilnius County Waste Management Plan clearly constitutes a plan covered by article 7 of the Convention, and has been considered thus by the communicant as well as the Party concerned, the nature of the other decisions relating to the landfill is less clear.

*(Lithuania ACCC/2006/16; ECE/MP.PP/2008/5/Add.6, 4 April 2008, para. 55)*

The requirement for “early public participation, when all options are open” should be seen first of all within a concept of tiered decision-making, whereby at each stage of decision-making certain options are discussed and selected with the participation of the public and each consecutive stage of decision-making addresses only the issues within the option already selected at the preceding stage. Thus, according to the particular needs of a given country and the subject matter of the decision-making, Parties have a certain discretion as to which range of options is to be discussed at each stage of the decision-making. Such stages may involve various consecutive strategic decisions under article 7 of the Convention (policies, plans and programmes) and various individual decisions under article 6 of the Convention authorizing the basic parameters and location of a specific activity, its technical design, and finally its technological specifications related to specific environmental standards. Within each and every such procedure, where public participation is required, it should be provided early in the procedure when all options are open and effective public participation can take place.

*(European Community ACCC/C/2006/17; ECE/MP.PP/2008/5/Add.10, 2 May 2008, para. 51)*

The Committee observes that in the Department of Bouches-du-Rhone there was no plan for disposal of household and related waste (PDEDMA) in the period when the decisions were taken (from 2003 to 12 January 2006). If such a plan had been in place, it could have provided guidance on whether new installations for waste incineration would be constructed, and if so, indicated their possible locations. According to the Convention, such a plan should have been elaborated with the participation of the public concerned and the public would thereby have been given the right to a say at an earlier stage of the decision-making process. Focusing on plans and programmes as a useful tool in the hierarchy of governmental decisions is an advantage in any decision-making process. However, the Committee finds that the lack of a PDEDMA does not entail any violation of the Convention.

*(France ACCC/C/2007/22; ECE/MP.PP/C.1/2009/4/Add.1, 8 February 2011, para. 30)*

When the resolutions were adopted, on 20 December 2003, there was already a land-use plan of 1991 and a zone development plan of the industrial and port zone of 1993 in force for the location in Fos-sur-Mer. According to the information given to the Committee, none of these plans forbade the construction of the waste treatment centre. The resolutions neither had any legal effect on these plans, nor conferred any right to construct or operate the waste treatment centre or to use the site, nor in any other respect did they entail legal effects amounting to that of the applicable planning instruments. Moreover, they did not take the form of programmes or policies. Thus, the Party concerned did not fail to comply with article 7 of the Convention either, by not ensuring public participation before the 2003 resolutions were adopted.

*(France ACCC/C/2007/22; ECE/MP.PP/C.1/2009/4/Add.1, 8 February 2011, para. 34)*

The communication refers to a number of consecutive decisions and decision-making processes. Whether any one of these decisions amount to a permitting decision under article 6, or a decision to adopt a plan, programme or policy under article 7 of the Convention, must be determined on a contextual basis, taking into account the legal effects of each decision.

*(Austria ACCC/C/2008/26; ECE/MP.PP/C.1/2009/6/Add.1, 8 February 2011, para. 50)*

As to whether any one of the decisions and decision-making processes referred to by the communicant amount to the preparation of plans, programmes or policies within the purview of article 7 of the Convention, the Committee refers to its previous findings where it stated that, when it determines how to categorize the relevant decisions under the Convention, their labels under domestic law of the Party concerned are not decisive (ECE/MPPP/C.1/2006/4/Add.2, para. 29). In this case, the Committee will thus have to determine whether any of the decisions taken amount to part of a decision-making process regarding

*tiered  
decision-making/  
range of options*

the preparation of plans, programmes or policies, and if so, whether the conditions of article 7, in conjunction with article 6, paragraphs 3, 4 and 8 of the Convention, have been met.

*(Austria ACCC/C/2008/26; ECE/MP.PP/C.1/2009/6/Add.1, 8 February 2011, para. 55)*

The Committee finds that the decision of the Styrian Provincial Government on 22 January 2004, well in advance of the entry into force of the Convention for the Party concerned, initiated a planning process which is still ongoing. Within that planning process, public participation, in the sense of public debate, has taken place through the so-called Round Tables, both before and after the Convention entered into force for the Party concerned. Whether these Round Tables as such amount to public participation in accordance with the article 7, in conjunction with article 6, paragraphs 3, 4 and 8, is not for the Committee to decide in this case, given that the relevant decision was taken and that no significant events relating to the decision-making process took place after the Convention entered into force for the Party concerned.

*(Austria ACCC/C/2008/26; ECE/MP.PP/C.1/2009/6/Add.1, 8 February 2011, para. 56)*

The Committee notes that the planning process is still ongoing. Important in this respect is the assurance of the Party concerned that during the strategic assessment, still to be conducted based on the SP-V Act, all options will be open and considered and participation in accordance with the Convention will be afforded. In this context, the Committee, however, expresses concern in respect of the motion adopted by Styrian Provincial Government of 21 April 2008 and the document dated 27 March 2008 which provides the basis for this motion. These documents express a strong presumption in favour of the 4-lane option (corroborated by information available on the website of the Styrian Government),\* which may de facto narrow down the available options and thus hamper participation at an early stage when all options are still open and due account can be taken of the outcome of the public participation. Similarly, the Committee expresses concern with respect to the statements of the member of the provincial government, Mag. Kristina Edlinger-Ploder on public television and in newspapers that the 4-lane road will be built, excluding the consideration of other options.\*\*

\* See <http://www.verkehr.steiermark.at/cms/beitrag/10930541/11163579/> (last accessed 17 June 2009).

\*\* See <http://oesterreich.orf.at/steiermark/stories/272397/> (last accessed on 23 September 2009).

*(Austria ACCC/C/2008/26; ECE/MP.PP/C.1/2009/6/Add.1, 8 February 2011, para. 57)*

The Committee concludes that the decision-making process regarding the proposal to introduce a 7.5 tonnage restriction for lorries on route B 320 does not constitute a decision-making process regarding a plan, programme or policy. As mentioned the Committee has decided not to deal with article 8 issues.

*(Austria ACCC/C/2008/26; ECE/MP.PP/C.1/2009/6/Add.1, 8 February 2011, para. 61)*

As to the possible link between the two decision-making processes (see para. 2 (c) above), the Committee suggests that it would be logical to examine this possible link early on in the decision-making process, when all options are still open. The strategic assessment to be conducted pursuant to the SP-V Act might well provide opportunities in this respect.

*(Austria ACCC/C/2008/26; ECE/MP.PP/C.1/2009/6/Add.1, 8 February 2011, para. 64)*

The Committee considered the submission by the Oekobuero asserting, inter alia, that the Austrian laws on EIA and SEA might in general not be in conformity with the Convention. The Committee noted that in the present communication the specific facts of the case were at stake and no decisions pursuant to either the EIA or SEA have yet been taken.

*(Austria ACCC/C/2008/26; ECE/MP.PP/C.1/2009/6/Add.1, 8 February 2011, para. 65)*

The Committee concludes that, given the present phase of the decision-making process, the Party concerned has not failed to comply with the Convention. The Committee, however, notes that at least in part its conclusion is related to the fact that the planning process in the present case commenced well in advance of the entry into force of the Convention for the Party concerned. It is in this context that the Committee considers it important to reiterate its concern expressed in paragraph 0. The Committee emphasizes that participation in accordance with article 6 and article 7, in conjunction with article 6, paragraphs 3, 4 and 8, of the Convention, should take place and that such participation does not only require formal participation. Importantly, participation is to include public debate and the opportunity for the public to participate in such debate at an early stage of the decision-making process, when all options are open and when due account can be taken of the

***planning started  
before entry  
into force of AC***

***ongoing  
planning process***

**EIA/SEA role**

outcome of the public participation.

*(Austria ACCC/C/2008/26; ECE/MP.PP/C.1/2009/6/Add.1, 8 February 2011, para. 66)*

The Committee, however, in principle acknowledges the importance of environmental assessment, whether in the form of EIA or in the form of strategic environmental assessment (SEA), for the purpose of improving the quality and the effectiveness of public participation in taking permitting decisions under article 6 of the Convention or decisions concerning plans and programmes under article 7 of the Convention.

*(Spain ACCC/C/2008/24; ECE/MP.PP/C.1/2009/8/Add.1, 30 September 2010, para. 83)*

The Committee notes that the EIA Law subjects decisions for planned activities and “concepts” (see paras. 15–18 above) to an EIA procedure. The distinction between a planned activity and a concept in the EIA Law appears to reflect the distinction between decisions for specific activities under article 6 of the Convention, and plans and programmes under article 7 of the Convention. The Convention does not clearly define what the plans, programmes and policies of article 7 encompass, and leaves it to the national legislature to detail the specificities of the decisions within the general framework of the Convention.

*(Armenia ACCC/C/2009/43; ECE/MP.PP/2011/11/Add.1, April 2011, para.49)*

The Concept for the exploitation of the Teghout deposits may be considered a regional development strategy and sectoral planning which falls under article 15 of the EIA Law and article 7 of the Convention, as a plan relating to the environment; or it may be the first phase (expressed as an “intention”) for a planned activity under article 6 of the EIA Law and article 6 of the Convention. While Armenian law provides for public participation in different phases of an activity and as early as possible, it does not indicate with precision the particular features of an “intention to carry out a planned activity”, a “planned activity” or a “concept”. It is further not clear what the legal effects of the approval of the concept on 30 September 2005 by the inter-agency commission were. As already observed in the past, it is sometimes difficult to determine *prima facie* whether a decision falls under article 6 or 7 of the Convention, but in all cases the requirements of paragraphs 3, 4 and 8 of article 6 apply (see ACCC/C/2005/12, (Albania), ECE/MP.PP/C.1/2007/4/Add.1, para. 70) for plans and programmes. However, it is important to identify what the legal effects of an act are — whether an act constitutes a decision under article 7 or a first phase/intention for a planned activity under article 6, because only some of the public participation provisions of article 6 apply to decisions under article 7.

*(Armenia ACCC/C/2009/43; ECE/MP.PP/2011/11/Add.1, April 2011, para.52)*

The Committee also considers whether the amended Planning Agreement of 14 October 2008 is a plan relating to the environment within the scope of article 7 of the Convention. What constitutes a “plan” is not defined in the Convention. The fact that the document is entitled “Planning Agreement” does not necessarily mean that it is a plan; rather, it is necessary to consider the substance of the document. Having considered the substance of the document, the Committee finds that the “Planning Agreement” in this case is in fact a decision on a specific activity that would properly be the type of activity under article 6. However, as held above, the activity does not meet the threshold of article 6.4 The Committee therefore finds that the “Planning Agreement” in this case is not covered by article 7.

*(United Kingdom ACCC/C/2008/27; ECE/MP.PP/C.1/2010/6/Add.2, November 2010, para. 41)*

Having reviewed the documentation referred to by the parties, including the MTS and the AWPR Project Development 2005-2006 Consolidated Assessment Report<sup>10</sup>, the Committee finds that the objective referred to by the communicant is to be found in the latter document only. The Committee does not consider that this document is a plan subject to the requirements of article 7 but rather a document relating to a specific activity subject to article 6 and notes that it has already considered the communicant’s allegations under article 6 above. It will therefore not consider this allegation further.

*(United Kingdom ACCC/C/2009/38; ECE/MP.PP/C.1/2011/2/Add.10, April 2011, para. 87)*

Prior to engaging in these considerations and without examining the legal nature of REFIT I, the Committee finds that in this case the decisions taken by the Party concerned to approve State aid for REFIT I and to approve financial assistance for the interconnector, on their own, do not amount to decisions under articles 6 or 7 of the Convention. Therefore, the Committee decides to focus on NREAP, and to deal with allegations concerning articles 4, 5 and 9 of the Convention only.

*(European Union ACCC/C/2010/54; ECE/MP.PP/C.1/2012, 2 October 2012, para. 74)*

A proper regulatory framework for the implementation of article 7 of the Convention would require Member States, including Ireland, to have in place proper participatory procedures in accordance with the Convention. It would also require Member States, including Ireland to report on how the arrangements for public participation made by a Member State were transparent and fair and how within those arrangements the necessary information was provided to the public. In addition, such a regulatory framework would have made reference to the requirements of article 6, paragraphs 3, 4 and 8, of the Convention, including reasonable time-frames, allowing for sufficient time for informing the public and for the public to prepare and participate effectively, allowing for participation when all options are open and how due account is taken of the outcome of the public participation.

*(European Union ACCC/C/2010/54; ECE/MP.PP/C.1/2012/12, 2 October 2012, para. 80)*

In assessing how the Party concerned monitored implementation by Ireland of article 7 of the Convention, the Committee notes that the Party concerned neither in its written statements nor in its oral presentations provided evidence that it evaluated Ireland's NREAPs in the light of the requirements of article 7 of the Convention. The Party concerned instead submits that in this case Ireland, even if not a Party to the Convention, complied with the requirements of article 7 of the Convention by holding both a targeted consultation and a consultation with the wider public, the latter for the duration of a period of two weeks.

*(European Union ACCC/C/2010/54; ECE/MP.PP/C.1/2012/12, 2 October 2012, para. 81)*

The communicant submits that the targeted consultation was only open to entities that supported Government policy and that the public was not adequately informed of the public consultation. The Committee takes these allegations to mean that the communicant claims that the targeted consultation was conducted without adequately "taking into account the objectives of this Convention", as required by article 7 of the Convention and that the public consultation was not conducted in conformity with article 6, paragraph 3, of the Convention. However, the Committee was provided with insufficient information by the communicant and the Party concerned to assess whether the targeted consultation conducted by Ireland was conducted without adequately "taking into account the objectives of this Convention", as required by article 7 of the Convention.

*(European Union ACCC/C/2010/54; ECE/MP.PP/C.1/2012/12, 2 October 2012, para. 82)*

Nevertheless, with respect to the consultation with the public conducted by Ireland the Committee finds that it was conducted within a very short time frame, namely two weeks. Public participation under article 7 of the Convention must meet the standards of the Convention, including article 6, paragraph 3, of the Convention, which requires reasonable time frames. A two week period is not a reasonable time frame for "the public to prepare and participate effectively", taking into account the complexity of the plan or programme (see findings on communication ACCC/C/2006/16 (Lithuania), ECE/MP.PP/2008/5/Add.6, para. 69). The manner in which the public was informed of the fact that public consultation was going to take place remains unclear; neither the Party concerned nor the communicant provided clarity on the matter. The Committee furthermore points out that a targeted consultation involving selected stakeholders, including NGOs, can usefully complement but not substitute for proper public participation, as required by the Convention.

*(European Union ACCC/C/2010/54; ECE/MP.PP/C.1/2012/12, 2 October 2012, para. 83)*

Proper monitoring by the Party concerned of the compatibility of Ireland's NREAP with article 7 of the Convention would have entailed that the Party concerned evaluate Ireland's NREAP in terms of the elements mentioned in paragraph 80 above. The Party concerned thus should have ascertained whether the targeted consultation and the public participation engaged in when Ireland adopted its NREAP met the standards of article 7 of the Convention, including whether reasonable time frames were employed and whether the public consultation was properly announced in Ireland. The Party concerned cannot deploy its obligation to monitor the implementation of article 7 of the Convention in the development of Ireland's NREAP by relying on complaints received from the public, as it suggested it does during the public hearings conducted by the Committee.

*(European Union ACCC/C/2010/54; ECE/MP.PP/C.1/2012/12, 2 October 2012, para. 84)*

Based on the above considerations, the Committee finds that the Party concerned does not have in place a proper regulatory framework and/or other instructions to ensure implementation of article 7 of the Convention by its member States, including Ireland, with respect to the adoption of NREAPs. The Committee also finds that the Party concerned, in practice, by way of its monitoring responsibility, failed to ensure proper implementation of article 7 of the Convention by Ireland with respect to the adoption of its NREAP. The Com-

***targeted  
consultations***

***2 weeks for PP***

***EU obligation  
to monitor  
implementation  
by member-states***

mittee thus finds that the Party concerned in both these respects is in non-compliance with article 7 of the Convention.

*(European Union ACCC/C/2010/54; ECE/MP.PP/C.1/2012/12, 2 October 2012, para. 85)*

***all-inclusive PP***

The Committee emphasizes that article 6, paragraph 4, of the Convention requires “early public participation, when all options are open and effective public participation can take place”, both in relation to activities under article 6 of the Convention and in relation to plans and programmes under article 7 of the Convention. If the adoption of local investment plans, or other developments, were to prejudice public participation in the planning procedure as envisaged by article 6, paragraph 4, in relation to article 6 or 7 of the Convention, this would engage the responsibilities of the Party concerned under these provisions of the Convention. If this were the case, the Party concerned would also be obliged to ensure all-inclusive public participation, i.e., not limited to the involvement of private sector, in this early stage of planning.

*(United Kingdom ACCC/C/2010/45 and ACCC/C/2011/60; ECE/MP.PP/C.1/2013/12, 23 October 2013, para. 81)*

***investment plans***

According to the information before the Committee, the practice for the preparation of the local investment plans has not crystallized across the Party concerned and largely depends on the discretion of the authority to engage public participation of all stakeholders. Therefore, the Committee is not in a position to conclude whether the Party concerned fails to comply with its obligations arising from article 7. However, given the growing significance of the cooperative endeavours between public and private actors for the preparations of local investment plans, and in view of the object and purpose of the Convention, the Committee considers that participation of the public in the preparation of the local investment plans and related procedures is highly appropriate.

*(United Kingdom ACCC/C/2010/45 and ACCC/C/2011/60; ECE/MP.PP/C.1/2013/12, 23 October 2013, para. 82)*

The Convention provides for somewhat differentiated requirements for public participation in the framework of decisions on specific activities (art. 6), plans, programmes (art.7) and policies (art. 7), or executive regulations and generally applicable legally binding normative instruments (art. 8). Whether the Traffic Regulation Order falls within the scope of article 6, article 7 or article 8 of the Convention must be determined on a contextual basis, taking into account the legal effects of the Order (cf. the findings on communication ACCC/C/2006/1 concerning Lithuania (ECE/MP.PP/2008/5/Add.6), para. 57).

*(United Kingdom ACCC/C/2010/53; ECE/MP.PP/C.1/2013/3, 11 January 2013, para. 82)*

What constitutes a “plan” is not defined in the Convention. The fact that a document bears in its title the word “plan” does not necessarily mean that it is a plan; rather it is necessary to consider the substance of the document (see also findings on communication ACCC/C/2008/27 (United Kingdom) (ECE/MP.PP/C.1/2010/6/Add.2, para. 41)). The Committee thus considers the contents of the municipal waste plans of the Party concerned, as well as the legal effects of these plans on the public, to determine whether they fall within the ambit of article 7 and the extent to which public participation procedures should apply under the Convention.

*(Croatia ACCC/C/2012/66; ECE/MP.PP/C.1/2014/4, 13 January 2014, para. 35)*

***plan definition***

While these municipality waste management plans implement the national and county waste management plan and the national strategy at the local level, they are not only theoretical orientations on waste management or only a repetition of the subjects treated in the national/county waste management documentation. It is apparent to the Committee that they contain considerations specific to the region concerned on the impact of waste management, on possible emissions, possible locations and facilities, which are without doubt of interest to the public and therefore should be subject to public participation according to article 7. Moreover, whether a document sets the framework for future development consent is not a determining factor of its nature as a plan under article 7 or not.

*(Croatia ACCC/C/2012/66; ECE/MP.PP/C.1/2014/4, 13 January 2014, para. 39)*

***lack of sectoral legislation***

The fact that the waste management plans are not mentioned in the EPA and in sectoral laws as sustainable development and environment protection documents is not relevant; an insufficient coverage by the legislation of one of the subject matters of the Aarhus Convention cannot be invoked as an excuse to avoid its application to an activity which is obviously related to the protection of the environment.

*(Croatia ACCC/C/2012/66; ECE/MP.PP/C.1/2014/4, 13 January 2014, para. 40)*

For these reasons, the Committee finds that municipal waste management plans are plans within the purview of article 7 of the Convention.

*(Croatia ACCC/C/2012/66; ECE/MP.PP/C.1/2014/4, 13 January 2014, para. 41)*

[T]he Committee notes that the EPA (art. 142, para. 3), as well as the Regulation on Information and Public Participation (art. 14, para. 3), stipulate that the list of plans relating to the environment which are not subjected to SEA, but for which public participation is required, will be determined by law/regulation. According to the information submitted to the Committee, there is yet no law/regulation in place as to this type of plans, and this creates uncertainty as to the application of the public participation procedures.

*(Croatia ACCC/C/2012/66; ECE/MP.PP/C.1/2014/4, 13 January 2014, para. 49)*

In addition, according to the English translation of the laws provided to the Committee, there is no consistency as to whether the public participates before the first draft of the plan or only once there is a draft available (see text of the EPA (art. 142, para. 2), and the Regulation on Information and Public Participation (art. 14, para. 1), referring to the “draft proposal of the plans”, as compared with the general principle for public participation in the development of plans enshrined in the EP A (art. 16, para. 3)).

*(Croatia ACCC/C/2012/66; ECE/MP.PP/C.1/2014/4, 13 January 2014, para. 50)*

For these reasons, the Committee finds that the present arrangements under the law of the Party concerned are not sufficiently clear to ensure that the requirement of article 7 for a transparent framework is met. Thus, the Party concerned fails to comply with article 7.

*(Croatia ACCC/C/2012/66; ECE/MP.PP/C.1/2014/4, 13 January 2014, para. 51)*

NREAPs are plans or programmes under article 7 of the Convention (see findings on communication ACCC/C/2010/54, para. 75) and as such are subject to public participation. The fact that the United Kingdom’s Renewable Energy Strategy, which informed the NREAP, was subject to public participation does not affect this conclusion, given their different legal status and functions in the EU and United Kingdom legal framework, respectively.

*(European Union and United Kingdom ACCC/C/2012/68; ECE/MP.PP/C.1/2014/5, 13 January 2014, para. 100)*

The Committee concludes that because the United Kingdom’s NREAP was not subjected to public participation, the Party concerned (United Kingdom) failed to comply with article 7 of the Convention, in this regard.

*(European Union and United Kingdom ACCC/C/2012/68; ECE/MP.PP/C.1/2014/5, 13 January 2014, para. 101)*

The communicant alleges non-compliance with article 7 of the Convention with respect to renewable energy policy documents in Scotland, in particular in relation to the Scottish Renewables Action Plan, the Scottish Renewable Energy Routemap and the Electricity Generation Policy Statement. However, at the hearing the communicant agreed that these documents had been subject to public participation and no longer challenged the compliance of these procedures with the Convention.

*(European Union and United Kingdom ACCC/C/2012/68; ECE/MP.PP/C.1/2014/5, 13 January 2014, para. 102)*

The Committee notes that the 2009 Scottish Renewables Action Plan was subject to public consultation in the context of the conduct of SEA.<sup>17</sup> Likewise the Renewable Energy Routemap, published in 2011, and the draft Electricity Generation Policy Statement, published in 2010, were subject to SEA in March 2012, in the context of which public participation took place.

*(European Union and United Kingdom ACCC/C/2012/68; ECE/MP.PP/C.1/2014/5, 13 January 2014, para. 103)*

Given the facts noted in paragraph 103 above and the position of the communicant at the hearing (see para. 102), the Committee concludes that the Party concerned (EU) did not fail to comply with article 7 of the Convention, in this respect.

*(European Union and United Kingdom ACCC/C/2012/68; ECE/MP.PP/C.1/2014/5, 13 January 2014, para. 104)*

The Committee was requested by the communicant to examine the decision concerning the details on the construction of the NPP (location, technology, etc.) as an activity under article 6, and the decision to construct a new NPP as a plan under article 7. The Committee notes, however, that the only document acknowledged by both the communicant and the

**clarity**

**nuclear power  
plant siting study**



Party concerned to have been issued in relation to the project is a study for the selection of possible locations for the NPP, and the Committee has not been provided with any further information to prove that any decision in this respect has been taken. The Committee does not consider a study aiming at examining possible locations for a project, according to certain criteria (geographical, scientific, etc.), and making proposals for the preferred location(s) to be a decision under article 6, or as a plan, programme or policy under article 7, of the Convention. Nor is there any other evidence provided to the Committee that there was a decision taken to permit the NPP. Therefore, in relation to the study for the possible locations, the Committee will not examine any allegations of non-compliance with the public participation provisions of articles 6 and 7 of the Convention.

*(Romania ACCC/C/2010/51; ECE/MP.PP/C.1/2014/12, 14 July 2014, para.73)*

Regarding the allegation that no proper public participation was provided during the preparation of the Energy Strategy, the Committee notes that while it is undisputed that the Strategy is a document subject to article 7 of the Convention and some public participation took place during its preparation, there are different views in relation to the participation of NGOs in the working group drafting the Strategy.

*(Romania ACCC/C/2010/51; ECE/MP.PP/C.1/2014/12, 14 July 2014, para.108)*

### **working groups & PP**

In this context, it should be stressed that whether a particular NGO participated or not in the working group drafting the Strategy is irrelevant from the point of view of meeting the requirements of article 7 of the Convention, because the inclusion of representatives of NGOs and “stakeholders” in a closed advisory group cannot be considered as public participation under the Convention. Furthermore, whatever the definition of the “public concerned” in the law of a Party to the Convention, it must meet the following criteria under the Convention: it must include both NGOs and individual members of the public; and it must be based on objective criteria and not on discretionary power to pick individual representatives of certain groups. In this context, participation in closed advisory groups cannot be considered as public participation meeting the requirements of the Convention.

*(Romania ACCC/C/2010/51; ECE/MP.PP/C.1/2014/12, 14 July 2014, para.109)*

### **11 days to comment a draft**

Furthermore, the Committee notes that, while indeed the draft 2007 Strategy was published on the websites of the Ministry of Economy and the Secretariat General of the Government, formally the general public had only 11 days to get acquainted with the draft and submit comments. Despite the fact that some members of the public had been able to submit comments also outside the scope of these 11 days, the Committee considers that the Party concerned failed to ensure a reasonable time frame for public participation in the case of such a document. Thus, by not providing sufficient time for the public to get acquainted with the draft and to submit comments thereon, the Party concerned failed to comply with article 7, in conjunction with article 6, paragraph 3, of the Convention.

*(Romania ACCC/C/2010/51; ECE/MP.PP/C.1/2014/12, 14 July 2014, para.110)*

Whether the application at issue falls under article 7 of the Convention is determined by the following two criteria: whether the document is a plan or programme and whether it is related to the environment.

*(Czech Republic ACCC/C/2012/70; ECE/MP.PP/C.1/2014/9, 4 June 2014, para. 48)*

### **plan definition**

First, what constitutes a “plan” is not defined in the Convention. The fact that a document bears in its title the word “plan” does not necessarily mean that it is a plan under article 7 of the Convention; rather, it is necessary to consider the substance of the document (see findings on communications ACCC/C/2005/11 (Belgium) (ECE/MP.PP/C.1/2006/4/Add.2), para. 29; ACCC/C/2005/12 (Albania) (ECE/MP.PP/C.1/2007/4/Add.1), para. 65; and ACCC/C/2008/27 (United Kingdom of Great Britain and Northern Ireland) (ECE/MP.PP/C.1/2010/6/Add.2), para. 41). For instance, in the present case, the document at issue was an “application” that included the “national investment plan”. The Committee looks at the contents and the legal effects of the application as a whole, to determine whether it falls under article 7 of the Convention.

*(Czech Republic ACCC/C/2012/70; ECE/MP.PP/C.1/2014/9, 4 June 2014, para. 49)*

It is acknowledged that the application relates to the environment since it proposes measures in the energy sector that affect or are likely to affect the elements of the environment. This is further supported by the fact that paragraph 60 of the 2011 Guidance Document states that “any application submitted by a member State should be considered environmental information”.

*(Czech Republic ACCC/C/2012/70; ECE/MP.PP/C.1/2014/9, 4 June 2014, para. 50)*

Among other things, the Czech application for the allocation of free emission allowances proposed measures for investment into equipment and for the modernization of infrastructure and clean technologies in the electricity sector for a period of seven years. To this end, the accompanying plan envisaged the implementation of 350 projects throughout the territory. Through the application, including the accompanying documentation, the Party concerned set out its investment direction in the sector and proposed specific projects for the accomplishment of the plan. On the basis of this, the Committee finds that the application, including the accompanying documentation, is a plan under article 7 of the Convention.

*(Czech Republic ACCC/C/2012/70; ECE/MP.PP/C.1/2014/9, 4 June 2014, para. 51)*

It is submitted by the Party concerned that once approved by the Government and submitted to the Commission, the application underwent considerable changes. The Committee notes that article 7 requires appropriate provisions to be made for the public to participate during the preparation of the plan. Whether the plan was further amended when it passed to the next level of government (i.e., the Commission) before its finalization and adoption does not alleviate the obligations arising for the Party concerned during the period that it carried the main responsibility for the preparation of the substantive elements of the application.

*(Czech Republic ACCC/C/2012/70; ECE/MP.PP/C.1/2014/9, 4 June 2014, para. 52)*

For these reasons, the Committee finds that the application, including its national investment plan, prepared by the Party concerned under the revised rules for the EU ETS, is a plan within the purview of article 7 of the Convention and therefore article 6, paragraphs 3, 4 and 8, apply to its preparation.

*(Czech Republic ACCC/C/2012/70; ECE/MP.PP/C.1/2014/9, 4 June 2014, para. 53)*

The official consultation period for the application was from 19 to 26 August 2011. During the discussion with the Committee at its fortieth meeting, the Party concerned agreed that the one-week period was short, but submitted that overall there were plenty of opportunities for the public to participate.

*(Czech Republic ACCC/C/2012/70; ECE/MP.PP/C.1/2014/9, 4 June 2014, para. 54)*

During the discussion, the Party concerned also mentioned that the documentation relating to the application was available on the Ministry's website from 3 December 2010. While indeed the documentation was published on 3 December 2010, formally the general public had only seven days for getting acquainted with the draft and submitting comments. Despite the fact that some members of the public had been able to submit comments outside the scope of these seven days, the Committee finds that the Party concerned failed to ensure a reasonable time frame for public participation in the case of such a document, since the general public was not aware of the ongoing consultation on the application.

*(Czech Republic ACCC/C/2012/70; ECE/MP.PP/C.1/2014/9, 4 June 2014, para. 55)*

It was further submitted that although the application was available from 19 August 2011, due to an error the national investment plan was only published on the website on 25 August 2011, without providing for an extension of the deadline for submission of comments. This meant that the public concerned had one day to study the plan, digest the information and provide comments.

*(Czech Republic ACCC/C/2012/70; ECE/MP.PP/C.1/2014/9, 4 June 2014, para. 56)*

The Committee considers that providing the public with seven days to get acquainted with the draft documents and to submit comments, let alone allowing it one day for the same purpose, cannot be considered a reasonable time frame for the public to prepare and participate effectively in the preparation of a document of the magnitude of the national investment plan. Therefore, the Committee considers that, by not providing sufficient time for the public to get acquainted with the draft and submit comments, the Party failed to comply with article 7, in conjunction with article 6, paragraph 3, of the Convention.

*(Czech Republic ACCC/C/2012/70; ECE/MP.PP/C.1/2014/9, 4 June 2014, para. 57)*

Given that the process to prepare the application was initiated on 31 October 2009 and that formally the general public had only seven days to get acquainted with the draft and submit comments, starting on 19 August 2011, that is, almost two years after the start of the application's preparation, the Committee finds that the Party concerned failed to comply with article 7, in conjunction with article 6, paragraph 4, of the Convention, because no early public participation was ensured, when all options were open.

*(Czech Republic ACCC/C/2012/70; ECE/MP.PP/C.1/2014/9, 4 June 2014, para. 58)*

**EU ETS**

**7 days for PP**

**targeted  
consultations  
with private  
stakeholders**

In this respect, it is noted that article 7 provides that “the public which may participate shall be identified by the relevant public authority, taking into account the objectives of this Convention”. This provision should not be used by public authorities in a way so as to restrict public participation, but rather as a way of making public participation more effective. In the present case, it is accepted that the input by private stakeholders engaged in electricity production was essential in that it provided specific technical details indispensable for the preparation of the application. The Committee considers that there was a considerable span of time for participation of private stakeholders compared to that granted to other members of the public, to the extent that the authority exercised its discretion in a way that ran counter to the objectives of the Convention; in particular “to encourage widespread public awareness of, and participation in, decisions affecting the environment and sustainable development” by involving, among others, NGOs promoting environmental protection. While the closer inclusion of the private stakeholders in the process may have been justified, there was still an obligation on the public authority to act in accordance with the objectives of the Convention and not to abuse this provision to effectively bar or significantly reduce the effective public participation of other members of the public.

*(Czech Republic ACCC/C/2012/70; ECE/MP.PP/C.1/2014/9, 4 June 2014, para. 59)*

There is a clear obligation arising from article 7 on public authorities to seriously consider the outcome of public participation in the preparation of plans. However, the Convention does not specify how this should be done in practice.

*(Czech Republic ACCC/C/2012/70; ECE/MP.PP/C.1/2014/9, 4 June 2014, para. 60)*

**obligation to  
seriously consider/  
no veto right**

It is recognized that the public authority preparing the plan is ultimately responsible for policymaking and has to consider a number of factors, including the comments of the public. This may lead to a final plan that may not always be accepted by the public. However, the authority should be able to demonstrate how the comments were considered and why it did not follow the views expressed by the public. As already stated, “the requirement of article 6, paragraph 8, that public authorities take due account of the outcome of public participation, does not amount to the right of the public to veto the decision” (see Committee’s commentary on communication ACCC/C/2008/29 (Poland) in the report of its twenty-fourth meeting (Geneva, 30 June–3 July 2009) ECE/MP.PP/C.1/2009/4, para. 29). Yet, “while it is impossible to accept in substance all the comments submitted, which may often be conflicting, the relevant authority must still seriously consider all the comments received” (findings on communication ACCC/C/2008/24 (Spain) (ECE/MP.PP/C.1/2009/8/Add.1), para. 99).

*(Czech Republic ACCC/C/2012/70; ECE/MP.PP/C.1/2014/9, 4 June 2014, para. 61)*

**reasons &  
considerations  
for a decision**

The Committee notes that for decisions on specific activities, fulfilment of the requirement of article 6, paragraph 8, is to be proven through fulfilment of article 6, paragraph 9. In contrast, a requirement to make accessible the reasons and considerations on which the decision is based is not expressly provided for in article 7 of the Convention. Nevertheless, the Party concerned has the obligation to demonstrate that it has fulfilled its obligations under article 6, paragraph 8. The Committee notes that in the process of preparing a plan this obligation could be fulfilled by following the procedure set out in article 6, paragraph 9, or any other way the Party concerns chooses to demonstrate that it has taken “due account” of the outcome of the public participation.

*(Czech Republic ACCC/C/2012/70; ECE/MP.PP/C.1/2014/9, 4 June 2014, para. 62)*

In the present case, the Party concerned, in its application to the European Commission referred to in paragraph 22, mentions that “the Ministry of the Environment will thoroughly settle all duly submitted comments”. The Party concerned was not able to show through its written and oral submissions how the outcome of public participation was duly taken into account. The Committee appreciates that the Party concerned had to operate under extremely tight deadlines to ensure that its application to the Commission was submitted within the set deadline and that free allowances were eventually awarded for the transitional period 2013–2019 according to the new EU regime on ETS. Nevertheless, the Committee considers that the application at issue certainly did not constitute an emergency situation and that there would have been a possibility for enhanced openness and transparency of the process from its start in October 2009, so that public participation would not have been jeopardized. For these reasons, the Committee finds that, by failing to show through its written and oral submissions how the outcome of public participation was duly taken into account, the Party concerned failed to comply with article 6, paragraph 8, of the Convention.

*(Czech Republic ACCC/C/2012/70; ECE/MP.PP/C.1/2014/9, 4 June 2014, para. 63)*

The Committee notes that the preparation of the application was a long process whereby the Party concerned was responsible for preparing the application for submission to the Commission and thereafter the Commission, together with the Party concerned, further elaborated the application until its final approval by the Commission. The Committee will focus only on the obligations arising for the Party concerned from the Convention during the preparation of the application, and will not extend its review to EU compliance with the Convention (not being the Party concerned). However, the Committee notes the complexity of decision-making in a multi-level government structure, such as the one between the EU and its member States, including the Party concerned, and encourages further cooperation and coordination of actions with respect to the implementation of the Convention.

*(Czech Republic ACCC/C/2012/70; ECE/MP.PP/C.1/2014/9, 4 June 2014, para. 47)*

### **Nature of EU**

## **Article 8 PUBLIC PARTICIPATION DURING THE PREPARATION OF EXECUTIVE REGULATIONS AND/OR GENERALLY APPLICABLE LEGALLY BINDING NORMATIVE INSTRUMENTS**

Each Party shall strive to promote effective public participation at an appropriate stage, and while options are still open, during the preparation by public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment. To this end, the following steps should be taken:

- (a) Time-frames sufficient for effective participation should be fixed;
- (b) Draft rules should be published or otherwise made publicly available; and
- (c) The public should be given the opportunity to comment, directly or through representative consultative bodies.

The result of the public participation shall be taken into account as far as possible.

In line with the Committee's understanding, set out in its first report to the Meeting of the Parties (ECE/MP.PP/2005/13, para. 13), that decision I/7 does not require the Commission to address all facts and/or allegations raised in the communication, the Committee decides not to address the allegations that executive decisions, ex article 8 of the Convention, have been taken in regard of the consideration of alternative transport solutions in the Enns Valley and the proposal to introduce a 7.5 tonnage restriction for lorries on route B 320. The Committee comes to this decision because the communicant did not clearly indicate which decisions are at stake with respect to the consideration of alternative transport solutions in the Enns Valley and a decision, subject to a hearing, is still pending regarding the proposed introduction of the 7.5 tonnage restriction for lorries on road B 320.

*(Austria ACCC/C/2008/26; ECE/MP.PP/C.1/2009/6/Add.1, 8 February 2011, para. 53)*

The Committee concludes that the decision-making process regarding the proposal to introduce a 7.5 tonnage restriction for lorries on route B 320 does not constitute a decision-making process regarding a plan, programme or policy. As mentioned the Committee has decided not to deal with article 8 issues.

*(Austria ACCC/C/2008/26; ECE/MP.PP/C.1/2009/6/Add.1, 8 February 2011, para. 61)*

The Convention provides for somewhat differentiated requirements for public participation in the framework of decisions on specific activities (art. 6), plans, programmes (art.7) and policies (art. 7), or executive regulations and generally applicable legally binding normative instruments (art. 8). Whether the Traffic Regulation Order falls within the scope of article 6, article 7 or article 8 of the Convention must be determined on a contextual basis, taking into account the legal effects of the Order (cf. the findings on communication ACCC/C/2006/1 concerning Lithuania (ECE/MP.PP/2008/5/Add.6), para. 57).

*(United Kingdom ACCC/C/2010/53; ECE/MP.PP/C.1/2013/3, 11 January 2013, para. 82)*

The TRO1 provides direction on how traffic would be organized in a certain area. It is not an act permitting a specific activity, but has general application to all persons that are in a similar situation and unlike a plan or programme, it creates binding legal obligations. As such, it is an act within the scope of article 8 of the Convention.

*(United Kingdom ACCC/C/2010/53; ECE/MP.PP/C.1/2013/3, 11 January 2013, para. 83)*

### **determination of decision under Art. 6, Art. 7 or Art. 8**

**discretion  
of parties**

The Convention prescribes the modalities of public participation in the preparation of legally binding normative instruments of general application in a general manner, pointing to some of the basic principles and minimum requirements on public participation enshrined by the Convention (i.e., effective public participation at an early stage, when all options are open; publication of a draft early enough; sufficient timeframes for the public to consult a draft and comment). Parties are then left with some discretion as to the specificities of how public participation should be organized. In the present case, the public has been given the opportunity to comment at various occasions (see also the report of the Ombudsman, in particular paragraphs 22–29). The Committee finds that the Party concerned has offered opportunities for public participation to a degree that meets the requirements of article 8.

*(United Kingdom ACCC/C/2010/53; ECE/MP.PP/C.1/2013/3, 11 January 2013, para. 84)*

In particular, the Committee notes that: (a) the effect of TRO1 was essentially the same as the effect of the CETM, namely the rerouting of traffic from the shopping thoroughfare of the city through the Moray Feu, and although the Committee does not examine whether the process for the adoption of the CETM was in compliance with the Convention, Moray Feu residents essentially have had the opportunity to provide comments/objections/representations to the effects of CETM since 1997; (b) importantly, TRO1 has yet not been finalized and, at the recommendation of the TIE Committee, workshops are still being organized to take forward measures to address the wider-area impact of the traffic restriction on Shandwick Place.

*(United Kingdom ACCC/C/2010/53; ECE/MP.PP/C.1/2013/3, 11 January 2013, para. 85)*

**explaining  
PP process**

The Committee also examines whether the result of public participation was taken into account as far as possible. This is mandatory under article 8 and in practice it means that the final version of the normative instrument — here the Traffic Regulation Orders — should be accompanied by an explanation of the public participation process and how the results of the public participation were taken into account.

*(United Kingdom ACCC/C/2010/53; ECE/MP.PP/C.1/2013/3, 11 January 2013, para. 86)*

To this end, the Committee reviewed the TIE Committee Reports: “Edinburgh Tram — Traffic Regulation Orders” and “Edinburgh Tram — Traffic Regulation Order: TRO1 Review”, both dated 21 September 2010 (annexes 5 and 6 to the Party’s response of 23 August 2011). The Committee finds that the comments relating to the impact on the Moray Feu were considered. Although the comments and supporting documentation on air and noise quality were rejected, a detailed reasoning was provided and specific actions were recommended. Among actions to be undertaken were to continue to monitor air quality, and to organize workshops with the residents to discuss mitigation measures. Mitigation measures were seen as necessary as, although the official measurements showed that air and noise quality were within the United Kingdom and European Union standards, it was recognized that there was an air and noise quality impact. In addition, it was recommended to note alternative rerouting (e.g., reopening of Hope Street eastbound) to help redistribution of traffic in the area.

*(United Kingdom ACCC/C/2010/53; ECE/MP.PP/C.1/2013/3, 11 January 2013, para. 87)*

For these reasons, the Committee does not find that the Party concerned has failed to take into account as much as possible the objections/comments of the communicant. At the same time, the Committee notes that the public participation process has not been completed yet. The Party concerned may well have striven to promote public participation, but the Committee notes that participation would have been more effective if the raw data, which was part of the basis for decision-making, had been duly provided to the public. While the Committee has already concluded that refusing access to the raw data constitutes non-compliance with article 4, the Committee does not find this to amount to non-compliance also with article 8. Noting that the decision-making procedure has not been completed, the Committee stresses that the raw data should be made available to the public in the continuing decision-making.

*(United Kingdom ACCC/C/2010/53; ECE/MP.PP/C.1/2013/3, 11 January 2013, para. 88)*

**hybrid bill**

The Committee first examines the nature of the hybrid bill and whether it falls under article 6 or article 8 of the Convention. As already established in previous findings, this must be determined on a contextual basis, taking into account the legal effects of the act, while its label under the domestic law of the Party concerned is not decisive (cf. the Committee’s findings concerning communication ACCC/C/2005/11 (Belgium), ECE/

MPPP/C.1/2006/4/Add.2, para. 29; and concerning communication ACCC/C/2006/17 (European Community), ECE/MPPP/C.1/2008/5/Add.10, para. 42).

(United Kingdom ACCC/C/2011/61; ECE/MP.PP/C.1/2013/13, 23 October 2013, para. 52)

The legal effect of the Crossrail Act, following the hybrid bill procedure, is the authorization of a project, the Crossrail. The Act is processed as a “hybrid bill” because of the magnitude of the project, affecting national interests in general. Had it been an executive regulation or an act introducing legislative changes applicable to all, it would have been processed following the public bill process. As such, it does not fall under article 8 of the Convention, because, while the system of the Party concerned — recognizing the cross-cutting impact of such a large project on various spheres of national policy, including transport, economy, employment, etc. — opts for a procedure that passes through Parliament, the act ultimately permits a specific activity. Therefore, the Act is a decision falling under article 6 of the Convention.

(United Kingdom ACCC/C/2011/61; ECE/MP.PP/C.1/2013/13, 23 October 2013, para. 53)

The Committee stresses that the scope of obligations under article 8 relate to any normative acts that may have a significant effect on the environment, which should be considered as including acts dealing with procedural matters related to authorization of activities subject to environmental assessment, as well as to public participation in environmental matters.

(Belarus ACCC/C/2009/44; ECE/MP.PP/C.1/2011/6/Add.1, 19 September 2011, para.61)

***procedural acts***

## Article 9 ACCESS TO JUSTICE

The Committee notes that the more direct route for the communicants to challenge the contravention of environmental laws would have been to take a lawsuit directly against the polluting company, but the communicants were concerned about the financial risk they could face and therefore opted for the second route of taking a lawsuit against the relevant public authorities. This concern over what is known as strategic lawsuits against public participation also point out to obstacles in access to justice.

(Kazakhstan ACCC/C/2004/6; ECE/MP.PP/C.1/2006/4/Add.1, 28 July 2006, para. 32)

The Committee also considers that there is inconclusive evidence that the public lacked access to justice and therefore finds no basis on which to conclude that article 9 of the Convention was not complied with. Although the communicant was not satisfied with the decisions of the courts, having an adverse court decision does not in itself necessarily translate into a denial of access to justice. While appeal processes in the case in question were indeed overall lengthy, this seems to be primarily due to the different interpretations of the then existing legal provisions by various judicial instances, rather than the procedures being unfair, costly or inequitable. The matter is, in the Committee’s opinion, therefore more linked with a lack of a clear legal framework in the context of article 3, paragraph 1, of the Convention, than a lack of access to justice under article 9.

(Kazakhstan ACCC/C/2004/2; ECE/MP.PP/C.1/2005/2/Add.2, 14 March 2005, para. 27)

However, in the Committee’s opinion, the problem is not so much with the issue of jurisdiction or standing. Rather, it is connected to the fact that planning decisions whose subject matter is regulated by environmental legislation, and decisions on specific activities which, in accordance with the Convention, should be subject to an administrative or judicial review, were taken through a procedure that provides no possibility for the public to participate and no remedies. The Committee acknowledges that national legislature, as a matter of principle, has the freedom to protect some acts of the executive from judicial review by regular courts through what is known as ouster clauses in laws. However, to regulate matters subject to articles 6 and 7 of the Convention exclusively through acts enjoying the protection of ouster clauses would be to effectively prevent the use of access-to-justice provisions. Where the legislation gives the executive a choice between an act that precludes participation, transparency and the possibility of review and one that provides for all of these, the public authorities should not use this flexibility to exempt from public scrutiny or judicial review matters which are routinely subject to administrative decisions and fall under specific procedural requirements under domestic law. Unless there are compelling reasons, to do so would risk violating the principles of the Convention. In this case, the Committee has not been made aware of any compelling reason justifying the choice of this form of decision-making.

(Armenia ACCC/C/2004/8; ECE/MP.PP/C.1/2006/2/Add.1, 10 May 2006, para. 38)

***SLAPPs***

***unfavourable court decision***

***Art. 6 & Art. 7 decisions as acts of law***

The communicant also alleges that, in different respects and with regard to different decisions, in particular the 2003 resolutions, the Party concerned failed to comply with article 9, paragraphs 2 and 5, of the Convention. Since the Committee did not find that the 2003 resolutions amounted to permit decisions under article 6, it will limit its examination to consider whether the Party concerned complied with article 9 with respect to the authorization by the Prefect.

*(France ACCC/C/2007/22; ECE/MP.PP/C.1/2009/4/Add.1, 8 February 2011, para. 47)*

The Communicant alleges that the Party concerned fails to comply with article 9, paragraphs 2-5, of the Convention. In order to determine whether the Party concerned fails to comply with article 9, paragraphs 2-5, it must be considered whether the challenged decisions, acts and omissions by the EU institutions or bodies are such as to be covered by the Convention, as under article 2, paragraph 2 (a) to (d), or whether they are made by the EU institutions or bodies when acting in a legislative capacity.

*(European Union ACCC/C/2008/32 (Part I); ECE/MP.PP/C.1/2011/4/Add.1, May 2011, para. 69)*

The Party concerned has referred to the possibility of members of the public to request national courts to ask for a preliminary ruling of the ECJ on the basis of article 234 TEC. Under EU law, while it is not possible to contest directly an EU act before the courts of the Member States, individuals and NGOs may in some states be able to challenge an implementing measure and thus pursue the annulment by asking the national court to request a preliminary ruling of the ECJ. Yet, such a procedure requires that the NGO is granted standing in the EU Member State concerned. It also requires that the national court decides to bring the case to the ECJ under the conditions set out in article 234 TEC.

*(European Union ACCC/C/2008/32 (Part I); ECE/MP.PP/C.1/2011/4/Add.1, May 2011, para. 89)*

#### **EU courts/ standing**

While the system of judicial review in the national courts of the EU Member States and the request for preliminary ruling is a significant element for ensuring consistent application and proper implementation of EU law in the Member States, it cannot be a basis for generally denying members of the public access to the EU Courts to challenge decisions, acts and omissions by EU institutions and bodies. Nor does the system of preliminary review amount to appellate system with regard to decisions, acts and omissions by the EU institutions and bodies. Thus, with respect to decisions, acts and omissions of EU institutions and bodies, the system of preliminary ruling does neither in itself meet the requirements of access to justice in article 9 of the Convention nor compensate for the strict jurisprudence of the EU Courts, examined in paragraphs 76-88 above.

*(European Union ACCC/C/2008/32 (Part I); ECE/MP.PP/C.1/2011/4/Add.1, May 2011, para. 90)*

The jurisprudence examined was not actually implied by the TEC, but rather a result of the strict interpretation by the EU Courts. While this jurisprudence was built by the EU Courts on the basis of the old text in TEC, article 230, paragraph 4, the wording of TFEU article 263, paragraph 4, based on the Lisbon Treaty, is different. The Committee notes the debate on whether this difference in itself provides for a possible change of the jurisprudence so as to enable members of the public to have standing before the EU Courts, and considers this a possible means for ensuring compliance with article 9 of the Convention. Yet, the Committee refrains from any speculation on whether and how the EU Courts will consider the jurisprudence on access to justice in environmental matters on the basis of the TFEU.

*(European Union ACCC/C/2008/32 (Part I); ECE/MP.PP/C.1/2011/4/Add.1, May 2011, para. 91)*

#### **preamble/ objective**

When evaluating the compliance of the Party concerned with article 9 of the Convention in each of these areas, the Committee pays attention to the general picture on access to justice, in the light of the purpose also reflected in the preamble of the Convention, that “effective judicial mechanisms should be accessible to the public, including organizations, so that its legitimate interests are protected and the law is enforced” (Convention, preamble para. 18; cf. also findings on communication ACCC/C/2006/18 concerning Denmark (ECE/MP.PP/2008/5/Add.4), para. 30). Therefore, in assessing whether the Convention’s requirement for effective access to justice is met by the Party concerned, the Committee looks at the legal framework in general and the different possibilities for access to justice, available to members of the public, including organizations, in different stages of the decision-making (“tiered” decision-making).

*(Bulgaria ACCC/C/2011/58; ECE/MP.PP/C.1/2013/4, 11 January 2013, para. 52)*

#### **label of decision**

In addition, in examining access to justice with respect to the different types of acts before it (SEA statements, spatial plans or construction and exploitation permits), the Committee bears in mind that whether a decision should be challengeable under article 9 is determined by the legal functions and effects of a decision, not by its label under national law (c.f. find-

ings on communication ACCC/C/2005/11 concerning Belgium (ECE/MP.PP/C.1/2006/4/Add.2), para. 29 and findings on communication ACCC/C/2006/16 concerning Lithuania (ECE/MP.PP/2008/5/Add.6), para. 57).

(Bulgaria ACCC/C/2011/58; ECE/MP.PP/C.1/2013/4, 11 January 2013, para. 53)

As already noted in its findings on previous communications, when evaluating compliance with article 9 of the Convention, the Committee pays attention to the general picture regarding access to justice in the Party concerned, in the light of the purpose reflected in the preamble of the Convention that “effective judicial mechanisms should be accessible to the public, including organizations, so that its legitimate interests are protected and the law is enforced” (see findings on communications ACCC/C/2006/18 (Denmark) (ECE/MP.PP/2008/5/Add.4), para. 30, and ACCC/C/2011/58 (Bulgaria) (ECE/MP.PP/C.1/2013/4), para. 52). The “general picture” includes both the legislative framework of the Party concerned concerning access to justice in environmental matters, and its application in practice by the courts. Moreover, the fact that an international agreement may be applied directly and prior to national law should not be taken as an excuse by the Party concerned for not transposing the Convention through a clear, transparent and consistent framework (see findings on communication ACCC/C/2006/17 (EU (ECE/MP.PP/C.1/2008/5/Add.10), para. 58).

(Germany ACCC/C/2008/31; ECE/MP.PP/C.1/2014/8, 4 June 2014, para. 64)

Consequently, when assessing compliance with article 9 of the Convention, the Committee does not only examine whether the Party concerned has literally transposed the wording of the Convention into national legislation, but also considers practice, as shown through relevant case law. The mere hypothesis that courts could interpret the relevant national provisions contrary to the Convention’s requirement is not sufficient to establish non-compliance by the Party concerned. If the relevant national provisions can be interpreted in compliance with the Convention’s requirements, the Committee considers whether the evidence submitted to it demonstrates that the practice of the courts of the Party concerned indeed follows this approach. If it does not, the Committee may conclude that the Party concerned fails to comply with the Convention.

(Germany ACCC/C/2008/31; ECE/MP.PP/C.1/2014/8, 4 June 2014, para. 65)

In this context, the Committee notes that EU legislation constitutes a part of the national law of EU member States (see findings on communication ACCC/C/2006/18 (Denmark), para. 27).

(Germany ACCC/C/2008/31; ECE/MP.PP/C.1/2014/8, 4 June 2014, para. 66)

Where the wording of national legislation appears to contradict the requirements of the Convention, the Committee still considers the case law submitted to it in order to determine whether the line of interpretation by courts or other national authorities nevertheless meets the requirements of the Convention. Under such circumstances, the Committee may conclude that the Party concerned does not fail to comply with the Convention notwithstanding the wording of the national legislation.

(Germany ACCC/C/2008/31; ECE/MP.PP/C.1/2014/8, 4 June 2014, para. 67)

1. Each Party shall, within the framework of its national legislation, ensure that any person who considers that his or her request for information under article 4 has been ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not dealt with in accordance with the provisions of that article, has access to a review procedure before a court of law or another independent and impartial body established by law.

The Committee considers it important to point out the aforementioned deficiencies in the handling of the information requests in order to clarify the obligations under the Convention with regard to environmental information and thereby contribute to better implementation of its provisions. However, it does not consider that in every instance where a public authority of a Party to the Convention makes an erroneous decision when implementing the requirements of article 4, this should lead the Committee to adopt a finding of non-compliance by the Party, provided that there are adequate review procedures. The review procedures that each Party is required to establish in accordance with article 9, paragraph 1, are intended to correct any such failures in the processing of information requests at the domestic level, and as a general rule, it is only when the Party has failed to do so within a reasonable period of time that the Committee would consider reaching a finding of non-compliance in such a case. Decisions on such a question need to be made on a case-by-case basis. In the present case, the requested information was provided, albeit

*general  
picture approach*

*court practice  
& literal  
transposition*



with some delay, and thus the matter was resolved even before there was any recourse to the review procedures available to the communicant.

*(European Community ACCC/C/2007/21; ECE/MP.PP/C.1/2009/2/Add.1, 11 December 2009, para. 33)*

In the circumstances where a Party provides for such a review by a court of law, it shall ensure that such a person also has access to an expeditious procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law.

Final decisions under this paragraph 1 shall be binding on the public authority holding the information. Reasons shall be stated in writing, at least where access to information is refused under this paragraph.

### *expeditious AtoJ*

The Convention, in its article 9, paragraph 1, requires the Parties to ensure that any procedure for appealing failure to access information is expeditious. However, as the time and number of determinations with regard to jurisdiction in this case demonstrate, there appears to be lack of regulations providing clear guidance to the judiciary as to the meaning of an expeditious procedure in cases related to access to information.

*(Kazakhstan ACCC/C/2004/1; ECE/MP.PP/C.1/2005/2/Add.1, 11 March 2005, para. 21)*

The Committee considers that the underlying reason for non-compliance with the requirements of articles 4 and 9, paragraph 1, as described in paragraphs 16 to 19 and 21 to 22 above, was a failure by the Party concerned to establish and maintain, pursuant to the obligation established in article 3, paragraph 1, a clear, transparent and consistent framework to implement these provisions of the Convention, e.g. by providing clear instructions on the status and obligations of bodies performing functions of public authorities, or regulating the issue of standing in cases on access to information in procedural legislation.

*(Kazakhstan ACCC/C/2004/1; ECE/MP.PP/C.1/2005/2/Add.1, 11 March 2005, para. 23)*

The Committee also finds that the lengthy review procedure and denial of standing to the non-governmental organization in a lawsuit on access to environmental information was not in compliance with article 9, paragraph 1.

*(Kazakhstan ACCC/C/2004/1; ECE/MP.PP/C.1/2005/2/Add.1, 11 March 2005, para. 26)*

### *execution of court decisions*

Moldsilva did not comply with the final decision of the Civil Chamber of Chisinau Court of Appeal, adopted on 23 June 2008, which ruled that Moldsilva had to provide the communicant with the copies of the requested contracts. If a public agency has the possibility not to comply with a final decision of a court of law under article 9, paragraph 1, of the Convention, then doubts arise as to the binding nature of the decisions of the courts within a given legal system. Taking into account article 9, paragraph 1, which implies that the final decisions of a court of law or other independent and impartial body established by law are binding upon and must thus be complied with by public authorities, the failure of Moldsilva to fully execute the final decision of the Civil Chamber of Chisinau Court of Appeal, adopted on 23 June 2008, implies non-compliance of the Party concerned with article 9, paragraph 1, of the Convention.

*(Moldova ACCC/C/2008/30; ECE/MP.PP/C.1/2009/6/Add.3, 8 February 2011, para.35).*

## 2. Each Party shall, within the framework of its national legislation, ensure that members of the public concerned

The Convention obliges the Parties to ensure access to justice for three generic categories of acts and omissions by public authorities. Leaving aside decisions concerning access to information, the distinction is made between, on the one hand, acts and omissions related to permits for specific activities by a public authority for which public participation is required under article 6 (article 9, paragraph 2) and, on the other hand, all other acts and omissions by private persons and public authorities which contravene national law relating to the environment (article 9, paragraph 3). It is apparent that the rationales of paragraph 2 and paragraph 3 of article 9 of the Convention are not identical.

*(Belgium ACCC/2005/11; ECE/MP.PP/C.1/2006/4/Add.2, 28 July 2006, para. 26)*

The communicant has attempted to make use of the domestic remedies available at the early stage. The Committee finds some merit in the argument of the communicant that deficiencies in applying public participation procedures effectively deprived it of its rights under article 9, paragraph 2, of the Convention, i.e. the possibility to challenge the decisions taken at the early stage of decision-making.

*(Lithuania ACCC/2006/16; ECE/MP.PP/2008/5/Add.6, 4 April 2008, para. 63)*

The Committee considers it to be beyond the scope of its mandate to examine the claim by the communicant and other expert bodies that other regulations were breached through the construction of the power line (see para. 17). However, it notes that if the local residents had had the full opportunities to be involved in the decision-making process as they should have had if article 6 of the Convention had been properly applied, they might then have been better placed to exercise their right to ‘challenge the substantive and procedural legality’ of the decision in accordance with article 9, paragraph 2, of the Convention. In this sense, therefore, the possibility that the decision itself breached other regulations has some relevance, but the violation of those regulations, if established, would not necessarily constitute non-compliance with the Convention.

(Kazakhstan ACCC/C/2004/2; ECE/MP.PP/C.1/2005/2/Add.2, 14 March 2005, para. 29)

The Committee notes that in accordance with the Act, the final siting decision is taken by a ministerial decree and that this limits the possibilities of appealing these decisions under article 9, paragraph 2, of the Convention. However, it does not believe that such a system necessarily conflicts with article 9, paragraph 2, as long as there are appeal possibilities with regard to the environmental part of the decision.

(Hungary ACCC/C/2004/4; ECE/MP.PP/C.1/2005/2/Add.4, 14 March 2005, para. 13)

Since the majority of the regional and national environmental issues naturally concern the local environmental protection interests, the territorial field of operation of the local NGOs seems not to be significantly restricted. If the new legislation were to exclude local NGOs as such from participation in decision— making on projects in other parts of the country or on nationwide projects, programmes, etc., this would not be in conformity with the Convention. However, since there is no sufficient evidence of Actual implementation of article 13 in conjunction with article 15, the Committee finds it difficult to establish at this stage whether the provisions as such might constitute non-compliance with article 6 and article 9, paragraph 2, in conjunction with article 2, paragraph 5, of the Convention.

(Turkmenistan ACCC/C/2004/5; ECE/MP.PP/C.1/2005/2/Add.5, 14 March 2005, para. 19)

With regard to access to justice, the communicants claim that they were denied access to a review procedure to challenge the substantive and procedural legality of the government decrees which, they argue, should be guaranteed under article 9, paragraph 2, of the Convention. The relevance of article 9, paragraph 2, would depend on the extent to which article 6 is applicable, and, as was stated above (paras 28–32), the Committee considers that, while the decrees primarily concern article 7 decision-making, some of their elements fall within the scope of article 6, and that therefore provisions of article 9, paragraph 2, apply.

(Armenia ACCC/C/2004/8; ECE/MP.PP/C.1/2006/2/Add.1, 10 May 2006, para. 35)

The Committee further finds that by failing to ensure that members of the public concerned had access to a review procedure and to provide adequate and effective remedies, the Government of Armenia was not in compliance with article 9, paragraphs 2–4, of the Convention.

(Armenia ACCC/C/2004/8; ECE/MP.PP/C.1/2006/2/Add.1, 10 May 2006, para. 44)

The Convention obliges the Parties to ensure access to justice for three generic categories of acts and omissions by public authorities. Leaving aside decisions concerning access to information, the distinction is made between, on the one hand, acts and omissions related to permits for specific activities by a public authority for which public participation is required under article 6 (article 9, paragraph 2) and, on the other hand, all other acts and omissions by private persons and public authorities which contravene national law relating to the environment (article 9, paragraph 3). It is apparent that the rationales of paragraph 2 and paragraph 3 of article 9 of the Convention are not identical.

(Belgium ACCC/2005/11; ECE/MP.PP/C.1/2006/4/Add.2, 28 July 2006, para. 26)

When determining how to categorize a decision under the Convention, its label in the domestic law of a Party is not decisive. Rather, whether the decision should be challengeable under article 9, paragraph 2 or 3, is determined by the legal functions and effects of a decision, i.e. on whether it amounts to a permit to actually carry out the activity.

(Belgium ACCC/2005/11; ECE/MP.PP/C.1/2006/4/Add.2, 28 July 2006, para. 29)

The situation is more complicated with respect to the legal functions and effects of town planning permits (“permis d’urbanisme”), as defined by Walloon law. Based on the information provided by the Party and the Communicant, it appears to the Committee that in Walloon law some town planning permits may amount to permit decisions for specific

**environmental part  
of a decision**

**local NGOs**

**Art. 7**

**label of decision**

activities where public participation is required (e.g. when an environmental impact assessment is required; cf. annex I, paragraph 20 of the Convention), whereas other do not. Hence, it is not possible for the Committee to generally conclude whether Belgian law on access to justice for these cases should be assessed in light of article 9, paragraph 2 or 3. Therefore, the Committee will assess the case under both provisions.

*(Belgium ACCC/2005/11; ECE/MP.PP/C.1/2006/4/Add.2, 28 July 2006, para. 32)*

***significant interest  
of NGOs***

In the view of the Committee, the criteria that have been applied by the Council of State with respect to the right of environmental organizations to challenge Walloon town planning permits would not comply with article 9, paragraph 2. As stated, in these cases environmental organizations are deemed to have a sufficient interest to be granted access to a review procedure before a court or an independent and impartial body established by law. Although what constitutes a sufficient interest and impairment of a right shall be determined in accordance with national law, it must be decided “with the objective of giving the public concerned wide access to justice” within the scope of the Convention. As shown by the cases submitted by the Communicant with respect to town planning permits this is not reflected in the jurisprudence of the Council of State. Thus, if the jurisprudence is maintained, Belgium would fail to comply with the article 9, paragraph 2, of the Convention.

*(Belgium ACCC/2005/11; ECE/MP.PP/C.1/2006/4/Add.2, 28 July 2006, para. 33)*

Noting the observations made in the communication regarding the existence of different criteria for standing with respect to the procedures for seeking annulment and suspension, respectively, of decisions before the Council of State, the Committee is of the opinion, without, however, having made any in-depth analysis, that the provisions of article 9, paragraphs 2 and 3, of the Convention do not require that there be a single set of criteria for standing for these two types of procedure.

*(Belgium ACCC/2005/11; ECE/MP.PP/C.1/2006/4/Add.2, 28 July 2006, para. 44)*

***excessive burden/  
objective  
of wide AtoJ***

It follows from article 2, paragraph 5, that NGOs “promoting environmental protection” shall be deemed to have an interest in environmental decision-making. According to article 9, paragraph 2, of the Convention, any NGO meeting the requirements referred to in article 2, paragraph 5, should be deemed to have sufficient interest and thus granted standing in the review procedure. Hence, a criterion in national law that NGOs, to have standing for judicial review, must promote the protection of the environment is not inconsistent with the Convention per se. However, in order to be in accordance with the spirit and principles of the Convention, such requirements should be decided and applied “with the objective of giving the public concerned wide access to justice” (see findings on communications ACCC/C/2006/11 (Belgium) (ECE/MPPP/C.1/2006/4/Add.2), para. 27, and ACCC/C/2009/43 (Armenia) (ECE/MPPP/2011/11/Add.1), para. 81). This means that any requirements introduced by a Party should be clearly defined, should not cause excessive burden on environmental NGOs and should not be applied in a manner that significantly restricts access to justice for such NGOs.

*(Germany ACCC/C/2008/31; ECE/MP.PP/C.1/2014/8, 4 June 2014, para. 71)*

The criterion in the law of the Party concerned that environmental NGOs must demonstrate that their objectives are affected by the challenged decision amounts to a “requirement under national law”, as set out in article 2, paragraph 5, of the Convention. The criterion is sufficiently clear and does not seem to put an excessive burden on environmental NGOs, since this can be easily proven by the objectives stated in its by-laws. Moreover, NGOs have the possibility to (re-)formulate their objectives from time to time as they see fit. No information was submitted to the Committee to show that the authorities and courts of the Party concerned use this criterion in such a manner so as to effectively bar environmental NGOs from access to justice.

*(Germany ACCC/C/2008/31; ECE/MP.PP/C.1/2014/8, 4 June 2014, para. 72)*

Since the application of this requirement by the Party concerned does not seem to contravene the objective of giving the public concerned wide access to justice, the Party concerned does not fail to comply with article 9, paragraph 2, of the Convention in this respect not transposed into German law.

*(Germany ACCC/C/2008/31; ECE/MP.PP/C.1/2014/8, 4 June 2014, para. 73)*

The fact that the exact wording of any provision of the Convention has not been transposed into national legislation is in itself not sufficient to conclude that the Party concerned fails to comply with the Convention. The communicant’s allegations concerning the impacts of the Party concerned not explicitly transposing the “substantive and proce-

dural legality” requirement into German law have not been substantively corroborated by relevant practice. Therefore, the Committee does not conclude that the Party concerned fails to comply with article 9, paragraph 2, of the Convention in this respect.

(Germany ACCC/C/2008/31; ECE/MP.PP/C.1/2014/8, 4 June 2014, para. 75)

As mentioned above, the Party concerned is not obliged to literally transpose the text of the Convention into its national legislation. However, when using its discretion in designing its national law, the Party concerned should not impose additional requirements that restrict the way the public may realize the rights awarded by the Convention, if there is no legal basis in the Convention for imposing such restrictions.

(Germany ACCC/C/2008/31; ECE/MP.PP/C.1/2014/8, 4 June 2014, para. 77)

Article 9, paragraph 2, requires each Party to ensure access to review procedures in relation to any decision, act or omission subject to article 6 of the Convention. The range of subjects who can challenge such decisions may be defined (limited) by the Party in accordance with the provisions of article 2, paragraph 5, and article 9, paragraph 2 (a) and (b), of the Convention. However, the Party may not through its legislation or practice add further criteria that restrict access to the review procedure, for example by limiting the scope of arguments which the applicant can use to challenge the decision. While the Convention relates to environmental matters, there may be legal provisions that do not promote protection of the environment, which can be violated when a decision under article 6 of the Convention is adopted, for instance, provisions concerning conditions for building and construction, economic aspects of investments, trade, finance, public procurement rules, etc. Therefore, review procedures according to article 9, paragraph 2, of the Convention should not be restricted to alleged violations of national law “serving the environment”, “relating to the environment” or “promoting the protection of the environment”, as there is no legal basis for such limitation in the Convention.

(Germany ACCC/C/2008/31; ECE/MP.PP/C.1/2014/8, 4 June 2014, para. 78)

When there is a clear contradiction between the provisions of national law and the requirements of the Convention, as in the present case, it is for the Party concerned to bring evidence to show that its courts interpret those provisions in conformity with the Convention (see para. 67). However, this has not been shown by the Party concerned with respect to the requirement of “serving the environment”. The Party concerned, in its comments on the draft findings, referred to a number of court decisions that it claimed showed that the term “serving the environment” is interpreted in a broad manner. These cases show that the courts include, for example, protection of human health or flood protection in their considerations. These issues are, however, within the scope of what relates to the environment. The Committee is thus not convinced that these cases show that issues other than those relating to environmental concerns can be successfully raised under the clause “serving the environment”.

(Germany ACCC/C/2008/31; ECE/MP.PP/C.1/2014/8, 4 June 2014, para. 79)

For these reasons, the Committee finds that by imposing a requirement that an environmental NGO to be able to file an appeal under the EAA must assert that the challenged decision contravenes a legal provision “serving the environment” (dem Umweltschutz dienen), the Party concerned fails to comply with article 9, paragraph 2, of the Convention.

(Germany ACCC/C/2008/31; ECE/MP.PP/C.1/2014/8, 4 June 2014, para. 80)

The Committee recalls that article 9, paragraph 2, of the Convention is directly linked to article 6, which grants the rights of the public concerned to participate in permitting procedures for specific activities. The Parties must ensure that in such procedures, members of the public concerned can fully exercise their participatory procedural rights set out in article 6 of the Convention.

(Germany ACCC/C/2008/31; ECE/MP.PP/C.1/2014/8, 4 June 2014, para. 82)

Article 9, paragraph 2, in conjunction with article 9, paragraph 4, of the Convention requires Parties to provide members of the public concerned with access to effective judicial protection should their procedural rights under article 6 be violated. Therefore, it would not be compatible with the Convention to allow members of the public to challenge the procedural legality of the decisions subject to article 6 of the Convention in theory, while such actions were systematically refused by the courts in practice, as either not admissible or not well founded, on the grounds that the alleged procedural errors were not of importance for the decisions (i.e., that the decision would not have been different, if the procedural error had not taken place).

(Germany ACCC/C/2008/31; ECE/MP.PP/C.1/2014/8, 4 June 2014, para. 83)

**literal  
transposition**

**restricting AtoJ  
to environmental law**

**restricting AtoJ  
to environmental law**

**procedural errors**

On the basis of the above, the Committee examines the information provided by the communicant and the Party concerned as to whether the courts of the Party concerned systematically refuse review applications as non-admissible or ill-founded when the applicants allege that procedural rights under article 6 of the Convention have been infringed.

*(Germany ACCC/C/2008/31; ECE/MP.PP/C.1/2014/8, 4 June 2014, para. 84)*

EAA section 2 does not establish any criteria for determining when a contravention of a legal provision could be “of importance” for a challenged decision. EAA section 4 specifies that the reversal of a decision can be requested if (a) an EIA, or (b) a preliminary assessment of a project concerning the requirement for an EIA, required in accordance with the EIA Act, was not carried out. The Committee notes that there is disagreement between the communicant and the Party concerned as to whether the errors listed in EAA section 4 “can” lead to reversal of the challenged decision, as the communicant asserts, or “must” have this effect, which is the position of the Party concerned.

*(Germany ACCC/C/2008/31; ECE/MP.PP/C.1/2014/8, 4 June 2014, para. 85)*

Based on the information provided to it, the Committee understands that for its appeal to be admissible, an NGO must assert that the allegedly violated provision “could be” of importance for the contested decision, while to find an appeal justified, the court must conclude that the violated provisions “are” of importance for the decision.

*(Germany ACCC/C/2008/31; ECE/MP.PP/C.1/2014/8, 4 June 2014, para. 86)*

The possibility for national courts to evaluate whether the allegedly infringed provisions could be of any importance for the merits of the case, is not, in general, contrary to the requirements of article 9, paragraph 2, and to the objectives of the Convention. This possibility, as such, would not prevent environmental NGOs from challenging both substantive and procedural legality of the decisions.

*(Germany ACCC/C/2008/31; ECE/MP.PP/C.1/2014/8, 4 June 2014, para. 87)*

The information provided by the communicant and the Party concerned relating to the scope of judicial review for alleged procedural errors raises doubts as to whether the legal system of the Party concerned ensures adequate access for environmental NGOs to review the procedural legality of the decisions subject to article 6 of the Convention. This is so namely because the question of the possible “importance of the provision for the contested decision” is, according to section 2, paragraph 1, of the EAA, considered by the court already when deliberating on the admissibility of the case, i.e., not in the full judicial review procedure.

*(Germany ACCC/C/2008/31; ECE/MP.PP/C.1/2014/8, 4 June 2014, para. 88)*

The Party concerned has submitted relevant recent case law showing that German courts consider violations of procedural rights granted under article 6 of the Convention as fundamental errors of procedure that would require review and eventually annulment of the decision, and that courts are ready to apply the Convention directly in that respect (“direct effect of article 9, paragraph 2, of the Convention supplements the provisions of section 2, paragraphs 1 and 5, of the EAA”). The request for a preliminary ruling made by the Federal Administrative Court to CJEU in the Altrip case (see para 35 above) indicates that there may be uncertainty as to how German courts should deal with procedural errors concerning decisions subject to article 6 of the Convention. The communicant has not, however, sufficiently substantiated, e.g., by reference to recent case law, that the courts when applying the EAA in practice refuse to deal with appeals and/or arguments of environmental NGOs concerning alleged procedural errors with respect to decisions subject to article 6 of the Convention. Moreover, it follows from the CJEU ruling in Altrip that the German courts should take procedural errors into account in environmental cases. Therefore, the Committee does not conclude that the Party concerned fails to comply with article 9, paragraph 2, of the Convention with respect to the scope of judicial review regarding the procedural legality of decisions subject to article 6 of the Convention.

*(Germany ACCC/C/2008/31; ECE/MP.PP/C.1/2014/8, 4 June 2014, para. 89)*

The Committee nevertheless raises a concern about the lack of clarity of the legal system of Party concerned as to whether a violation of the procedural rights prescribed under article 6 would be considered as a fundamental error of procedure to allow for fulfilment of the rights prescribed under article 9, paragraph 2, of the Convention. The Committee emphasizes that if German courts in practice were to deny review of the appeals and/or arguments of members of the public concerned, including environmental NGOs, regarding the procedural legality of decisions subject to article 6, this would amount to non-compliance with article 9, paragraph 2.

*(Germany ACCC/C/2008/31; ECE/MP.PP/C.1/2014/8, 4 June 2014, para. 90)*

- (a) Having a sufficient interest or, alternatively,
- (b) Maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition, have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 and, where so provided for under national law and without prejudice to paragraph 3 below, of other relevant provisions of this Convention.

Based on the information received from the Party concerned and the communicant, the Committee understands that the General Spatial Plans provide a basis for the overall planning of spatial development of municipalities or their sections: they determine the general structure and the prevailing purpose of the spatial development of the area and provide the framework for the future development of the respective areas.

*(Bulgaria ACCC/C/2011/58; ECE/MP.PP/C.1/2013/4, 11 January 2013, para. 62)*

On the basis of these characteristics, the Committee concludes that the General Spatial Plans do not have such legal functions or effects so as to qualify as “decisions on whether to permit a specific activity” in the sense of article 6, and thus are not subject to article 9, paragraph 2, of the Convention.

*(Bulgaria ACCC/C/2011/58; ECE/MP.PP/C.1/2013/4, 11 January 2013, para. 63)*

As the Committee understands, the Detailed Spatial Plans provide details for the development of specific areas. These Plans are mandatory for the development projects and the permits which are necessary for the implementation of such projects.

*(Bulgaria ACCC/C/2011/58; ECE/MP.PP/C.1/2013/4, 11 January 2013, para. 67)*

Under the law of the Party concerned, the Detailed Spatial Plans do not have the legal nature of “decisions on whether to permit a specific activity” in the sense of article 6 of the Convention, as a specific permit (construction and/or exploitation permit) is needed to implement the activity (project). Therefore, article 9, paragraph 2, of the Convention, is not applicable.

*(Bulgaria ACCC/C/2011/58; ECE/MP.PP/C.1/2013/4, 11 January 2013, para. 68)*

As mentioned above, the outcome of an EIA screening decision is a determination under article 6, paragraph 1 (b), of the Convention. These determinations thus are subject to the requirements of article 9, paragraph 2, of the Convention. This entails that members of the public concerned, as defined in article 9, paragraph 2, of the Convention, “shall have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6.”

*(United Kingdom ACCC/C/2010/45 and ACCC/C/2011/60; ECE/MP.PP/C.1/2013/12, 23 October 2013, para. 83)*

The Committee notes that the right of an applicant to appeal to the Secretary of State for Communities and Local Government or to the Secretary of State’s Planning Inspectors are not procedures under article 9, paragraph 2, of the Convention. They are instead procedures by way of which an applicant whose planning decision has been refused may appeal that decision before an executive body, not constituting a court of law or independent and impartial body established by law. This is so even though in the course of such an appeal members of the public concerned may be heard. If the procedure results in a retaking of the decision at stake, then, depending on the proposed activity under consideration, it engages article 6 of the Convention. Similarly, the latter would be the case if the Secretary of State calls in an application for its own determination.

*(United Kingdom ACCC/C/2010/45 and ACCC/C/2011/60; ECE/MP.PP/C.1/2013/12, 23 October 2013, para. 84)*

The Committee notes that the communicants in communication ACCC/C/2010/45 did not pursue judicial review of the screening decision at stake in the communication for reasons of the expenses probably involved in such a review procedure, as well as the likelihood that only the procedural legality of the screening decision could be raised in such a review.

*(United Kingdom ACCC/C/2010/45 and ACCC/C/2011/60; ECE/MP.PP/C.1/2013/12, 23 October 2013, para. 85)*

The Committee has addressed the issue of the costs involved in procedures for judicial review with respect to the Party concerned in ACCC/C/2008/33, and has found the Party

***spatial planning***

***EIA screening decisions***

***applicant right to appeal***

concerned not to comply with article 9, paragraph 4, of the Convention. Thus, the Committee maintains its findings on that communication regarding costs (ECE/MP.PP/C.1/2010/6/Add.3, para. 136). As to the possibility to obtain a review of substantive legality in a procedure for judicial review, which was also addressed in findings in ACCC/C/2008/33, no new facts have been brought before the Committee. Therefore, the Committee, while maintaining its concerns regarding substantive review expressed in paragraph 127 of communication ACCC/C/2008/33, does not conclude that the Party concerned fails to comply with article 9, paragraph 2 in this respect.

*(United Kingdom ACCC/C/2010/45 and ACCC/C/2011/60; ECE/MP.PP/C.1/2013/12, 23 October 2013, para. 86)*

**standing/  
hybrid bill**

Article 9, paragraph 2, of the Convention requires Parties to ensure access to procedures for review of decisions, acts and omissions subject to article 6. This provision addresses standing, as well as the scope of review, that should comprise the substantive and procedural legality of the act. To comply with the Convention, the Party concerned must ensure that within its domestic legal system all criteria required under article 9, paragraph 2, of the Convention, also those extending beyond EU law and the 1998 Human Rights Act, are met in regard to hybrid bills processes.

*(United Kingdom ACCC/C/2011/61; ECE/MP.PP/C.1/2013/13, 23 October 2013, para. 60)*

The Committee examines in particular the scope of the review procedures after the adoption of the Crossrail Act (or any act adopted further to a hybrid bill procedure authorizing a specific activity). In the case of the Crossrail Act no such challenge was brought before a court of law. Thus, the Committee is not in position to determine whether the legal remedies available under the law of the Party concerned would have enabled members of the public concerned to challenge the Crossrail Act as required under article 9, paragraph 2, of the Convention.

*(United Kingdom ACCC/C/2011/61; ECE/MP.PP/C.1/2013/13, 23 October 2013, para. 61)*

What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention. To this end, the interest of any non-governmental organization meeting the requirements referred to in article 2, paragraph 5, shall be deemed sufficient for the purpose of subparagraph (a) above. Such organizations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above.

**objective  
of wide AtoJ**

Article 9, paragraph 2, applies to decisions with respect to permits for specific activities where public participation is required under article 6. For these cases, the Convention obliges the Parties to ensure standing for environmental organizations. Environmental organizations, meeting the requirements referred to in article 2, paragraph 5, are deemed to have a sufficient interest to be granted access to a review procedure before a court and/or another independent and impartial body established by law. Although what constitutes a sufficient interest and impairment of a right shall be determined in accordance with national law, it must be decided “with the objective of giving the public concerned wide access to justice” within the scope of the Convention.

*(Belgium ACCC/2005/11; ECE/MP.PP/C.1/2006/4/Add.2, 28 July 2006, para. 27)*

**NGO statute**

[...] Whether or not an NGO promotes environmental protection can be ascertained in a variety of ways, including, but not limited to, the provisions of its statutes and its activities. Parties may set requirements under national law, but such requirements should not be inconsistent with the principles of the Convention. Despite the fact that Transparency International was not granted standing, the information given to the Committee does not demonstrate that the criteria that only organizations with explicitly mentioning environmental protection have standing, has been applied in a way that the Party concerned would be in non compliance with the Convention. In this context the Committee notes that Ecodar was granted standing.

*(Armenia ACCC/C/2009/43; ECE/MP.PP/2011/11/Add.1, April 2011, para.81)*

**discretion  
to interpret criteria**

In defining standing under article 9, paragraph 2, the Convention allows a Party to determine within the framework of its national legislation, whether members of the public have “sufficient interest” or whether they can maintain an “impairment of a right”, where the administrative procedural law requires this as a precondition. While for NGOs the Conven-

tion provides some further guidance on how the “sufficient interest” should be interpreted, for persons, such as “individuals”, the Convention requires that “sufficient interest” and “impairment of a right” be determined “in accordance with the requirements of national law”. Parties, thus, retain some discretion in defining the scope of the public entitled to standing in these cases; but the Convention further sets the limitation that this determination must be consistent “with the objective of giving the public concerned wide access to justice within the scope of the Convention” (see ECE/MP.PP/C.1/2006/4/Add.2, para. 33). This means that the Parties in exercising their discretion may not interpret these criteria in a way that significantly narrows down standing and runs counter to its general obligations under articles 1, 3 and 9 of the Convention.

*(Austria ACCC/C/2010/48; ECE/MP.PP/C.1/2012/4, 17 April 2012, para. 61)*

The Austrian legal system follows the impairment of a right criterion to determine standing rights for individuals. The question thus arises whether the impairment of rights under Austrian legislation meets the standards of the Convention. In other words, whether the definition of “neighbours” under article 19, paragraph 1, of the EIA Act (see para. 18 above) is consistent with the objective of giving wide access to justice.

*(Austria ACCC/C/2010/48; ECE/MP.PP/C.1/2012/4, 17 April 2012, para. 62)*

In the view of the Committee the standing criteria for individuals set by Austrian legislation do not seem to run counter to the objectives of the Convention regarding wide access to justice. However, the definition of “neighbours” may be limiting the rights of “persons that temporarily stay in the vicinity of the project and do not have any in rem rights” (EIA Act, art. 19(1)1), such as tenants or individuals that work in the vicinity, unless they could claim that they “may be threatened or disturbed through the construction, the operation or the existence of a project” (EIA Act, art. 19(1)1). The information provided does not sufficiently substantiate the allegations, e.g., by reference to relevant case-law, to the extent that the Committee finds the Party not to comply with article 9, paragraphs 2 and 3, in these respects. Despite this, the Committee finds that the information before it raises some concern as to how this provision of the EIA Act may be interpreted and applied. Therefore, the Committee encourages courts of the Party concerned to interpret and apply the provisions relating to locus standi for individuals in the light of the Convention’s objectives.

*(Austria ACCC/C/2010/48; ECE/MP.PP/C.1/2012/4, 17 April 2012, para. 63)*

The Committee understands that the Party concerned allows individuals to challenge certain aspects of the substantive legality of decisions, acts or omissions subject to article 9, paragraph 2, of the Convention, when their rights relating to property or well-being have been violated, and that in such situations, individuals may also raise issues of general environmental concern. However, the Committee understands that it is up to the courts to consider whether they will in fact take up such more general environmental issues. As an example, the communicant refers to the decision of the Administrative Court (Case 2010/06/0262–10, Automobile Testing Centre Voitsberg), which ruled that neighbours are not entitled to invoke environmental provisions that go beyond the impairment of rights doctrine[...] However, the information provided does not sufficiently substantiate, e.g., by reference to recent case-law, that this indeed reflects the general court practice. Therefore, the Committee does not conclude whether the Party concerned is in a state of non-compliance with article 9, paragraph 2, of the Convention. The Committee nevertheless raises a concern with respect to the line of reasoning by the Administrative Court, and notes that if this was the line generally adopted by Austrian courts, this would amount to non-compliance with article 9, paragraph 2.

*(Austria ACCC/C/2010/48; ECE/MP.PP/C.1/2012/4, 17 April 2012, para. 66)*

The provisions of this paragraph 2 shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.

The communicant makes the point that it is meaningless to provide access to justice in relation to a public participation procedure that takes place after the construction starts. While the Committee does not accept that access to justice at this stage is necessarily meaningless, if there were no opportunity for access to justice in relation to any permit procedures until after the construction has started, this would definitely be incompatible with article 9, paragraph 2, of the Convention. Access to justice must indeed be provided when it is effectively possible to challenge the decision permitting the activity in question.

**neighbours**

**EIA/IPPC  
directives**



However, the Committee is not convinced that the EIA Directive as amended by the Public Participation Directive allows a Member State to maintain a system where access to justice in relation to the EIA permit is only provided after the construction has started; nor is it convinced that a Member State having fully implemented the EIA, Public Participation and IPPC Directives would be able to have a system that only provides an opportunity for the public to challenge decisions concerning technological choices at a stage when there is no realistic possibility for considering alternative technologies.

*(European Community ACCC/C/2006/17; ECE/MP.PP/2008/5/Add.10, 2 May 2008, para. 56)*

Notwithstanding the distinctive structure of the European Community, and the nature of the relationship between the Convention and the EC secondary legislation, as outlined in paragraph 35, the Committee notes with concern the following general features of the Community legal framework:

- (a) Lack of express wording requiring the public to be informed in an “adequate, timely and effective manner” in the provisions regarding public participation in the EIA and IPPC Directives;
- (b) Lack of a clear obligation to provide the public concerned with effective remedies, including injunctive relief, in the provisions regarding access to justice in the EIA and IPPC Directives.

While the Committee is not convinced that these features amount to a failure to comply with article 3, paragraph 1, it considers that they may adversely affect the implementation of article 6 of the Convention. Moreover, having essentially limited its examination to decision-making relating to landfills, the Committee does not make any conclusions with regard to other activities listed in annex I of the Convention. Nor does it make any conclusions concerning the precise correlation between the list of activities contained in annex I of the Convention and those contained in the respective annexes to the EIA and IPPC Directives.

*(European Community ACCC/C/2006/17; ECE/MP.PP/2008/5/Add.10, 2 May 2008, para. 59)*

Waste treatment installations such as the one in Fos-sur-Mer are listed in annex I, paragraph 5, of the Convention and thus decisions on whether to permit such installations are subject to the requirement for public participation in article 6 of the Convention. Moreover, decisions, acts and omissions related to permit procedures for such installations are subject to the review procedure set out in article 9, paragraph 2, of the Convention.

*(France ACCC/C/2007/22; ECE/MP.PP/C.1/2009/4/Add.1, 8 February 2011, para. 28)*

Given that none of the decisions taken amount to a permitting decision under article 6 of the Convention, the Committee finds that article 9, paragraph 2, and subsequently paragraph 4 of the Convention, do not apply to the phase of the decision-making process considered in the present case with respect to the consideration of alternative transport solutions in the Enns Valley.

*(Austria ACCC/C/2008/26; ECE/MP.PP/C.1/2009/6/Add.1, 8 February 2011, para. 58)*

Given that no permitting decisions within the purview of article 6 of the Convention are at stake, the Committee concludes that article 9, paragraph 2, and consequently paragraph 4 of the Convention, does not apply in the present case, with respect to the proposed introduction of a 7.5 tonnage restriction for lorries on route B 320.

*(Austria ACCC/C/2008/26; ECE/MP.PP/C.1/2009/6/Add.1, 8 February 2011, para. 62)*

Article 9, paragraph 2, of the Convention addresses both substantive and procedural legality. Hence, the Party concerned has to ensure that members of the public have access to a review procedure before a court of law and/or another independent body established by law which can review both the substantive and procedural legality of decisions, acts and omissions in appropriate cases.

*(United Kingdom ACCC/C/2008/33; ECE/MP.PP/C.1/2010/6/Add.3, December 2010, para. 123)*

### **Wednesbury test**

The Committee finds that the Party concerned allows for members of the public to challenge certain aspects of the substantive legality of decisions, acts or omissions subject to article 9, paragraphs 2 and 3, of the Convention, including, inter alia, for material error of fact; error of law; regard to irrelevant considerations and failure to have regard to relevant considerations; jurisdictional error; and on the grounds of Wednesbury unreasonableness (see paras. 87–89 above). The Committee, however, is not convinced that the Party concerned, despite the above-mentioned challengeable aspects, meets the standards for review required by the Convention as regards substantive legality. In this context, the Committee notes for example the criticisms by the House of Lords,<sup>100</sup> and the European Court of

Human Rights, 101 of the very high threshold for review imposed by the Wednesbury test.

*(United Kingdom ACCC/C/2008/33; ECE/MP.PP/C.1/2010/6/Add.3, December 2010, para. 125)*

The Committee considers that the application of a “proportionality principle” by the courts in England and Wales could provide an adequate standard of review in cases within the scope of the Aarhus Convention. A proportionality test requires a public authority to provide evidence that the act or decision pursued justifies the limitation of the right at stake, is connected to the aim(s) which that act or decision seeks to achieve and that the means used to limit the right at stake are no more than necessary to attain the aim(s) of the act or decision at stake. While a proportionality principle in cases within the scope of the Aarhus Convention may go a long way towards providing for a review of substantive and procedural legality, the Party concerned must make sure that such a principle does not generally or prima facie exclude any issue of substantive legality from a review.

*(United Kingdom ACCC/C/2008/33; ECE/MP.PP/C.1/2010/6/Add.3, December 2010, para. 126)*

Given its findings in paragraphs 125 and 126 above, the Committee expresses concern regarding the availability of appropriate judicial or administrative procedures, as required by article 9, paragraphs 2 and 3, of the Convention, in which the substantive legality of decisions, acts or omissions within the scope of the Convention can be subjected to review under the law of England and Wales. However, based on the information before it in the context of the current communication, the Committee does not go so far as to find the Party concerned to be in non-compliance with article 9, paragraphs 2 or 3, of the Convention.

*(United Kingdom ACCC/C/2008/33; ECE/MP.PP/C.1/2010/6/Add.3, December 2010, para. 127)*

While Czech law may not be fully clear and consistent in all respects as regards standing of NGOs, the Committee notes that NGOs are not able to participate during the entire decision-making procedure, since for NGOs standing after the conclusion of the EIA stage is linked to the exercise of their rights during the EIA procedure or other procedures prior to the decision/authorization. The Committee finds that this feature of the Czech legislation limits the rights of NGOs to access review procedures regarding the final decisions permitting proposed activities, such as building permits. In this respect the Party concerned fails to comply with article 9, paragraph 2, of the Convention.

*(Czech Republic ACCC/C/2010/50; ECE/MP.PP/C.1/2012/11, 2 October 2012, para. 78)*

The situation as described by the parties indicates that under Czech law individuals may seek review of the procedural and limited substantive legality of decisions under article 6; and that NGOs may seek the review only of the procedural legality of such decisions. In the light of the limited right of review of NGOs, the Committee finds that the Party concerned fails to comply with article 9, paragraph 2, of the Convention.

*(Czech Republic ACCC/C/2010/50; ECE/MP.PP/C.1/2012/11, 2 October 2012, para. 81)*

With respect to the communicant’s allegations that the Czech legal system fails to provide for judicial review of EIA screening conclusions, article 6, paragraph 1 (b), of the Convention requires Parties to determine whether an activity which is outside the scope of annex I, and which may have a significant effect on the environment, should nevertheless be subject to the provisions of article 6. Therefore, when this is determined for each case individually, the competent authority is required to make a determination which will have the effect of either creating an obligation to carry out a public participation procedure in accordance with article 6 or exempting the activity in question from such an obligation. Under Czech law, that determination is in practice made through the EIA screening conclusions. As such, the Committee considers the outcome of the EIA screening process to be a determination under article 6, paragraph 1 (b). Article 9, paragraph 2, of the Convention requires Parties to provide the public access to a review procedure to challenge the procedural and substantive legality of any decision, act or omission subject to the provisions of article 6. This necessarily also includes decisions and determinations subject to article 6, paragraph 1 (b). The Committee thus finds that, to the extent that the EIA screening process and the relevant criteria serve also as the determination required under article 6, paragraph 1 (b), members of the public concerned shall have access to a review procedure to challenge the legality of the outcome of the EIA screening process. Since this is not the case under Czech law, the Committee finds that the Party concerned fails to comply with article 9, paragraph 2, of the Convention.

*(Czech Republic ACCC/C/2010/50; ECE/MP.PP/C.1/2012/11, 2 October 2012, para. 82)*

The communicant also alleged non-compliance with article 9, paragraph 3, of the Convention with respect to nuclear matters, substantiating its allegations with excerpts from court

***proportionality principle***

***linking standing to EIA participation***

***limited right of review***

***EIA screening decisions***

***operating permits***

jurisprudence. However, the Committee considers this jurisprudence as relating to standing to challenge operation permits under the Nuclear Act, and thus to be covered by article 9, paragraph 2. The Committee notes in particular the jurisprudence that excludes members of the public, including NGOs, from challenging operating permits on the ground; that it is not mandatory for the public to participate in nuclear safety matters; and the ruling which specifically excludes NGOs on the ground that they do not have rights to life, privacy or a favourable environment that could be affected. If indeed standing to challenge nuclear operation permits is limited because public participation is limited, then there are serious concerns of non-compliance not only with article 9, paragraph 2, of the Convention, but also with article 6 of the Convention. However, as decision-making for the construction and operation of nuclear installations is a much more complex procedure, the information submitted to the Committee does not sufficiently substantiate the allegations of non-compliance with article 9 of the Convention in this case.

*(Czech Republic ACCC/C/2010/50; ECE/MP.PP/C.1/2012/11, 2 October 2012, para. 86)*

### **SEA statement**

The communicant also alleges that, under certain conditions, the SEA statements for the “small scale” Detailed Spatial Plans can substitute individual EIA decisions for specific activities and that this includes activities listed in annex I. In such a situation, the SEA statement together with the small scale Detailed Spatial Plan has the legal function of a decision whether to permit an activity listed in annex I to the Convention. If such is the case, and the scope of persons entitled to challenge the Detailed Spatial Plan excludes environmental organizations, this also implies a failure to comply with article 9, paragraph 2, of the Convention.

*(Bulgaria ACCC/C/2011/58; ECE/MP.PP/C.1/2013/4, 11 January 2013, para. 71)*

### **final permits & EIA**

First, the communicant informs the Committee of situations in practice where construction or exploitation permits for activities listed in annex I to the Convention were issued without a prior EIA procedure, although this was required by law (see the cases referred to above in paras. 43–44). The communicant asserts that in these cases there was a lack of access to justice for the members of the public concerned. The Party concerned emphasizes that a construction or exploitation permit, issued without a prior mandatory EIA decision, as well as implementation of an activity on the basis of such permits, would be illegal. Be that as it may, since environmental organizations, as well as other members of the public concerned, do not have access to a review procedure before a court of law or another independent and impartial body established by law to challenge such final permits for annex I activities, when EIA decisions are missing, the Party concerned fails to comply with article 9, paragraph 2, of the Convention.

*(Bulgaria ACCC/C/2011/58; ECE/MP.PP/C.1/2013/4, 11 January 2013, para. 79)*

### **final decisions/ EIA**

Secondly, there are situations where the EIA statements are issued and these are subject to appeal, but the subsequent/final decisions are not subject to appeal by members of the public concerned, including organizations, even if those decisions are not in conformity with the conditions and measures contained in the EIA decision. This means that even if all the environmental aspects of a proposed activity were covered by the EIA decision, there is no possibility for members of the public, including environmental organizations, to challenge the legality of a final permit that did not respect that EIA decision. Therefore, the Party concerned fails to comply with article 9, paragraph 2, in conjunction with paragraph 4, of the Convention.

*(Bulgaria ACCC/C/2011/58; ECE/MP.PP/C.1/2013/4, 11 January 2013, para. 80)*

### **SEA/EIA**

Thirdly, at least for one category of annex I activities (tourism and recreation projects according to annex 2, para. 12, of the EPA), it was demonstrated to the Committee that the EIA decision can be substituted by the SEA statement (see para. 30 above). Since the SEA statements are not subject to judicial review, there is, in such cases, absolutely no possibility for the members of the public concerned to challenge any decision during the permitting process of such activities in court. This, according to the Committee, also constitutes failure by the Party concerned to comply with article 9, paragraph 2, of the Convention.

*(Bulgaria ACCC/C/2011/58; ECE/MP.PP/C.1/2013/4, 11 January 2013, para. 81)*

In its decision of 1 April 2011, the Court of Cassation issued a reverse decision to the one of 30 October 2009 and decided that the communicant, an environmental NGO, did not have standing to pursue the review of decisions that fall within article 6. The Committee finds that while the wording of the national legislation does not run counter to article 9, paragraph 2, the decision of the Court of Cassation of 1 April 2011, by declaring that the environmental NGO did not have standing, failed to meet the standards set by the Convention.

Thus the Party concerned failed to comply with article 9, paragraph 2, of the Convention.

*(Armenia ACCC/C/2011/62; ECE/MP.PP/C.1/2013/14, 23 October 2013, para. 36)*

3. In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.

The communicants' standing was not disputed in any of the court instances. In the Committee's view, this sufficiently establishes that they meet the criteria under Kazakh law for access to review procedures as stipulated in article 9, paragraph 3, of the Convention. The argument of the Party concerned with regard to the communicants' consent to reside in the area (para. 4 above) is not relevant in this consideration. Leaving aside the fact that the purchase of property occurred when the facility was not operational, the communicants do not challenge legitimate operation of the facility, but rather allege failure of the public authorities to bring about compliance with environmental legislation and their own failure to obtain access to justice in the context of the Convention.

*(Kazakhstan ACCC/C/2004/6; ECE/MP.PP/C.1/2006/4/Add.1, 28 July 2006, para. 22)*

While the communication presents a lot of information with regard to violations that continually occur in the operation of the facility, as illustrated in paragraphs 9 and 15 above, it is not within the Committee's mandate to assess these alleged violations or verify the information. The Committee will however consider the judicial procedure in question from the point of view of compliance with article 9, paragraphs 3 and 4.

*(Kazakhstan ACCC/C/2004/6; ECE/MP.PP/C.1/2006/4/Add.1, 28 July 2006, para. 25)*

With regard to the court decision of 27 November 2001, the court had in front of it three claims: to require the public authorities to take certain actions (i.e. develop a management plan), to revoke the conclusions of the earlier environmental assessment and the related permit and to award compensation of damages. The decision addressed the third claim but failed to address the request for an environmental management plan to be developed for the facility to bring its operation into compliance with the national legislation. It also did not resolve the matter of appeal against the conclusions of the governmental environmental assessment. Without an in-depth analysis of the domestic legislation the Committee is not able to establish whether an omission to develop such a plan would be in contradiction with environmental legislation and therefore fall under article 9, paragraph 3, of the Convention. Should this have been positively established, the failure by the courts to address this claim would constitute a denial of access to judicial review procedures in the meaning of article 9, paragraph 3. The Committee therefore would like to bring the attention of the Party to this situation.

*(Kazakhstan ACCC/C/2004/6; ECE/MP.PP/C.1/2006/4/Add.1, 28 July 2006, para. 26)*

The judicial procedures referred to in paragraph 17 above were initiated to challenge the public authorities' failure to act to bring about compliance with national environmental law. In this regard, it is important to distinguish three issues:

(a) Whether the communicant had access to a review procedure in order to challenge the alleged failure of enforcement by the public authorities. The Convention clearly applies here, and it appears that the communicants did have such access, even if the courts' decisions did not go in their favour;

(b) Whether the public authorities were legally obliged (as opposed to merely permitted) to enforce the relevant laws and regulations. The Committee is not in a position to interpret substantive environmental and administrative legislation of the Party where it falls outside the scope of the Convention, nor is it in a position to dispute the court's opinion that the public authority has a right to judge which of the courses of actions available to it are best suited to achieve effective enforcement. The Committee is, generally speaking, reluctant to discuss the courts' interpretations of substantive provisions of environmental or other domestic legislation. However, a general failure by public authorities to implement and / or enforce environmental law would constitute an omission in the meaning of article 9, paragraph 3, of the Convention, even though the specific means proposed by the plaintiff to rectify this failure might not be the only ones or the most effective ones;

(c) Whether the public authorities did in fact effectively enforce the relevant laws and regulations. There is certainly, in the view of the Committee, a freedom for the public authori-

ties to choose which enforcement measures are most appropriate as long as they achieve effective results required by the law. Public authorities of the kind referred to in paragraph 17 above often have at their disposal various means to enforce standards and requirements of law, of which initiation of legal action against the alleged violator is but one. The Committee notes however, that actions with regard to the facility undertaken by the public authorities in the course of the past seven years (e.g. imposing fines) consistently failed to ensure effective results, as demonstrated by the information presented in paragraphs 4 (e), 10 and 16 above.

*(Kazakhstan ACCC/C/2004/6; ECE/MP.PP/C.1/2006/4/Add.1, 28 July 2006, para. 30)*

It is the Committee's opinion that the procedures fall under article 9, paragraph 3, of the Convention, triggering also the application of article 9, paragraph 4. Furthermore, it appears that there were significant problems with enforcement of national environmental law. Even though the communicants had access to administrative and judicial review procedures on the basis of the existing national legislation, this review procedure in practice failed to provide adequate and effective remedies and, therefore, was out of compliance with article 9, paragraph 4, in conjunction with article 9, paragraph 3, of the Convention.

*(Kazakhstan ACCC/C/2004/6; ECE/MP.PP/C.1/2006/4/Add.1, 28 July 2006, para. 31)*

**omission  
to enforce law**

The Committee finds that the failure by Kazakhstan to provide effective remedies in a review procedure concerning an omission by the public authority to enforce environmental legislation as well as failure to ensure that courts properly notify the parties of the time and place of hearings and of the decision taken constitutes a failure to comply with the requirements of article 9, paragraph 4, in conjunction with article 9, paragraph 3, of the Convention.

*(Kazakhstan ACCC/C/2004/6; ECE/MP.PP/C.1/2006/4/Add.1, 28 July 2006, para. 35)*

The communicants also point out that they were denied access to review procedures to challenge the land designation aspect of the decrees. In this respect the Committee notes that the subject matter of the decrees is regulated in detail by both Armenian environmental laws (such as the Law on Environmental Impact Assessment) and laws regulating urban planning. Moreover, these laws require that the public be consulted in the process of such decision-making. It is therefore the Committee's opinion that the communicants, in accordance with article 9, paragraph 3, should have had access to a review procedure to challenge the decisions, which deal with such subject matter and which they believed to contradict their national law relating to the environment.

*(Armenia ACCC/C/2004/8; ECE/MP.PP/C.1/2006/2/Add.1, 10 May 2006, para. 36)*

**challenging  
government decrees**

The lawsuit challenging the legality of the decrees and petitioning for a writ to declare them null and void was dismissed by the district court for lack of jurisdiction. The decision of the court points out that the Civil Procedure Code prevents courts from declaring null and void for any reason decisions whose constitutionality is subject to review by the Constitutional court. It further notes that the Constitution of Armenia provides for a review of the constitutionality of government decisions by the Constitutional Court only. However, as the communicants point out, only three institutions have standing in the Constitutional Court (see para. 15 above). Two of these represent the executive that issues government decrees, and the third constitutes a large proportion of the national legislative body. In the Committee's opinion, such an approach does not ensure that members of the public have access to review procedures.

*(Armenia ACCC/C/2004/8; ECE/MP.PP/C.1/2006/2/Add.1, 10 May 2006, para. 37)*

The Convention obliges the Parties to ensure access to justice for three generic categories of acts and omissions by public authorities. Leaving aside decisions concerning access to information, the distinction is made between, on the one hand, acts and omissions related to permits for specific activities by a public authority for which public participation is required under article 6 (article 9, paragraph 2) and, on the other hand, all other acts and omissions by private persons and public authorities which contravene national law relating to the environment (article 9, paragraph 3). It is apparent that the rationales of paragraph 2 and paragraph 3 of article 9 of the Convention are not identical.

*(Belgium ACCC/2005/11; ECE/MP.PP/C.1/2006/4/Add.2, 28 July 2006, para. 26)*

**members  
of the public  
v. members of the  
public concerned**

Article 9, paragraph 3, is applicable to all acts and omissions by private persons and public authorities contravening national law relating to the environment. For all these acts and omissions, each Party must ensure that members of the public "where they meet the criteria, if any, laid down in its national law" have access to administrative or judicial procedures

to challenge the acts and omissions concerned. Contrary to paragraph 2 of article 9, however, paragraph 3 does not refer to “members of the public concerned”, but to “members of the public”.

*(Belgium ACCC/2005/11; ECE/MP.PP/C.1/2006/4/Add.2, 28 July 2006, para. 28)*

When determining how to categorize a decision under the Convention, its label in the domestic law of a Party is not decisive. Rather, whether the decision should be challengeable under article 9, paragraph 2 or 3, is determined by the legal functions and effects of a decision, i.e. on whether it amounts to a permit to actually carry out the activity.

*(Belgium ACCC/2005/11; ECE/MP.PP/C.1/2006/4/Add.2, 28 July 2006, para. 29)*

Relevant in this case is also article 9, paragraph 4, according to which the procedures for challenging acts and omissions that contravene national law relating to the environment shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive.

*(Belgium ACCC/2005/11; ECE/MP.PP/C.1/2006/4/Add.2, 28 July 2006, para. 30)*

Based on the information received from the Party concerned and the Communicant, the Committee understands that decisions concerning area plans (“plan de secteur”) do not have such legal functions or effects as to qualify as decisions on whether to permit a specific activity. Therefore, article 9, paragraph 3, is the correct provision to review Belgian law on access to justice with respect to area plans, as provided for in Walloon legislation.

*(Belgium ACCC/2005/11; ECE/MP.PP/C.1/2006/4/Add.2, 28 July 2006, para. 31)*

The situation is more complicated with respect to the legal functions and effects of town planning permits (“permis d’urbanisme”), as defined by Walloon law. Based on the information provided by the Party and the Communicant, it appears to the Committee that in Walloon law some town planning permits may amount to permit decisions for specific activities where public participation is required (e.g. when an environmental impact assessment is required; cf. annex I, paragraph 20 of the Convention), whereas other do not. Hence, it is not possible for the Committee to generally conclude whether Belgian law on access to justice for these cases should be assessed in light of article 9, paragraph 2 or 3. Therefore, the Committee will assess the case under both provisions.

*(Belgium ACCC/2005/11; ECE/MP.PP/C.1/2006/4/Add.2, 28 July 2006, para. 32)*

To the extent that a town planning permit should not be considered a permit for a specific activity as provided for in article 6 of the Convention, the decision is still an act by a public authority. As such it may contravene provisions of national law relating to the environment. Thus, Belgium is obliged to ensure that in these cases members of the public have access to administrative or judicial procedures to challenge the acts concerned, as set out in article 9, paragraph 3. This provision is intended to provide members of the public with access to adequate remedies against acts and omissions which contravene environmental laws, and with the means to have existing environmental laws enforced and made effective. When assessing the Belgian criteria for access to justice for environmental organizations in the light of article 9, paragraph 3, the provision should be read in conjunction with articles 1 to 3 of the Convention, and in the light of the purpose reflected in the preamble, that “effective judicial mechanisms should be accessible to the public, including organizations, so that its legitimate interests are protected and the law is enforced.”

*(Belgium ACCC/2005/11; ECE/MP.PP/C.1/2006/4/Add.2, 28 July 2006, para. 34)*

While referring to “the criteria, if any, laid down in national law”, the Convention neither defines these criteria nor sets out the criteria to be avoided. Rather, the Convention is intended to allow a great deal of flexibility in defining which environmental organizations have access to justice. On the one hand, the Parties are not obliged to establish a system of popular action (“actio popularis”) in their national laws with the effect that anyone can challenge any decision, act or omission relating to the environment. On the other hand, the Parties may not take the clause “where they meet the criteria, if any, laid down in its national law” as an excuse for introducing or maintaining so strict criteria that they effectively bar all or almost all environmental organizations from challenging act or omissions that contravene national law relating to the environment.

*(Belgium ACCC/2005/11; ECE/MP.PP/C.1/2006/4/Add.2, 28 July 2006, par 35)*

Accordingly, the phrase “the criteria, if any, laid down in national law” indicates a self-restraint on the parties not to set too strict criteria. Access to such procedures should thus be the presumption, not the exception. One way for the Parties to avoid a popular action

*label  
of decision*

*interpreting  
Convention in light  
of its objectives*

*actio popularis*

*presumption  
of AtoJ*

(“actio popularis”) in these cases, is to employ some sort of criteria (e.g. of being affected or of having an interest) to be met by members of the public in order to be able to challenge a decision. However, this presupposes that such criteria do not bar effective remedies for members of the public. This interpretation of article 9, paragraph 3, is clearly supported by the Meeting of the Parties, which in paragraph 16 of decision II/2 (promoting effective access to justice) invites those Parties which choose to apply criteria in the exercise of their discretion under article 9, paragraph 3, “to take fully into account the objective of the Convention to guarantee access to justice.”

*(Belgium ACCC/2005/11; ECE/MP.PP/C.1/2006/4/Add.2, 28 July 2006, para. 36)*

When evaluating whether a Party complies with article 9, paragraph 3, the Committee pays attention to the general picture, namely to what extent national law effectively has such blocking consequences for environmental organizations, or if there are remedies available for them to actually challenge the act or omission in question. As mentioned, Belgian (Walloon) law does not provide for administrative appeals or remedies for third parties to challenge town planning permits or decisions on area planning. The question therefore is whether sufficient access is granted to the Council of State. This evaluation is not limited to the wordings in legislation, but also includes jurisprudence of the Council of State itself.

*(Belgium ACCC/2005/11; ECE/MP.PP/C.1/2006/4/Add.2, 28 July 2006, para. 37)*

NOTE: The council of State is an administrative court in Belgium

Up to the point of entry into force of the Convention for Belgium, the general criteria for standing of environmental organizations before the Council of State have not differed from those of natural persons. According to this practice, to be able to challenge a town planning permit or a plan before the Council of State, an environmental organization must thus claim a direct, personal and legitimate interest. It must also prove that, when acting in accordance with its statutory goals, the goals do not coincide with the protection of a general interest or a personal interest of its members. Hence, federations of environmental organizations have generally not been able to meet this criterion, since their interest is not seen as distinct from the interests of its members. Moreover, according to this practice, two criteria must be fulfilled in order to appreciate the general character of the organization’s statutory goal, a social and a geographical criterion. The case is not admissible if the objective of the organization is so broadly defined that it is not distinct from a general interest. As to the geographical criterion, an act cannot be challenged by an organization if the act refers to a well-defined territory and the activities of organization are not territorially limited or cover a large geographical area, unless the organization also has a specifically defined social objective. Furthermore, an organization whose objective expands to a large territory may only challenge an administrative act if the act affects the entire or a great part of the territory envisaged by the organization’s statutes.

*(Belgium ACCC/2005/11; ECE/MP.PP/C.1/2006/4/Add.2, 28 July 2006, para. 38)*

### ***federations of NGOs***

The Convention does not explicitly refer to federations of environmental organizations. If, in the jurisdiction of a Party, standing is not granted to such federations, it is possible that, to the extent that member organizations of the federation are able to effectively challenge the act or omission in question, this may suffice for complying with article 9, paragraph 3. If, on the other hand, due to the criteria of a direct and subjective interest for the person, no member of the public may be in a position to challenge such acts or omissions, this is too strict to provide for access to justice in accordance with the Convention. This is also the case if, for the same reasons, no environmental organization is able to meet the criteria set by the Council of State.

*(Belgium ACCC/2005/11; ECE/MP.PP/C.1/2006/4/Add.2, 28 July 2006, para. 39)*

The Convention does not prevent a Party from applying general criteria of the sort found in Belgian legislation. However, even though the wordings of the relevant Belgian laws do not as such imply a lack of compliance, the jurisprudence of the Belgian courts, as reflected in the cases submitted by the Communicant, implies a too restrictive access to justice for environmental organizations. In its response, the Party concerned contends that the Communicant “presents an unbalanced image by its ‘strategic use’ of jurisprudence,” and that “the difficulties that the BBL experiences by the Communicant to bring an action in court are not representative for environmental NGOs in general”. In the view of the Committee, however, the cases referred to show that the criteria applied by the Council of State so far seem to effectively bar most, if not all, environmental organizations from challenging town planning permits and area plans that they consider to contravene national law relating to the environment, as under article 9, paragraph 3. Accordingly, in these cases, too, the juris-

prudence of the Council of State appears too strict. Thus, if maintained by the Council of State, Belgium would fail to provide for access to justice as set out in article 9, paragraph 3, of the Convention. By failing to provide for effective remedies with respect to town planning permits and decisions on area plans, Belgium would then also fail to comply with article 9, paragraph 4.

(Belgium ACCC/2005/11; ECE/MP.PP/C.1/2006/4/Add.2, 28 July 2006, para. 40)

NOTE: BBL is the communicant Bond Beter Leefmilieu Vlaanderen VZW. BBL is a federation of environment organizations in Belgium.

Noting the observations made in the communication regarding the existence of different criteria for standing with respect to the procedures for seeking annulment and suspension, respectively, of decisions before the Council of State, the Committee is of the opinion, without, however, having made any in-depth analysis, that the provisions of article 9, paragraphs 2 and 3, of the Convention do not require that there be a single set of criteria for standing for these two types of procedure.

(Belgium ACCC/2005/11; ECE/MP.PP/C.1/2006/4/Add.2, 28 July 2006, para. 44)

The focus of the examination of the Committee is the claim by the communicant that he had no means available to challenge the alleged failure of Denmark to correctly implement the Birds Directive, and that because of this Denmark failed to comply with the Convention. In addition to writing letters to the editors of local newspapers, he reported the case to the police authority, appealed the decision by the police not to take action to the public prosecutor, and sent a letter to the Nature Protection Board of Appeal, asking it to investigate whether the Danish legislation on hunting and the derived Statutory order on Wildlife Damage complied with the Birds Directive. Yet, the Committee notes that neither did he nor any other member of the public request the competent supervisory authority, i.e. the Forest and Nature Agency, to take action against the culling.

(Denmark ACCC/C/2006/18; ECE/MP.PP/2008/5/Add.4, 29 April 2008, para. 23)

It is not for the Committee to consider the culling of birds as such. However, the right of members of the public to challenge acts and omissions concerning wildlife is indeed covered by article 9, paragraph 3, of the Convention, to the extent that these amount to acts or omissions contravening provisions of national law relating to the environment.

(Denmark ACCC/C/2006/18; ECE/MP.PP/2008/5/Add.4, 29 April 2008, para. 24)

The municipality of Hillerød constitutes a public authority, in accordance with article 2, paragraph 2, of the Convention, but the relevant decision to cull the juvenile rooks was made by the municipality not in its capacity of public authority, but as a landowner. Even so, article 9, paragraph 3, applies to the act by the Hillerød municipality to cull the juvenile rooks, regardless of whether it acted as public authority or landowner (and thus, in the same vein as a private person).

(Denmark ACCC/C/2006/18; ECE/MP.PP/2008/5/Add.4, 29 April 2008, para. 25)

Although the opportunity to challenge acts and omissions set out in article 9, paragraph 3, pertains to a broad spectrum of acts and omissions, the challenge must refer to an act or omission that contravenes provisions in the national law relating to the environment. At the time of the culling of the rooks, while these acts may have been prohibited by the European Community Birds Directive, culling by landowners was allowed according to Danish legislation, including statutory orders.

(Denmark ACCC/C/2006/18; ECE/MP.PP/2008/5/Add.4, 29 April 2008, para. 26)

The communicant argues that the act of culling the rooks contravenes European Community legislation rather than Danish legislation, whereas article 9, paragraph 3, refers to “provisions of its national law relating to the environment”. Therefore, the Committee must first consider whether in a case concerning compliance by Denmark, i.e. an EU member state, European Community legislation is covered by article 9, paragraph 3, of the Convention. The Committee notes that, in different ways, European Community legislation does constitute a part of national law of the EU member states. It also notes that article 9, paragraph 3, applies to the European Community as a Party, and that the reference to “national law” therefore should be understood as the domestic law of the Party concerned. While the impact of European Community law in the national laws of the EU member states depends on the form and scope of the legislation in question, in some cases national courts and authorities are obliged to consider EC directives relating to the environment even when they have not been fully transposed by a member state. For these reasons, in the context

**single set  
of criteria**

**municipalities  
as landowners**

**EU legislation  
as part of  
domestic law**



of article 9, paragraph 3, applicable European Community law relating to the environment should also be considered to be part of the domestic, national law of a member state.

(Denmark ACCC/C/2006/18; ECE/MP.PP/2008/5/Add.4, 29 April 2008, para. 27)

***failure to enforce***

Access to justice in the sense of article 9, paragraph 3, requires more than a right to address an administrative agency about the issue of illegal culling of birds. This part of the Convention is intended to provide members of the public with access to adequate remedies against acts and omissions which contravene environmental laws, and with the means to have existing environmental laws enforced and made effective. Thus, Denmark is obliged to ensure that, in cases where administrative agencies fail to act in accordance with national law relating to nature conservation, members of the public have access to administrative or judicial procedures to challenge such acts and omissions.

(Denmark ACCC/C/2006/18; ECE/MP.PP/2008/5/Add.4, 29 April 2008, para. 28)

***actio popularis  
v. barring AtoJ***

As the Committee has pointed out in its findings and recommendations with regard to communication ACCC/C/2005/11 (Belgium) (ECE/MP.PP/C.1/2006/4/Add.2, paras. 29-37), while article 9, paragraph 3, refers to “the criteria, if any, laid down in national law”, the Convention neither defines these criteria nor sets out the criteria to be avoided. Rather, the Convention is intended to allow a great deal of flexibility in defining which members of the public have access to justice. On the one hand, the Parties are not obliged to establish a system of popular action (“actio popularis”) in their national laws with the effect that anyone can challenge any decision, act or omission relating to the environment. On the other hand, the Parties may not take the clause “where they meet the criteria, if any, laid down in its national law” as an excuse for introducing or maintaining so strict criteria that they effectively bar all or almost all environmental organizations or other members of the public from challenging act or omissions that contravene national law relating to the environment. This interpretation of article 9, paragraph 3, is clearly supported by the Meeting of the Parties, which in paragraph 16 of decision II/2 (promoting effective access to justice) invites those Parties which choose to apply criteria in the exercise of their discretion under article 9, paragraph 3, “to take fully into account the objective of the Convention to guarantee access to justice”.

(Denmark ACCC/C/2006/18; ECE/MP.PP/2008/5/Add.4, 29 April 2008, para. 29)

***objective of AtoJ***

When evaluating whether a Party complies with article 9, paragraph 3, the Committee pays attention to the general picture, i.e. to what extent national law effectively has such blocking consequences for members of the public in general, including environmental organizations, or if there are remedies available for them to actually challenge the act or omission in question. In this evaluation article 9, paragraph 3, should be read in conjunction with articles 1 to 3 of the Convention, and in the light of the purpose reflected in the preamble, that “effective judicial mechanisms should be accessible to the public, including organizations, so that its legitimate interests are protected and the law is enforced.”

(Denmark ACCC/C/2006/18; ECE/MP.PP/2008/5/Add.4, 29 April 2008, para. 30)

The Convention does not prevent a Party from applying general criteria of a legal interest or of demonstrating a substantial individual interest of the sort found in Danish law, provided the application of these criteria does not lead to effectively barring all or almost all members of the public from challenging acts and omissions related to wildlife protection.

(Denmark ACCC/C/2006/18; ECE/MP.PP/2008/5/Add.4, 29 April 2008, para. 31)

Although the communication centres on the communicant’s attempts to initiate penal procedures against those responsible for the culling, the lack of such an opportunity for the communicant does not in itself necessarily amount to non-compliance with article 9, paragraph 3. That depends on the availability of other means for challenging such acts and omissions. Accordingly, for the assessment of compliance by the Party concerned, it is not sufficient to take into account only whether the communicant could make use of the Danish penal law system. It is not even sufficient to examine whether he himself had access to any administrative or judicial procedure to challenge the decision to cull the bird population. Rather, the Committee will have to consider to what extent some members of the public – individuals and/or organisations – can have access to administrative or judicial procedures where they can invoke the public environmental interests at stake when challenging the culling of birds allegedly in contravention of Danish law, including relevant European Community law.

(Denmark ACCC/C/2006/18; ECE/MP.PP/2008/5/Add.4, 29 April 2008, para. 32)

At the time of the culling, the communicant was indeed able to address the alleged non-compliance of the activities in Hillerød with the Birds Directive to the Forest and Nature

Agency. If the Agency would have found this claim to be well founded, it may have acted so as to stop the activity. Although the communicant's report on the incompatibility of Danish law and the Birds Directive did reach the Forest and Nature Agency, via the Nature Protection Board of Appeal, the report was essentially limited to a request to investigate the issue of compatibility. It did not include any claim for action against the municipality of Hillerød.

*(Denmark ACCC/C/2006/18; ECE/MP.PP/2008/5/Add.4, 29 April 2008, para. 33)*

If the communicant had requested action by the Forest and Nature Agency at the time of the culling, it is still quite unlikely that the Agency would have decided in his favour, taking into account that the Agency was already fully aware of decisions of the municipality of Hillerød to cull the rooks. Moreover, had the Agency's decision not been in his favour, it is also unlikely that he would have had access to a judicial review procedure due to the Danish criteria for standing in court. Even so, the Committee notes that the communicant did not make his request to the Agency, taking into account also that he could have complained to the Minister of the Environment if the Agency had not decided in his favour. Nor did the communicant report the matter to the Ombudsman. As far as the Committee is aware, nor did any other member of the public.

*(Denmark ACCC/C/2006/18; ECE/MP.PP/2008/5/Add.4, 29 April 2008, para. 34)*

While there is also an opportunity for individuals and non-governmental organisations to bring a private action directly to a court against an illegal activity, it is clear that in this case the communicant would not have fulfilled the criteria for standing. However, considering the limited, yet relevant, case law mentioned in paragraph 21, there appears to have been some possibility for some members of the public, namely certain non-governmental organizations, to challenge the culling. They could have reported the culling to the Forest and Nature Agency, alleging that the statutory order was not compatible with the Birds Directive and pointing at the general obligation of public authorities to ensure the fulfilment of Denmark's obligations arising from European Community legislation. Had the Forest and Nature Agency turned down their request for actions against the culling, at least some such organisations, in particular local ones, might have had access to a judicial review of the Agency's decision.

*(Denmark ACCC/C/2006/18; ECE/MP.PP/2008/5/Add.4, 29 April 2008, para. 35)*

The Committee is aware that Danish jurisprudence is not fully clear as to the effectiveness of this remedy, and that there is little case law to build upon. Yet, it cannot ignore the fact that neither the communicant nor any other member of the public tried to request action by the Forest and Nature Agency, and that no other actions were taken by the communicant or any other member of the public than those referred to in paragraph 23. The Committee is not convinced that, simply because there was no possibility for the communicant to trigger a penal procedure, Denmark failed to comply with the Convention in this particular case. Nor was there sufficient information provided to the Committee to conclude that no other member of the public would have been able to challenge the culling through other administrative or judicial procedures.

*(Denmark ACCC/C/2006/18; ECE/MP.PP/2008/5/Add.4, 29 April 2008, para. 36)*

While the Committee concludes that it is not convinced that Denmark has failed to comply with the Convention, it notes the limited case law with regard to standing for non-governmental organisations in these situations. It therefore stresses that its findings are based on the presumption that the approach reflected in the decision by the Western High Court in 2001, referred to in paragraph 21, should indeed be applied *mutatis mutandis* as a minimum standard of access to justice for non-governmental organizations in cases relating to the protection of wildlife.

*(Denmark ACCC/C/2006/18; ECE/MP.PP/2008/5/Add.4, 29 April 2008, para. 37)*

Although it is not decisive for the question of compliance in this case, the Committee notes that the Danish law on the culling of birds was actually changed shortly after the communicant's request reached the Forest and Nature Agency. It is not clear whether it was a direct result of the communicant's letter, but the new regime for the culling of birds requires a prior permit for any culling of the bird species in question. The licensing procedure has the effect that it is now illegal to cull these birds without a licence, and the Forest and Nature Agency is required to take action to immediately stop any unauthorised culling. If such a request by an environmental non-governmental organisation is turned down by the Agency, the relevant non-governmental organizations would have access to a judicial review procedure.

*(Denmark ACCC/C/2006/18; ECE/MP.PP/2008/5/Add.4, 29 April 2008, para. 38)*

The Committee is aware that several kinds of decisions related to nature conservation can be appealed within the administrative system to the Nature Protection Board of Appeal. Often these decisions concern the protection of areas and habitats, and conflicts between the landowners' interests in using land against the public interest of preserving nature. However, some decisions relating to the direct protection of species of wild fauna, such as the new licensing regime on the culling of birds, cannot be appealed to the Nature Protection Board of Appeal, but only to a court. In the view of the Committee, although access to courts is an essential element, providing an administrative appeal to the Nature Protection Board of Appeal, in addition to the court procedure, would seem to be a more effective way of promoting the objective of the Convention than the current system

*(Denmark ACCC/C/2006/18; ECE/MP.PP/2008/5/Add.4, 29 April 2008, para. 39)*

The Committee is not convinced that the lack of opportunity for the communicant to initiate a criminal procedure in itself amounts to non-compliance by Denmark. On the basis of the information provided in the case, the Committee is not able to conclude that Danish law effectively bars all or almost all members of the public, in particular all or almost all non-governmental organizations devoted to wildlife and nature conservation, from challenging the culling of wild birds, as covered by article 9, paragraph 3.

*(Denmark ACCC/C/2006/18; ECE/MP.PP/2008/5/Add.4, 29 April 2008, para. 41)*

While the Committee is not convinced that the Party concerned fails to comply with the Convention, it notes the limited case law with regard to standing for non-governmental organisations in these situations. As far as standing for such organisations is concerned, it therefore stresses the importance of applying the approach reflected in the decision by the Western High Court in 2001, referred to in paragraph 21, *mutatis mutandis*, as a minimum standard of access to justice in cases relating to the protection of wildlife.

*(Denmark ACCC/C/2006/18; ECE/MP.PP/2008/5/Add.4, 29 April 2008, para. 42)*

The Committee, while aware of the information available in the public domain with respect to the limited manner in which the Party concerned has implemented article 9, paragraph 3, of the Convention, finds that the communicant has insufficiently substantiated its allegation that article 9, paragraph 3, of the Convention has not been complied with in the present case with respect to the consideration of alternative transport solutions in the Enns Valley.

*(Austria ACCC/C/2008/26; ECE/MP.PP/C.1/2009/6/Add.1, 8 February 2011, para. 59)*

The Committee, while aware of the information available in the public domain with respect to the limited manner in which the Party concerned has implemented article 9, paragraph 3, of the Convention, finds that the communicant has not sufficiently substantiated its allegation that article 9, paragraph 3, of the Convention has not been complied with in the present proceedings, with respect to the proposed introduction of the 7.5 tonnage restriction for lorries on route B 320.

*(Austria ACCC/C/2008/26; ECE/MP.PP/C.1/2009/6/Add.1, 8 February 2011, para. 63)*

### **private nuisance law (UK)**

Article 9, paragraph 3, of the Convention requires each Party to ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment. In their legal proceedings against the operator, the communicants allege that the operator is in breach of the United Kingdom's private nuisance law. The question for the Committee is whether a breach of the United Kingdom's law of private nuisance should be considered a contravention of provisions of its national law relating to the environment.

*(United Kingdom ACCC/C/2008/23; ECE/MP.PP/C.1/2010/6/Add.1, October 2010, para. 44)*

Private nuisance is a tort (civil wrong) under the United Kingdom's common law system. A private nuisance is defined as an act or omission generally connected with the use or occupation of land which causes damage to another person in connection with that other's use of land or interference with the enjoyment of land or of some right connected with the land. The Committee finds that in the context of the present case, the law of private nuisance is part of the law relating to the environment of the Party concerned, and therefore within the scope of article 9, paragraph 3, of the Convention.

*(United Kingdom ACCC/C/2008/23; ECE/MP.PP/C.1/2010/6/Add.1, October 2010, para. 45)*

The Committee notes that the decision challenged was made in 2003, whereas the judicial review proceedings were filed in December 2006, after the Convention came into force.

The fact that the decision challenged was made before the entry into force of the Convention for the United Kingdom does not prevent the Committee from reviewing compliance by the Party concerned with article 9 with respect to the decision in question. Before considering whether the Party concerned complied with the requirements of article 9, paragraph 4, of the Convention, it is necessary to establish if the case in question is dealing with an access to justice procedure covered by either paragraph 2 or paragraph 3 of article 9. Because, as established above, neither the 2008 Planning Agreement nor the 30 June 2003 determination are covered by article 6, article 9, paragraph 2 cannot be invoked in the present case. In considering whether the judicial proceedings in question are a procedure referred to by article 9, paragraph 3, of the Convention, the Committee has considered the subject of the claims brought by the communicant in the High Court. In its application for judicial review, the communicant contended that the Department of the Environment had erred in law in making its June 2003 determination under article 41 of the Planning (Northern Ireland) Order 1991. Having reviewed the documentation, including the order of the High Court dated 7 November 2007, the Committee finds that these proceedings were intended to challenge acts and omissions by a public authority which the communicant alleged to contravene provisions of the law of the Party concerned relating to the environment. The Committee thus finds that the communicant's judicial review proceedings were within the scope of article 9, paragraph 3, of the Convention.

*(United Kingdom ACCC/C/2008/27; ECE/MP.PP/C.1/2010/6/Add.2, November 2010, para. 43)*

Upon approving the Convention, the EU confirmed its declaration made upon signature. It also declared that the legal instruments that it had already enacted to implement the Convention did not cover fully the implementation of the obligations resulting from Article 9, paragraph 3, of the Convention, to the extent that it did not relate to acts and omissions of EU institutions under article 2, paragraph 2 (d), and thus Member States would be responsible for the performance of these obligations until the EU in the exercise of its powers under the TEC adopted provisions of EU law covering the implementation of these obligations. The Aarhus Regulation came into effect on 28 June 2007.

*(European Union ACCC/C/2008/32 (Part I); ECE/MP.PP/C.1/2011/4/Add.1, May 2011, para. 58)*

While the Committee does not rule out that some decisions, acts and omissions by the EU institutions – even if labeled “regulation” – may amount to some form of decision-making under articles 6-8 of the Convention, it will not carry out any examination on this issue. Rather, for the Committee, when examining the general jurisprudence and the interpretation of the standing criteria by the EU Courts, it is sufficient if it can conclude that some decisions, acts and omissions by the EU institutions are such as to be covered by article 9, paragraph 3, of the Convention. That is the case if an act or omission by an EU institution or body can be (i) attributed to it in its capacity as a public authority, and (ii) linked to provisions of EU law relating to the environment.

*(European Union ACCC/C/2008/32 (Part I); ECE/MP.PP/C.1/2011/4/Add.1, May 2011, para. 72)*

Thus, without ruling out that also other acts and omissions by EU institutions may be covered by article 9, paragraphs 2 or 3, of the Convention, the Committee is convinced that for at least some acts and omissions by EU institutions, the Party concerned must ensure that members of the public have access to administrative or judicial review procedures, as set out in article 9, paragraph 3.

*(European Union ACCC/C/2008/32 (Part I); ECE/MP.PP/C.1/2011/4/Add.1, May 2011, para. 74)*

Article 9, paragraph 3, of the Convention refers to review procedures relating to acts or omissions of public authorities which contravene national law relating to the environment. This provision is intended to provide members of the public access to remedies against such acts and omissions, and with the means to have existing environmental laws enforced and made effective. In this context, when applied to the EU, the reference to “national law” should be interpreted as referring to the domestic law of the EU (cf. ACCC/C/2006/18 (Denmark) (ECE/MP.PP/2008/5/Add.4, para 27)).

*(European Union ACCC/C/2008/32 (Part I); ECE/MP.PP/C.1/2011/4/Add.1, May 2011, para. 76)*

As the Committee has pointed out in its findings with regard to communication ACCC/C/2005/11 (Belgium) (ECE/MP.PP/C.1/2006/4/Add.2, paras. 29-37) and communication ACCC/C/2006/18 (Denmark) (ECE/MP.PP/2008/5/Add.4, paras. 29-31), while article 9, paragraph 3, refers to “the criteria, if any, laid down in national law”, the Convention does not set these criteria nor sets out the criteria to be avoided. Rather, the Convention allows a great deal of flexibility in defining which members of the public have access to justice. On the one hand, the Parties are not obliged to establish a system of popular action

### **EU acts**

### **scope of flexibility**

(“actio popularis”) in their domestic laws with the effect that anyone can challenge any decision, act or omission relating to the environment. On the other hand, the Parties may not take the clause “where they meet the criteria, if any, laid down in its national law” as an excuse for introducing or maintaining so strict criteria that they effectively bar all or almost all environmental organizations or other members of the public from challenging acts or omissions that contravene national law relating to the environment.

*(European Union ACCC/C/2008/32 (Part I); ECE/MP.PP/C.1/2011/4/Add.1, May 2011, para. 77)*

In communication ACCC/C/2005/11 (Belgium) (ECE/MP.PP/C.1/2006/4/Add.2, para. 36), the Committee further observed that “the criteria, if any, laid down in national law” should be such so that access to a review procedure is the presumption and not the exception, and suggested that one way for the Parties to avoid popular action (“actio popularis”) in these cases, is to employ some sort of criteria (e.g. of being affected or of having an interest) to be met by members of the public in order to be able to challenge a decision. However, this presupposes that such criteria do not bar effective remedies for members of the public.

*(European Union ACCC/C/2008/32 (Part I); ECE/MP.PP/C.1/2011/4/Add.1, May 2011, para. 78)*

### **blocking consequences**

When evaluating whether a Party complies with article 9, paragraph 3, the Committee pays attention to the general picture, i.e. to what extent the domestic law of the party concerned effectively has such blocking consequences for members of the public in general, including environmental organizations, or if there are remedies available for them to actually challenge the act or omission in question. In this evaluation, article 9, paragraph 3, should be read in conjunction with articles 1 to 3 of the Convention, and in the light of the purpose reflected in the preamble, that “effective judicial mechanisms should be accessible to the public, including organizations, so that its legitimate interests are protected and the law is enforced” (cf ACCC/C/2005/11, Belgium, para. 34; and ACCC/C/2006/18 Denmark, para. 30).

*(European Union ACCC/C/2008/32 (Part I); ECE/MP.PP/C.1/2011/4/Add.1, May 2011, para. 79)*

The Convention does not prevent a Party from applying general criteria of a legal interest or of demonstrating a “direct or individual concern”, provided the application of these criteria does not lead to effectively barring all or almost all members of the public from challenging acts and omissions related to domestic environmental laws (cf. ACCC/C/2006/18 Denmark, para. 31).

*(European Union ACCC/C/2008/32 (Part I); ECE/MP.PP/C.1/2011/4/Add.1, May 2011, para. 80)*

### **ECJ/ Plaumann test**

The Committee will first focus on the jurisprudence established by the ECJ, based on the Plaumann test. If access to the EU Courts appears too limited, the next question is whether this is compensated for by the possibility of requesting national courts to ask for preliminary rulings by the ECJ.

*(European Union ACCC/C/2008/32 (Part I); ECE/MP.PP/C.1/2011/4/Add.1, May 2011, para. 81)*

### **N.B.**

As pointed out in paragraph 20, the judgment in the Plaumann case, decided in 1963, established what was to become a consistent jurisprudence with respect to standing before the EU Courts. When interpreting the criterion of being directly and individually concerned by a decision or a regulation, cf. TEC article 230, paragraph 4, the ECJ held that “persons other than those to whom a decision is addressed may only claim to be individually concerned if that decision affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and by virtue of these factors distinguishes them individually just as in the case of the person addressed.”

*(European Union ACCC/C/2008/32 (Part I); ECE/MP.PP/C.1/2011/4/Add.1, May 2011, para. 82)*

The Plaumann test has been maintained in the ECJ jurisprudence. In the field of the environment, the EU Courts have in no case accepted standing to any individual or civil society organization unless the matter concerned a decision addressed directly to that person. In two cases relating to the environment, i.e. the Greenpeace case and the Danielsson case, the EU Courts did not grant standing to the applicant, despite the possibility of reinterpreting the provision in question. The communicant has also referred to other cases, such as the UPA cases, the Jégo-Quééré case, the EEB cases, to show that the ECJ has not endeavoured to alter its jurisprudence.

*(European Union ACCC/C/2008/32 (Part I); ECE/MP.PP/C.1/2011/4/Add.1, May 2011, para. 83)*

### **N.B.**

It is clear to the Committee that TEC article 230, paragraph 4, on which the ECJ has based its strict position on standing, is drafted in a way that could be interpreted so as to provide standing for qualified individuals and civil society organizations in a way that would meet

the standard of article 9, paragraph 3, of the Convention. Yet, the cases referred to by the communicant reveal that, to be individually concerned, according to the ECJ, the legal situation of the person must be affected because of a factual situation that differentiates him or her from all other persons. Thus, persons cannot be individually concerned if the decision or regulation takes effect by virtue of an objective legal or factual situation. The consequences of applying the Plaumann test to environmental and health issues is that in effect no member of the public is ever able to challenge a decision or a regulation in such case before the ECJ.

*(European Union ACCC/C/2008/32 (Part I); ECE/MP.PP/C.1/2011/4/Add.1, May 2011, para. 86)*

Article 9, paragraph 3, of the Convention, as opposed to article 9, paragraph 2, of the Convention, does not explicitly refer to either substantive or procedural legality. Instead it refers to “acts or omissions [...] which contravene its national law relating to the environment”. Clearly, the issue to be considered in such a review procedure is whether the act or omission in question contravened any provision — be it substantive or procedural — in national law relating to the environment.

*(United Kingdom ACCC/C/2008/33; ECE/MP.PP/C.1/2010/6/Add.3, December 2010, para. 124)*

The Committee finds that the Party concerned allows for members of the public to challenge certain aspects of the substantive legality of decisions, acts or omissions subject to article 9, paragraphs 2 and 3, of the Convention, including, inter alia, for material error of fact; error of law; regard to irrelevant considerations and failure to have regard to relevant considerations; jurisdictional error; and on the grounds of *Wednesbury* unreasonableness (see paras. 87–89 above). The Committee, however, is not convinced that the Party concerned, despite the above-mentioned challengeable aspects, meets the standards for review required by the Convention as regards substantive legality. In this context, the Committee notes for example the criticisms by the House of Lords,<sup>100</sup> and the European Court of Human Rights,<sup>101</sup> of the very high threshold for review imposed by the *Wednesbury* test.

*(United Kingdom ACCC/C/2008/33; ECE/MP.PP/C.1/2010/6/Add.3, December 2010, para. 125)*

The Committee considers that the application of a “proportionality principle” by the courts in England and Wales could provide an adequate standard of review in cases within the scope of the Aarhus Convention. A proportionality test requires a public authority to provide evidence that the act or decision pursued justifies the limitation of the right at stake, is connected to the aim(s) which that act or decision seeks to achieve and that the means used to limit the right at stake are no more than necessary to attain the aim(s) of the act or decision at stake. While a proportionality principle in cases within the scope of the Aarhus Convention may go a long way towards providing for a review of substantive and procedural legality, the Party concerned must make sure that such a principle does not generally or *prima facie* exclude any issue of substantive legality from a review.

*(United Kingdom ACCC/C/2008/33; ECE/MP.PP/C.1/2010/6/Add.3, December 2010, para. 126)*

Given its findings in paragraphs 125 and 126 above, the Committee expresses concern regarding the availability of appropriate judicial or administrative procedures, as required by article 9, paragraphs 2 and 3, of the Convention, in which the substantive legality of decisions, acts or omissions within the scope of the Convention can be subjected to review under the law of England and Wales. However, based on the information before it in the context of the current communication, the Committee does not go so far as to find the Party concerned to be in non-compliance with article 9, paragraphs 2 or 3, of the Convention.

*(United Kingdom ACCC/C/2008/33; ECE/MP.PP/C.1/2010/6/Add.3, December 2010, para. 127)*

The central allegation of the communication is the lack of possibility for members of the public, including NGOs, to have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of the national law relating to the environment, under article 9, paragraph 3, of the Convention. The Committee decides not to consider alleged non-compliance with article 9, paragraph 4, of the Convention on the merits, because in the present case the allegations of the absence of effective remedies (art. 9, para. 4) are subsumed by the allegations of a complete absence of any remedies (art. 9, para. 3). That is, if the Committee holds that the Party concerned fails to provide any remedy, as provided for under article 9, paragraph 3, this also implies a failure by the Party concerned to comply with article 9, paragraph 4.

*(Austria ACCC/C/2011/63; ECE/MP.PP/C.1/2014/3, 13 January 2014, para. 48)*

[T]he Committee recalls that “the criteria, if any, laid down in national law” in accordance with article 9, paragraph 3, should not be seen as an excuse for introducing or maintaining

### ***Wednesbury test***

### ***proportionality principle (UK)***

***N.B.***

so strict criteria that they effectively bar all or almost all environmental organizations or other members of the public from challenging acts or omissions that contravene national laws relating to the environment (see findings on communication ACCC/C/2005/11 (Belgium) (ECE/MP.PP/C/1/2006/4/Add.2, paras. 35–37) and ACCC/C/2006/18 (Denmark) (ECE/MP.PP/C/1/2008/5/Add.4, paras. 29–31)).

(Austria ACCC/C/2011/63; ECE/MP.PP/C.1/2014/3, 13 January 2014, para. 51)

**law relating  
to the environment**

Article 9, paragraph 3, is intended to provide members of the public with access to adequate remedies against acts and omissions which contravene laws relating to the environment, and with the means to have existing laws relating to the environment enforced and made effective (see also findings on ACCC/C/2005/11 (Belgium), para. 34). Importantly, the text of the Convention does not refer to “environmental laws”, but to “laws relating to the environment”. Article 9, paragraph 3, is not limited to “environmental laws”, e.g., laws that explicitly include the term “environment” in their title or provisions. Rather, it covers any law that relates to the environment, i.e. a law under any policy, including and not limited to, chemicals control and waste management, planning, transport, mining and exploitation of natural resources, agriculture, energy, taxation or maritime affairs, which may relate in general to, or help to protect, or harm or otherwise impact on the environment.

(Austria ACCC/C/2011/63; ECE/MP.PP/C.1/2014/3, 13 January 2014, para. 52)

**EU law  
as national law**

The scope of “national laws” also extends to the applicable EU law in a member State. In this regard, acts and omissions that may contravene EU regulations or directives, but not national laws implementing those instruments, may as well be challenged under paragraph 3 (see findings on ACCC/C/2006/18 (Denmark), para. 27).

(Austria ACCC/C/2011/63; ECE/MP.PP/C.1/2014/3, 13 January 2014, para. 53)

Laws on the protection of wildlife species and/or trade in endangered species (including marketing in the domestic market, import and export) are also “laws relating to the environment”, because they are not limited to the regulation of trade relations but include obligations on how the animals/species are to be treated and protected. Accordingly, these laws help protect or otherwise impact on the environment. In addition, to the extent the laws of the Parties relating to the environment apply to acts and omissions of a transboundary or extraterritorial character or effect, these acts and omissions are also subject to article 9, paragraph 3, of the Convention.

(Austria ACCC/C/2011/63; ECE/MP.PP/C.1/2014/3, 13 January 2014, para. 55)

**access to criminal  
and administrative  
penal law**

The Committee concludes that in certain cases members of the public, including environmental NGOs, have no means of access to administrative or judicial procedures to challenge acts and omissions of public authorities and private persons which contravene provisions of national law, including administrative penal law and criminal law, relating to the environment, such as contraventions of laws relating to trade in wildlife, nature conservation and animal protection. Whereas lack of access to criminal or administrative penal procedures as such does not amount to non-compliance, the lack of any administrative or judicial procedures to challenge acts and omissions contravening national law relating to the environment such as in this case amounts to non-compliance with article 9, paragraph 3, in conjunction with article 9, paragraph 4, of the Convention. For these reasons, the Committee holds that the Party concerned fails to comply with article 9, paragraph 3, in conjunction with paragraph 4, of the Convention.

(Austria ACCC/C/2011/63; ECE/MP.PP/C.1/2014/3, 13 January 2014, para. 63)

[A]ccess to justice under article 9, paragraphs 3 and 4, requires more than a right of members of the public to address an administrative authority or the prosecution about an illegal activity. Members of the public should also have access to administrative or judicial procedures to challenge acts or omissions by private persons or public authorities when they consider that such acts or omissions amount to criminal acts or administrative offences. This may be pursued through avenues within or beyond penal/criminal law procedures.

(Austria ACCC/C/2011/63; ECE/MP.PP/C.1/2014/3, 13 January 2014, para. 64)

While they may provide standing for neighbours, a number of Austrian environmental laws presented to the Committee do not provide standing for NGOs at all. Moreover, in addition to these sectoral environmental laws which do not provide locus standi to NGOs, there seem to be rather limited avenues available to NGOs to actually challenge acts and omissions by public authorities that contravene provisions of its national law relating to the environment. These avenues include: (a) when the procedure envisaged by the sectoral law at issue is consolidated with the EIA or IPPC procedure; (b) under the environmental

liability laws; and, in any event, (c) through the Ombudsman for the Environment, who according to the sectoral or provincial legislation, may or may not have the right to access the courts. The administrative procedures failing, there is a possibility for those affected to seek civil remedies.

*(Austria ACCC/C/2010/48; ECE/MP.PP/C.1/2012/4, 17 April 2012, para. 71)*

The Committee, in evaluating the compliance of Austrian law with the Convention, considers the general picture described by the parties. It understands that, in effect, under Austrian law, there is insufficient possibility for a members of the public to challenge an act or omission of a public authority, if the procedure is not consolidated under the EIA or IPPC procedures, or if they cannot prove that they may be adversely affected by environmental damage so as to benefit from the laws transposing the EU Environmental Liability Directive. In addition, members of the public who cannot prove that they are affected by a project have insufficient means of recourse to civil remedies.

*(Austria ACCC/C/2010/48; ECE/MP.PP/C.1/2012/4, 17 April 2012, para. 72)*

In the view of the Committee, outside the scope of the EIA and IPPC procedures and environmental liability, the conditions laid down by the Party concerned in its national law are so strict that they effectively bar NGOs from challenging acts or omissions that contravene national laws relating to the environment (cf. findings in previous cases referred to in paras. 69 and 70 above). The fact that there is a possibility that the procedure laid down under the sectoral environmental laws may be consolidated in the framework of the EIA or IPPC procedure for the purposes of a large project or that environmental liability and civil law remedies may apply, under conditions, does not compensate for the failure to fulfil the requirements of article 9, paragraph 3, concerning other acts and omissions.

*(Austria ACCC/C/2010/48; ECE/MP.PP/C.1/2012/4, 17 April 2012, para. 73)*

The Party concerned emphasizes the importance of the institution of the Ombudsman for the Environment and the possibility for a member of the public, including an NGO, to ask the Ombudsman to take on its claims. The Committee notes, however, that according to the table prepared by the communicant and agreed by the Party concerned, the authority of the Ombudsman for the Environment may be limited, as it does not have standing in procedures of many sectoral laws relating to the environment other than the EIA and IPPC procedures, environmental liability, nature conservation procedures and waste management. Moreover, the Ombudsman has discretion whether or not to bring a case to court despite the request of a member of the public, including an NGO.

*(Austria ACCC/C/2010/48; ECE/MP.PP/C.1/2012/4, 17 April 2012, para. 74)*

In the light of the considerations set out above, the Committee finds that the Party concerned, in failing to ensure standing of environmental NGOs to challenge acts or omissions of a public authority or private person which contravene provisions of national law relating to the environment, is not in compliance with article 9, paragraph 3, of the Convention.

*(Austria ACCC/C/2010/48; ECE/MP.PP/C.1/2012/4, 17 April 2012, para. 75)*

While article 9, paragraph 3, of the Convention accords greater flexibility to Parties in its implementation as compared with paragraphs 1 and 2 of that article, the Committee has previously held (*ibid.* and findings on communication ACCC/C/2005/11 (Belgium), ECE/MP.PP/C.1/2006/4/Add.2) that the criteria for standing may not be so strict that they effectively bar all or almost all environmental organizations or members of the public from challenging acts of omissions under this paragraph. It is clear from the oral and written submissions of the parties, that if an operator exceeds some noise limits set by law, then no member of the public can be granted standing to challenge the act of the operator (private person) or the omission of the authority to enforce the law. In addition, it is evident that in cases of land-use planning, if an authority has issued a land-use plan in contravention of urban and land-planning standards or other environmental protection laws, a considerable portion of the public, including NGOs, cannot challenge this act of the authority. The Committee finds that such a situation is not in compliance with article 9, paragraph 3, of the Convention.

*(Czech Republic ACCC/C/2010/50; ECE/MP.PP/C.1/2012/11, 2 October 2012, para. 85)*

The communicant also alleged non-compliance with article 9, paragraph 3, of the Convention with respect to nuclear matters, substantiating its allegations with excerpts from court jurisprudence. However, the Committee considers this jurisprudence as relating to standing to challenge operation permits under the Nuclear Act, and thus to be covered by article 9, paragraph 2. The Committee notes in particular the jurisprudence that excludes members

**Ombudsman**

**scope  
of flexibility/  
failure to enforce**

**nuclear laws**



of the public, including NGOs, from challenging operating permits on the ground; that it is not mandatory for the public to participate in nuclear safety matters; and the ruling which specifically excludes NGOs on the ground that they do not have rights to life, privacy or a favourable environment that could be affected. If indeed standing to challenge nuclear operation permits is limited because public participation is limited, then there are serious concerns of non-compliance not only with article 9, paragraph 2, of the Convention, but also with article 6 of the Convention. However, as decision-making for the construction and operation of nuclear installations is a much more complex procedure, the information submitted to the Committee does not sufficiently substantiate the allegations of non-compliance with article 9 of the Convention in this case.

*(Czech Republic ACCC/C/2010/50; ECE/MP.PP/C.1/2012/11, 2 October 2012, para. 86)*

### **spatial planning**

[T]he characteristics of the General Spatial Plans indicate that that these plans are binding administrative acts, which determine future development of the area. They are mandatory for the preparation of the Detailed Spatial Plans, and thus also binding, although indirectly, for the specific investment activities, which must comply with them. Moreover, they are subject to obligatory SEA and are related to the environment since they can influence the environment of the regulated area. Consequently, the General Spatial Plans have the legal nature of acts of administrative authorities which may contravene provisions of national law related to the environment and the Committee reviews access to justice in respect to these plans in the light of article 9, paragraph 3, of the Convention.

*(Bulgaria ACCC/C/2011/58; ECE/MP.PP/C.1/2013/4, 11 January 2013, para. 64)*

### **N.B.**

While referring to “the criteria, if any, laid down in national law” in article 9, paragraph 3, the Convention neither defines these criteria nor sets out the criteria to be avoided and allows a great deal of flexibility in this respect. On the one hand, the Parties are not obliged to establish a system of popular action (*actio popularis*) in their national laws with the effect that anyone can challenge any decision, act or omission relating to the environment. On the other hand, the Parties may not take the clause “where they meet the criteria, if any, laid down in its national law” as an excuse for introducing or maintaining such strict criteria that they effectively bar all or almost all members of the public, especially environmental organizations, from challenging acts or omissions that contravene national law relating to the environment. The phrase “the criteria, if any, laid down in national law” indicates that the Party concerned should exercise self-restraint not to set too strict criteria. Access to such procedures should thus be the presumption, not the exception (cf. findings on communication ACCC/C/2005/11 concerning Belgium, paras. 34–36).

*(Bulgaria ACCC/C/2011/58; ECE/MP.PP/C.1/2013/4, 11 January 2013, para. 65)*

As mentioned above, the SDA explicitly prevents any person from challenging the General Spatial Plans in court (see para. 21 above). Such explicit provision can hardly be overcome by jurisprudence. Therefore, the Committee concludes that Bulgarian legislation effectively bars all members of the public, including environmental organizations, from challenging General Spatial Plans. As a result, members of the public, including environmental organizations, are also prevented from challenging the SEA statements for General Spatial Plans, as these statements are considered as “preliminary acts”, which are not subject to judicial review in a separate procedure (see paras. 58–60 above). Therefore, the Party concerned fails to comply with article 9, paragraph 3, of the Convention

*(Bulgaria ACCC/C/2011/58; ECE/MP.PP/C.1/2013/4, 11 January 2013, para. 66)*

Bearing in mind their characteristics, as summarized above, the Committee considers Detailed Spatial Plans as acts of administrative authorities which may contravene provisions of national law related to the environment. In this respect, article 9, paragraph 3, of the Convention applies also for the review of the law and practice of the Party concerned on access to justice with respect to the Detailed Spatial Plans. It follows also that for Detailed Spatial Plans the standing criteria of national law must not effectively bar all or almost all members of the public, especially environmental organizations, from challenging them in court (cf. findings on communication ACCC/C/2005/11 Belgium).

*(Bulgaria ACCC/C/2011/58; ECE/MP.PP/C.1/2013/4, 11 January 2013, para. 69)*

### **SEA/ spatial planning**

The SDA provides standing to challenge Detailed Spatial Plans to the directly affected owners of real estate. Environmental organizations and other members of the public do not have the possibility of challenging these plans in court. The case-law presented by the communicant confirms this approach (see paras. 22 and 40 above). Besides, members of public have no possibility to challenge the SEA statements for the Detailed Spatial Plans within the scope of an appeal challenging these plans: they can challenge neither the fact that an SEA

statement was not issued prior to approval of the Detailed Spatial Plan nor the disrespect of conditions set out in the SEA statement. This situation constitutes non-compliance of the Party concerned with article 9, paragraph 3, of the Convention.

*(Bulgaria ACCC/C/2011/58; ECE/MP.PP/C.1/2013/4, 11 January 2013, para. 70)*

Unlike article 9, paragraph 2, article 9, paragraph 3, of the Convention applies to a broader range of acts and omissions. Namely, this paragraph provides for the possibility of members of the public to review acts and omissions which allegedly contravene provisions of national law relating to the environment, and not only public participation provisions. In implementing paragraph 3, Parties are granted more flexibility in defining which environmental organizations have access to justice. The Committee has already considered implementation of article 9, paragraph 3, of the Convention (cf. findings on communications ACCC/C/2005/11 (Belgium) (ECE/MP.PP/C.1/2006/4/Add.2); ACCC/C/2006/18 (Denmark) ECE/MP.PP/2008/5/Add.4; and ACCC/C/2010/48 (Austria) ECE/MP.PP/C.1/2012/4) and has in general determined that, while Parties are not obliged to establish a system of popular action in their national laws, Parties may not take the clause “where they meet the criteria, if any, laid down in its national law”, as an excuse for maintaining or introducing criteria that effectively bar all or almost all environmental organizations from challenging acts or omissions that contravene national law relating to the environment. [.]

*(Armenia ACCC/C/2011/62; ECE/MP.PP/C.1/2013/14, 23 October 2013, para. 37)*

**N.B.**

Unlike article 9, paragraphs 1 and 2, article 9, paragraph 3, of the Convention applies to a broad range of acts or omissions and also confers greater discretion on Parties when implementing it. Yet, the criteria for standing, if any, laid down in national law according to this provision should always be consistent with the objective of the Convention to ensure wide access to justice. The Parties are not obliged to establish a system of popular action (*actio popularis*) in their national laws to the effect that anyone can challenge any decision, act or omission relating to the environment. On the other hand, the Parties may not take the clause “where they meet the criteria, if any, laid down in its national law” as an excuse for introducing or maintaining such strict criteria that they effectively bar all or almost all members of the public, including environmental NGOs, from challenging acts or omissions that contravene national law relating to the environment. Access to such procedures should be the presumption, not the exception, as article 9, paragraph 3, should be read in conjunction with articles 1 and 3 of the Convention and in the light of the purpose reflected in the preamble, that “effective judicial mechanisms should be accessible to the public, including organizations, so that its legitimate interests are protected and the law is enforced” (findings on communications ACCC/C/2005/11 (Belgium), paras. 34–36; ACCC/C/2006/18 (Denmark), paras. 29–30; and ACCC/C/2010/48 (Austria) (ECE/MP.PP/C.1/2012/4), paras. 68–70).

*(Germany ACCC/C/2008/31; ECE/MP.PP/C.1/2014/8, 4 June 2014, para. 92)*

**N.B.**

The Committee, when evaluating the compliance of the Party concerned with article 9, paragraph 3, of the Convention, considers the “general picture” described by the communicant and the Party concerned, i.e., both the relevant legislative framework and its application in practice (see para. 64 above). Therefore, the Committee takes into account whether national law effectively blocks access to justice for members of the public, including environmental NGOs, and considers if there are remedies available for them to actually challenge the act or omission in question.

*(Germany ACCC/C/2008/31; ECE/MP.PP/C.1/2014/8, 4 June 2014, para. 93)*

Article 9, paragraph 3, does not distinguish between public or private interests or objective or subjective rights, and it is not limited to any such categories. Rather, article 9, paragraph 3, applies to contraventions of any provision of national law relating to the environment. While what is considered a public or private interest or an objective or subjective right may vary among Parties and jurisdictions, access to a review procedure must be provided for all contraventions of national law relating to the environment.

*(Germany ACCC/C/2008/31; ECE/MP.PP/C.1/2014/8, 4 June 2014, para. 94)*

**public/  
private interest  
objective/  
subjective right**

The Party concerned has adopted environmental laws at the federal level, and the Länder (states) have competence to implement and enforce that legislation. Access to justice in environmental matters is primarily regulated at the federal level. According to the well-enshrined principle in German procedural law derived from the “impairment of rights” doctrine (“Schutznormtheorie”), access to justice is granted on the basis of whether the applicant claims infringement of his/her subjective rights. A strict application of this principle in matters of access to justice under the Convention would imply non-compliance with

**impairment  
of a right**

article 9, paragraph 3, of the Convention, since many contraventions by public authorities and private persons would not be challengeable unless it could be proven that the contravention infringes a subjective right. The requirement of infringement of subjective rights would in many cases rule out the opportunity for environmental NGOs to access review procedures, since they engage in public interest litigation.

*(Germany ACCC/C/2008/31; ECE/MP.PP/C.1/2014/8, 4 June 2014, para. 95)*

The Party concerned and the communicant agree that, apart from the rights of access to justice provided for in the EAA, which implements article 9, paragraph 2, of the Convention, the only other explicit legislative provisions which provide legal standing to environmental NGOs, are proceedings issued under the Federal Nature Conservation Act or the Environmental Damage Act. It follows that, apart from the rights on access to justice provided in the EAA, the Federal Nature Conservation Act and the Environmental Damage Act, there is no apparent basis in the legislation for access to review procedures for environmental NGOs.

*(Germany ACCC/C/2008/31; ECE/MP.PP/C.1/2014/8, 4 June 2014, para. 96)*

The communicant provided examples of recent judgements where it claimed standing was denied to environmental NGOs. The Party concerned disputed these examples, alleging that the lawsuits of the NGOs were admissible, but refused on the basis of not being well-founded. The Party concerned also presented the judgment of the Federal Administrative Court of 5 September 2013, in which legal standing was granted to an NGO, in the area of air protection, beyond the scope of the EAA, the Federal Nature Conservation Act and the Environmental Damage Act, with reference to article 9, paragraph 3, of the Aarhus Convention and relevant CJEU jurisprudence.

*(Germany ACCC/C/2008/31; ECE/MP.PP/C.1/2014/8, 4 June 2014, para. 97)*

#### **Slovak Brown Bear case**

In its judgment of 5 September 2013, following the CJEU judgment in the “Slovak Brown Bear” case, the Federal Administrative Court broadened the interpretation of the criterion of “impairment of a right”. This, however, was done in order to ensure the correct implementation of the relevant EU legislation (see paras. 20–26 and 46 of the judgement of the Federal Administrative Court) and does not imply that the same interpretation will be applied by the courts to those areas of national law relevant to the Aarhus Convention but not covered by EU law. Nor does it guarantee that this interpretation will be widely followed in future decisions. The Federal Administrative Court itself has indicated that for Germany to be fully in compliance with the requirements of article 9, paragraph 3, of the Convention, changes in the legislation would be needed (see para. 32 of its judgement).

*(Germany ACCC/C/2008/31; ECE/MP.PP/C.1/2014/8, 4 June 2014, para. 98)*

If the broad interpretation of the term “impairment of subjective rights” reflected in the judgment of the Federal Administrative Court of 5 September 2013 was to become a general practice of German courts in all areas of national law relevant to the Convention, this could amount to compliance with article 9, paragraph 3. However, in the absence of legislative guarantees for members of the public, including environmental NGOs, to have access to review procedures to challenge acts and omissions of private persons and public authorities in areas of national environmental law beyond the scope of the EAA, the Federal Nature Conservation Act and the Environmental Damage Act, the Committee concludes that the conditions laid down by the Party concerned do not ensure standing to environmental NGOs to challenge acts or omissions that contravene national laws relating to the environment.

*(Germany ACCC/C/2008/31; ECE/MP.PP/C.1/2014/8, 4 June 2014, para. 99)*

For these reasons, the Committee finds that, by not ensuring standing of environmental NGOs in many of its sectoral laws to challenge acts or omissions of public authorities or private persons which contravene provisions of national law relating to the environment, the Party concerned fails to comply with article 9, paragraph 3, of the Convention.

*(Germany ACCC/C/2008/31; ECE/MP.PP/C.1/2014/8, 4 June 2014, para. 100)*

4. In addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1, 2 and 3 above shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive. Decisions under this article shall be given or recorded in writing. Decisions of courts, and whenever possible of other bodies, shall be publicly accessible.

The Committee indeed has some concerns with regard to the effect of the combination of some of the Expressway Act provisions, in particular, those described in paragraphs 8 (e) and (f) above, might have on the adequacy and effectiveness of remedies, in accordance with article 9, paragraph 4, of the Convention. Where individual provisions are not in themselves in conflict with the requirements of the Convention, one cannot exclude a possibility that their cumulative effect might lead to non-compliance. However, in this particular case the Committee is not convinced that the cumulative effect provides sufficient grounds for establishment of non-compliance.

*(Hungary ACCC/C/2004/4; ECE/MP.PP/C.1/2005/2/Add.4, 14 March 2005, para. 14)*

With regard to the decision of the court of first instance of 27 June 2002 and the subsequent developments described in paragraph 13 above, the Committee is of the opinion that a procedure which allows for a court hearing to commence without proper notification of the parties involved (including a confirmation that notifications have indeed been received), cannot be considered a fair procedure in the meaning of article 9, paragraph 4, of the Convention. Although the court decision refers to the multiple notifications being sent to the plaintiffs, no evidence was presented in support of this by the Party. In absence of such evidence the Committee considers that the claim of the communicants that they were not duly notified has not been reputed. In the view of the Committee the shortcoming lies with the compliance by the courts with the existing requirements of procedural legislation, rather than the legislation itself.

*(Kazakhstan ACCC/C/2004/6; ECE/MP.PP/C.1/2006/4/Add.1, 28 July 2006, para. 28)*

The Committee also finds that the failure to communicate the court decision to the parties, as described in paragraph 15, constitutes a lack of fairness and timeliness in the procedure. At the Committee's eighth meeting, the representatives of the Party concerned argued that even if the decision was not communicated directly to the plaintiffs, they still had a possibility to access the text of the decision in the court records. Clearly, while public accessibility of decisions is commendable, it does not in itself satisfy the fairness of the procedure. A fair and timely procedure requires that a decision should be communicated to the parties within a short time to enable them to take further actions, including filing an appeal.

*(Kazakhstan ACCC/C/2004/6; ECE/MP.PP/C.1/2006/4/Add.1, 28 July 2006, para. 29)*

It is the Committee's opinion that the procedures fall under article 9, paragraph 3, of the Convention, triggering also the application of article 9, paragraph 4. Furthermore, it appears that there were significant problems with enforcement of national environmental law. Even though the communicants had access to administrative and judicial review procedures on the basis of the existing national legislation, this review procedure in practice failed to provide adequate and effective remedies and, therefore, was out of compliance with article 9, paragraph 4, in conjunction with article 9, paragraph 3, of the Convention.

*(Kazakhstan ACCC/C/2004/6; ECE/MP.PP/C.1/2006/4/Add.1, 28 July 2006, para. 31)*

The Committee finds that the failure by Kazakhstan to provide effective remedies in a review procedure concerning an omission by the public authority to enforce environmental legislation as well as failure to ensure that courts properly notify the parties of the time and place of hearings and of the decision taken constitutes a failure to comply with the requirements of article 9, paragraph 4, in conjunction with article 9, paragraph 3, of the Convention.

*(Kazakhstan ACCC/C/2004/6; ECE/MP.PP/C.1/2006/4/Add.1, 28 July 2006, para. 35)*

The Convention does not prevent a Party from applying general criteria of the sort found in Belgian legislation. However, even though the wordings of the relevant Belgian laws do not as such imply a lack of compliance, the jurisprudence of the Belgian courts, as reflected in the cases submitted by the Communicant, implies a too restrictive access to justice for environmental organizations. In its response, the Party concerned contends that the Communicant "presents an unbalanced image by its 'strategic use' of jurisprudence," and that "the difficulties that the BBL experiences by the Communicant to bring an action in court are not representative for environmental NGOs in general". In the view of the Committee, however, the cases referred to show that the criteria applied by the Council of State so far seem to effectively bar most, if not all, environmental organizations from challenging town planning permits and area plans that they consider to contravene national law relating to the environment, as under article 9, paragraph 3. Accordingly, in these cases, too, the jurisprudence of the Council of State appears too strict. Thus, if maintained by the Council of State, Belgium would fail to provide for access to justice as set out in article 9, paragraph 3, of the Convention. By failing to provide for effective remedies with respect to town plan-

*cumulative effect*

*fair procedure*

*failure  
to communicate  
court decision*

ning permits and decisions on area plans, Belgium would then also fail to comply with article 9, paragraph 4.

*(Belgium ACCC/2005/11; ECE/MP.PP/C.1/2006/4/Add.2, 28 July 2006, para. 40)*

The communicant makes the point that it is meaningless to provide access to justice in relation to a public participation procedure that takes place after the construction starts. While the Committee does not accept that access to justice at this stage is necessarily meaningless, if there were no opportunity for access to justice in relation to any permit procedures until after the construction has started, this would definitely be incompatible with article 9, paragraph 2, of the Convention. Access to justice must indeed be provided when it is effectively possible to challenge the decision permitting the activity in question. However, the Committee is not convinced that the EIA Directive as amended by the Public Participation Directive allows a Member State to maintain a system where access to justice in relation to the EIA permit is only provided after the construction has started; nor is it convinced that a Member State having fully implemented the EIA, Public Participation and IPPC Directives would be able to have a system that only provides an opportunity for the public to challenge decisions concerning technological choices at a stage when there is no realistic possibility for considering alternative technologies.

*(European Community ACCC/C/2006/17; ECE/MP.PP/2008/5/Add.10, 2 May 2008, para. 56)*

The Committee notes that indeed both the EIA and the IPPC Directives lack provisions clearly requiring the public concerned to be provided with effective remedies, including injunctive relief. While such remedies are essential for effective access to justice, when considering the structural characteristics of the Party concerned, and the general division of powers between the European Community and its Member States, it is not clear to the Committee whether procedural issues relating to remedies are part of the European Community's competence. In the absence of further information on this issue, the Committee cannot conclude that the European Community fails to comply with article 9, paragraph 4, of the Convention. The Committee nevertheless stresses the importance of such remedies and the need for the European Community and the EU Member States to determine whether such remedies should be provided only by the laws of the Member States or in addition by Community legislation.

*(European Community ACCC/C/2006/17; ECE/MP.PP/2008/5/Add.10, 2 May 2008, para. 57)*

Notwithstanding the distinctive structure of the European Community, and the nature of the relationship between the Convention and the EC secondary legislation, as outlined in paragraph 35, the Committee notes with concern the following general features of the Community legal framework:

(a) Lack of express wording requiring the public to be informed in an "adequate, timely and effective manner" in the provisions regarding public participation in the EIA and IPPC Directives;

(b) Lack of a clear obligation to provide the public concerned with effective remedies, including injunctive relief, in the provisions regarding access to justice in the EIA and IPPC Directives.

While the Committee is not convinced that these features amount to a failure to comply with article 3, paragraph 1, it considers that they may adversely affect the implementation of article 6 of the Convention. Moreover, having essentially limited its examination to decision-making relating to landfills, the Committee does not make any conclusions with regard to other activities listed in annex I of the Convention. Nor does it make any conclusions concerning the precise correlation between the list of activities contained in annex I of the Convention and those contained in the respective annexes to the EIA and IPPC Directives.

*(European Community ACCC/C/2006/17; ECE/MP.PP/2008/5/Add.10, 2 May 2008, para 59)*

The Committee is aware that several kinds of decisions related to nature conservation can be appealed within the administrative system to the Nature Protection Board of Appeal. Often these decisions concern the protection of areas and habitats, and conflicts between the landowners' interests in using land against the public interest of preserving nature. However, some decisions relating to the direct protection of species of wild fauna, such as the new licensing regime on the culling of birds, cannot be appealed to the Nature Protection Board of Appeal, but only to a court. In the view of the Committee, although access to courts is an essential element, providing an administrative appeal to the Nature Protection Board of Appeal, in addition to the court procedure, would seem to be a more effective way

***AtoJ after  
construction starts/  
EIA directive***

***EIA/IPPC directives***

of promoting the objective of the Convention than the current system

*(Denmark ACCC/C/2006/18; ECE/MP.PP/2008/5/Add.4, 29 April 2008, para. 39)*

Three appeals were lodged against the authorization by the Prefect, two of which sought the suspension of the authorization and one of which sought the annulment of the authorization. Whereas the interim judge of the Administrative Court of Marseille rejected one of the applications for interim measures, the other application was approved, thus resulting in a decision to suspend the authorization. However, upon appeal by the Ministry of Environment and Sustainable Development, the Conseil d'Etat reversed the decision. Thus it set aside the suspension on the grounds that the urgency requirement had not been met, in particular because the incinerator was unlikely to start operating before July 2008. While in the Committee's view refusing interim measures can amount to non-compliance with article 9, paragraph 5, of the Convention, the Committee is not convinced that the reasoning of the Conseil d'Etat in the given case implies such a violation.

*(France ACCC/C/2007/22; ECE/MP.PP/C.1/2009/4/Add.1, 8 February 2011, para. 48)*

The Administrative Court of Marseille rejected the application to annul the authorization on the merits, stating that when considering which provisions have a direct effect according to French law, paragraphs 2 and 3 of article 6 have such effect, but that this is not the case with paragraphs 4 and 5 of article 6. The Committee notes that while the Parties may implement the Convention in different ways, e.g. by fully transforming the provisions through national legislation or by, to some extent relying on notions of direct effect, it is apparent that paragraph 5 of article 6 cannot be complied with unless it is fully reflected in the national law of the Parties.

*(France ACCC/C/2007/22; ECE/MP.PP/C.1/2009/4/Add.1, 8 February 2011, para. 49)*

Given that none of the decisions taken amount to a permitting decision under article 6 of the Convention, the Committee finds that article 9, paragraph 2, and subsequently paragraph 4 of the Convention, do not apply to the phase of the decision-making process considered in the present case with respect to the consideration of alternative transport solutions in the Enns Valley.

*(Austria ACCC/C/2008/26; ECE/MP.PP/C.1/2009/6/Add.1, 8 February 2011, para. 58)*

The Committee finds that this kind of reasoning creates a system where citizens cannot actually obtain injunctive relief early or late; it indicates that while injunctive relief is theoretically available, it is not available in practice. As a result, the Committee finds that the Party concerned is in non-compliance with article 9, paragraph 4, of the Convention, which requires Parties to provide adequate and effective remedies, including injunctive relief.

*(Spain ACCC/C/2008/24; ECE/MP.PP/C.1/2009/8/Add.1, 30 September 2010, para.105)*

**NOTE:** The court first denied to suspend project because it was too early and further decisions were needed to allow for actual construction and, later, courts denied to suspend the construction because it was too late.

The Committee emphasizes that article 9, paragraph 4, of the Convention applies also to situations where a member of the public seeks to appeal an unfavourable court decision that involves a public authority and matters covered by the Aarhus Convention. Thus the Party concerned is obliged to implement the Convention in an appropriate way so as to prevent unfair, inequitable or prohibitively expensive cost orders being imposed on a member of the public in such appeal cases.

*(Spain ACCC/C/2008/24; ECE/MP.PP/C.1/2009/8/Add.1, 30 September 2010, para.108)*

From a formal point of view, Spanish legislation does not appear to prevent decisions concerning the cost of appeal from taking fully into account the requirements of article 9, paragraph 4, that procedures be fair, equitable and not prohibitively expensive. However, the evidence presented to the Committee demonstrates clearly that in practice if a natural or legal person loses in the court of first instance against a public authority, appeals the decision and loses again, the related costs are being imposed on the appellant. The Committee therefore stresses that if the trend referred to reflects a general practice of courts of appeal in Spain in such cases this constitutes non-compliance with article 9, paragraph 4, of the Convention.

*(Spain ACCC/C/2008/24; ECE/MP.PP/C.1/2009/8/Add.1, 30 September 2010, para.110)*

Regarding the requirement of timely remedies, a decision on whether to grant suspension as a preventive measure should be issued before the decision is executed. In the present case,

*theoretic  
availability*

*suspension  
after construction  
starts*

it took eight months for the court to issue a decision on whether to grant the suspension sought for the Urbanization Project. Even if it had been granted, the suspension would have been meaningless as construction works were already in process. The Committee has already held that “if there were do opportunity for access to justice in relation to any permit procedures until after the construction has started, this would definitely be incompatible with article 9, paragraph 2, of the Convention.

Access to justice must indeed be provided when it is effectively possible to challenge the decision permitting the activity in question” (ECE/MP.PP/2008/5/Add.10, para. 56 (European Community)). In the present case, since no timely, adequate or effective remedies were available, the Party concerned is in non-compliance with article 9, paragraph 4.

*(Spain ACCC/C/2008/24; ECE/MP.PP/C.1/2009/8/Add.1, 30 September 2010, para.112)*

### **legal aid system**

The Committee notes that the present system of legal aid, as it applies to NGOs.. appears to be very restrictive for small NGOs. The Committee considers that by setting high financial requirements for an entity to qualify as a public utility entity and thus enabling it to receive free legal aid, the current Spanish system is contradictory. Such a financial requirement challenges the inherent meaning of free legal aid, which aims to facilitate access to justice for the financially weaker. The Committee finds that instituting a system on legal aid which excludes small NGOs from receiving legal aid provides sufficient evidence to conclude that the Party concerned did not take into consideration the establishment of appropriate assistance mechanisms to remove or reduce financial barriers to access to justice. Thus, the Party concerned failed to comply with article 9, paragraph 5, of the Convention and failed to provide for fair and equitable remedies, as required by article 9, paragraph 4, of the Convention.

*(Spain ACCC/C/2009/36; ECE/MP.PP/C.1/2010/4/Add.2, 08 February 2011, para.66)*

The Committee, having found that article 9, paragraph 3, of the Convention is applicable to the law of private nuisance in the context of the present case, also finds that article 9, paragraph 4, requiring that the procedures referred to in paragraph 3 shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive, is thereby also applicable.

*(United Kingdom ACCC/C/2008/23; ECE/MP.PP/C.1/2010/6/Add.1, October 2010, para. 46)*

With respect to the communicants’ allegations that the costs order of 21 December 2007 of £5,130 plus interest was prohibitively expensive under article 9, paragraph 4, the Committee finds that the quantum of the order was not prohibitively expensive in this case. This was also acknowledged by the representative of the communicants.

*(United Kingdom ACCC/C/2008/23; ECE/MP.PP/C.1/2010/6/Add.1, October 2010, para. 49)*

The above excerpt of the Court of Appeal’s judgement makes it clear that if the operator had cooperated with the communicants’ invitation (at the Council and Agency’s suggestion) to name an alternative expert, the injunction may have been varied by consent without the need for the Council and Agency to incur the costs of instructing counsel to attend the Court of Appeal hearing. Thus, it was the operator’s refusal to cooperate in naming an expert that led to the Council and Agency having to attend the hearing on 21 December 2007, incurring the £5,130 legal costs as a result. In these circumstances, the Committee considers that the Court of Appeal’s subsequent order that the communicants pay the whole of the Council and Agency’s legal costs (without the operator being ordered to contribute at all) was unfair and inequitable and constitutes stricto sensu non-compliance with article 9, paragraph 4, of the Convention, also given the fact that the Court could have decided to reserve the whole of the costs issue to the trial judge. The trial judge may have been in a better position to ascertain what allocation of cost would be fair and equitable given the overall proceedings of the case. However, taking into consideration that no evidence has been presented to substantiate that the non-compliance in this case was due to a systemic error, the Committee refrains from presenting any recommendations.

*(United Kingdom ACCC/C/2008/23; ECE/MP.PP/C.1/2010/6/Add.1, October 2010, para. 52)*

### **prohibitively expensive**

Since the communicant’s judicial review proceedings were judicial procedures under article 9, paragraph 3, of the Convention, these proceedings were also subject to the requirements of article 9, paragraph 4, of the Convention. The Committee finds that the quantum of costs awarded in this case, £39,454, was prohibitively expensive within the meaning of article 9, paragraph 4, and thus, amounted to non-compliance.

*(United Kingdom ACCC/C/2008/27; ECE/MP.PP/C.1/2010/6/Add.2, November 2010, para. 44)*

### **fairness & costs**

The Committee in this respect also stresses that “fairness” in article 9, paragraph 4, refers to what is fair for the claimant, not the defendant, a public body. The Committee, moreover,

finds that fairness in cases of judicial review where a member of the public is pursuing environmental concerns that involve the public interest and loses the case, the fact that the public interest is at stake should be accounted for in allocating costs. The Committee accordingly finds that the manner in which the costs were allocated in this case was unfair within the meaning of article 9, paragraph 4, of the Convention and thus, amounted to non-compliance.

*(United Kingdom ACCC/C/2008/27; ECE/MP.PP/C.1/2010/6/Add.2, November 2010, para. 45)*

The Committee has concluded in paragraph 87 that the established jurisprudence of the EU Courts prevents access to judicial review procedures of acts and omissions by EU institutions, when acting as public authorities. This jurisprudence also implies that there is no effective remedy when such acts and omissions are challenged. Thus, the Committee is convinced that if the jurisprudence of the EU Courts examined in paragraphs 76-88 were to continue, unless fully compensated for by adequate administrative review procedures, the Party concerned would also fail to comply with article 9, paragraph 4, of the Convention (cf. ACCC/C/2005/11 (Belgium) (ECE/MP.PP/C.1/2006/4/Add.2, para. 40)).

*(European Union ACCC/C/2008/32 (Part I); ECE/MP.PP/C.1/2011/4/Add.1, May 2011, para. 92)*

The Communicant alleges that the costs incurred for the losing party before the EU Courts are uncertain and may be prohibitively expensive. The Party concerned disagrees with the communicant because the Court in principle does not charge any fees, and the costs of the losing party are nominal, unless the Commission hires an external lawyer. Based on the fact that the communicant did not present any case where the EU Courts have decided to allocate the costs on applicants in a way that would make the procedure prohibitively expensive, and having examined the applicable rules of procedure on costs and legal aid, the Committee finds that the allegations concerning costs were not sufficiently substantiated by the communicant.

*(European Union ACCC/C/2008/32 (Part I); ECE/MP.PP/C.1/2011/4/Add.1, May 2011, para. 93)*

When assessing the costs related to procedures for access to justice in the light of the standard set by article 9, paragraph 4, of the Convention, the Committee considers the cost system as a whole and in a systemic manner.

*(United Kingdom ACCC/C/2008/33; ECE/MP.PP/C.1/2010/6/Add.3, December 2010, para. 128)*

The Committee considers that the “costs follow the event rule”, contained in CPR rule 44.3 (2), is not inherently objectionable under the Convention, although the compatibility of this rule with the Convention depends on the outcome in each specific case and the existence of a clear rule that prevents prohibitively expensive procedures. In this context, the Committee considers whether the effects of “costs follow the event rule” can be softened by legal aid, CFAs and PCOs, as well as by the considerable discretionary powers that the courts have in interpreting and applying the relevant law. At this stage, however, at least four potential problems emerge with regard to the legal system of England and Wales. First, the “general public importance”, “no private interest” and “in exceptional circumstances” criteria applied when considering the granting of PCOs. Second, the limiting effects of (i) the costs for a claimant if a PCO is applied for and not granted and (ii) PCOs that cap the costs of both parties. Third, the potential effect of cross-undertakings in damages on the costs incurred by a claimant. Fourth, the fact that in determining the allocation of costs in a given case, the public interest nature of the environmental claims under consideration is not in and of itself given sufficient consideration.

*(United Kingdom ACCC/C/2008/33; ECE/MP.PP/C.1/2010/6/Add.3, December 2010, para. 129)*

While the courts in England and Wales have applied a flexible approach to Corner House criteria when considering the granting of PCOs, including the “general public importance”, “no private interest” and “exceptional circumstances” criteria, they have also indicated that, given the ruling in Corner House, there are limits to this flexible approach.

The Committee notes the numerous calls by judges suggesting that the Civil Procedure Rules Committee take legislative action in respect of PCOs, also in view of the Convention (see para. 102 above). These calls have to date not resulted in amendment of the Civil Procedure Rules so as to ensure that all cases within the scope of article 9 of the Aarhus Convention are accorded the standards set by the Convention. The Convention, among other things, requires its Parties to “provide adequate and effective remedies” which shall be “fair, equitable [...] and not prohibitively expensive”. The Committee endorses the calls by the judiciary and suggests that the Party concerned amend the Civil Procedure Rules in the light of the standards set by the Convention.

*(United Kingdom ACCC/C/2008/33; ECE/MP.PP/C.1/2010/6/Add.3, December 2010, para. 130)*

**costs follow  
the event rule/  
PCOs (UK)**



Within such considerations the Committee finds that the Party concerned should also consider the cost that may be incurred by a claimant in those cases where a PCO is applied for but not granted, as suggested in appendix 3 to the Sullivan Report.<sup>102</sup> The Committee endorses this recommendation.

*(United Kingdom ACCC/C/2008/33; ECE/MP.PP/C.1/2010/6/Add.3, December 2010, para. 131)*

The Committee also notes the limiting effect of reciprocal cost caps which, as noted in Corner House, in practice entail that “when their lawyers are not willing to act pro bono” successful claimants are entitled to recover only solicitor’s fees and fees for one junior counsel “that are no more than modest”.<sup>103</sup> The Committee in this respect finds that it is essential that, where costs are concerned, the equality of arms between parties to a case should be secured, entailing that claimants should in practice not have to rely on pro bono or junior legal counsel.

*(United Kingdom ACCC/C/2008/33; ECE/MP.PP/C.1/2010/6/Add.3, December 2010, para. 132)*

A particular issue before the Committee are the costs associated with requests for injunctive relief. Under the law of England and Wales, courts may, and usually do, require claimants to give cross-undertakings in damages. As shown, for example, by the Sullivan Report, this may entail potential liabilities of several thousands, if not several hundreds of thousands of pounds.<sup>104</sup> This leads to the situation where injunctive relief is not pursued, because of the high costs at risk, where the claimant is legitimately pursuing environmental concerns that involve the public interest. Such effects would amount to prohibitively expensive procedures that are not in compliance with article 9, paragraph 4.

*(United Kingdom ACCC/C/2008/33; ECE/MP.PP/C.1/2010/6/Add.3, December 2010, para. 133)*

Moreover, in accordance with its findings in ACCC/C/2008/23 (United Kingdom) and ACCC/C/2008/27 (United Kingdom), the Committee considers that in legal proceedings within the scope of article 9 of the Convention the public interest nature of the environmental claims under consideration does not seem to be given sufficient consideration in the apportioning of costs by the courts.

*(United Kingdom ACCC/C/2008/33; ECE/MP.PP/C.1/2010/6/Add.3, December 2010, para. 134)*

### **uncertainty regarding costs**

The Committee concludes that, despite the various measures available to address prohibitive costs, taken together they do not ensure that the costs remain at a level which meets the requirements under the Convention. At this stage, the Committee considers that the considerable discretion of the courts of England and Wales in deciding the costs, without any clear legally binding direction from the legislature or judiciary to ensure costs are not prohibitively expensive, leads to considerable uncertainty regarding the costs to be faced where claimants are legitimately pursuing environmental concerns that involve the public interest. The Committee also notes the Court of Appeal’s judgement in *Morgan v. Hinton Organics*, which held that the principles of the Convention are “at most” a factor which it “may” (not must) “have regard to in exercising its discretion”,<sup>105</sup> “along with a number of other factors, such as fairness to the defendant”.<sup>106</sup> The Committee in this respect notes that “fairness” in article 9, paragraph 4, refers to what is fair for the claimant, not the defendant.

*(United Kingdom ACCC/C/2008/33; ECE/MP.PP/C.1/2010/6/Add.3, December 2010, para. 135)*

In the light of the above, the Committee concludes that the Party concerned has not adequately implemented its obligation in article 9, paragraph 4, to ensure that the procedures subject to article 9 are not prohibitively expensive. In addition, the Committee finds that the system as a whole is not such as “to remove or reduce financial [...] barriers to access to justice”, as article 9, paragraph 5, of the Convention requires a Party to the Convention to consider.

*(United Kingdom ACCC/C/2008/33; ECE/MP.PP/C.1/2010/6/Add.3, December 2010, para. 136)*

The Committee finds that the three-month requirement specified in CPR rule 54.5 (1) is not as such problematic under the Convention, also in comparison with the time limits applicable in other Parties to the Convention. However, the Committee considers that the courts in England and Wales have considerable discretion in reducing the time limits by interpreting the requirement under the same provision that an application for a judicial review be filed “promptly” (see paras. 113–116). This may result in a claim for judicial review not being lodged promptly even if brought within the three-month period. The Committee also considers that the courts in England and Wales, in exercising their judicial discretion, apply various moments at which a time may start to run, depending on the circumstances of the case (see para. 117). The justification for discretion regarding time limits for judicial review, the Party concerned submits, is constituted by the public interest

considerations which generally are at stake in such cases. While the Committee accepts that a balance needs to be assured between the interests at stake, it also considers that this approach entails significant uncertainty for the claimant. The Committee finds that in the interest of fairness and legal certainty it is necessary to (i) set a clear minimum time limit within which a claim should be brought, and (ii) time limits should start to run from the date on which a claimant knew, or ought to have known of the act, or omission, at stake.

*(United Kingdom ACCC/C/2008/33; ECE/MP.PP/C.1/2010/6/Add.3, December 2010, para. 138)*

As was pointed out with regard to the costs of procedures (see para. 134 above), the Party concerned cannot rely on judicial discretion of the courts to ensure that the rules for timing of judicial review applications meet the requirements of article 9, paragraph 4. On the contrary, reliance on such discretion has resulted in inadequate implementation of article 9, paragraph 4. The Committee finds that by failing to establish clear time limits within which claims may be brought and to set a clear and consistent point at which time starts to run, i.e., the date on which a claimant knew, or ought to have known of the act, or omission, at stake, the Party concerned has failed to comply with the requirement in article 9, paragraph 4, that procedures subject to article 9 be fair and equitable.

*(United Kingdom ACCC/C/2008/33; ECE/MP.PP/C.1/2010/6/Add.3, December 2010, para. 139)*

The national legislation of the Party concerned requires that if the authority does not provide any answer to the request for information within two months and it further fails to provide official notification within the next six months, the information requester has to proceed with the devolution request and only after it has received a response to its devolution request, can it seek a review procedure. This means that, if the requester believes that its request was not properly addressed by the authorities, it may have to wait for longer than one year after its initial request for information until it can access a review procedure. Therefore, the Committee finds that the Party concerned fails to ensure access to a timely review procedure with respect to requests for information, as required by article 9, paragraph 4 of the Convention.

*(Austria ACCC/C/2010/48; ECE/MP.PP/C.1/2012/4, 17 April 2012, para. 59)*

With regard to the communicant's first allegation, the Committee holds that the requirement for fair procedures means that the process, including the final ruling of the decision-making body, must be impartial and free from prejudice, favouritism or self-interest. While the requirement for fair procedures applies equally to all persons, the Committee nevertheless considers that a criterion that distinguishes between individuals and legal persons – like the differentiated fee in the present case – is not in itself necessarily unfair. The Committee does not find that the Party concerned fails to comply with article 9, paragraph 4, on this ground.

*(Denmark ACCC/C/2011/57; ECE/MP.PP/C.1/2012/7, 16 July 2012, para. 44)*

When assessing if the new fees regime is “prohibitively expensive”, apart from the amount of the fee as such, the Committee considers the following aspects of the system as a whole to be particularly relevant: (a) the contribution made by appeals by NGOs to improving environmental protection and the effective implementation of the Danish Livestock Act; (b) the expected result of the introduction of the new fee on the number of appeals by NGOs to NEAB; and (c) the fees for access to justice in environmental matters as compared with fees for access to justice in other matters in Denmark.

*(Denmark ACCC/C/2011/57; ECE/MP.PP/C.1/2012/7, 16 July 2012, para. 48)*

According to the statistics provided by the Party concerned (see para. 21 above), it is evident that NGO efforts resulted in the repeal of a large number of illegal decisions, a halt on many potentially environmentally harmful activities, and the imposition of measures for limiting other harmful effects on the environment. These statistics alone provide sufficient evidence of the contribution made by appeals by NGOs to improving environmental protection and the effective implementation of the Danish Livestock Act.

*(Denmark ACCC/C/2011/57; ECE/MP.PP/C.1/2012/7, 16 July 2012, para.49)*

It is the communicant's strongly put submission that the increased fees for NGOs will result in a decrease in the number of environmental appeals filed by NGOs before NEAB. Moreover, the Explanatory Note to the bill introducing the new fees regime explicitly states: “the number of appeals submitted by organizations and enterprises is expected to decrease” Therefore, the Committee finds that the new fees system was intended to, and is likely to, result in a decrease of the number of appeals filed against environmental decisions by NGOs.

*(Denmark ACCC/C/2011/57; ECE/MP.PP/C.1/2012/7, 16 July 2012, para. 50)*

***judicial  
discretion***

***timely review  
procedure***

***fair procedure***

***prohibitively  
expensive***

The Committee has been provided information by the Party concerned regarding the cost to appeal administrative decisions before other similar quasi-judicial bodies in the Party concerned, including those concerned with patients' rights (health), consumer issues, energy supply and tax matters. The Committee notes that such appeals are either free of charge or have fees of considerably less than DKK 3,000, whereas higher fees are charged for appeals concerning matters regarding primarily commercial interests, such as competition, patent and trademark rights. The Committee also notes that NGO appeals before NEAB have more the nature of appeals to the first group of bodies than appeals regarding primarily commercial interests.

(Denmark ACCC/C/2011/57; ECE/MP.PP/C.1/2012/7, 16 July 2012, para. 51)

Based on the above three considerations, the Committee finds that the fee of DKK 3,000 for NGOs to appeal to NEAB is in breach of the requirement in article 9, paragraph 4, that access to justice procedures not be prohibitively expensive.

(Denmark ACCC/C/2011/57; ECE/MP.PP/C.1/2012/7, 16 July 2012, para. 52)

### *timely*

As regards the allegations of non-compliance with article 9, paragraph 4, of the Convention, on the grounds that procedures are not timely, the Committee considers that one year is not a particularly long time for a supreme court to deliver a decision in this case, and that the allegations were not sufficiently substantiated. Hence, the Committee does not find the Party concerned to be in non-compliance with article 9, paragraph 4, of the Convention, in this respect.

(Armenia ACCC/C/2011/62; ECE/MP.PP/C.1/2013/14, 23 October 2013, para. 38)

Regarding injunctive relief, the communicant referred to a 2004 ruling of the District Court of Plzen (not a supreme court) relating to land-use plans and injunctions, alleging that some courts continued to apply this argumentation. While the communicant conceded that some courts follow a different line, in its view it is "typical" that injunctive relief is not given. The communicant cited two other decisions to this effect. [H]owever, from the oral and written submissions of both parties, it appears that there may be a shift in jurisprudence in granting suspensory effect or injunctive relief in environmental cases. The Committee considers that the communicant has not provided sufficient systematic jurisprudence to substantiate its allegations, that the criteria for injunctive relief are too restrictive. Therefore, the Committee cannot, in this case, conclude that the Party concerned fails to comply with the requirements in article 9, para. 4, for adequate and effective remedies and timely procedures in respect of injunctive relief in environmental cases.

(Czech Republic ACCC/C/2010/50; ECE/MP.PP/C.1/2012/11, 2 October 2012, para. 87)

### *tiered decision-making*

In the present case, since the communicant does not allege non-compliance with article 6 of the Convention with respect to the final stage of the tiered decision-making for the activities listed in annex I to the Convention, i.e., the permits according to the SPA, the Committee will not deal with this issue. However, it is appropriate to apply the above reasoning concerning the tiered decision-making also when examining which decisions, issued in the tiered decision-making processes, shall be subject to judicial review upon an appeal by the members of the public concerned. For this examination, article 9, paragraph 4, of the Convention, according to which the procedures for challenging acts and omissions that may contravene national law relating to the environment must provide adequate and effective remedies, is also relevant (cf., e.g., findings on communication ACCC/C/2004/6 concerning Kazakhstan (ECE/MP.PP/C.1/2006/4/Add.1), para. 31).

(Bulgaria ACCC/C/2011/58; ECE/MP.PP/C.1/2013/4, 11 January 2013, para. 76)

### *link to Art. 9.3*

The central allegation of the communication is the lack of possibility for members of the public, including NGOs, to have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of the national law relating to the environment, under article 9, paragraph 3, of the Convention. The Committee decides not to consider alleged non-compliance with article 9, paragraph 4, of the Convention on the merits, because in the present case the allegations of the absence of effective remedies (art. 9, para. 4) are subsumed by the allegations of a complete absence of any remedies (art. 9, para. 3). That is, if the Committee holds that the Party concerned fails to provide any remedy, as provided for under article 9, paragraph 3, this also implies a failure by the Party concerned to comply with article 9, paragraph 4.

(Austria ACCC/C/2011/63; ECE/MP.PP/C.1/2014/3, 13 January 2014, para. 48)

The communicant makes several allegations with respect to non-compliance with article 9, paragraph 4, of the Convention. First, regarding the allegation concerning the availability

of injunctive relief in environmental cases, on the basis of the information before it in the context of the current communication, the Committee is not in a position to make any findings concerning compliance in this respect.

*(Romania ACCC/C/2010/51; ECE/MP.PP/C.1/2014/12, 14 July 2014, para.100)*

Second, the communicant did not substantiate how the requirements in the law of the Party concerned that judges assigned to hear cases related to classified information must be certified to do so as such result in delayed, ineffective or unfair procedures. Therefore the Committee does not find that the Party concerned failed to comply with article 9, paragraph 4, with respect to access to justice in these respects.

*(Romania ACCC/C/2010/51; ECE/MP.PP/C.1/2014/12, 14 July 2014, para.101)*

Third, with respect to the allegations that the suspensive effect of an appeal affects the effectiveness of judicial procedures, the Committee notes that this constitutes a rather a common feature of law and practice in most jurisdictions, and the Committee considers that this feature serves well the rule of law. Therefore the Committee finds that the Party concerned did not fail to comply with article 9, paragraph 4, of the Convention as regards its obligation to provide for effective remedies.

*(Romania ACCC/C/2010/51; ECE/MP.PP/C.1/2014/12, 14 July 2014, para.102)*

Fourth, with respect to the allegations regarding the accessibility of court decisions, the Committee notes that the Party concerned referred to a number of arrangements already undertaken or planned to be undertaken to provide full accessibility to court decisions. The requirements in article 9, paragraph 4, are limited to the procedures referred to in article 9, paragraphs 1, 2 and 3, of the Convention. However, any reasons not to disclose a decision relating to the matters governed by the Convention, such as data protection, should be considered under the article 4 of the Convention and not under article 9, paragraph 4. Therefore the Committee finds that the Party concerned did not fail to comply with the requirement of article 9, paragraph 4, that decisions be publicly accessible.

*(Romania ACCC/C/2010/51; ECE/MP.PP/C.1/2014/12, 14 July 2014, para.103)*

Article 9, paragraph 2, in conjunction with article 9, paragraph 4, of the Convention requires Parties to provide members of the public concerned with access to effective judicial protection should their procedural rights under article 6 be violated. Therefore, it would not be compatible with the Convention to allow members of the public to challenge the procedural legality of the decisions subject to article 6 of the Convention in theory, while such actions were systematically refused by the courts in practice, as either not admissible or not well founded, on the grounds that the alleged procedural errors were not of importance for the decisions (i.e., that the decision would not have been different, if the procedural error had not taken place).

*(Germany ACCC/C/2008/31; ECE/MP.PP/C.1/2014/8, 4 June 2014, para. 83)*

5. In order to further the effectiveness of the provisions of this article, each Party shall ensure that information is provided to the public on access to administrative and judicial review procedures and shall consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice.

The Committee notes that the present system of legal aid, as it applies to NGOs .. appears to be very restrictive for small NGOs. The Committee considers that by setting high financial requirements for an entity to qualify as a public utility entity and thus enabling it to receive free legal aid, the current Spanish system is contradictory. Such a financial requirement challenges the inherent meaning of free legal aid, which aims to facilitate access to justice for the financially weaker. The Committee finds that instituting a system on legal aid which excludes small NGOs from receiving legal aid provides sufficient evidence to conclude that the Party concerned did not take into consideration the establishment of appropriate assistance mechanisms to remove or reduce financial barriers to access to justice. Thus, the Party concerned failed to comply with article 9, paragraph 5, of the Convention and failed to provide for fair and equitable remedies, as required by article 9, paragraph 4, of the Convention.

*(Spain ACCC/C/2009/36; ECE/MP.PP/C.1/2010/4/Add.2, 08 February 2011, para.66)*

In addition, with regard to the rule of dual representation (“abogado” and “procurador”; see para 16 above), for those seeking judicial review on appeal in Spain, the Party concerned did not oppose that this rule applies after the first instance (one judge). The Committee further notes that Spanish citizens therefore have to pay the fees for two lawyers after the first instance, and also the fees for the two lawyers of the winning party in the event that

***suspensive  
effect of appeal***

***systemic refusal  
by courts***

***legal aid system***

***dual representation  
in court proceedings***

they lose their case (loser pays principle). The Committee observes that the Spanish system of compulsory dual representation may potentially entail prohibitive expenses for the public. However, the Committee does not have detailed information on how high the costs of the dual representation may be, while it recognizes that such costs may vary in the different regions of the country. The Committee therefore stresses that maintaining a system that would lead to prohibitive expenses would amount to noncompliance with article 9, paragraph 4, of the Convention.

*(Spain ACCC/C/2009/36; ECE/MP.PP/C.1/2010/4/Add.2, 08 February 2011, para.67)*

### EU courts

The Communicant alleges that the costs incurred for the losing party before the EU Courts are uncertain and may be prohibitively expensive. The Party concerned disagrees with the communicant because the Court in principle does not charge any fees, and the costs of the losing party are nominal, unless the Commission hires an external lawyer. Based on the fact that the communicant did not present any case where the EU Courts have decided to allocate the costs on applicants in a way that would make the procedure prohibitively expensive, and having examined the applicable rules of procedure on costs and legal aid, the Committee finds that the allegations concerning costs were not sufficiently substantiated by the communicant.

*(European Union ACCC/C/2008/32 (Part I); ECE/MP.PP/C.1/2011/4/Add.1, May 2011, para. 93)*

## Article 10 MEETING OF THE PARTIES

1. The first meeting of the Parties shall be convened no later than one year after the date of the entry into force of this Convention. Thereafter, an ordinary meeting of the Parties shall be held at least once every two years, unless otherwise decided by the Parties, or at the written request of any Party, provided that, within six months of the request being communicated to all Parties by the Executive Secretary of the Economic Commission for Europe, the said request is supported by at least one third of the Parties.
2. At their meetings, the Parties shall keep under continuous review the implementation of this Convention on the basis of regular reporting by the Parties, and, with this purpose in mind, shall:
  - (a) Review the policies for and legal and methodological approaches to access to information, public participation in decision-making and access to justice in environmental matters, with a view to further improving them;
  - (b) Exchange information regarding experience gained in concluding and implementing bilateral and multilateral agreements or other arrangements having relevance to the purposes of this Convention and to which one or more of the Parties are a party;
  - (c) Seek, where appropriate, the services of relevant ECE bodies and other competent international bodies and specific committees in all aspects pertinent to the achievement of the purposes of this Convention;
  - (d) Establish any subsidiary bodies as they deem necessary;
  - (e) Prepare, where appropriate, protocols to this Convention;
  - (f) Consider and adopt proposals for amendments to this Convention in accordance with the provisions of article 14;
  - (g) Consider and undertake any additional action that may be required for the achievement of the purposes of this Convention;
  - (h) At their first meeting, consider and by consensus adopt rules of procedure for their meetings and the meetings of subsidiary bodies;
  - (i) At their first meeting, review their experience in implementing the provisions of article 5, paragraph 9, and consider what steps are necessary to develop further the system referred to in that paragraph, taking into account international processes and developments, including the elaboration of an appropriate instrument concerning pollution release and transfer registers or inventories which could be annexed to this Convention.
3. The Meeting of the Parties may, as necessary, consider establishing financial arrangements on a consensus basis.
4. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State or regional economic integration organization entitled under article 17 to sign

this Convention but which is not a Party to this Convention, and any intergovernmental organization qualified in the fields to which this Convention relates, shall be entitled to participate as observers in the meetings of the Parties.

5. Any non-governmental organization, qualified in the fields to which this Convention relates, which has informed the Executive Secretary of the Economic Commission for Europe of its wish to be represented at a meeting of the Parties shall be entitled to participate as an observer unless at least one third of the Parties present in the meeting raise objections.
6. For the purposes of paragraphs 4 and 5 above, the rules of procedure referred to in paragraph 2 (h) above shall provide for practical arrangements for the admittance procedure and other relevant terms.

## Article 11 RIGHT TO VOTE

1. Except as provided for in paragraph 2 below, each Party to this Convention shall have one vote.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States which are Parties to this Convention. Such organizations shall not exercise their right to vote if their member States exercise theirs, and vice versa.

## Article 12 SECRETARIAT

The Executive Secretary of the Economic Commission for Europe shall carry out the following secretariat functions:

- (a) The convening and preparing of meetings of the Parties;
- (b) The transmission to the Parties of reports and other information received in accordance with the provisions of this Convention; and
- (c) Such other functions as may be determined by the Parties.

## Article 13 ANNEXES

The annexes to this Convention shall constitute an integral part thereof.

## Article 14 AMENDMENTS TO THE CONVENTION

1. Any Party may propose amendments to this Convention.
2. The text of any proposed amendment to this Convention shall be submitted in writing to the Executive Secretary of the Economic Commission for Europe, who shall communicate it to all Parties at least ninety days before the meeting of the Parties at which it is proposed for adoption.
3. The Parties shall make every effort to reach agreement on any proposed amendment to this Convention by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting.
4. Amendments to this Convention adopted in accordance with paragraph 3 above shall be communicated by the Depositary to all Parties for ratification, approval or acceptance. Amendments to this Convention other than those to an annex shall enter into force for Parties having ratified, approved or accepted them on the ninetieth day after the receipt by the Depositary of notification of their ratification, approval or acceptance by at least three fourths of these Parties. Thereafter they shall enter into force for any other Party on the ninetieth day after that Party deposits its instrument of ratification, approval or acceptance of the amendments.
5. Any Party that is unable to approve an amendment to an annex to this Convention shall so notify the Depositary in writing within twelve months from the date of the communication of the adoption. The Depositary shall without delay notify all Parties of any such notification received. A Party may at any time substitute an acceptance for its previous notification and, upon deposit

of an instrument of acceptance with the Depositary, the amendments to such an annex shall become effective for that Party.

6. On the expiry of twelve months from the date of its communication by the Depositary as provided for in paragraph 4 above an amendment to an annex shall become effective for those Parties which have not submitted a notification to the Depositary in accordance with the provisions of paragraph 5 above, provided that not more than one third of the Parties have submitted such a notification.
7. For the purposes of this article, «Parties present and voting» means Parties present and casting an affirmative or negative vote.

## Article 15 REVIEW OF COMPLIANCE

The Meeting of the Parties shall establish, on a consensus basis, optional arrangements of a non-confrontational, non-judicial and consultative nature for reviewing compliance with the provisions of this Convention. These arrangements shall allow for appropriate public involvement and may include the option of considering communications from members of the public on matters related to this Convention.

## Article 16 SETTLEMENT OF DISPUTES

1. If a dispute arises between two or more Parties about the interpretation or application of this Convention, they shall seek a solution by negotiation or by any other means of dispute settlement acceptable to the parties to the dispute.
2. When signing, ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a Party may declare in writing to the Depositary that, for a dispute not resolved in accordance with paragraph 1 above, it accepts one or both of the following means of dispute settlement as compulsory in relation to any Party accepting the same obligation:
  - (a) Submission of the dispute to the International Court of Justice;
  - (b) Arbitration in accordance with the procedure set out in annex II.
3. If the parties to the dispute have accepted both means of dispute settlement referred to in paragraph 2 above, the dispute may be submitted only to the International Court of Justice, unless the parties agree otherwise.

## Article 17 SIGNATURE

This Convention shall be open for signature at Aarhus (Denmark) on 25 June 1998, and thereafter at United Nations Headquarters in New York until 21 December 1998, by States members of the Economic Commission for Europe as well as States having consultative status with the Economic Commission for Europe pursuant to paragraphs 8 and 11 of Economic and Social Council resolution 36 (IV) of 28 March 1947, and by regional economic integration organizations constituted by sovereign States members of the Economic Commission for Europe to which their member States have transferred competence over matters governed by this Convention, including the competence to enter into treaties in respect of these matters.

## Article 18 DEPOSITARY

The Secretary-General of the United Nations shall act as the Depositary of this Convention.

## Article 19 RATIFICATION, ACCEPTANCE, APPROVAL AND ACCESSION

1. This Convention shall be subject to ratification, acceptance or approval by signatory States and regional economic integration organizations.

2. This Convention shall be open for accession as from 22 December 1998 by the States and regional economic integration organizations referred to in article 17.
3. Any other State, not referred to in paragraph 2 above, that is a Member of the United Nations may accede to the Convention upon approval by the Meeting of the Parties.
4. Any organization referred to in article 17 which becomes a Party to this Convention without any of its member States being a Party shall be bound by all the obligations under this Convention. If one or more of such an organization's member States is a Party to this Convention, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under this Convention. In such cases, the organization and the member States shall not be entitled to exercise rights under this Convention concurrently.
5. In their instruments of ratification, acceptance, approval or accession, the regional economic integration organizations referred to in article 17 shall declare the extent of their competence with respect to the matters governed by this Convention. These organizations shall also inform the Depositary of any substantial modification to the extent of their competence.

## Article 20 ENTRY INTO FORCE

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the sixteenth instrument of ratification, acceptance, approval or accession.
2. For the purposes of paragraph 1 above, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States members of such an organization.
3. For each State or organization referred to in article 17 which ratifies, accepts or approves this Convention or accedes thereto after the deposit of the sixteenth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the date of deposit by such State or organization of its instrument of ratification, acceptance, approval or accession.

## Article 21 WITHDRAWAL

At any time after three years from the date on which this Convention has come into force with respect to a Party, that Party may withdraw from the Convention by giving written notification to the Depositary. Any such withdrawal shall take effect on the ninetieth day after the date of its receipt by the Depositary.

## Article 22 AUTHENTIC TEXTS

The original of this Convention, of which the English, French and Russian texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Convention.

DONE at Aarhus (Denmark), this twenty-fifth day of June, one thousand nine hundred and ninety-eight.

## Annex I LIST OF ACTIVITIES REFERRED TO IN ARTICLE 6, PARAGRAPH 1 (a)

1. Energy sector:
  - Mineral oil and gas refineries;
  - Installations for gasification and liquefaction;



- Thermal power stations and other combustion installations with a heat input of 50 megawatts (MW) or more;
- Coke ovens;
- Nuclear power stations and other nuclear reactors including the dismantling or decommissioning of such power stations or reactors<sup>1/</sup> (except research installations for the production and conversion of fissionable and fertile materials whose maximum power does not exceed 1 kW continuous thermal load);

Nuclear power plants, such as the Mochovce NPP, are activities covered by article 6, paragraph 1, and annex I, paragraph 1, of the Convention, for which public participation shall be provided in permit procedures. The Committee notes that the original construction permit for Mochovce NPP Units 3 and 4 was issued in 1986, long before the Convention entered into force for Slovakia. This does not, as such, prevent the Convention from being applicable to subsequent reconsiderations and updates by public authorities of the conditions for the activity in question, and to possible permits given for extensions of the activity, after the entry into force of the Convention for the Party concerned.

*(Slovakia ACCC/C/2009/41; ECE/MP.PP/2011/11/Add.3, 12 May 2011, para. 44)*

The Committee also considers that if the Mochovce NPP had been in operation since 1986 under the conditions set at the time, the changes of the activity required by the 2008 decisions would have met the criteria set out in annex I, paragraphs 1 and 22, of the Convention. In this context, the Committee wishes to stress that, while for many activities listed in annex 1 to the Convention there are certain criteria or thresholds envisaged below which the requirements of article 6 paragraph 1 (a) would not apply, for some of the activities listed (including nuclear power stations) the Convention does not establish any criteria or thresholds. This means that these activities, regardless of their size, are subject to article 6, paragraph 1 (a), and thus provisions of article 6 must be applied with respect to decisions of whether to permit such activities. By virtue of the first sentence of paragraph 22 of annex 1 the same applies to a change or extension of such activities. Thus, in principle, all changes or extensions to such activities are subject to article 6. However, bearing in mind that a change or extension to already permitted activities requires reconsideration or updating of the existing permit, the provisions of article 6 would apply “mutatis mutandis, and where appropriate”, as stipulated in article 6, paragraph 10.

*(Slovakia ACCC/C/2009/41; ECE/MP.PP/2011/11/Add.3, 12 May 2011, para. 58)*

- Installations for the reprocessing of irradiated nuclear fuel;
- Installations designed:
  - For the production or enrichment of nuclear fuel;
  - For the processing of irradiated nuclear fuel or high-level radioactive waste;
  - For the final disposal of irradiated nuclear fuel;
  - Solely for the final disposal of radioactive waste;
  - Solely for the storage (planned for more than 10 years) of irradiated nuclear fuels or radioactive waste in a different site than the production site.
- 2. Production and processing of metals:
  - Metal ore (including sulphide ore) roasting or sintering installations;
  - Installations for the production of pig-iron or steel (primary or secondary fusion) including continuous casting, with a capacity exceeding 2.5 tons per hour;
  - Installations for the processing of ferrous metals:
    - (i) Hot-rolling mills with a capacity exceeding 20 tons of crude steel per hour;
    - (ii) Smitheries with hammers the energy of which exceeds 50 kilojoules per hammer, where the calorific power used exceeds 20 MW;
    - (iii) Application of protective fused metal coats with an input exceeding 2 tons of crude steel per hour;
  - Ferrous metal foundries with a production capacity exceeding 20 tons per day;
  - Installations:
    - (i) For the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes;

- (ii) For the smelting, including the alloying, of non-ferrous metals, including recovered products (refining, foundry casting, etc.), with a melting capacity exceeding 4 tons per day for lead and cadmium or 20 tons per day for all other metals;
  - Installations for surface treatment of metals and plastic materials using an electrolytic or chemical process where the volume of the treatment vats exceeds 30 m<sup>3</sup>.
3. Mineral industry:
- Installations for the production of cement clinker in rotary kilns with a production capacity exceeding 500 tons per day or lime in rotary kilns with a production capacity exceeding 50 tons per day or in other furnaces with a production capacity exceeding 50 tons per day;
  - Installations for the production of asbestos and the manufacture of asbestos-based products;
  - Installations for the manufacture of glass including glass fibre with a melting capacity exceeding 20 tons per day;
  - Installations for melting mineral substances including the production of mineral fibres with a melting capacity exceeding 20 tons per day;
  - Installations for the manufacture of ceramic products by firing, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain, with a production capacity exceeding 75 tons per day, and/or with a kiln capacity exceeding 4 m<sup>3</sup> and with a setting density per kiln exceeding 300 kg/m<sup>3</sup>.
4. Chemical industry: Production within the meaning of the categories of activities contained in this paragraph means the production on an industrial scale by chemical processing of substances or groups of substances listed in subparagraphs (a) to (g):
- (a) Chemical installations for the production of basic organic chemicals, such as:
- (i) Simple hydrocarbons (linear or cyclic, saturated or unsaturated, aliphatic or aromatic);
  - (ii) Oxygen-containing hydrocarbons such as alcohols, aldehydes, ketones, carboxylic acids, esters, acetates, ethers, peroxides, epoxy resins;
  - (iii) Sulphurous hydrocarbons;
  - (iv) Nitrogenous hydrocarbons such as amines, amides, nitrous compounds, nitro compounds or nitrate compounds, nitriles, cyanates, isocyanates;
  - (v) Phosphorus-containing hydrocarbons;
  - (vi) Halogenic hydrocarbons;
  - (vii) Organometallic compounds;
  - (viii) Basic plastic materials (polymers, synthetic fibres and cellulose-based fibres);
  - (ix) Synthetic rubbers;
  - (x) Dyes and pigments;
  - (xi) Surface-active agents and surfactants;
- (b) Chemical installations for the production of basic inorganic chemicals, such as:
- (i) Gases, such as ammonia, chlorine or hydrogen chloride, fluorine or hydrogen fluoride, carbon oxides, sulphur compounds, nitrogen oxides, hydrogen, sulphur dioxide, carbonyl chloride;
  - (ii) Acids, such as chromic acid, hydrofluoric acid, phosphoric acid, nitric acid, hydrochloric acid, sulphuric acid, oleum, sulphurous acids;
  - (iii) Bases, such as ammonium hydroxide, potassium hydroxide, sodium hydroxide;
  - (iv) Salts, such as ammonium chloride, potassium chlorate, potassium carbonate, sodium carbonate, perborate, silver nitrate;
  - (v) Non-metals, metal oxides or other inorganic compounds such as calcium carbide, silicon, silicon carbide;
- (c) Chemical installations for the production of phosphorous-, nitrogen- or potassium-based fertilizers (simple or compound fertilizers);
- (d) Chemical installations for the production of basic plant health products and of biocides;
- (e) Installations using a chemical or biological process for the production of basic pharmaceutical products;

- (f) Chemical installations for the production of explosives;
  - (g) Chemical installations in which chemical or biological processing is used for the production of protein feed additives, ferments and other protein substances.
5. Waste management:
    - Installations for the incineration, recovery, chemical treatment or landfill of hazardous waste;
    - Installations for the incineration of municipal waste with a capacity exceeding 3 tons per hour;
    - Installations for the disposal of non-hazardous waste with a capacity exceeding 50 tons per day;
    - Landfills receiving more than 10 tons per day or with a total capacity exceeding 25,000 tons, excluding landfills of inert waste.
  6. Waste-water treatment plants with a capacity exceeding 150,000 population equivalent.
  7. Industrial plants for the:
    - (a) Production of pulp from timber or similar fibrous materials;
    - (b) Production of paper and board with a production capacity exceeding 20 tons per day.
  8. (a) Construction of lines for long-distance railway traffic and of airports<sup>2/</sup> with a basic runway length of 2,100 m or more;

Because the amended Planning Agreement does not fit within any of the activities listed in annex I to the Convention, the Committee finds that the adoption of the amended Planning Agreement is not a decision within the scope of article 6, paragraph 1 (a) of the Convention. Paragraph 8 (a) of annex I is the only paragraph of the annex relating to airports, but it concerns the construction of airports with a basic runway length of 2,100 metres or more. At the time of the events in question, the Belfast City Airport's runway was 1,829 metres, which is below the threshold set out in annex I. The amended Planning Agreement of 14 October 2008 concerned an increase in the number of permitted seats for sale. As noted in paragraph 22 above, the amended Planning Agreement did not change the existing runway length of the airport.

*(United Kingdom ACCC/C/2008/27; ECE/MP.PP/C.1/2010/6/Add.2, November 2010, para. 38)*

- (b) Construction of motorways and express roads;<sup>3/</sup>
- (c) Construction of a new road of four or more lanes, or realignment and/or widening of an existing road of two lanes or less so as to provide four or more lanes, where such new road, or realigned and/or widened section of road, would be 10 km or more in a continuous length.

The Committee finds that the AWPR is an activity covered by annex I of the Convention and thus subject to article 6, paragraph 1(a) of the Convention for two reasons. First, the AWPR involves the construction of a new road of four lanes of more than 10 kilometres in length (paragraph 8(c) of Annex I). Second, the AWPR is an activity regarding which national legislation (section 20A of the Roads (Scotland) Act 1984) requires that public participation be provided under the environmental impact assessment procedure (paragraph 19 of Annex I).

*(United Kingdom ACCC/C/2009/38; ECE/MP.PP/C.1/2011/2/Add.10, April 2011, para. 80)*

9. (a) Inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1,350 tons;

The decision-making process in question concerns construction of a deep-water navigation canal of a type that falls under paragraph 9 of annex I to the Aarhus Convention and therefore falls under article 6, paragraph 1 (a), of the Convention, triggering also the application of other provisions of that article.

*(Ukraine ACCC/C/2004/3 and ACCC/S/2004/1; ECE/MP.PP/C.1/2005/2/Add.3, 14 March 2005, para. 25)*

- (b) Trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1,350 tons.
10. Groundwater abstraction or artificial groundwater recharge schemes where the annual volume of water abstracted or recharged is equivalent to or exceeds 10 million cubic metres.
  11. (a) Works for the transfer of water resources between river basins where this transfer aims at preventing possible shortages of water and where the amount of water transferred exceeds 100 million cubic metres/year;

(b) In all other cases, works for the transfer of water resources between river basins where the multiannual average flow of the basin of abstraction exceeds 2,000 million cubic metres/year and where the amount of water transferred exceeds 5 per cent of this flow.

In both cases transfers of piped drinking water are excluded.

12. Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 tons/day in the case of petroleum and 500,000 cubic metres/day in the case of gas.
13. Dams and other installations designed for the holding back or permanent storage of water, where a new or additional amount of water held back or stored exceeds 10 million cubic metres.
14. Pipelines for the transport of gas, oil or chemicals with a diameter of more than 800 mm and a length of more than 40 km.
15. Installations for the intensive rearing of poultry or pigs with more than:
  - (a) 40,000 places for poultry;
  - (b) 2,000 places for production pigs (over 30 kg); or
  - (c) 750 places for sows.
16. Quarries and opencast mining where the surface of the site exceeds 25 hectares, or peat extraction, where the surface of the site exceeds 150 hectares.
17. Construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 km.
18. Installations for the storage of petroleum, petrochemical, or chemical products with a capacity of 200,000 tons or more.
19. Other activities:
  - Plants for the pretreatment (operations such as washing, bleaching, mercerization) or dyeing of fibres or textiles where the treatment capacity exceeds 10 tons per day;
  - Plants for the tanning of hides and skins where the treatment capacity exceeds 12 tons of finished products per day;
    - (a) Slaughterhouses with a carcass production capacity greater than 50 tons per day;
    - (b) Treatment and processing intended for the production of food products from:
      - (i) Animal raw materials (other than milk) with a finished product production capacity greater than 75 tons per day;
      - (ii) Vegetable raw materials with a finished product production capacity greater than 300 tons per day (average value on a quarterly basis);
    - (c) Treatment and processing of milk, the quantity of milk received being greater than 200 tons per day (average value on an annual basis);
  - Installations for the disposal or recycling of animal carcasses and animal waste with a treatment capacity exceeding 10 tons per day;
  - Installations for the surface treatment of substances, objects or products using organic solvents, in particular for dressing, printing, coating, degreasing, waterproofing, sizing, painting, cleaning or impregnating, with a consumption capacity of more than 150 kg per hour or more than 200 tons per year;
  - Installations for the production of carbon (hard-burnt coal) or electrographite by means of incineration or graphitization.
20. Any activity not covered by paragraphs 1-19 above where public participation is provided for under an environmental impact assessment procedure in accordance with national legislation.

Annex I, paragraph 20, requires that, if public participation is provided under an EIA procedure in accordance with national legislation, the provisions of article 6 shall apply. Article 15, paragraph 2, of the Law on Ecological Expertise of Kazakhstan requires the results of taking public opinion into account, according to a procedure to be adopted by the central executive body in the sphere of environmental protection, to be presented as part of an ecological expertise, among other documents. The Ministry in its letter of 17 December

2004 argued that the specific procedure of the central executive body did not exist in 2002 (at the time that the EE in question was being undertaken). However, article 15 of the Law itself does, in the view of the Committee, provide for public participation in the sense of annex I, paragraph 20. The fact that the Ministry itself recognized, in December 2001 and then in May 2002, that both the first and the second ecological expertises violated article 15 of the Law on Ecological Expertise because “the project was accepted for assessment without the results of a survey of public opinion,” and that the Almaty Territorial Environmental Protection Board, under instruction from the Ministry, subsequently introduced some elements of public participation into the process, bears this out. The Committee therefore considers that such an EIA procedure does exist in Kazakh legislation, as part of the 1997 Law on Ecological Expertise; that consequently the activity in question does fall within the scope of annex I, paragraph 20; and that a decision to permit such an activity does therefore fall within the scope of article 6, paragraph 1.

*(Kazakhstan ACCC/C/2004/2; ECE/MP.PP/C.1/2005/2/Add.2, 14 March 2005, para. 22)*

Finally, the Committee notes with appreciation the efforts of the Ministry in December 2001 and May-June 2002 to attempt to introduce some elements of public participation in a process that was defective in that respect. It further notes that Kazakhstan’s failure to comply with the Convention in this particular case stems directly from the fact that public participation was, in the view of the Committee, required under the Law on Environmental Expertise, thereby bringing the activity in question within the scope of annex I, paragraph 20. Because the applicability of paragraph 20 is contingent on there being national requirements for public participation, it is one of those provisions of the Convention that does not necessarily contribute to a level playing field or a common set of standards. In other words, a country which had no public participation requirement with respect to EIA for such an activity would not be in non-compliance in such a case, and yet its system would be less in harmony with the objective of the Convention than that of Kazakhstan. This is certainly an important mitigating factor in considering the gravity of any non-compliance arising with respect to that particular provision.

*(Kazakhstan ACCC/C/2004/2; ECE/MP.PP/C.1/2005/2/Add.2, 14 March 2005, para. 31)*

The Committee also finds that by failing to ensure effective public participation in decision-making on specific activities, the Government of Armenia did not comply fully with article 6, paragraph 1 (a); with annex I, paragraph 20, of the Convention; or, in connection with this, with article 6, paragraphs 2–5 and 7–9. It considers that the extent of non-compliance would be somewhat mitigated if public participation were to be provided for in further permitting processes for the specific activities in question, but it notes that the requirement under article 6, paragraph 4, to ensure that early public participation is provided for when all options are open would still have been breached. In this regard, the Committee notes, however, the information provided to it by the Government of Armenia regarding the new draft law on Environmental Impact Assessment and understands that the drafters of the new law will take this opportunity to ensure its approximation with the requirements of the Convention.

*(Armenia ACCC/C/2004/8; ECE/MP.PP/C.1/2006/2/Add.1, 10 May 2006, para. 42)*

The Committee notes that it cannot address the adequacy or result of an EIA screening procedure, because the Convention does not make the EIA a mandatory part of public participation; it only requires that when public participation is provided for under an EIA procedure in accordance with national legislation (paragraph 20 of annex I to the Convention), such public participation must apply the provisions of its article 6. Thus, under the Convention, public participation is a mandatory part of the EIA, but an EIA is not necessarily a part of public participation. Accordingly, the factual accuracy, impartiality and legality of screening decisions are not subject to the provisions of the Convention, in particular the decisions that there is no need for environmental assessment, even if such decisions are taken in breach of applicable national or international laws related to environmental assessment, and cannot thus be considered as failing to comply with article 6, paragraph 1, of the Convention.

*(Spain ACCC/C/2008/24; ECE/MP.PP/C.1/2009/8/Add.1, 30 September 2010, para.82)*

**N.B.**

[...] The Committee observes that the determination of whether an activity falls within the ambit of paragraph 20 of annex I to the Convention depends on three elements, namely: (i) public participation; (ii) EIA in the context of which public participation takes place; and (iii) domestic legislation providing for EIA.

*(Georgia ACCC/C/2008/35; ECE/MP.PP/C.1/2010/4/Add.1, 08 February 2011, para.43)*

[...] The Committee notes that even if paragraph 20 of annex I to the Convention refers to the taking place of an EIA, national legislation may provide for a process that includes all basic elements for an EIA, without naming the process by the term “EIA”. Such a de facto EIA process should also fall within the ambit of annex I, paragraph 20. It is critical, however, to define the extent to which the de facto EIA process qualifies as an EIA process, even if it is not termed as such.

*(Georgia ACCC/C/2008/35, ECE/MP.PP/C.1/2010/4/Add.1, 08 February 2011, para.46)*

[...] In this case, however, the Committee is not convinced that the de facto EIA process for the issuance of forest use licences amounts to an EIA in the meaning of annex I, paragraph 20. In that regard, the Committee notes that Georgian legislation already provides for EIA under specific activities listed in its 2008 Law on Permits for Impact on the Environment, among which forest use activities were not included. This is an indication that the national legislature did not have the intention to subject forest use and management activities to an EIA process. Therefore, the Committee finds that licences issued by the auctions of 1 May 2007 and 7–8 October 2008 are not decisions within the scope of article 6, paragraph 1 (a), of the Convention.

*(Georgia ACCC/C/2008/35, ECE/MP.PP/C.1/2010/4/Add.1, 08 February 2011, para.47)*

Paragraph 20 of annex I covers any activity not covered by the other paragraphs of the annex where public participation is provided for under an environmental impact assessment (EIA) procedure in accordance with national legislation. The Committee understands that the relevant legislation specifying which activities in Northern Ireland are subject to an EIA procedure is the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999. For the purposes of those regulations, an “EIA development” means either development which is listed in schedule 1 of those regulations, or development, which is listed in schedule 2 and which is likely to have significant effects on the environment by virtue of factors such as its nature, size or location. Schedule 1, paragraph 7 (a), of the Regulations refers to the construction of airports with a basic runway length of 2,100 metres or more. Schedule 2, paragraph 10 (e), of the Regulations refers to the construction of airfields (unless included in schedule 1) where the development involves an extension to a runway or the area of works exceeds 1 hectare. The increased seat allocation is not an activity subject to an EIA procedure under national legislation and, as noted above, the amended Planning Agreement did not alter the runway length. Thus, paragraph 20 of annex I does not apply.

*(United Kingdom ACCC/C/2008/27; ECE/MP.PP/C.1/2010/6/Add.2, November 2010, para. 39)*

21. The provision of article 6, paragraph 1 (a) of this Convention, does not apply to any of the above projects undertaken exclusively or mainly for research, development and testing of new methods or products for less than two years unless they would be likely to cause a significant adverse effect on environment or health.
22. Any change to or extension of activities, where such a change or extension in itself meets the criteria/thresholds set out in this annex, shall be subject to article 6, paragraph 1 (a) of this Convention. Any other change or extension of activities shall be subject to article 6, paragraph 1 (b) of this Convention.

The Committee also considers that if the Mochovce NPP had been in operation since 1986 under the conditions set at the time, the changes of the activity required by the 2008 decisions would have met the criteria set out in annex I, paragraphs 1 and 22, of the Convention. In this context, the Committee wishes to stress that, while for many activities listed in annex 1 to the Convention there are certain criteria or thresholds envisaged below which the requirements of article 6 paragraph 1 (a) would not apply, for some of the activities listed (including nuclear power stations) the Convention does not establish any criteria or thresholds. This means that these activities, regardless of their size, are subject to article 6, paragraph 1 (a), and thus provisions of article 6 must be applied with respect to decisions of whether to permit such activities. By virtue of the first sentence of paragraph 22 of annex 1 the same applies to a change or extension of such activities. Thus, in principle, all changes or extensions to such activities are subject to article 6. However, bearing in mind that a change or extension to already permitted activities requires reconsideration or updating of the existing permit, the provisions of article 6 would apply “mutatis mutandis, and where appropriate”, as stipulated in article 6, paragraph 10.

*(Slovakia ACCC/C/2009/41; ECE/MP.PP/2011/11/Add.3, 12 May 2011, para. 58)*

***thresholds***

The Party concerned was also under an obligation to ensure that the provisions of article 6 were applied if the 2008 construction permit concerned a change to or extension of the activity in question, and if the change or extension in itself met the criteria/threshold set out in annex I to the Convention.

*(Slovakia ACCC/C/2009/41; ECE/MP.PP/2011/11/Add.3, 12 May 2011, para. 52)*

#### Notes

- 1/ Nuclear power stations and other nuclear reactors cease to be such an installation when all nuclear fuel and other radioactively contaminated elements have been removed permanently from the installation site.
- 2/ For the purposes of this Convention, «airport» means an airport which complies with the definition in the 1944 Chicago Convention setting up the International Civil Aviation Organization (Annex 14).
- 3/ For the purposes of this Convention, «express road» means a road which complies with the definition in the European Agreement on Main International Traffic Arteries of 15 November 1975.

## Annex II ARBITRATION

1. In the event of a dispute being submitted for arbitration pursuant to article 16, paragraph 2, of this Convention, a party or parties shall notify the secretariat of the subject matter of arbitration and indicate, in particular, the articles of this Convention whose interpretation or application is at issue. The secretariat shall forward the information received to all Parties to this Convention.
2. The arbitral tribunal shall consist of three members. Both the claimant party or parties and the other party or parties to the dispute shall appoint an arbitrator, and the two arbitrators so appointed shall designate by common agreement the third arbitrator, who shall be the president of the arbitral tribunal. The latter shall not be a national of one of the parties to the dispute, nor have his or her usual place of residence in the territory of one of these parties, nor be employed by any of them, nor have dealt with the case in any other capacity.
3. If the president of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Executive Secretary of the Economic Commission for Europe shall, at the request of either party to the dispute, designate the president within a further two-month period.
4. If one of the parties to the dispute does not appoint an arbitrator within two months of the receipt of the request, the other party may so inform the Executive Secretary of the Economic Commission for Europe, who shall designate the president of the arbitral tribunal within a further two-month period. Upon designation, the president of the arbitral tribunal shall request the party which has not appointed an arbitrator to do so within two months. If it fails to do so within that period, the president shall so inform the Executive Secretary of the Economic Commission for Europe, who shall make this appointment within a further two-month period.
5. The arbitral tribunal shall render its decision in accordance with international law and the provisions of this Convention.
6. Any arbitral tribunal constituted under the provisions set out in this annex shall draw up its own rules of procedure.
7. The decisions of the arbitral tribunal, both on procedure and on substance, shall be taken by majority vote of its members.
8. The tribunal may take all appropriate measures to establish the facts.
9. The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:
  - (a) Provide it with all relevant documents, facilities and information;
  - (b) Enable it, where necessary, to call witnesses or experts and receive their evidence.
10. The parties and the arbitrators shall protect the confidentiality of any information that they receive in confidence during the proceedings of the arbitral tribunal.

11. The arbitral tribunal may, at the request of one of the parties, recommend interim measures of protection.
12. If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to render its final decision. Absence of a party or failure of a party to defend its case shall not constitute a bar to the proceedings.
13. The arbitral tribunal may hear and determine counter-claims arising directly out of the subject matter of the dispute.
14. Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its expenses, and shall furnish a final statement thereof to the parties.
15. Any Party to this Convention which has an interest of a legal nature in the subject matter of the dispute, and which may be affected by a decision in the case, may intervene in the proceedings with the consent of the tribunal.
16. The arbitral tribunal shall render its award within five months of the date on which it is established, unless it finds it necessary to extend the time limit for a period which should not exceed five months.
17. The award of the arbitral tribunal shall be accompanied by a statement of reasons. It shall be final and binding upon all parties to the dispute. The award will be transmitted by the arbitral tribunal to the parties to the dispute and to the secretariat. The secretariat will forward the information received to all Parties to this Convention.
18. Any dispute which may arise between the parties concerning the interpretation or execution of the award may be submitted by either party to the arbitral tribunal which made the award or, if the latter cannot be seized thereof, to another tribunal constituted for this purpose in the same manner as the first.

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## PART II

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### **DECISION I/7: REVIEW OF COMPLIANCE (commented text)**

# DECISION I/7

## review of compliance

adopted at the first meeting of the Parties  
held in Lucca, Italy, on 21-23 October 2002

The Meeting,

*Determined* to promote and improve compliance with the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters and recalling its article 15,

*Recognizing* the necessity for rigorous reporting by the Parties on their compliance with the Convention,

1. *Establishes* the Compliance Committee for the review of compliance by the Parties with their obligations under the Convention.
2. *Decides* that the structure and functions of the Compliance Committee and the procedures for the review of compliance shall be those set out in the annex to this decision.

### Annex

## STRUCTURE AND FUNCTIONS OF THE COMPLIANCE COMMITTEE AND PROCEDURES FOR THE REVIEW OF COMPLIANCE

### I. STRUCTURE

1. The Committee shall consist of eight members, who shall serve in their personal capacity.
2. The Committee shall be composed of nationals of the Parties and Signatories to the Convention who shall be persons of high moral character and recognized competence in the fields to which the Convention relates, including persons having legal experience.
3. The Committee may not include more than one national of the same State.
4. Candidates meeting the requirements of paragraph 2 shall be nominated by Parties, Signatories and non-governmental organizations falling within the scope of article 10, paragraph 5, of the Convention and promoting environmental protection, for election pursuant to paragraph 7.
5. Unless the Meeting of the Parties, in a particular instance, decides otherwise, the procedure for the nomination of candidates for the Committee shall be the following:
  - (a) Nominations shall be sent to the secretariat in at least one of the official languages of the Convention not later than 12 weeks before the opening of the meeting of the Parties during which the election is to take place;
  - (b) Each nomination shall be accompanied by a curriculum vitae (CV) of the candidate not exceeding 600 words and may include supporting material;
  - (c) The secretariat shall distribute the nominations and the CVs, together with any supporting material, in accordance with rule 10 of the Rules of Procedure.
6. Committee members shall be elected on the basis of nominations in accordance with paragraphs 4 and 5. The Meeting of the Parties shall give due consideration to all nominations.
7. The Meeting of the Parties shall elect the members of the Committee by consensus or, failing consensus, by secret ballot.
8. In the election of the Committee, consideration should be given to the geographical distribution of membership and diversity of experience.

9. The Meeting of the Parties shall, as soon as practicable, elect four members to the Committee to serve until the end of the next ordinary meeting and four members to serve a full term of office. At each ordinary meeting thereafter, the Meeting of the Parties shall elect four members for a full term of office. Outgoing members may be re-elected once for a further full term of office, unless in a given case the Meeting of the Parties decides otherwise. A full term of office commences at the end of an ordinary meeting of the Parties and runs until the second ordinary meeting of the Parties thereafter. The Committee shall elect its own Chairperson and Vice-Chairperson.
10. If a member of the Committee can no longer perform his or her duties as member of the Committee for any reason, the Bureau of the Meeting of the Parties shall appoint another member fulfilling the criteria in this chapter to serve the remainder of the term, subject to the approval of the Committee.
11. Every member serving on the Committee shall, before taking up his or her duties, make a solemn declaration in a meeting of the Committee that he or she will perform his or her functions impartially and conscientiously.

## II. MEETINGS

12. The Committee shall, unless it decides otherwise, meet at least once a year. The secretariat shall arrange for and service the meetings of the Committee.

## III. FUNCTIONS OF THE COMMITTEE

13. The Committee shall:
  - (a) Consider any submission, referral or communication made in accordance with paragraphs 15 to 24 below;
  - (b) Prepare, at the request of the Meeting of the Parties, a report on compliance with or implementation of the provisions of the Convention; and
  - (c) Monitor, assess and facilitate the implementation of and compliance with the reporting requirements under article 10, paragraph 2, of the Convention; and act pursuant to paragraphs 36 and 37.
14. The Committee may examine compliance issues and make recommendations if and as appropriate.

## IV. SUBMISSION BY PARTIES

15. A submission may be brought before the Committee by one or more Parties that have reservations about another Party's compliance with its obligations under the Convention. Such a submission shall be addressed in writing to the secretariat and supported by corroborating information. The secretariat shall, within two weeks of receiving a submission, send a copy of it to the Party whose compliance is at issue. Any reply and supporting information shall be submitted to the secretariat and to the Parties involved within three months or such longer period as the circumstances of a particular case may require but in no case later than six months. The secretariat shall transmit the submission and the reply, as well as all corroborating and supporting information, to the Committee, which shall consider the matter as soon as practicable.
16. A submission may be brought before the Committee by a Party that concludes that, despite its best endeavours, it is or will be unable to comply fully with its obligations under the Convention. Such a submission shall be addressed in writing to the secretariat and explain, in particular, the specific circumstances that the Party considers to be the cause of its noncompliance. The secretariat shall transmit the submission to the Committee, which shall consider the matter as soon as practicable.

## V. REFERRALS BY THE SECRETARIAT

17. Where the secretariat, in particular upon considering the reports submitted in accordance with the Convention's reporting requirements, becomes aware of possible noncompliance by a Party with its obligations under the Convention, it may request the Party concerned to furnish necessary information about the matter. If there is no response or the matter is not resolved within

three months, or such longer period as the circumstances of the matter may require but in no case later than six months, the secretariat shall bring the matter to the attention of the Committee, which shall consider the matter as soon as practicable.

## VI. COMMUNICATIONS FROM THE PUBLIC

18. On the expiry of twelve months from either the date of adoption of this decision or from the date of the entry into force of the Convention with respect to a Party, whichever is the later, communications may be brought before the Committee by one or more members of the public concerning that Party's compliance with the Convention, unless that Party has notified the Depositary in writing by the end of the applicable period that it is unable to accept, for a period of not more than four years, the consideration of such communications by the Committee. The Depositary shall without delay notify all Parties of any such notification received. During the four-year period mentioned above, the Party may revoke its notification thereby accepting that, from that date, communications may be brought before the Committee by one or more members of the public concerning that Party's compliance with the Convention.

### *prior to entry into force*

Noting that some of the activities described in the communication took place prior to the Convention's entry into force for Kazakhstan, the Committee will only address the activities that took place after 30 October 2001.

*(Kazakhstan ACCC/C/2004/6; ECE/MP.PP/C.1/2006/4/Add.1, 28 July 2006, para. 21)*

### *general rules & principles of international law*

The Committee does not exclude the possibility when determining issues of noncompliance to take into consideration general rules and principles of international law, including international environmental and human rights law, which might be relevant in context of interpretation and application of the Convention. However, there is an existing provision in the Convention, demonstrating that negotiating parties considered the issue of the relationship between the existing rights and the rights provided by the Convention itself (art. 3, para. 6) but that they did not wish to completely exclude a possibility of reducing existing rights as long as they did not fall below the level granted by the Convention. However, the wording of article 3, paragraph 6, especially taken together with article 1 and article 3, paragraph 5, also indicates that such reduction was not generally perceived to be in line with the objective of the Convention.

*(Hungary ACCC/C/2004/4; ECE/MP.PP/C.1/2005/2/Add.4, 14 March 2005, para. 18)*

### *addressing all facts*

The communicant and the Party concerned both consider that the approval of the technical project and construction permit should not be treated as decisions subject to article 6. The Committee has decided not to address this issue in the present case. This approach is in line with the Committee's understanding, set out in its first report to the Meeting of the Parties (ECE/MP.PP/2005/13, para. 13), that decision I/7 does not require the Committee to address all facts and/or allegations raised in a communication. On the other hand, in these findings the Committee is addressing also some general features of the Lithuanian legal framework, despite the indication by the communicant in its letter of 21 September 2007, that the communication was not aiming at the compliance of the Lithuanian legal framework in general, but only concerned its deficient application in the case of the landfill in question.

*(Lithuania ACCC/2006/16; ECE/MP.PP/2008/5/Add.6, 4 April 2008, para. 59)*

### *committee's discretion*

The Committee decides to focus its attention on the substantive issues identified in section I B above (paras. 17–33). In addition to alleging non-compliance with respect to the European Commission's co-financing of the landfill, the communicant alleges a general failure on the part of the European Community to correctly implement articles 6 and 9 of the Convention. In its examination, the Committee therefore also considers some issues of a general character with respect to the implementation of the Convention into Community law. However, this general examination is limited to the type of activity here in question, i.e. landfills. This approach is in line with the Committee's understanding, set out in its first report to the Meeting of the Parties (ECE/MP.PP/2005/13, para. 13), that decision I/7 does not require the Committee to address all facts and/or allegations raised in a communication. This procedural decision by the Committee to focus on these issues does not prevent it from addressing other aspects of the case.

*(European Community ACCC/C/2006/17; ECE/MP.PP/2008/5/Add.10, 2 May 2008, para. 36)*

### *prior to entry into force*

Regarding the allegation of the communicant that article 6 of the Convention is applicable to the decision to fund the project in question, the Committee, on account of the fact that such a decision was taken well before the European Community ratified the Convention,

and having regard to the fact that the general matter of decisions on funding is under consideration in connection with another communication (ACCC/C/2007/21), decides not to consider the allegation.

(European Community ACCC/C/2006/17; ECE/MP.PP/2008/5/Add.10, 2 May 2008, para. 39)

As stated on previous occasions, the Committee does not feel bound to address all arguments raised by a communicant or Party concerned, and notes that the absence of any comment on argumentation presented by one or other of the parties concerned should not be taken to imply agreement (see ECE/MP.PP/2005/13, para. 13). The following points are those which the Committee considers it useful to address.

(European Community ACCC/C/2007/21; ECE/MP.PP/C.1/2009/2/Add.1, 11 December 2009, para. 28)

Noting that a number of events referred to in the proceedings took place before the entry into force of the Convention for the Party concerned, the Committee focuses on the activities that took place after 17 April 2005. The Committee notes that a number of significant events in the decision-making process have taken place since the entry into force of the Convention for Austria (ECE/MP.PP/C.1/2005/2/Add.1, para. 4) and notes that the application of the Convention was not disputed by the Party concerned.

(Austria ACCC/C/2008/26; ECE/MP.PP/C.1/2009/6/Add.1, 8 February 2011, para. 49)

The Committee finds that the decision of the Styrian Provincial Government on 22 January 2004, well in advance of the entry into force of the Convention for the Party concerned, initiated a planning process which is still ongoing. Within that planning process, public participation, in the sense of public debate, has taken place through the so-called Round Tables, both before and after the Convention entered into force for the Party concerned. Whether these Round Tables as such amount to public participation in accordance with the article 7, in conjunction with article 6, paragraphs 3, 4 and 8, is not for the Committee to decide in this case, given that the relevant decision was taken and that no significant events relating to the decision-making process took place after the Convention entered into force for the Party concerned.

(Austria ACCC/C/2008/26; ECE/MP.PP/C.1/2009/6/Add.1, 8 February 2011, para. 56)

The communicant's allegations relate to the application of the Convention in the specific instance of the HPP project and do not pertain to compliance in general of the respective national legal framework with the provisions of the Convention. The Committee, however, finds it useful to make some observations concerning features of the relevant national legal framework in force at the time of the events that are the subject of the communication, without engaging in a comprehensive review of the legal system.

(Belarus ACCC/C/2009/37; ECE/MP.PP/2011/11/Add.2, 12 May 2011, para.61)

Nuclear power plants, such as the Mochovce NPP, are covered by article 6 of the Convention. In the present case, however, the applicability of the Convention depends on the relation between the 1986 and the 2008 decisions. The Convention is not applicable to the 1986 decision. The application for the 2008 UJD decisions was made in May 2008. Thus, the Convention was applicable, and accordingly the Party concerned was obliged to ensure public participation before taking the 2008 UJD decisions, if they amounted to a reconsideration or an update of the operating conditions, under article 6, paragraph 10 of the Convention, or if the decisions concerned a change to or extension of the activity in accordance with annex I, paragraph 22, to the Convention.

(Slovakia ACCC/C/2009/41; ECE/MP.PP/2011/11/Add.3, 12 May 2011, para.50)

In order to define the nature of the complaint, the Committee examines the role of community councils in Scotland. Although community councils have statutory duties in terms of licensing and planning, they have no regulatory decision-making functions and are essentially voluntary bodies established within a statutory framework. They mainly act to further the interests of the community and take action in the interest of the community as appears to be expedient and practicable, including representing the view of the community regarding planning applications. In addition, community councils rely on grants from local authorities and voluntary donations. Community Council members furthermore operate on a voluntary basis and do not receive payment for their services.

(European Union and United Kingdom ACCC/C/2012/68; ECE/MP.PP/C.1/2014/5, 13 January 2014, para. 81)

The Committee was also informed by the Party concerned (United Kingdom) that the representations from the Avich and Kilchrenan Community Council with regard to the

***committee's  
discretion***

***prior to entry  
into force***

***prior to entry  
into force***

***committee's  
discretion***

***prior to entry  
into force***

projects at stake were recorded under the same section as representations from members of the public and non-governmental organizations (NGOs).

*(European Union and United Kingdom ACCC/C/2012/68; ECE/MP.PP/C.1/2014/5, 13 January 2014, para. 82)*

**community councils  
(Scotland)**

Based on the above, in particular the role of the council in representing the interests of the community in planning matters and the fact that council members provide their services on a voluntary basis and have no regulatory decision-making functions, the Committee concludes that community councils in Scotland qualify as “the public” within the definition of article 2, paragraph 4, of the Convention. It thus decides to consider the present complaint as a communication under paragraph 18 of the annex to decision I/7, as submitted by Ms. Metcalfe on behalf of the Avich and Kilchrenan Community Council.

*(European Union and United Kingdom ACCC/C/2012/68; ECE/MP.PP/C.1/2014/5, 13 January 2014, para. 83)*

**committee's  
discretion**

The Committee, after the discussion with representatives of the parties at its thirty-seventh meeting, decided to further focus its considerations on the allegations regarding screening decisions subject to article 6, paragraph 1 (b), of the Convention, the procedure at public planning meetings and the Party concerned's compliance with article 6, paragraph 7, of the Convention. It would also look at the role of local investment plans, adopted by local public-private partnerships, including Local Strategic Partnerships, in the planning process and their relationship to article 7 of the Convention, as well as any issues that, in conjunction with the above, might arise in relation to article 9 of the Convention.

*(United Kingdom ACCC/C/2010/45 and ACCC/C/2011/60; ECE/MP.PP/C.1/2013/12, 23 October 2013, para. 71)*

**committee's  
discretion**

The Committee decides not to examine the general compatibility of the planning laws of the Party concerned with the Convention due to the fact that the communications remain vague as to how these laws fail to comply with the Convention; while the Party concerned has provided sufficient prima facie information to illustrate that there are numerous opportunities for public participation during the planning process. The Committee therefore does not reach any conclusion regarding compliance by the Party concerned on this matter.

*(United Kingdom ACCC/C/2010/45 and ACCC/C/2011/60; ECE/MP.PP/C.1/2013/12, 23 October 2013, para. 72)*

**additional  
allegations**

The Committee also decides not to consider the role of Local Enterprise Partnerships, because the allegations of non-compliance concerning them were submitted very late in the proceedings and these instruments are currently in the process of being implemented.

*(United Kingdom ACCC/C/2010/45 and ACCC/C/2011/60. ECE/MP.PP/C.1/2013/12, 23 October 2013, para. 73)*

Noting that some of the activities described in the communication took place prior to the Convention's entry into force for Lithuania, the Committee is focusing on the activities that took place after 28 April 2002. However, as pointed out by the Committee, in determining whether or not to consider certain domestic procedures initiated before the entry into force of the Convention for the Party concerned, it considers whether significant events of those processes had taken place since the entry into force (cf. ECE/MP.PP/C.1/2005/2/Add.2, para. 4). In this regard the Committee noted that the significant events of the EIA procedure relating to implementation of article 6, in the Committee's understanding, came after the entry into force of the Convention for Lithuania, with notification of the public concerned taking place in May 2002 and the decision itself being made on 12 June 2002.

*(Lithuania ACCC/2006/16; ECE/MP.PP/2008/5/Add.6, 4 April 2008, para. 56)*

**committee's  
discretion**

In line with the Committee's understanding, set out in its first report to the Meeting of the Parties (ECE/MP.PP/2005/13, para. 13), that decision I/7 does not require the Commission to address all facts and/or allegations raised in the communication, the Committee decides not to address the allegations that executive decisions, ex article 8 of the Convention, have been taken in regard of the consideration of alternative transport solutions in the Enns Valley and the proposal to introduce a 7.5 tonnage restriction for lorries on route B 320. The Committee comes to this decision because the communicant did not clearly indicate which decisions are at stake with respect to the consideration of alternative transport solutions in the Enns Valley and a decision, subject to a hearing, is still pending regarding the proposed introduction of the 7.5 tonnage restriction for lorries on road B 320.

*(Austria ACCC/C/2008/26; ECE/MP.PP/C.1/2009/6/Add.1, 8 February 2011, para. 53)*

In respect of Modification No. 50 to the City General Plan of April 2005 (para. 20) the Committee noted that, although the City Council approved Modification No. 50 to the City General Plan in April 2005 and the final approval was granted in June 2005, many significant events of the procedure relating to Modification No. 50 took place well before the entry into force of the Convention for Spain. The procedure was initiated in June 2004, the public notice and subsequent commenting period started in August 2004 and the screening decision was taken in September 2004. Moreover, the agreement between the Murcia City Council and Joven Futura was concluded already in 2003. Bearing the above in mind, the Committee decided not to render findings on these events.

*(Spain ACCC/2008/24; ECE/MP.PP/C.1/2009/8/Add.1, 30 September 2010, para.59)*

NOTE: The Convention entered into force for Spain on 29 March 2005

**19. The communications referred to in paragraph 18 shall be addressed to the Committee through the secretariat in writing and may be in electronic form. The communications shall be supported by corroborating information.**

With regard to communication ACCC/C/2005/14 (Poland), the Committee noted that no further information had been received from the communicant. Noting the requirement in paragraph 19 of the annex to decision I/7 that communications be supported by corroborating information, the Committee determined that the communication was inadmissible.

*(Poland ACCC/2005/14; Report of the 11th meeting, ECE/MP.PP/C.1/2006/2, para. 23)*

[...]At the request of the Committee, the secretariat had conveyed to the communicant in a letter dated 8 January 2009 the Committee's concerns regarding the lack of completeness, clarity and relevance of the information in the communication, thereby providing the communicant with an opportunity to improve the presentation of the communication before the Committee would formally consider its admissibility.

*(Spain ACCC/C/2008/34; Report of the 23rd meeting, ECE/MP.PP/C.1/2009/2, para.30)*

The Committee noted that no further correspondence had been received from the communicant. It decided that the case was not admissible for the reasons that had been given do the communicant in January and due to the absence of the corroborating information required under paragraph 19 of the annex to decision I/7. The secretariat was requested to notify the communicant accordingly.

*(Spain ACCC/C/2008/34; Report of the 23rd meeting, ECE/MP.PP/C.1/2009/2, para.31)*

At its twenty-seventh meeting, the Committee had agreed to defer making any preliminary determination on the admissibility of communication ACCC/C/2010/47 (United Kingdom) until additional information had been submitted. The Committee had requested further clarification from the communicant on 7 May 2010. By letter of 8 June 2010, the communicant's representative had indicated that the communicant was not in a position to provide a full response to the questions raised because doing so might prejudice the communicant's ongoing domestic court proceedings. The communicant asked whether the deadline by which she must respond to the questions might be deferred for a three-month period or else kept confidential until that time. Having considered the response, the Committee determined that the communication would not be considered and the file would be closed, on the grounds that it could not proceed under paragraph 19 of the annex to decision I/7, because the communicant could not provide corroborating information.

*(United Kingdom ACCC/C/2010/47; ECE/MP.PP/C.1/2010/4, 8 February 2011, para. 33)*

At its twenty-eighth meeting, the Committee had agreed to defer making any preliminary determination on the admissibility of communication ACCC/C/2010/49 (United Kingdom) until additional information had been submitted. By letter of 30 August 2010, the communicant's representative had indicated that there had been various developments which made it inappropriate to proceed with the complaint at that stage. He had asked the Committee to suspend any further consideration of the complaint until further notice. Having considered the response, the Committee determined that the communication would not be considered and the file would be closed, on the grounds that it could not proceed under paragraph 19 of the annex to decision I/7, because the communicant could not provide corroborating information.

*(United Kingdom ACCC/C/2010/49; ECE/MP.PP/C.1/2010/6, 14 February 2011, para. 30)*

The Committee noted that during the last three months a small number of parties had submitted to the Committee unprecedented amounts of information in a disorganized,

**large amounts  
of information/  
disorganized**



unstructured and difficult to examine manner. In addition, in one case, the communicant had resubmitted amended versions of documents that he had already submitted for the attention of the Committee, and the Chair decided that the information submitted would not be processed (i.e., forwarded to the other Committee members and to the Party concerned, and posted on the Internet). The Committee noted that, while parties were free to decide how to organize the material relating to their position, it was important that they organized that information in a structured and well-ordered manner, so as to enable the Committee to make use of that information. It also noted that submitting abundant information in a disorganized manner might amount to an abuse of right, and in many cases might render a communication inadmissible, as it seriously obstructed the work of the Committee.

*(Report of the 34th meeting, ECE/MP.PP/C.1/2011/8, para.51)*

***excessive  
documentation***

The Committee recalled that parties to communications should be encouraged to avoid submitting to the Committee excessive documentation that was not strictly relevant to the allegations of non-compliance or their response. It also decided that, when the submission of additional information was absolutely necessary, and such information was of a considerable volume, parties should (a) clearly indicate to the Committee the relevance of the information with respect to their arguments; and (b) organize the information in an easy-to-understand manner by providing a list of documents submitted. The Committee also decided that, in the future, if the secretariat received excessive and disorganized material, it would consult with the Chair, who would decide whether the information fulfilled those criteria and, if not, such information would not be processed or considered by the Committee. The Committee decided to include that decision in its *modus operandi*.

*(Report of the 34th meeting, ECE/MP.PP/C.1/2011/8, para.52)*

The Committee discussed the use of hyperlinks in documentation submitted to it. The Committee agreed that hyperlinks should not form part of the body of a communication, response or documentation submitted to the Committee, but should only be used for reference purposes.

*(Report of the 44th meeting, ECE/MP.PP/C.1/2014/2, para.48)*

**20. The Committee shall consider any such communication unless it determines that the communication is:**

***de minimis***

Moreover, since, in the words of the communicant, “it is extremely rare for an order for security for costs to be made against an individual Claimant”, the communicant’s allegation was non-admissible on the ground of not meeting the *de minimis* requirements.

*(Report of the 36th meeting, ECE/MP.PP/C.1/2012/2, para.40)*

- (a) Anonymous;
- (b) An abuse of the right to make such communications;
- (c) Manifestly unreasonable;

The Committee then entered into discussion in open session on communication ACCC/C/2009/40 (United Kingdom), with the participation of representatives of the Government of United Kingdom and the communicant. The communication had been submitted by Mrs. Elizabeth Condron, represented by Richard Buxton Environmental and Public Law, and concerned compliance by the United Kingdom with article 3, paragraph 8, and article 9, paragraph 4, of the Convention. It alleged failure by the Party concerned to comply with its obligations under article 3, paragraph 8, of the Convention to ensure that she was not penalized, persecuted or harassed by the Merthyr Tydfil County Borough Council or the mining company, Miller Argent (South Wales) Ltd, in the course of asserting her right of access to justice under article 9, paragraph 4, of the Convention to challenge decisions relating to an open-cast coal mine and adjacent coal processing site. The communication alleged, *inter alia*, that the action of the Council in mounting a legal challenge to the granting of legal aid to the communicant constituted a form of penalisation, persecution and harassment of the communicant.

*(United Kingdom ACCC/C/2009/40; the report of the 27th meeting, para. 26)*

At the outset, the Party concerned stated that it would be seeking to challenge the admissibility of the communication, and the Committee agreed to hear submissions from both the Party concerned and the communicant on the issue of admissibility before entering a closed session to deliberate on this point. Following its deliberations in closed session, the Committee held that the communication was not admissible, on the grounds that it was

manifestly unreasonable pursuant to paragraph 20 (c) of the annex to decision I/7. The Chair explained that his personal interpretation of the Committee's discussion was that, taking into account that legal aid was ultimately granted, the communicant was not persecuted in a way that would fall within article 3, paragraph 8, of the Convention.

*(United Kingdom ACCC/C/2009/40; the report of the 27th meeting, para. 27)*

In the hours following the discussion, the Committee received a letter from the communicant in which it was stated that whereas legal aid had been granted in April 2009, it had in fact been withdrawn in May 2009 and on 5 January 2010, the Legal Services Commission had refused to reinstate or grant further funding to continue with the proceedings in the Court of Appeal. The communicant indicated that this matter was itself the subject of an ongoing appeal, and thus it remained to be seen whether public funding would ultimately be granted for the proceedings before the Court of Appeal. Following its consideration of the letter in closed session, the Committee held that the new information provided by the communicant did not alter its decision regarding the inadmissibility of the communication. The Committee noted that relevant points made by the communicant were manifestly unreasonable, for example, the allegation that a press release by a private company acting in its own interest should be attributed to the Government.

*(United Kingdom ACCC/C/2009/40; the report of the 27th meeting, para. 28)*

Communication ACCC/C/2010/46 (United Kingdom) had been submitted by Mr. Gareth Clubb and alleged non-compliance by the United Kingdom with the provisions of article 6 of the Convention with regard to two projects being carried out in Wales and general failure of the United Kingdom to comply with the provisions of the Convention. Following the receipt of the communication, Mr. Merab Barbakadze had been designated as curator for the case.

*(United Kingdom ACCC/C/2010/46; ECE/MP.PP/C.1/2010/2, 4 August 2010, para. 40)*

Having considered the communication and the supporting documentation, and in light of the admissibility criteria set out in paragraph 20 of the annex to decision I/7 as developed through its practice, the Committee decided that the communication did not fulfil those criteria. The Committee noted that the communicant's allegations concerning non-compliance with article 6 of the Convention only related to the fact that some documents relevant for public participation had not been available in a timely manner in the Welsh language. Specifically, the Committee found that while the principle of non-discrimination on the basis of citizenship, nationality or domicile was explicit in article 3, paragraph 9, of the Convention, the provision was silent on matters of discrimination on the basis of language. While the lack of availability of documentation in a particular language might under certain circumstances present an impediment to correct implementation of the Convention, nothing in the present communication suggested that such circumstances pertained. In addition, the Committee was not convinced that the possibility for domestic administrative and, in particular, judicial review had been adequately used by the communicant.

*(United Kingdom ACCC/C/2010/46; ECE/MP.PP/C.1/2010/2, 4 August 2010, para. 41)*

At its twenty-ninth meeting, the Committee had decided to request further clarification from the communicants on communications ACCC/C/2010/52 and ACCC/C/2010/53 (both concerning the United Kingdom) and had agreed to defer making any preliminary determination of their admissibility until the additional information had been submitted. With regard to communication ACCC/C/2010/52, the Committee took note of the letter of the communicant on 8 December 2010 informing the Committee that it had applied for and successfully obtained leave to judicially review decisions in relation to the matter of the communication and that it would revert to the Committee on completion of those proceedings. The Committee considered the communicant's letter and decided that the file would be closed.

*(United Kingdom ACCC/C/2010/52; ECE/MP.PP/C.1/2010/8, 14 February 2011, para. 25)*

The Committee then entered into discussion in open session on communication ACCC/C/2009/39 (Austria), with the participation of representatives of the Party concerned and the communicant. The communication had been submitted by the Municipality of Szentgotthárd (Hungary). It contained allegations of non-compliance by Austria with the provisions of articles 6 and 9 of the Convention, in relation to a decision by the Austrian authorities to permit the construction and operation of a household and commercial waste incinerator in Burgenland, Austria, located on the border with Hungary and close to the Municipality of Szentgotthárd.

*(Austria ACCC/C/2009/39; ECE/MP.PP/C.1/2010/4, 8 February 2011, para. 26)*

The Committee did not confirm immediately that the communication was admissible. Further to a discussion of the communication with the Party concerned and the communicant in an open session, the Committee deliberated in closed session and determined that the communication was manifestly unreasonable, because the communicant, having been awarded the status of “neighbour” under Austrian legislation, had submitted all its comments to the competent authorities during the permitting procedure. In the view of the Committee, the communicant had failed to substantiate that it was not able to participate in the different stages of the environmental decision-making procedure; or to what extent its important objections to the project were not considered during that procedure. The Committee informed the parties of the outcome and also asked the secretariat to send a letter to the parties to that effect.

*(Austria ACCC/C/2009/39; ECE/MP.PP/C.1/2010/4, 8 February 2011, para. 27)*

**(d) Incompatible with the provisions of this decision or with the Convention.**

The Committee determined that communication ACCC/C/2004/10 was inadmissible because it did not appear to relate to the procedures and obligations regulated by the Aarhus Convention, but rather dealt with substantive environmental issues. The only provision that might have been of some relevance was article 9, paragraph 3, but the Committee considered that the communication did not relate to a denial of access to administrative or judicial procedures but rather reflected dissatisfaction with their outcome. As it was not the first time that a communicant had appealed to the Committee out of dissatisfaction with court decisions, the Committee considered that it would be worthwhile to include some examples in the information sheet on communications of cases which would not be admissible.

*(Kazakhstan ACCC/2004/10; Report of the 7th meeting, ECE/MP.PP/C.1/2005/2, para. 15)*

**unsuccessful  
litigation**

The Committee determined on a preliminary basis that communication ACCC/C/2004/07 was inadmissible. In its view, to determine otherwise would set a precedent for the Convention’s compliance mechanism being used to review cases of unsuccessful environmental litigation, which was clearly not its purpose. It did however agree to offer the communicant the opportunity to provide additional information clearly indicating the relevance of the matter to the Convention, in which case it would consider the communication further. If no such information were provided or if, following the provision of further information, the Committee remained unconvinced, the determination of inadmissibility would be confirmed by default at its next meeting.

*(Poland ACCC/2004/7; Report of the 5th meeting, MP.PP/C.1/2004/6, para. 27)*

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.

*(Albania ACCC/C/2008/25; Report of the 20th meeting, ECE/MP.PP/C.1/2008/4, para.19)*

Having considered the communication and the supporting documentation and in light of the admissibility criteria set out in paragraph 20 of the annex to decision I/7 as developed through its practice, the Committee decided that the communication did not fulfil these criteria. The Committee noted that the communicant’s allegations concerning non-compliance with article 6 of the Convention only related to the fact that some documents relevant for public participation had not been available in a timely manner in the Welsh language. Specifically, the Committee found that while the principle of non-discrimination on the basis of citizenship, nationality or domicile was explicit in article 3, paragraph 9, of the Convention, the provision was silent on matters of discrimination on the basis of language. While the lack of availability of documentation in a particular language might under certain circumstances present an impediment to correct implementation of the Convention, nothing in the present communication suggested that such circumstances pertained. In addition, the Committee was not convinced that the possibility for domestic administrative and, in particular, judicial review had been adequately used by the communicant.

*(United Kingdom ACCC/C/2010/46; Report of the 27th meeting, ECE/MP.PP/C.1/2010/2, para. 41)*

The Committee found that as the communication had been submitted, inter alia, by the Upper Austrian Environmental Attorney-General, which is an organ of the State, the communication was inadmissible under paragraph 20 (d) of the annex to decision I/7.

*(Austria ACCC/C/2013/97; Report of the 44th meeting, ECE/MP.PP/C.1/2014/2, para.30)*

The Committee decided that, henceforth, upon learning of the existence of a pending domestic procedure, the Committee would ask the communicant to promptly provide it with clear reasons as to why, notwithstanding the pending domestic procedure, the Committee should provisionally admit or uphold its earlier determination of provisional admissibility (depending on the stage of the communication). The Committee would thereafter consider any reasons provided by the communicant in the light of paragraphs 20 and 21 of the annex to decision I/7 and, if it considered the reasons provided did not meet the thresholds set out in those paragraphs, might determine the communication to be inadmissible.

*(Report of the 44th meeting, ECE/MP.PP/C.1/2014/2, para.49)*

With respect to the allegations concerning a lack of effective public participation, the Committee observed that those related to public participation with respect to a draft National Planning Policy Framework Guidance. The Committee considered that the latter allegations were not admissible on a preliminary basis, because it was too early for the Committee to review a national instrument that had yet not been adopted.

*(United Kingdom ACCC/C/2010/64; Report of the 36th meeting, ECE/MP.PP/C.1/2012/2, para.38)*

- 21. 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.**

As mentioned under paragraph 20 above, the Committee found the communication to be admissible. Nonetheless, the Committee does have some concerns about the limited extent to which the communicant made use of domestic remedies. The communicant did not try to apply to a court or another independent or impartial body established by law, either about the alleged refusal of the information requests (as entitled under art. 9, para. 1), or about the alleged failure of the public authorities to notify the public concerned about the proposed activities in an adequate, timely and effective manner and to take into account its concerns (under the article 9, para. 2).

*(Albania ACCC/C/2005/12; ECE/MP.PP/C.1/2007/4/Add.1, 31 July 2007, para. 58)*

The communicant attempted to justify this at one point by asserting that Albanian legislation did not provide domestic judicial or similar remedies of the kind envisaged under article 9; at another stage, by reference to its lack of confidence in the ability of the Albanian courts to safeguard its interests in an effective way. Furthermore, it considered its efforts to raise signatures and thereby precipitate a referendum to be a form of domestic remedy, albeit not in a conventional sense.

*(Albania ACCC/C/2005/12; ECE/MP.PP/C.1/2007/4/Add.1, 31 July 2007, para. 59)*

Decision I/7 of the First Meeting of the Parties of the Aarhus Convention says that the Committee should “take into account any available domestic remedy” (emphasis added). As previously noted by the Committee (MP.PP/C.1/2003/2, para. 37), this is not a strict requirement to exhaust domestic remedies. The Party concerned said in November 2005 that there was no domestic judicial remedy that could be used before the decision was taken, as there was nothing that a court could consider. One year later, the Party concerned presented general information to the effect that according to the Constitution and laws of Albania, there was access to administrative review, the Ombudsman and the courts. The first statement of the Party concerned could be seen to imply that the three decisions the text of which it submitted to the Committee in June 2006 (see para. 9 above) were not subject to appeal, which was also the position of the communicant (see para. 23); by contrast, its second statement indicated that they could have been appealed. In any event, there appears to be a certain lack of clarity with regard to possibilities to appeal certain decisions.

*(Albania ACCC/C/2005/12; ECE/MP.PP/C.1/2007/4/Add.1, 31 July 2007, para. 60)*

The Committee regrets the failure of both the Party concerned and the communicant to provide, in a timely manner, more detailed and comprehensive information on the possibilities for seeking domestic remedies. Furthermore, it does not accept the communicant's

assertion that it has tried all possible domestic remedies. Nonetheless, in the face of somewhat incomplete and contradictory information concerning the availability of remedies, also from the side of the Party concerned, the Committee cannot reject the allegations of the communicant that domestic remedies do not provide an effective and sufficient means of redress.

*(Albania ACCC/C/2005/12; ECE/MP.PP/C.1/2007/4/Add.1, 31 July 2007, para. 61)*

With regard to communication ACCC/C/2004/09, although the Committee considered that the criteria of paragraph 20 of the annex to decision I/7 were met, it decided to exercise the discretion given to it under paragraph 21 of the annex to decision I/7 not to consider the communication further, as the matter has just been submitted for review by the domestic court of appeals. It noted, however, that if in the future the communicant still wished to bring the matter before the Committee due to the outcome or length of the review procedure, the communicant could ask for the file to be reopened.

*(Armenia ACCC/2004/09; Report of the 5th meeting, MP.PP/C.1/2004/6, para. 28)*

With regard to communication ACCC/C/2007/19 (United Kingdom), further information had been received from the communicant, which pointed out that an inquiry on the matter in question was currently under way. The Committee therefore agreed that although it considered that the criteria of paragraph 20 of the annex to decision I/7 had been met, it would exercise the discretion given to it under paragraph 21 of the annex to decision I/7 not to consider the communication further, as the matter was subject to an ongoing inquiry. The file would therefore be closed. It noted, however, that if in the future the communicant still wished to bring the matter before the Committee due to the outcome or length of the review procedure, he could do so.

*(United Kingdom ACCC2007/19; Report of the 18th meeting, ECE/MP.PP/C.1/2007/8, para. 15)*

Given the phase of the decision-making process, the Committee concludes that the communicant has made all reasonable efforts to exhaust domestic remedies.

*(Austria ACCC/C/2008/26; ECE/MP.PP/C.1/2009/6/Add.1, 8 February 2011, para. 52)*

With regard to communication ACCC/C/2008/28 (Denmark), the Committee considered information provided by the communicant, at the request of the Committee (ECE/MP.PP/C.1/2009/4, para. 25), concerning his intentions regarding the further use of domestic remedies in connection with the matter which was the subject of the communication. The communicant had indicated his intention to appeal the matter to the Danish Ombudsman, but had stated that he considered the option of an appeal to the courts to be beyond his capabilities in terms of the time involved and the costs.

*(Denmark ACCC/C/2008/28; Report of the 25th meeting, para. 20)*

The Committee considered that while the communication fulfilled the requirements for admissibility, it was apparent that the communicant had not exhausted the domestic remedies available in Denmark. Without deciding on whether the Danish Ombudsman met the requirement of article 9, paragraph 1, the Committee noted that the issue raised by the communicant was currently subject to a review by the Ombudsman, and that the Ombudsman had decided to suspend its investigation while the case was pending before the Committee. Furthermore, the Committee noted that the communicant had not at any stage brought the case to the Danish judiciary for a legal review, despite the possibility for doing so. Finally, the Committee noted that, according to the information received, various initiatives had been taken by the Danish authorities in order to accommodate, at least to some extent, the application made by the communicant.

*(Denmark ACCC/C/2008/28; Report of the 25th meeting, para. 22)*

For these reasons, the Committee decided to postpone any further deliberation of the case until the Danish Ombudsman had carried out its review of the matter. The Committee requested the secretariat to write to the Party concerned, asking it to inform the Danish Ombudsman about the Committee's decision, in order for the Ombudsman to continue its investigation.

*(Denmark ACCC/C/2008/28; Report of the 25th meeting, para. 23)*

Having considered the communication and the supporting documentation and in light of the admissibility criteria set out in paragraph 20 of the annex to decision I/7 as developed through its practice, the Committee decided that the communication did not fulfil these criteria. The Committee noted that the communicant's allegations concerning non-compliance with article 6 of the Convention only related to the fact that some documents relevant for public participation had not been available in a timely manner in the Welsh

language. Specifically, the Committee found that while the principle of non-discrimination on the basis of citizenship, nationality or domicile was explicit in article 3, paragraph 9, of the Convention, the provision was silent on matters of discrimination on the basis of language. While the lack of availability of documentation in a particular language might under certain circumstances present an impediment to correct implementation of the Convention, nothing in the present communication suggested that such circumstances pertained. In addition, the Committee was not convinced that the possibility for domestic administrative and, in particular, judicial review had been adequately used by the communicant.

*(United Kingdom ACCC/C/2010/46; Report of the 27th meeting, ECE/MP.PP/C.1/2010/2, para. 41)*

[...] The Committee recalls that in some cases it has decided to suspend consideration of a communication pending national review procedures. However, the allegations of non-compliance in the present communication reflect similar legal issues upon which the Committee has already deliberated in another communication concerning Armenia (ACCC/C/2004/08, ECE/MPPP/C.1/2006/2/Add.1), and the findings and recommendations with regard to this communication were endorsed by decision III/6b of the Meeting of the Parties (ECE/MPPP/2008/2/Add.10). While the Party concerned regularly reports to the Committee on its progress in implementing the recommendations of decision III/6b, the Committee decides to consider the present communication in order to examine the actual impact of decision III/6b in Armenian practice, especially with respect to public participation. The Committee, however, does not look at the argumentation of the administrative court in its decision of 24 March 2010, currently under appeal.

*(Armenia ACCC/C/2009/43; ECE/MP.PP/2011/11/Add.1, April 2011, para.48)*

The Committee recalls that in some cases it had decided to suspend consideration of a communication, pending decision by the national ombudsman (see, e.g., ACCC/C/2008/28 Denmark). The Committee, after having taken into account the diversity of the national legal systems and that the powers of the Ombudsperson under the Spanish system seem to be rather limited, decides to consider the present communication.

*(Spain ACCC/C/2009/36; ECE/MP.PP/C.1/2010/4/Add.2, 08 February 2011, para.53)*

The Committee notes that the communicant did not use domestic remedies, but in its oral submission during the discussion of the case it did not exclude the possibility of doing so in the future. The Committee welcomes the efforts of the Party concerned and the communicant to start a dialogue, though this began after the submission of the present communication.

*(Kazakhstan ACCC/C/2011/59; ECE/MP.PP/C.1/2013/9, 16 July 2013, para. 41)*

Since the communicant did not use available domestic remedies, the Committee, rather than examining issues arising from the decision-making concerning the Road Corridor Project, decides to examine some general features of the relevant national legal framework in the light of recent legal developments. However, the Committee considers it necessary to examine also the specific allegations raised with respect to article 6, paragraphs 6 and 8, in order to assess how the regulatory scheme works in practice.

*(Kazakhstan ACCC/C/2011/59; ECE/MP.PP/C.1/2013/9, 16 July 2013, para. 42)*

To illustrate its allegations and also to show that domestic remedies were not available, the communicant provides the example of its attempts to join judicial criminal proceedings for reported contraventions of the Wildlife Trade Act. It also mentions that no further remedies are available.

*(Austria ACCC/C/2011/63; ECE/MP.PP/C.1/2014/3, 13 January 2014, para. 33)*

In its response, the Party concerned questions the admissibility of the communication, first because of its relationship to communication ACCC/C/2010/48 and secondly because the communicant failed to use the existing domestic remedies.

*(Austria ACCC/C/2011/63; ECE/MP.PP/C.1/2014/3, 13 January 2014, para. 34)*

The Party concerned recalls the Committee's findings on communication ACCC/C/2010/48, which covered standing for NGOs in environmental law with respect to permitting procedures, sectoral administrative procedures and civil law. It asserts that the aspects of administrative proceedings raised in the present communication were already covered by communication ACCC/C/2010/48, while the issue of participatory rights of NGOs and other members of the public in criminal or administrative penal proceedings is beyond the scope of rights granted under the Convention.

*(Austria ACCC/C/2011/63; ECE/MP.PP/C.1/2014/3, 13 January 2014, para. 35)*

The Party concerned also notes that the communicant did not use the existing legal remedies provided under the environmental liability and environmental information laws.

*(Austria ACCC/C/2011/63; ECE/MP.PP/C.1/2014/3, 13 January 2014, para. 36)*

The Party concerned first refers to the applicable EU law on environmental liability. According to article 2, paragraph 1 (a), of EU Directive 2004/35/CE on environmental liability (Environmental Liability Directive),<sup>4</sup> “environmental damage” means “damage to protected species and natural habitats, which is any damage that has significant adverse effects on reaching or maintaining the favourable conservation status of such habitats or species”. The Directive further defines protected species and natural habitats (art. 2, para. 3) referring to the EU Birds and Habitats Directives.<sup>5</sup> Therefore, the Environmental Liability Directive covers matters on wild birds, natural habitats and wild fauna and flora. Provincial environmental liability acts, such as the Vienna and the Burgenland Environmental Liability Acts have transposed EU law into the domestic legal order and NGOs may submit a request for action and also have access to a court of other independent and impartial public body, such as the Independent Administrative Senate (Unabhängiger Verwaltungssenat). The Party concerned also indicates that it is currently considering broadening the scope of applicability of the Environmental Liability Directive.

*(Austria ACCC/C/2011/63; ECE/MP.PP/C.1/2014/3, 13 January 2014, para. 37)*

According to the Party concerned, the communicant could also have filed a request to obtain information on the “natural sites”, the “biological diversity and its components” and the “measures or activities designed to protect these elements” under the Environmental Information Act.

*(Austria ACCC/C/2011/63; ECE/MP.PP/C.1/2014/3, 13 January 2014, para. 38)*

The Committee then observed that a number of communications, some dating back to 2008, were still pending because domestic remedies were still ongoing. The Committee noted that to date its usual practice in such cases was to suspend its consideration of the communication while domestic remedies were pending; however, that meant that its mission to carry out its work in a timely and effective manner was seriously jeopardized. Committee members highlighted that the substance of the issues pending before national courts should be closely examined. The Committee agreed that it would consider the matter at its forthcoming meetings.

*(Report of the 36th meeting, ECE/MP.PP/C.1/2012/2, para.74)*

22. Subject to the provisions of paragraph 20, the Committee shall as soon as possible bring any communications submitted to it under paragraph 18 to the attention of the Party alleged to be in non-compliance.
23. A Party shall, as soon as possible but not later than five months after any communication is brought to its attention by the Committee, submit to the Committee written explanations or statements clarifying the matter and describing any response that it may have made.
24. The Committee shall, as soon as practicable, further consider communications submitted to it pursuant to this chapter and take into account all relevant written information made available to it, and may hold hearings.

***committee's  
discretion***

The Committee decided to concentrate primarily on the issue of public participation with regard to the two decisions made by the Council of Territorial Adjustment of the Republic of Albania on 19 February 2003, namely Decision No. 8 (approving the site of the proposed industrial and energy park) and Decision No. 20 (approving the construction site of the proposed TES). This approach is in line with the Committee's understanding, set out in its first report to the Meeting of the Parties (ECE/MP.PP/2005/13, para. 13), that Decision I/7 does not require the Committee to address all facts and/or allegations raised in a communication. This procedural decision by the Committee to focus on these issues does not prevent it from addressing other aspects of the case.

*(Albania ACCC/C/2005/12; ECE/MP.PP/C.1/2007/4/Add.1, 31 July 2007, para. 64)*

***committee's  
discretion***

The Committee takes note of the communicant's allegations concerning the failure of the authorities to respond to its requests for information made in 2007 (see para. 51). The Committee, using its discretionary power to focus on what it believes is most important in any given case, does not find it necessary to investigate this matter in any great detail. It does however note that if confirmed, such refusal to provide response to a request for information would be in breach of provisions of article 4, paragraph 1, of the Convention.

*(Albania ACCC/C/2005/12; ECE/MP.PP/C.1/2007/4/Add.1, 31 July 2007, para. 86)*

As a general remark on the processing of the communication, the Committee is concerned by the fact that it has taken more than two years to prepare findings and recommendations in this case. This is at least partly attributable to the initial lack of engagement in the process of the Party concerned (as evidenced not least by the fact that it did not accept the invitation to participate the discussion at the eleventh meeting of the Committee), and to the difficulties in obtaining timely, accurate and comprehensive answers from both the Party concerned and the communicant. Indeed, right up to the time of commenting on these findings and recommendations in draft form, i.e. May–June 2007, and despite specific and sometimes repeated requests by the Committee, the Party concerned failed to provide information crucial for correct interpretation of relevant events. The Committee therefore does not exclude a possibility that there is other information relevant to the case that has as yet not been made available to it at this stage.

*(Albania ACCC/C/2005/12; ECE/MP.PP/C.1/2007/4/Add.1, 31 July 2007, para. 88)*

The Committee notes however that the process of compliance review is forward-looking and that its aim is to begin facilitating implementation and compliance at the national level once a need for such is established. It therefore prefers to put forward those conclusions and recommendations which it can make at this stage.

*(Albania ACCC/C/2005/12; ECE/MP.PP/C.1/2007/4/Add.1, 31 July 2007, para. 89)*

Moreover, the Committee regrets that neither the Party concerned nor the communicant responded to the invitation to discuss the communication with the Committee at its twenty-fourth meeting (30 June–3 July 2009).

*(Poland ACCC/C/2008/29; ECE/MP.PP/C.1/2009/6/Add.1, 8 February 2011, para. 18)*

In view of the fact that many Parties, including the Party concerned in this case, and the communicants, in their submissions refer to the 2000 Aarhus Convention Implementation Guide,<sup>8</sup> the Committee stresses that the text of the Implementation Guide, while a tool to assist Parties in their implementation of the Convention, does not constitute an authoritative text for the Committee to follow in its deliberations.

*(Austria ACCC/C/2010/48; ECE/MP.PP/C.1/2012/4, 17 April 2012, para. 53)*

## Implementation Guide

### VII. INFORMATION GATHERING

25. To assist the performance of its functions, the Committee may:

(a) Request further information on matters under its consideration;

At its eleventh meeting, the Committee had decided to seek information from the World Bank and the European Bank for Reconstruction and Development (EBRD), as they were two of the main financing institutions for the TES. It noted that the project was subject to their procedures, including procedures related to information and participation issues. The secretariat sent letters to both institutions on 27 July 2006 inviting them to provide any relevant information, including on whether the World Bank's Inspection Panel was or had been addressing the issue.

*(Albania ACCC/C/2005/12; ECE/MP.PP/C.1/2007/4/Add.1, 31 July 2007, para. 16)*

As of the day of the scheduled discussion of the communication at the Committee's twenty-fourth meeting, the communicant had not provided the additional information requested by the Committee by letter of the secretariat dated 15 January 2009 (see para. 4 above).

*(Poland ACCC/C/2008/29; ECE/MP.PP/C.1/2009/6/Add.1, 8 February 2011, para. 17)*

Due to the lack of sufficient information made available to the Committee by the parties and in particular by the communicant before the draft findings, and also to the fact that neither the communicant nor the Party concerned were present at the scheduled discussion of the communication at the Committee's twenty-fourth meeting, the Committee was not able to consider whether the allegations relate to the issues regulated by the Convention. Under these circumstances, the Committee was not able to reach a conclusion regarding the alleged failure by Poland to comply with its obligations under the Convention in relation to the project in question.

*(Poland ACCC/C/2008/29; ECE/MP.PP/C.1/2009/6/Add.1, 8 February 2011, para. 19)*

(b) Undertake, with the consent of any Party concerned, information gathering in the territory of that Party;

(c) Consider any relevant information submitted to it; and



In establishing the facts of the case, the Committee, in addition to examining the information provided in the communication, also considered some other information in the public domain, such as an analysis done by the International Center for Non-profit Act (ICNL).

*(Turkmenistan ACCC/C/2004/5; ECE/MP.PP/C.1/2005/2/Add.5, 14 March 2005, para. 14)*

The Committee takes note of information available in the public domain that the European Parliament recently criticized extensive urbanization practices in Spain. The resolution adopted by the European Parliament in March 2009 refers to the “frequently excessive powers often given to town planners and property developers by certain local authorities” at the expense of communities and the citizens who have their homes in the area. The resolution calls for the suspension and revision of all new building projects which do not respect the environment or guarantee the right of ownership and calls for adequate compensation for those affected.

*(Spain ACCC/2008/24; ECE/MP.PP/C.1/2009/8/Add.1, 30 September 2010, para.66)*

- (d) Seek the services of experts and advisers as appropriate.

### VIII. CONFIDENTIALITY

26. Save as otherwise provided for in this chapter, no information held by the Committee shall be kept confidential.
27. The Committee and any person involved in its work shall ensure the confidentiality of any information that falls within the scope of the exceptions provided for in article 4, paragraphs 3 (c) and 4, of the Convention and that has been provided in confidence.
28. The Committee and any person involved in its work shall ensure the confidentiality of information that has been provided to it in confidence by a Party when making a submission in respect of its own compliance in accordance with paragraph 16 above.
29. Information submitted to the Committee, including all information relating to the identity of the member of the public submitting the information, shall be kept confidential if submitted by a person who asks that it be kept confidential because of a concern that he or she may be penalized, persecuted or harassed.

Communication ACCC/C/2009/42 (Hungary) had been submitted with the request that the communicant’s identity remain confidential. At the request of a letter from the communicant concerning the matter of confidentiality and additional time for submission of translations of documentation relating to the communication, the Committee at its twenty-sixth meeting had decided to defer any determination on the preliminary admissibility of the case and had requested the secretariat to inform the communicant urging it to submit any clarifying information by 1 March 2010.

*(Hungary ACCC/C/2009/42; Report of the 27th meeting, para. 32)*

The Committee noted that no further correspondence had been received from the communicant. It decided that the case was not admissible due to the absence of corroborating information required under paragraph 19 of the annex to decision I/7 and of collaboration from the communicant in dealing with the issue of confidentiality. It requested the secretariat to notify the communicant accordingly.

*(Hungary ACCC/C/2009/42; Report of the 27th meeting, para. 33)*

30. If necessary to ensure the confidentiality of information in any of the above cases, the Committee shall hold closed meetings. 31. Committee reports shall not contain any information that the Committee must keep confidential under paragraphs 27 to 29 above. Information that the Committee must keep confidential under paragraph 29 shall not be made available to any Party. All other information that the Committee receives in confidence and that is related to any recommendations by the Committee to the Meeting of the Parties shall be made available to any Party upon its request; that Party shall ensure the confidentiality of the information that it has received in confidence.

### IX. ENTITLEMENT TO PARTICIPATE

32. A Party in respect of which a submission, referral or communication is made or which makes a submission, as well as the member of the public making a communication, shall be entitled to participate in the discussions of the Committee with respect to that submission, referral or communication.

33. The Party and the member of the public shall not take part in the preparation and adoption of any findings, any measures or any recommendations of the Committee.
34. The Committee shall send a copy of its draft findings, draft measures and any draft recommendations to the Parties concerned and the member of the public who submitted the communication if applicable, and shall take into account any comments made by them in the finalization of those findings, measures and recommendations.

#### **X. COMMITTEE REPORTS TO THE MEETING OF THE PARTIES**

35. The Committee shall report on its activities at each ordinary meeting of the Parties and make such recommendations as it considers appropriate. Each report shall be finalized by the Committee not later than twelve weeks in advance of the meeting of the Parties at which it is to be considered. Every effort shall be made to adopt the report by consensus. Where this is not possible, the report shall reflect the views of all the Committee members. Committee reports shall be available to the public.

#### **XI. CONSIDERATION BY THE COMPLIANCE COMMITTEE**

36. Pending consideration by the Meeting of the Parties, with a view to addressing compliance issues without delay, the Compliance Committee may:
- (a) In consultation with the Party concerned, take the measures listed in paragraph 37 (a);
  - (b) Subject to agreement with the Party concerned, take the measures listed in paragraph 37 (b), (c) and (d).

#### **XII. CONSIDERATION BY THE MEETING OF THE PARTIES**

37. The Meeting of the Parties may, upon consideration of a report and any recommendations of the Committee, decide upon appropriate measures to bring about full compliance with the Convention. The Meeting of the Parties may, depending on the particular question before it and taking into account the cause, degree and frequency of the non-compliance, decide upon one or more of the following measures:
- (a) Provide advice and facilitate assistance to individual Parties regarding the implementation of the Convention;
  - (b) Make recommendations to the Party concerned;
  - (c) Request the Party concerned to submit a strategy, including a time schedule, to the Compliance Committee regarding the achievement of compliance with the Convention and to report on the implementation of this strategy;
  - (d) In cases of communications from the public, make recommendations to the Party concerned on specific measures to address the matter raised by the member of the public;
  - (e) Issue declarations of non-compliance;
  - (f) Issue cautions;
  - (g) Suspend, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, the special rights and privileges accorded to the Party concerned under the Convention;
  - (h) Take such other non-confrontational, non-judicial and consultative measures as may be appropriate.

#### **XIII. RELATIONSHIP BETWEEN SETTLEMENT OF DISPUTES AND THE COMPLIANCE PROCEDURE**

38. The present compliance procedure shall be without prejudice to article 16 of the Convention on the settlement of disputes.

#### **XIV. ENHANCEMENT OF SYNERGIES**

39. In order to enhance synergies between this compliance procedure and compliance procedures

under other agreements, the Meeting of the Parties may request the Compliance Committee to communicate as appropriate with the relevant bodies of those agreements and report back to it, including with recommendations as appropriate. The Compliance Committee may also submit a report to the Meeting of the Parties on relevant developments between the sessions of the Meeting of the Parties.

## PART III

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### **DECISIONS BY THE MEETING OF THE PARTIES ON COMPLIANCE BY INDIVIDUAL PARTIES**

**THE SECOND MEETING OF THE PARTIES**

held in Almaty, Kazakhstan,  
on 25-27 May 2005

**DECISION II/5a**

COMPLIANCE BY **KAZAKHSTAN** WITH ITS OBLIGATIONS  
UNDER THE AARHUS CONVENTION

*The Meeting of the Parties,*

Acting under paragraph 37 of the annex to decision I/7 on review of compliance,

*Taking note* of the report of the Compliance Committee (ECE/MPPP/2005/13) and its addenda 1 and 2 (ECE/MPPP/2005/13/Add.1 and 2), as well as addenda 1 and 2 to the report of its seventh meeting (ECE/MPPP/C.1/2005/2/Add.1 and 2), with regard to the cases concerning information requested from Kazatomprom and construction of a high-voltage power line respectively,

*Being encouraged* by Kazakhstan's ongoing willingness to discuss in a constructive manner the compliance issues in question with the Committee;

1. *Endorses* the following findings of the Committee:

- (a) By having failed to ensure that bodies performing public functions implement the provisions of article 4, paragraphs 1 and 2, of the Convention, Kazakhstan was not in compliance with that article;
- (b) The lengthy review procedure and denial of standing to a non-governmental organization in a lawsuit on access to environmental information was not in compliance with article 9, paragraph 1;
- (c) The lack of clear regulation and guidance with regard to the obligations of bodies performing public functions to provide information to the public and with regard to the implementation of article 9, paragraph 1, constitutes non-compliance with the obligations established in article 3, paragraph 1, of the Convention;

2. *Welcomes, nonetheless,* the Guidelines on Handling Public Requests for Environmental Information, prepared by the Ministry of the Environment of Kazakhstan;

3. *Furthermore endorses* the finding of the Compliance Committee that the Government of Kazakhstan did not comply fully with article 6, paragraph 1 (a) and annex I, paragraph 20, of the Convention and, in connection with this, article 6, paragraphs 2, 3, 4, 7 and 8;

4. *Notes,* however, with appreciation the efforts of the Ministry of the Environment in December 2001 and May-June 2002 to attempt to introduce some elements of public participation in a process that was defective in that respect;

5. *Requests* the Government of Kazakhstan, in order to address the findings in paragraph 1, to submit to the Compliance Committee, not later than the end of 2005, a strategy, including a time schedule, for transposing the Convention's provisions into national law and developing practical mechanisms and implementing legislation that would set out clear procedures for their implementation. The strategy might also include capacity-building activities, in particular for the judiciary and public officials, including persons having public responsibilities or functions, involved in environmental decision-making;

6. *Recommends* the Government of Kazakhstan, again in order to address the findings in paragraph 1, to provide officials of all the relevant public authorities on various levels of administration with training on the implementation of the Guidelines on Handling Public Requests for Environmental Information and to report to the Meeting of the Parties, through the Compliance Committee, no less than four months before the third meeting of the Parties on the measures taken to this end;

7. Also recommends the Government of Kazakhstan, in order to address the finding in paragraph 3 and with a view to fully implementing article 3, paragraph 1, of the Convention, to:

- (a) Adopt and implement regulations setting out more precise public participation procedures covering the full range of activities subject to article 6 of the Convention, without in any way reducing existing rights of public participation;
  - (b) Ensure that public authorities at all levels, including the municipal level, are fully aware of their obligations to facilitate public participation; and
  - (c) Consider introducing stronger measures to prevent any construction work going ahead prior to the completion of the corresponding permitting process with the required level of public participation;
8. *Invites* the Government of Kazakhstan to submit a report to the meeting of the Parties, through the Compliance Committee, no less than four months before the third meeting of the Parties on the measures taken to implement the recommendations in paragraph 7; and
9. *Welcomes* Kazakhstan's statement to the Meeting that it is willing to continue the established meaningful dialogue with the Compliance Committee referred to in the preamble above in order to bring about its full compliance.

## DECISION II/5b

### COMPLIANCE BY **UKRAINE** WITH ITS OBLIGATIONS UNDER THE AARHUS CONVENTION

*The Meeting of the Parties,*

*Acting* under paragraph 37 of the annex to decision I/7 on review of compliance,

*Taking note* of the report of the Compliance Committee (ECE/MP.PP/2005/13) and its addendum 3 (ECE/MP.PP/2005/13/Add.3), as well as addendum 3 to the report of its seventh meeting (ECE/MP.PP/C.1/2005/2/Add.3), with regard to the case of the Bystre deep-water navigation canal construction,

*Noting with regret* that no response to either the submission or the communication was provided by the Party concerned pursuant to the requirements set out in the annex to decision I/7,

1. *Endorses* the following findings of the Compliance Committee:
  - (a) By failing to provide for public participation of the kind required by article 6 of the Convention, Ukraine was not in compliance with article 6, paragraph 1 (a), and, in connection with this, article 6, paragraphs 2 to 8, and article 6, paragraph 9 (second sentence);
  - (b) By failing to ensure that information was provided by the responsible public authorities upon request, Ukraine was not in compliance with article 4, paragraph 1, of the Convention;
  - (c) The lack of clarity with regard to public participation requirements in environmental impact assessment (EIA) and environmental decision-making procedures for projects, such as time frames and modalities of a public consultation process, requirements to take its outcome into account and obligations with regard to making information available in the context of article 6, indicates the absence of a clear, transparent and consistent framework for the implementation of the Convention and constitutes non-compliance with article 3, paragraph 1, of the Convention;
2. *Requests* the Government of Ukraine to bring its legislation and practice into compliance with the provisions of the Convention and include information on the measures taken to that effect in its report to the next meeting of the Parties; and
3. *Also requests* the Government of Ukraine to submit to the Compliance Committee, not later than the end of 2005, a strategy, including a time schedule, for transposing the Convention's provisions into national law and developing practical mechanisms and implementing legislation that sets out clear procedures for their implementation. The strategy might also include capacity-building activities, in particular for the judiciary and public officials involved in environmental decision-making.

## DECISION II/5c

COMPLIANCE BY **TURKMENISTAN** WITH ITS OBLIGATIONS  
UNDER THE AARHUS CONVENTION

*The Meeting of the Parties,*

*Acting* under paragraph 37 of the annex to decision I/7 on review of compliance,

*Taking note* of the report of the Compliance Committee (ECE/MPPP/2005/13) and its addendum 5 (ECE/MPPP/2005/13/Add.5), as well as addendum 5 to the report of its seventh meeting (ECE/MPPP/C.1/2005/2/Add.5), with regard to the case of the Act on Public Associations,

*Noting with regret* that no response to the communication was provided by the Party concerned pursuant to the requirements set out in the annex to decision I/7,

1. *Endorses* the following findings of the Compliance Committee:
  - (a) Article 5 of the Act on Public Associations is not in compliance with article 3, paragraph 9, of the Convention;
  - (b) Article 17 of the Act on Public Associations is not in compliance with article 3, paragraph 4, of the Convention;
  - (c) By enacting provisions that are not in compliance with article 3, paragraph 9, and article 3, paragraph 4, of the Convention, the Party concerned is not in compliance with the requirement of article 3, paragraph 1, to establish and maintain a clear, transparent and consistent framework to implement the provisions of the Convention;
2. *Requests* the Government of Turkmenistan to amend the Act on Public Associations with a view to bringing all of its provisions into compliance with the Convention;
3. *Recommends* that the Government of Turkmenistan should immediately take appropriate interim measures with a view to ensuring that the provisions of the Act on Public Associations are implemented as far as possible in a manner which is in compliance with the requirements of the Convention;
4. *Also recommends* that the Government of Turkmenistan should carry out the measures referred to in paragraphs 2 and 3 above with the involvement of the public and, in particular, relevant national and international organizations, including non-governmental organizations;
5. *Furthermore recommends* that the Government of Turkmenistan should develop and make publicly available official guidance on the interpretation of the Act on Public Associations, taking into account the relevant provisions and standards of the Convention; and
6. *Invites* the Government of Turkmenistan to submit a report to the Meeting of the Parties, through the Compliance Committee, no less than four months before the third meeting of the Parties on the measures taken to implement the recommendations in paragraph 2.

## THE THIRD MEETING OF THE PARTIES

held from 11 to 13 June 2008 in Riga

### DECISION III/6a

COMPLIANCE BY **ALBANIA** WITH ITS OBLIGATIONS UNDER THE CONVENTION

*The Meeting of the Parties,*

*Acting* under paragraph 37 of the annex to decision I/7 on review of compliance,

*Taking note* of the report of the Compliance Committee and the corresponding addendum (ECE/MP.PP/2008/5 and Add.1), as well as the addendum to the report of its sixteenth meeting (ECE/MP.PP/C.1/2007/4/Add.1), with regard to a case concerning public participation in the decision-making on the planning of an industrial park comprising, inter alia, oil and gas pipelines, installations for the storage of petroleum, three thermal power plants and a refinery near the lagoon of Narta in Albania,

*Encouraged* by Albania's ongoing willingness to discuss in a constructive manner the compliance issues in question with the Committee and to take measures implementing the Committee's recommendations in the intersessional period,

1. *Endorses* the findings of the Committee that:

- (a) By failing to implement the requirements of article 6, paragraphs 3, 4 and 8, in connection with article 7 of the Convention in its decision-making process on an industrial and energy park, the Government of Albania was not in compliance with those provisions of the Convention;
- (b) By failing to ensure arrangements enabling adequate public participation on the early stages of decision-making on the first power plant project in Vlora, the Government of Albania was not in compliance with article 6, paragraphs 3, 4 and 8, of the Convention;
- (c) By failing to establish a clear, transparent and consistent framework to implement the provisions of the Convention in Albanian legislation, the Party concerned was not in compliance with article 3, paragraph 1, of the Convention;

2. *Welcomes* the recommendations that were made by the Committee during the intersessional period in accordance with paragraph 36 (b) of the annex to decision I/7 (ECE/MP.PP/C.1/2007/4/Add.1, paras. 96-99) and Albania's willingness to accept them;

3. *Also welcomes* also the progress made by Albania in implementing the Committee's recommendations since their adoption in June 2007 and its preparation of an action plan for the implementation of the Convention;

4. *Invites* the Government of Albania to continue taking relevant measures to implement the recommendations of the Committee with a view to bringing about full compliance with the relevant provisions of the Convention, inter alia, through the implementation of the action plan developed by it, and in particular:

- (a) To undertake the necessary legislative, regulatory, administrative and other measures to ensure that:
  - (i) A clear, transparent and consistent framework to implement the provisions of the Convention in Albanian legislation is established, including a clearer and more effective scheme of responsibility within the governmental administration;
  - (ii) Practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, not only during preparation of individual projects, are in place, including through development of detailed procedures and practical measures to implement article 25 of the Environment Impact Assessment Law of Albania;
  - (iii) The public which may participate is identified;
  - (iv) Notification of the public is made at an early stage for projects and plans, when options are open, not when decisions are already made;



- (v) Notification of the entire public which may participate, including nongovernmental organizations opposed to the project, is provided, and notifications are announced by appropriate means and in an effective manner so as to ensure that the various categories of the public which may participate are reached, and records are kept of such notifications;
  - (vi) The locations where the draft environmental impact assessment documentation can be inspected by the public before public meetings are publicized at a sufficiently early stage, giving members of the public time and opportunities to present their comments;
  - (vii) Public opinions are heard and taken into account by the public authority making the relevant decisions in order to ensure meaningful public participation;
- (b) To take particular care to ensure early and adequate opportunities for public participation in any subsequent phases in the permitting process for the industrial and energy park and the associated projects;
  - (c) To take or elaborate, as appropriate, the above measures in consultation with relevant non-governmental organizations;
5. *Also invites* the Government of Albania to submit to the Committee periodically, namely in November 2008, November 2009 and November 2010, information on the progress in implementing the recommendations of the Committee;
6. *Requests* the secretariat, and invites relevant international and regional organizations and financial institutions, to provide advice and assistance to the Party concerned as necessary in the implementation of these measures;
7. *Undertakes* to review the situation at its fourth meeting.

### DECISION III/6b

#### COMPLIANCE BY **ARMENIA** WITH ITS OBLIGATIONS UNDER THE CONVENTION

*The Meeting of the Parties,*

*Acting* under paragraph 37 of the annex to decision I/7 on review of compliance,

*Taking note* of the report of the Compliance Committee and the corresponding addendum (ECE/MP.PP/2008/5 and Add.2), as well as the addendum to the report of its eleventh meeting (ECE/MP.PP/C.1/2006/2/Add.1), with regard to a case concerning access to information and public participation in the decision-making on modification of land/use designation and zoning and on the leasing of certain plots in an agricultural area of Dalma Orchards in Armenia, as well as availability of appropriate appeal procedures,

*Encouraged* by Armenia's ongoing willingness to discuss in a constructive manner the compliance issues in question with the Committee and to take measures implementing the Committee's recommendations in the intersessional period,

1. *Endorses* the findings of the Committee, adopted at its eleventh meeting (March 2006) and accordingly reflecting the compliance situation in 2006, to the effect that:
  - (a) By failing to ensure that bodies performing public functions implement the provisions of article 4, paragraphs 1 and 2, of the Convention, Armenia was not in compliance with that article;
  - (b) By failing to ensure effective public participation in decision-making on specific activities, the Party did not comply fully with article 6, paragraph 1 (a), with annex I, paragraph 20, or, in connection with this, with article 6, paragraphs 2 to 5 and 7 to 9, of the Convention. The extent of non-compliance would be somewhat mitigated if public participation were to be provided for in further permitting processes for the specific activities in question, but the requirement under article 6, paragraph 4, to ensure that early public participation is provided for when all options are open would still have been breached. In this regard, information was provided at the time to the Committee by the Party regarding the new draft law on environmental impact assessment and the

Committee understood that the drafters of the new law would take the opportunity to ensure its approximation with the requirements of the Convention;

- (c) By failing to provide for public participation in decision-making processes for the designation of land use, the Party was not in compliance with article 7 of the Convention;
  - (d) By failing to ensure that members of the public concerned had access to a review procedure and to provide adequate and effective remedies, the Party was not in compliance with article 9, paragraphs 2 to 4, of the Convention;
2. *Welcomes* the recommendations that were made by the Committee during the inter-sessional period in accordance with paragraph 36 (b) of the annex to decision I/7 (ECE/MPPP/C.1/2006/2/Add.1, para. 45) and Armenia's willingness to accept them;
  3. *Also welcomes* the significant progress made by Armenia in implementing the Committee's recommendations since their adoption in March 2006;
  4. *Notes* that further progress needs to be made by Armenia in order to bring its legislation and practice into full compliance with the relevant provisions of the Convention, in particular with regard to further developments in specific legal acts and regulations, such as those setting out detailed procedures for environmental impact assessment, public notification and the consultation process;
  5. *Endorses* the finding of the Committee at its nineteenth meeting that information provided by the Party concerned in February 2008 indicates that further measures should be taken in order to bring Armenia into compliance with the above provisions of the Convention, in particular with regard to development of detailed procedures for public participation in decision-making on activities referred to in article 6, paragraph 1, of the Convention, *inter alia*, by incorporating them into the new Law on Environmental Impact Assessment, and to ensure their practical application, including by providing training to officials of all the relevant public authorities at various levels of administration;
  6. *Welcomes* the intention of the Party to continue introducing the relevant provisions necessary to fully implement the Convention through the ongoing process of legislative development and review;
  7. *Invites* the Party to take the Committee's considerations and findings with regard to communication ACCC/C/2004/08 into account in that process;
  8. *Requests the Party:*
    - (a) To ensure practical application of public participation procedures at all levels of decision-making in accordance with article 7 of the Convention and relevant domestic legislation;
    - (b) To develop detailed procedures for public participation in decision-making on the activities referred to in article 6, paragraph 1, of the Convention;
    - (c) To undertake appropriate practical measures to ensure effective access to justice, including the availability of adequate and effective remedies to challenge the legality of decisions on matters regulated by articles 6 and 7 of the Convention;
  9. *Invites* the Party to submit to the Committee periodically, namely in November 2008, November 2009 and November 2010, detailed information on further progress in implementing the recommendations set out above;
  10. *Requests* the secretariat, and invites relevant international and regional organizations and financial institutions, to provide advice and assistance to the Party concerned as necessary in the implementation of these measures, in particular measures being undertaken with regard to implementation of articles 6 and 7 of the Convention and capacity-building measures for public officials and the judiciary;
  11. *Undertakes* to review the situation at its fourth meeting.

## DECISION III/6c

COMPLIANCE BY **KAZAKHSTAN** WITH ITS OBLIGATIONS  
UNDER THE CONVENTION

*The Meeting of the Parties,*

*Acting* under paragraph 37 of the annex to decision I/7 on review of compliance,

*Mindful* of the conclusions and recommendations set out in decision II/5a with regard to compliance by Kazakhstan (ECE/MPPP/2005/2/Add.7),

*Taking note* of the report of the Compliance Committee and the corresponding addendum (ECE/MPPP/2008/5 and Add.5), as well as the first addendum to the report of its twelfth meeting (ECE/MPPP/C.1/2006/4/Add.1), with regard to a case concerning access to justice in appealing the failure of Almaty Sanitary-Epidemiological Department and Almaty City Territorial Department on Environmental Protection to enforce domestic environmental law with regard to operation of an industrial facility for storage of cement and coal and production of cement-based materials,

*Encouraged* by Kazakhstan's continuous efforts to engage in a constructive discussion with the Committee on the compliance issues in question and to take measures implementing decision II/5a in the intersessional period,

1. *Takes note* of the progress made by the Party concerned in implementing decision II/5a of the Meeting of the Parties, in particular with regard to the relevant legislative and regulatory developments, including the introduction of detailed procedures for access to information and public participation in decision-making;

2. *Also takes note* of the progress made by the Party concerned in implementing the Committee's recommendations with regard to communication ACCC/C/2004/06 since their adoption in June 2006, and in particular the provisions of the new Environmental Code further facilitating access to justice as well as many relevant capacity-building initiatives for the judiciary and other legal professionals initiated by the Supreme Court of Kazakhstan;

3. *Notes with appreciation* the active engagement and constructive approach demonstrated by the Government of Kazakhstan in the process of review of compliance and implementation of the recommendations made in this context;

4. *Recognizes* that further efforts, in particular in the area of access to justice, are needed and that the Party remains in non-compliance with article 9, paragraph 4, in conjunction with article 9, paragraph 3, of the Convention;

5. *Endorses* the following findings of the Committee:

(a) The Government of Kazakhstan has overall undertaken effective and comprehensive measures to implement most of the provisions of decision II/5a;

(b) Despite the aforementioned efforts, the Government of Kazakhstan has not yet achieved compliance with article 9, paragraph 4, in conjunction with article 9, paragraph 3, of the Convention, in particular with respect to practical possibilities to appeal against a failure to act by public authorities;

6. *Invites* the Government of Kazakhstan to thoroughly examine, with appropriate involvement of the public, the relevant environmental and procedural legislation as well as the relevant case law to identify whether it sufficiently provides judicial and other review authorities with the possibility to provide adequate and effective remedies in the course of judicial review;

7. *Further invites* the Government of Kazakhstan to report to the Meeting of the Parties, through the Compliance Committee, six months before the fourth meeting of the Parties, on the measures taken in connection with bringing about full compliance with article 9 of the Convention and ensuring effective implementation of article 6, including, as appropriate, any further developments in the legislative framework and detailed procedures, and in particular, their practical application in connection with providing the public with various effective means of participation in decision-making, ensuring that due account is taken of the public comments and also that activities subject to article 6 of the Convention are not carried out prior to the completion of the corresponding permitting processes in which the required level of public participation has been provided for;

8. *Requests* the secretariat, and invites relevant international and regional organizations and financial institutions, to provide advice and assistance to the Party concerned as necessary in the implementation of these measures;

9. *Undertakes* to review the situation at its fourth meeting.

## DECISION III/6d

### COMPLIANCE BY **LITHUANIA** WITH ITS OBLIGATIONS UNDER THE CONVENTION

*The Meeting of the Parties,*

*Acting* under paragraph 37 of the annex to decision I/7 on review of compliance,

*Taking note* of the report of the Compliance Committee and the corresponding addendum (ECE/MP.PP/2008/5 and Add.6) with regard to a case concerning public participation in the decision-making on a landfill in the village of Kazokiskes, Lithuania,

*Encouraged* by Lithuania's ongoing willingness to discuss in a constructive manner the compliance issues in question with the Committee;

1. *Endorses* the following findings of the Committee:

- (a) By failing to inform the public in an adequate, timely and effective manner about the possibility to participate in the decisions in the environmental impact assessment for the proposed landfill, and by providing too short a time to inspect the documentation and to submit comments in relation to the above decisions regarding the landfill in question, Lithuania failed to comply with the requirements of article 6, paragraphs 2 and 3, of the Convention;
- (b) The following general features of the Lithuanian legal framework are not in compliance with article 6 of the Convention:
  - (i) Lack of a clear requirement for the public to be informed in an adequate, timely and effective manner (article 6, para. 2);
  - (ii) Setting a fixed period of 10 working days for inspecting the documentation and for submitting comments (article 6, para. 3);
  - (iii) Making developers (project proponents) rather than the relevant public authorities responsible for organizing public participation, including for making available the relevant information and for collecting the comments (article 6, para. 2 (d) (iv) and (v), and para. 6);
  - (iv) Requiring that comments submitted should be "motivated" and restricting those entitled to submit comments to the "public concerned" (article 6, para. 7);

2. *Recommends* to the Government of Lithuania to take the necessary legislative, regulatory, administrative and other measures to ensure that:

- (a) There is a clear requirement for the public to be informed of decision-making processes that are subject to article 6 in an adequate, timely and effective manner;
- (b) There are reasonable time frames for different phases of public participation taking into account the stage of decision-making as well as the nature, size and complexity of proposed activities;
- (c) There is a clear responsibility on the relevant public authorities to ensure such opportunities for public participation as are required under the Convention, including for making available the relevant information and for collecting the comments;
- (d) Provision is clearly made for any comments to be submitted by any member of the public, even if the comments are not "motivated";
- (e) on which it There is a clear correlation between the time period(s) for informing the public about the decision and making available the text of the decision together with the reasons and considerations is based with the time-frame within which review procedures may be initiated under article 9, paragraph 2, of the Convention;

- (f) For each decision-making procedure covered by article 6, a public authority from which relevant information can be obtained by the public and to which comments or questions can be submitted is designated;
  - (g) All plans and programmes relating to the environment are subject to appropriate public participation;
3. *Requests* the Government of Lithuania to draw up an action plan for implementing the above recommendations, with the involvement of the public concerned, and to submit it to the Committee by 31 December 2008;
4. *Invites* the Government of Lithuania to provide information to the Committee at the latest six months in advance of the fourth meeting of the Parties on the measures taken and the results achieved in implementation of the above recommendations.

### DECISION III/6e

#### COMPLIANCE BY **TURKMENISTAN** WITH ITS OBLIGATIONS UNDER THE CONVENTION (Ref. Decision II/5c)

*The Meeting of the Parties,*

*Acting* under paragraph 37 of the annex to decision I/7 on the review of compliance,

*Mindful* of the conclusions and recommendations set out in decision II/5c with regard to compliance by Turkmenistan (ECE/MPPP/2005/2/Add.9),

*Recalling* the regret expressed in decision II/5c with regard to the lack of response from the Party concerned in the course of compliance review pursuant to the requirements set out in the annex to decision I/7,

*Taking note* of the report of the Compliance Committee (ECE/MPPP/2008/5) and the corresponding addendum (ECE/MPPP/2008/5/Add.8),

1. *Notes with regret* the failure of the Government of Turkmenistan to take measures to implement decision II/5c of the Meeting of the Parties;
2. *Also notes* the initial engagement of the Government of Turkmenistan demonstrated by its correspondence with the Committee and the participation of its representatives in a meeting of the Committee;
3. *Notes with appreciation* the information provided by Turkmenistan, inter alia through its national implementation report, with regard to general measures taken to implement the Convention, and in particular its expression of intent to review its legislation, including the Act on Public Associations, and its willingness to engage with the process outlined in paragraphs 6-8 below;
4. *Confirms* its earlier endorsement of the Committee's findings with regard to compliance by Turkmenistan as set out in paragraph 1 of decision II/5c;
5. *Decides* to issue a caution to the Government of Turkmenistan, to become effective on 1 May 2009, unless the Government of Turkmenistan has fully satisfied the conditions set out in subparagraphs (a) to (c) below and has notified the secretariat of this fact by 1 January 2009. The successful fulfilment of the conditions is to be established by the Committee:
  - (a) The Act on Public Associations is amended in such a way as to make clear that foreign citizens and persons without nationality can enjoy the same rights as citizens in the formation of and participation in public associations;
  - (b) The Act on Public Associations is amended in such a way as to make clear that members of the public may conduct activities on behalf of non-registered public associations in harmony with the requirements of the Convention, in particular, article 3, paragraph 4;
  - (c) Other legislation does not run counter to the above amendments;
6. *Invites* the Government of Turkmenistan to submit to the Committee periodically, namely in November 2008, November 2009 and November 2010, detailed information on further progress in implementing the measures referred to in paragraph 5;

7. *Also invites* the Government of Turkmenistan to consider accommodating an expert mission, with the involvement of Committee members and other experts, as appropriate, with a view to making available to it a wide range of expert opinion on possible ways to implement the measures referred to in decision II/5c, including any possible amendments to the Act on Public Associations;

8. *Requests* the secretariat and the Compliance Committee, and invites relevant international and regional organizations and financial institutions, to provide advice and assistance to the Party concerned, as necessary, in the implementation of these measures;

9. *Undertakes* to review the situation at its fourth meeting.

## DECISION III/6f

### COMPLIANCE BY **UKRAINE** WITH ITS OBLIGATIONS UNDER THE CONVENTION (Ref. Decision II/5b)

*The Meeting of the Parties,*

*Acting* under paragraph 37 of the annex to decision I/7 on review of compliance,

*Mindful* of the conclusions and recommendations set out in decision II/5b with regard to compliance by Ukraine (ECE/MPPP/2005/2/Add.8),

*Taking note* of the report of the Compliance Committee (ECE/MPPP/2008/5) and the corresponding addendum (ECE/MPPP/2008/5/Add.9),

1. *Notes* with regret the continuing failure of the Government of Ukraine to engage sufficiently with the process of compliance review or to take measures to implement decision II/5b of the Meeting of the Parties;

2. *Takes note* of the action plan developed by Ukraine and submitted through the Committee in May 2008;

3. *Notes* with appreciation the information provided by Ukraine, inter alia through its national implementation report, with regard to general measures taken to implement the Convention and the commitment to undertake the measures set out in subparagraphs (a) to (d) of paragraph 5 below, made by the delegation of Ukraine at the third meeting of the Parties;

4. *Regrets*, however, that fulfilment of the actions set out in the action plan submitted by Ukraine would not fully address the recommendations set out in decision II/5b of the Meeting of the Parties and therefore would not bring about compliance with the Convention;

5. *Decides* to issue a caution to the Government of Ukraine, to become effective on 1 May 2009, unless the Government of Ukraine has fully satisfied the conditions set out in subparagraphs (a) to (d) below and has notified the Secretariat of this fact by 1 January 2009. The successful fulfilment of the conditions is to be established by the Committee:

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

(b) The action plan also incorporates capacity-building activities, in particular training of the judiciary and of public officials involved in environmental decision-making;

(c) The action plan establishes a procedure which ensures its implementation in a transparent manner and in full consultation with civil society;

(d) The action plan is transposed through a governmental normative act ensuring its implementation by all ministries and other relevant authorities;

6. *Invites* the Government of Ukraine to submit to the Committee periodically, namely in November 2008, November 2009 and November 2010, detailed information on progress in implementing the action plan;

7. *Requests* the secretariat and the Compliance Committee, and invites relevant international and regional organizations and financial institutions, to provide advice and assistance to the Party concerned as necessary in the implementation of these measures;

8. *Undertakes* to review the situation at its fourth meeting.

## THE FOURTH SESSION OF THE MEETING OF THE PARTIES

held from 29 June to 1 July 2011 in Chisinau

### DECISION IV/9a

ON COMPLIANCE BY **ARMENIA** WITH ITS OBLIGATIONS  
UNDER THE CONVENTION

*The Meeting of the Parties,*

*Acting* under paragraph 37 of the annex to its decision I/7 on the review of compliance,

*Mindful* of the conclusions and recommendations set out in decision III/6b with regard to compliance by Armenia (ECE/MPPP/2008/2/Add.10),

*Taking note* of the report of the Compliance Committee and the corresponding addendum (ECE/MPPP/2011/11 and Add.1) with regard to follow up on decision III/6b and a case concerning public participation in the decision-making and access to justice in connection with the issuance and renewal of licences to a developer for the exploitation of copper and molybdenum deposits in the Lori region of Armenia,

*Encouraged* by Armenia's continuous efforts to engage in a constructive discussion with the Committee on the compliance issues in question, and to take measures implementing decision III/6b in the intersessional period,

1. *Takes note* of the serious and active engagement of and progress made by the Party concerned in implementing decision III/6b of the Meeting of the Parties;
2. *Endorses* the findings of the Committee that, while acknowledging the continuous efforts of the Party concerned in implementing decision III/6b, there are still shortcomings in Armenian law and practice and, due to these shortcomings, in the case of communication ACCC/C/2009/43, the Party concerned failed to comply with article 3, paragraph 1, of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, and article 6, paragraphs 2, 4 and 9, of the Convention;
3. *Encourages* the Party concerned to continue its constructive dialogue with the Committee and to accelerate the process for the new legislation on environmental impact assessment (EIA), including procedures on public participation in it, to be finalized and come into effect;
4. *Invites* the Party concerned to take the necessary legislative, regulatory, and administrative measures and practical arrangements to ensure that:
  - (a) Thresholds for activities subject to an EIA procedure, including public participation, are set in a clear manner;
  - (b) The public is informed as early as possible in the decision-making procedure, when all options are open, and that reasonable time frames are set for the public to consult and comment on project-related documentation;
  - (c) The responsibilities of different actors (public authorities, local authorities, developer) in the organization of public participation procedures are defined as clearly as possible;
  - (d) A system of prompt notification of the public concerned on final conclusions of environmental expertise is arranged, e.g., through the website of the Ministry of Nature Protection;
5. *Also invites* the Party concerned to take the above elements into account in finalizing its law on environmental impact assessment, and to provide a draft of the new law to the Committee as soon as possible;
6. *Requests* the Party concerned to draw up an action plan for implementing the above recommendations with a view to submitting an initial progress report to the Committee by 1 December 2011, and the action plan by 1 April 2012;
7. *Also requests* the Party concerned to provide information to the Committee at the latest six months in advance of the fifth session of the Meeting of the Parties on the measures taken and the results achieved in implementation of the above recommendations;



8. *Requests* the secretariat, and invites relevant international and regional organizations and financial institutions, to provide advice and assistance to the Party concerned as necessary in the implementation of these measures;

9. *Undertakes* to review the situation at its fifth session.

## DECISION IV/9b

### ON COMPLIANCE BY **BELARUS** WITH ITS OBLIGATIONS UNDER THE CONVENTION

*The Meeting of the Parties,*

*Acting* under paragraph 37 of the annex to its decision I/7 on the review of compliance,

*Taking note* of the report of the Compliance Committee and the corresponding addendum (ECE/MPPP/2011/11 and Add.2) with regard to a case concerning access to information and public participation in the decision-making for the hydropower plant project on the Neman River in Belarus (HPP project),

*Taking note also* of the ongoing legislative and regulatory reforms in Belarus in relation to implementing the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters,

*Encouraged* by the ongoing willingness of the Party concerned to discuss in a constructive manner compliance issues in question with the Committee,

1. *Endorses* the following findings of the Committee that the Party concerned in the specific case:

- (a) By failing to provide the requested information, it failed to comply with article 4, paragraph 1, of the Convention;
- (b) By not providing for adequate, timely and effective public notice, according to the criteria of the Convention, it failed to comply with article 6, paragraph 2;
- (c) By not providing the public with sufficient possibilities to submit any comments, information, analyses or opinions relevant for the HPP project, it failed to comply with article 6, paragraph 7 of the Convention;
- (d) By not informing the public promptly about the environmental *expertiza*<sup>1</sup> conclusions, namely a decision of the construction of the HPP project, it failed to comply with article 6, paragraph 9 of the Convention;

2. *Endorses also* the following findings of the Committee that the following general features of the Belarusian legal framework are not in compliance with the Convention:

- (a) Requiring an interest be stated for access to environmental information (art. 4, para. 1);
- (b) Not adequately regulating the public notice requirements: in particular by not providing for mandatory means of informing the public, setting insufficient requirements as to the content of public notice, and not providing for a clear requirement for the public to be informed in an adequate, timely and effective manner (art. 6, para. 2);
- (c) Setting only maximum time frames for public hearings and allowing thereby in individual cases for time frames to be set which might be not reasonable (art. 6, para. 3);
- (d) Making the developers (project proponents) rather than the relevant public authorities responsible for organizing public participation, including for making available the relevant information to the public and for collecting comments (art. 6, paras. 2 (d) (iv)- (v), 6 and 7);
- (e) Not establishing mandatory requirements for the public authorities that issue the *expertiza* conclusion to take into account the comments of the public (art. 6, para. 8);
- (f) Not establishing appropriate procedures to promptly notify the public about the environmental *expertiza* conclusions, and not establishing appropriate arrangements to facilitate public access to these conclusions (art. 6, para. 9);

3. *Shares* the Committee's concerns that:

<sup>1</sup> "State environmental review" or "ecological expertise" (here *expertiza*) mechanism formally established in the former Soviet Union in the second half of the 1980s..

- (a) In relation to compliance with article 5, paragraphs 1 (a) and (b), the law in Belarus renders only the developer responsible for maintaining the documentation relevant to OVOS<sup>2</sup> and *expertiza*, including the documents evidencing public participation, and they do not impose any obligation in this respect on the authorities competent to examine the results of OVOS and those competent to issue *expertiza* conclusions;
- (b) The law in Belarus concerning situations where provisions on public participation do not apply may be interpreted much more broadly than allowed under article 6, paragraph 1 (c), of the Convention;
4. *Recommends* to the Party concerned in the process of its reform to reach compliance with the Convention to take the necessary legislative, regulatory, and administrative measures and practical arrangements to ensure that:
- (a) The general law on access to information refers to the 1992 Law on Environmental Protection that specifically regulates access to environmental information, in which case the general requirement of stating an interest does not apply;
- (b) There is a clear requirement for the public to be informed of decision-making processes that are subject to article 6 in an adequate, timely and effective manner;
- (c) There are clear requirements regarding the form and content of the public notice, as required under article 6, paragraph 2, of the Convention;
- (d) There are reasonable minimum time frames for submitting the comments during the public participation procedure, taking into account the stage of decision-making as well as the nature, size and complexity of proposed activities;
- (e) There is a clear possibility for the public to submit comments directly to the relevant authorities (i.e., the authorities competent to take the decisions subject to article 6 of the Convention);
- (f) There is a clear responsibility of the relevant public authorities to ensure such opportunities for public participation, as are required under the Convention, including for making available the relevant information and for collecting the comments through written submission and/or at the public hearings;
- (g) There is a clear responsibility of the relevant public authorities to take due account of the outcome of public participation, and to provide evidence of this in the publicly available statement of reasons and considerations on which the decisions is based;
- (h) There is a clear responsibility of the relevant public authorities to:
- (i) Inform promptly the public of the decisions taken by them and their accessibility;
- (ii) Maintain and make accessible to the public: copies of such decisions along with the other information relevant to the decision-making, including the evidence of fulfilling the obligations regarding informing the public and providing it with possibilities to submit comments;
- (iii) Establish relevant publicly accessible lists or registers of the decisions held by them;
- (i) Statutory provisions regarding situations where provisions on public participation do not apply cannot be interpreted to allow for much broader exemptions than allowed under article 6, paragraph 1 (c), of the Convention;
5. *Invites* the Party concerned to draw up an action plan for implementing the above recommendations with a view to submitting an initial progress report to the Committee by 1 December 2011, and the action plan by 1 April 2012;
6. *Also invites* the Party concerned to provide information to the Committee, at the latest six months in advance of the fifth session of the Meeting of the Parties, on the measures taken and the results achieved in implementation of the above recommendations;
7. *Requests* the secretariat, and invites relevant international and regional organizations and financial institutions, to provide advice and assistance to the Party concerned as necessary in the implementation of these measures;
8. *Undertakes* to review the situation at its fifth session.

<sup>2</sup> An acronym whose terms can be rendered as “assessment of impact upon the environment”. However, the OVOS should be distinguished from what is generally understood as an environmental impact assessment (EIA). The Compliance Committee, in a decision on Belarus, held that OVOS and the *expertiza*, considered jointly, were “the decision-making process constituting a form of an EIA procedure” (ECE/MP.PP/C.1/2010/6, para. 74).

## DECISION IV/9c

ON COMPLIANCE BY **KAZAKHSTAN** WITH ITS OBLIGATIONS  
UNDER THE CONVENTION

*The Meeting of the Parties,*

*Acting* under paragraph 37 of the annex to its decision I/7 on the review of compliance,

*Mindful* of the conclusions and recommendations set out in decision II/5a (ECE/MPPP/2005/2/Add.7) and decision III/6c (ECE/MPPP/2008/2/Add.11) with regard to compliance by Kazakhstan,

*Taking note* of the report of the Compliance Committee (ECE/MPPP/2011/11) with regard to follow-up on decision III/6c,

1. *Notes* the initial engagement of the Party concerned, demonstrated by its correspondence with the Committee before the adoption of decision III/6c;
2. *Notes with regret*, however, the lack of response from the Party concerned in the course of follow-up to decision III/6c, and the apparent failure of the Party concerned to take the measures to implement decision III/6c;
3. *Confirms* its earlier endorsement of the Committee's findings with regard to compliance by Kazakhstan as set out in paragraph 5 of decision III/6c;
4. *Decides* to issue a caution to the Party concerned, to become effective on 1 May 2012, unless the Party concerned has fully satisfied the following condition and has notified the secretariat of this fact by 1 January 2012: it has thoroughly examined, with appropriate involvement of the public, the relevant environmental and procedural legislation, as well as the relevant case law, to identify whether it sufficiently provides judicial and other review authorities with the possibility to provide adequate and effective remedies in the course of judicial review;
5. *Requests* the Committee to establish the successful fulfilment of the above condition;
6. *Invites* the Party concerned to submit to the Committee periodically, namely, by November 2012 and November 2013, detailed information on further progress in implementing the measures referred to in paragraph 4;
7. *Also invites* the Party concerned to consider accommodating an expert mission, with the involvement of Committee members and other experts, as appropriate, with a view to making available to it a wide range of expert opinion on possible ways to implement the measures referred to in decision III/6c with regard to access to justice;
8. *Requests* the secretariat, and invites relevant international and regional organizations and financial institutions, to provide advice and assistance to the Party concerned as necessary in the implementation of these measures;
9. *Undertakes* to review the situation at its fifth session.

## DECISION IV/9d

ON COMPLIANCE BY THE REPUBLIC OF **MOLDOVA** WITH ITS OBLIGATIONS  
UNDER THE CONVENTION

*The Meeting of the Parties,*

*Acting* under paragraph 37 of the annex to its decision I/7 on the review of compliance,

*Taking note* of the report of the Compliance Committee (ECE/MPPP/2011/11), as well as the addendum to the report of its twenty-fifth meeting (ECE/MPPP/C.1/2009/6/Add.3) with regard to a case concerning access to information on contracts for rent of land of the Moldovan State Forestry Fund,

*Encouraged* by the willingness of the Republic of Moldova to discuss in a constructive manner the compliance issues in question with the Committee, and to take measures implementing the Committee's recommendations in the intersessional period,

1. *Endorses* the following findings of the Committee, that:
  - (a) The failure of the public authority Moldsilva to provide copies of the requested contracts of rent of lands of the State Forestry Fund to the communicant constituted a failure by

the Party concerned to comply with article 4, paragraphs 1 and 2, of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters;

- (b) The adoption of article 48 (e) of the Government Regulation No. 187 of 20 February 2008 on Rent of Forestry Fund for Hunting and Recreational Activities, setting out a broad rule with regard to the confidentiality of the information received from the rent holders, and the refusal for access to information on the grounds of its large volume constitute a failure by the Party concerned to comply with article 3, paragraph 1, and article 4, paragraph 4 of the Convention;
- (c) The failure of the public authority Moldsilva to state lawful grounds for refusal of access to information in its letters No. 01-07/130 and No. 01-07/362 of 31 January 2008 and 14 March 2008, respectively, and the failure of the same public authority to give in its letters of refusal information on access to the review procedure provided for in accordance with article 9 of the Convention, constituted a failure by the Party concerned to comply with article 3, paragraph 2, and article 4, paragraph 7 of the Convention;
- (d) The failure of the public authority Moldsilva to respond in writing and in a timely manner to the last request for information submitted by the communicant to Moldsilva in the beginning of January constituted a failure by the Party concerned to comply with article 4, paragraph 7 of the Convention;
- (e) The failure of the public authority Moldsilva to fully execute the final decision of the Civil chamber of Chisinau Court of Appeal, adopted on 23 June 2008, implied non compliance of the Party concerned with article 9, paragraph 1 of the Convention;

2. *Welcomes* the recommendations made by the Committee during the intersessional period, in accordance with paragraph 36 (b) of the annex to decision I/7 (ECE/MPPP/C.1/2009/6/Add.3, para. 42) and the willingness of the Republic of Moldova to accept them;

3. *Also welcomes* the actions undertaken by the Party concerned to address the recommendations of the Committee, such as the full execution by the public authority of the final decision of the Civil chamber of Chisinau Court of Appeal, adopted on 23 June 2008 (see para. 1 (e) above), the provision of copies of the requested contracts of rent of lands of the State Forestry Fund to the communicant, the elaboration of the draft national action plan, as well as the many relevant capacity-building and awareness-raising initiatives for civil servants, non-governmental organizations, journalists and members of the judiciary undertaken by the Party concerned in cooperation with civil society;

4. *Invites* the Party concerned to submit to the Committee the final version of the national action plan (including the recommendations made by the Committee in paragraph 42 of document ECE/MPPP/C.1/2009/6/Add.3) upon their adoption, and to submit to the Committee periodically (in November 2011, November 2012 and November 2013) detailed information on further progress in implementing the national action plan;

5. *Requests* the secretariat, and invites relevant international and regional organizations and financial institutions, to provide advice and assistance to the Party concerned as necessary in the implementation of these measures;

6. *Undertakes* to review the situation at its fifth session.

## DECISION IV/9e

### ON COMPLIANCE BY **SLOVAKIA** WITH ITS OBLIGATIONS UNDER THE CONVENTION

*The Meeting of the Parties,*

*Acting* under paragraph 37 of the annex to its decision I/7 on the review of compliance,

*Taking note* of the report of the Compliance Committee and the corresponding addendum (ECE/MP.PP/2011/11 and Add.3) with regard to a case concerning public participation in the decision-making for the construction of the Mochovce Nuclear Power Plant,

1. *Notes with regret* the lack of agreement demonstrated by the Party concerned in responding to the Committee's findings and recommendations;

2. *Endorses* the following finding of the Committee that the Party concerned: by failing to provide for early and effective public participation in the decision-making leading to the decisions by the Slovak Nuclear Regulatory Authority 246/2008, 266/2008 and 267/2008 of 14 August 2008 concerning the Mochovce Nuclear Power Plant, the Party concerned failed to comply with article 6, paragraphs 4 and 10, of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters;
3. *Recommends* that the Party concerned review its legal framework so as to ensure that early and effective public participation is provided for in decision-making when old permits are reconsidered or updated, or the activities are changed or extended compared to previous conditions, in accordance with the Convention;
4. *Invites* the Party concerned to submit to the Committee a progress report on 1 December 2011 and an implementation report on 1 December 2012 on achieving the recommendation above;
5. *Requests* the secretariat, and invites relevant international and regional organizations and financial institutions, to provide advice and assistance to the Party concerned as necessary in the implementation of these measures;
6. *Undertakes* to review the situation at its fifth session.

## DECISION IV/9f

### ON COMPLIANCE BY **SPAIN** WITH ITS OBLIGATIONS UNDER THE CONVENTION

*The Meeting of the Parties,*

*Acting* under paragraph 37 of the annex to its decision I/7 on the review of compliance,

*Taking note* of the report of the Compliance Committee (ECE/MPPP/2011/11), as well as the addendum to the report of its twenty-sixth meeting (ECE/MPPP/C.1/2009/8/Add.1) with regard to a case concerning the decision-making on a residential development project in the city of Murcia, Spain, and the addendum to the report of its twenty-eighth meeting (ECE/MPPP/C.1/2010/4/Add.2) with regard to a case concerning the general failure of the public authorities in Spain to implement the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, as illustrated in a number of examples in the town of Almendralejo,

*Encouraged* by the willingness of Spain to discuss in a constructive manner the compliance issues in question with the Committee, and to take measures implementing the Committee's recommendations in the intersessional period,

1. *Endorses* the following findings of the Committee with regard to communication ACCC/C/2008/24 (ECE/MPPP/C.1/2009/8/Add.1), that:
  - (a) As a result of a public authority ignoring a request for environmental information for a period of three months after the submission of the request, by failing to provide the information in the form requested without giving any reasons, and by imposing an unreasonable fee for copying the documents, Spain had failed to comply with article 4, paragraphs 1 (b), 2, and 8, of the Convention;
  - (b) As a result of a public authority setting a time frame of 20 days during the Christmas holiday season for the public to examine the documentation and to submit comments in relation to the Urbanization Project UA1, Spain had failed to comply with the requirements of article 6, paragraph 3, referred to in article 7;
  - (c) The failure of the Spanish system of access to justice to provide adequate and effective remedies as shown in that case constituted non-compliance with article 9, paragraph 4 of the Convention;
2. *Also endorses* the following findings of the Committee with regard to communication ACCC/C/2009/36 (ECE/MPPP/C.1/2010/4/Add.2), that:
  - (a) As a result of public authorities not making the requested information available unless

an interest was stated on the part of the requester, the Party concerned had failed to comply with article 4, paragraph 1, of the Convention;

- (b) As a result of public authorities not responding or delaying response to requests for environmental information, and without notifying the requester that a one-month delay was needed along with reasons for that delay, the Party concerned was not in compliance with article 4, paragraph 2;
- (c) The public authorities did not allow for access to information in the form requested, and did not provide copies, and as a result the Party concerned failed to comply with article 4, paragraph 1 (b), in conjunction with article 6, paragraph 6 of the Convention;
- (d) Public authorities set inhibitive conditions for public participation, and as a result the Party concerned failed to comply with article 6, paragraphs 3 and 6;
- (e) 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;
- (f) By failing to consider providing appropriate assistance mechanisms to remove or reduce financial barriers to access to justice to a small non-governmental organization (NGO), the Party concerned failed to comply with article 9, paragraph 5, of the Convention, and failed to provide for fair and equitable remedies, as required by article 9, paragraph 4; and also stressed that maintaining a system that would lead to prohibitive expenses would amount to non-compliance with article 9, paragraph 4;

3. *Welcomes* the recommendations made by the Committee during the intersessional period in accordance with paragraph 36 (b) of the annex to decision I/7 (ECE/MPPP/C.1/2009/8/Add. 1, para.119, and ECE/MPPP/C.1/2010/4/Add.2, para. 75) and the willingness of Spain to accept them;

4. *Also welcomes* of the progress made by the Party concerned in implementing the Committee's findings and recommendations, in particular with regard to access to information and public participation, and encourages the Party concerned to continue its efforts in this direction in all provinces of Spain;

5. *Notes* that further action should be taken by the Party concerned to ensure that fees charged by public authorities for provision of information relating to urban planning and building are the same as for information relating to the environment;

6. *Further notes* that awareness should be raised among competent authorities and their officials in implementing the time frames for public participation in decision-making processes in such a manner so as to exclude holiday seasons and allow for broad participation;

7. *Welcomes* the many relevant capacity-building initiatives for civil servants, the judiciary and students at the National Institute of Public Administration, and encourages the Party concerned to organize similar activities in a decentralized manner;

8. *Recognizes* that further efforts, in particular in the area of access to justice, are needed to overcome any obstacles of fully implementing article 9, paragraphs 4 and 5, of the Convention;

9. *Invites*, therefore, the Party concerned to thoroughly examine, with appropriate involvement of the public, the relevant legislation and in particular the court practice with regard to:

- (a) Injunctive relief in cases of environmental interest;
- (b) Award of legal aid to environmental NGOs; and
- (c) The rule of dual representation;

10. *Also invites* the Party concerned to report to the Meeting of the Parties through the Compliance Committee, six months before the fifth session of the Meeting of the Parties, on the progress with the recommendation under paragraph 5, the time frames applicable in public participation according to the Spanish laws, and the studies requested under paragraph 9 above;

11. *Undertakes* to review the situation at its fifth session.

## DECISION IV/9g

ON COMPLIANCE BY **TURKMENISTAN** WITH ITS OBLIGATIONS  
UNDER THE CONVENTION

*The Meeting of the Parties,*

*Acting* under paragraph 37 of the annex to its decision I/7 on the review of compliance,

*Mindful* of the conclusions and recommendations set out in its decision II/5c (ECE/MPPP/2005/2/Add.9) and its decision III/6e (ECE/MPPP/2008/2/Add.13) with regard to compliance by Turkmenistan with its obligations under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention),

*Taking note* of the report of the Compliance Committee (ECE/MPPP/2011/11) with regard to follow-up on decision III/6e,

*Recalling* that according to decision III/6e a caution was issued by the Meeting of the Parties, which, following the review by the Compliance Committee at its twenty-third meeting of the steps taken by the Party concerned to fulfil the conditions set out in paragraph 5 of that decision, entered into effect on 1 May 2009,

1. *Notes with appreciation* the recent engagement of the Party concerned demonstrated by its cooperation with the Committee, in particular with respect to the mission by members of the Committee and the secretariat to Ashgabat on 18-20 April 2011;
2. *Decides* to suspend the caution issued to the Party concerned through decision III/6e, and which entered into effect on 1 May 2009;
3. *Decides* that the caution should re-enter into effect on 1 January 2013 unless the Party concerned:
  - (a) Has amended the Act on Public Associations with a view to bringing all of its provisions into compliance with the Convention as requested by the Meeting of the Parties through paragraph 2 of decision II/5c;
  - (b) Has notified the secretariat of this fact by 1 October 2012;

The successful fulfilment of these conditions is to be established by the Committee;

4. *Requests*, inter alia, to avoid a situation where the Act on Public Associations may need to be revised again in the near future, that the Party concerned should ensure that the revisions to the Act on Public Associations are made in accordance with:
  - (a) The suggestions made by members of the Compliance Committee at the working session held during its mission to Turkmenistan on 18 April 2011 (informal document C.1/2011/4/Add.2/Inf.1);
  - (b) The outcome of the round tables organized by the National Institute of Democracy and Human Rights under the President of Turkmenistan and the International Center for Not-for-Profit Law in 2009 (informal document C.1/2011/4/Add.2/Inf.2);
  - (c) The comments of the Organization for Security and Cooperation in Europe's Office for Democratic Institutions and Human Rights dated 22 June 2010 (informal document C.1/2011/4/Add.2/Inf.3);

5. *Requests* that the Party concerned examine other relevant legislation, including its Code of Administrative Offences and the Presidential Decree on the Registration of Public Associations, with a view to ensuring that all relevant legislation is consistent with the provisions of the revised Act on Public Associations and, together, provides a clear and transparent framework to implement the provisions of the Convention, as required by article 3, paragraph 1, of the Convention;

6. *Requests*, in accordance with paragraph 4 of decision II/5c, that the Party concerned carry out the measures referred to above with the involvement of the public, including relevant non-governmental and international organizations;

7. *Requests*, in order to ensure the effective implementation thereof, that the above measures are carried out through constructive cooperation between the Ministry of Nature Protection and the Ministry of Justice, whose engagement as the competent authority for the Act on Public Associations is crucial;

8. *Requests* the secretariat, and invites relevant international and regional organizations and financial institutions, to provide advice and assistance to the Party concerned as necessary in the implementation of these measures;

9. *Undertakes* to review the situation at its fifth session.

**DECISION IV/9h**  
ON COMPLIANCE BY **UKRAINE** WITH ITS OBLIGATIONS  
UNDER THE CONVENTION

*The Meeting of the Parties,*

*Acting* under paragraph 37 of the annex to its decision I/7 on the review of compliance,

*Mindful* of the conclusions and recommendations set out in decision II/5b (ECE/MP.PP/2005/2/Add.8) and decision III/6f with regard to compliance by Ukraine (ECE/MP.PP/2008/2/Add.14),

*Taking note* of the report of the Compliance Committee (ECE/MP.PP/2011/11) with regard to follow-up on decision III/6f,

*Recalling* that according to decision III/6f a caution was issued by the Meeting of the Parties, which was to become effective on 1 May 2009, but further to the review and assessment of the Committee based on the information provided by the Party concerned, the caution did not become effective,

1. *Notes* the engagement of the Party concerned demonstrated by its correspondence with the Committee during the intersessional period;

2. *Takes note* of the action plan developed by Ukraine and submitted through the Committee in January 2009;

3. *Endorses* the conclusion of the Committee that Ukraine is still in a state of non-compliance with regard to decision II/5b;

4. *Notes with regret* the very slow progress by the Party concerned in implementing decisions II/5b and III/6f of the Meeting of the Parties;

5. *Urges* therefore the Party concerned to implement the measures requested by the Meeting of the Parties in decision II/5b as soon as possible;

6. *Decides* to issue a caution to the Party concerned;

7. *Also decides* that the caution will be lifted on 1 June 2012, if the Party concerned has fully implemented the measures requested by the Meeting of the Parties in decision II/5b and has notified the secretariat of this fact, providing evidence, by 1 April 2012;

8. *Requests* the Compliance Committee to establish the successful fulfilment of decision II/5b;

9. *Also requests* the Compliance Committee to report to the fifth session of the Meeting of the Parties on whether the Party concerned has fulfilled decision II/5b, with a view to the Meeting of the Parties deciding whether to suspend the special rights and privileges accorded to Ukraine under the Convention;

10. *Invites* the Party concerned to submit to the Committee periodically, namely, in November 2012 and November 2013, detailed information on further progress in implementing the measures referred to in decision II/5b;

11. *Also invites* the Party concerned to consider accommodating an expert mission, with the involvement of Committee members and other experts, as appropriate, with a view to making available to it a wide range of expert opinion on possible ways to implement the measures referred to in decision II/5b;

12. *Requests* the secretariat, and invites relevant international and regional organizations and financial institutions, to provide advice and assistance to the Party concerned as necessary in the implementation of these measures;

13. *Undertakes* to review the situation at its fifth session.



## DECISION IV/9i

ON COMPLIANCE BY THE **UNITED KINGDOM OF GREAT BRITAIN  
AND NORTHERN IRELAND** WITH ITS OBLIGATIONS  
UNDER THE CONVENTION

*The Meeting of the Parties,*

*Acting* under paragraph 37 of the annex to its decision I/7 on the review of compliance,

*Taking note* of the report of the Compliance Committee (ECE/MPPP/2011/11), as well as the addenda to the report of its twenty-ninth meeting (ECE/MPPP/C.1/2010/6/Add.1 -3) with regard to three cases concerning the availability of fair, equitable, timely and not prohibitively expensive review procedures,

*Encouraged* by the willingness of the United Kingdom of Great Britain and Northern Ireland to discuss in a constructive manner the compliance issues in question with the Committee, and to take measures implementing the Committee's recommendations in the intersessional period,

1. *Endorses* the following finding of the Committee with regard to communication ACCC/C/2008/23 (ECE/MPPP/C.1/2010/6/Add.1), that: in respect of the requirements of article 9, paragraph 4, of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, for procedures referred to in article 9, paragraph 3, to be fair and equitable, related to the fact that in the circumstances of the case where the communicants were ordered to pay the whole of the costs while the operator was not ordered to contribute at all, the Committee found that that constituted *stricto sensu* non-compliance with article 9, paragraph 4, of the Convention;

2. *Endorses* the following finding of the Committee with regard to communication ACCC/C/2008/27 (ECE/MPPP/C.1/2010/6/Add.2), that: the communicant's judicial review proceedings were within the scope of article 9, paragraph 3, of the Convention and thus were also subject to the requirements of article 9, paragraph 4, that the quantum of costs awarded in that case, £39,454, rendered the proceedings prohibitively expensive, and that the manner of allocating the costs was unfair, within the meaning of article 9, paragraph 4, and thus, amounted to non-compliance;

3. *Also endorses* the following findings of the Committee with regard to communication ACCC/C/2008/33 (ECE/MPPP/C.1/2010/6/Add.3), that:

- (a) By failing to ensure that the costs for all court procedures subject to article 9 were not prohibitively expensive, and in particular by the absence of any clear legally binding directions from the legislature or judiciary to this effect, the Party concerned failed to comply with article 9, paragraph 4, of the Convention;
- (b) The system as a whole was not such as "to remove or reduce financial [...] barriers to access to justice", as article 9, paragraph 5, of the Convention requires a Party to the Convention to consider;
- (c) By not ensuring clear time limits for the filing of an application for judicial review, and by not ensuring a clear date from when the time limit started to run, the Party concerned failed to comply with article 9, paragraph 4 of the Convention;
- (d) By not having taken the necessary legislative, regulatory and other measures to establish a clear, transparent and consistent framework to implement article 9, paragraph 4, the Party concerned also failed to comply with the article 3, paragraph 1 of the Convention;

4. *Welcomes* the recommendations made by the Committee during the intersessional period in accordance with paragraph 36 (b) of the annex to decision I/7 (ECE/MPPP/C.1/2010/6/Add.2, para. 53; and ECE/MPPP/C.1/2010/6/Add.3, para. 145) and the willingness of the United Kingdom to accept them;

5. *Also welcomes* the progress made by the Party concerned in implementing the recommendations since September 2010;

6. *Invites* the Party concerned to submit to the Committee periodically, namely, in February 2012 and February 2013, and six months before the fifth session of the Meeting of the Parties, information on the progress in implementing the recommendations of the Committee;

7. *Undertakes* to review the situation at its fifth session.

## THE FIFTH SESSION OF THE MEETING OF THE PARTIES

held from 30 June to 1 July 2014 in Maastricht

### DECISION V/9a

#### ON COMPLIANCE BY **ARMENIA**

*The Meeting of the Parties,*

*Acting* under paragraph 37 of the annex to its decision I/7 on the review of compliance,

*Mindful* of the conclusions and recommendations set out in decision III/6b (ECE/MP.PP/2008/2/Add. 10) and decision IV/9a (see ECE/MP.PP/2011/2/Add.1) with regard to compliance by Armenia,

*Taking note* of the report of the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (ECE/MP.PP/2014/9) and the report of the Committee on the implementation of decision IV/9a concerning compliance by Armenia (ECE/MP.PP/2014/10), as well as the findings of the Committee on communication ACCC/C/2011/62 (ECE/MP.PP/C.1/2013/14) concerning access to justice for environmental non-governmental organizations (NGOs),

*Encouraged* by Armenia's willingness to discuss in a constructive manner the compliance issues in question with the Committee,

1. *Takes note* of the progress made by the Party concerned in implementing decision IV/9a of the Meeting of the Parties, including the new practice of posting notifications and conclusions of environmental expertise on the website of the Ministry of Nature Protection;

2. *Regrets* the continued slow progress by the Party concerned to finalize and adopts a law on environmental impact assessment (EIA) which would fully implement the Convention and shares the Compliance Committee's concern with the continued non-implementation by Armenia of its obligations under the Convention;

3. *Endorses* the finding of the Committee with regard to decision IV/9a that since the relevant legislative measure proposed by the Party concerned to meet the requirements of that decision have not to date been adopted, Armenia has not yet met the requirements of decision IV/9a. This means the Party concerned remains in non-compliance with article 6 of the Convention on public participation and article 3, paragraph 1, requiring a clear, transparent and consistent framework to implement the Convention;

4. *Reiterates* its decision IV/9a and, in particular:

- (a) Encourages the Party concerned to continue its constructive dialogue with the Committee;
- (b) Urges the Party concerned to accelerate the process for the new legislation on environmental impact assessment (EIA), including the procedures on public participation contained in it, to be finalized and come into effect;
- (c) Invites the Party concerned to take the necessary legislative, regulatory and administrative measures and practical arrangements to ensure that:
  - (i) Thresholds for activities subject to an EIA procedure, including public participation, are set in a clear manner;
  - (ii) The public is informed as early as possible in the decision-making procedure, when all options are open, and that reasonable time frames are set for the public to consult and comment on project-related documentation;
  - (iii) The responsibilities of different actors (public authorities, local authorities, developers) in the organization of public participation procedures are defined as clearly as possible;

(iv) A system of prompt notification of the public concerned of the final conclusions of environmental expertise is arranged, e.g., through the website of the Ministry of Nature Protection;

5. *Invites* the Party concerned to:

- (a) Prior to their adoption and no later than 1 September 2014, provide the Committee with an English translation of the text of the draft EIA law and other legislative measures as they stand on that date for the Committee's review;
- (b) Provide the Committee with evidence that the draft EIA law and other legislative measures that have been proposed by the Party concerned to meet the requirements of decision IV/9a have been adopted;

6. *Endorses* the finding of the Committee with regard to communication ACCC/C/2011/62 that, while the wording of the legislation of the Party concerned does not run counter to article 9, paragraph 2, of the Convention, the decision of the Court of Cassation of 1 April 2011, by declaring that the environmental NGO did not have standing, failed to meet the standards set by the Convention. Thus the Party concerned fails to comply with article 9, paragraph 2, of the Convention;

7. *Invites* the Party concerned to:

- (a) Review and clarify its legislation, including the law on NGOs and administrative procedures, so as to ensure compliance with article 9, paragraph 2, of the Convention with regard to standing;
- (b) Take the measures necessary to raise awareness among the judiciary to promote implementation of domestic legislation in accordance with the Convention;

8. *Requests* the Party concerned to provide detailed progress reports to the Committee by 31 December 2014, 31 October 2015 and 31 October 2016 on the measures taken and the results achieved in implementation of the above recommendations;

9. *Undertakes* to review the situation at its sixth session.

## DECISION V/9b

### ON COMPLIANCE BY AUSTRIA

*The Meeting of the Parties,*

*Acting* under paragraph 37 of the annex to its decision I/7 on the review of compliance,

*Taking note* of the report of the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) (ECE/MPPP/2014/9), as well as the findings of the Committee on communication ACCC/C/2010/48 (ECE/MPPP/C. 1/2012/4) concerning access to justice in environmental matters generally, the Committee's report on the implementation of the recommendations contained in those findings (ECE/MPPP/2014/11) and the findings of the Committee on communication ACCC/C/2011/63 (ECE/MPPP/C. 1/2014/3) concerning access to justice in criminal proceedings regarding contraventions of national environmental law,

*Encouraged* by Austria's willingness to discuss in a constructive manner the compliance issues in question with the Committee,

1. *Endorses* the following findings of the Committee with regard to communication ACCC/C/2010/48:

- (a) The requirement for a separate "official notification" as a precondition for an appeal of a denial of an information request is not in compliance with article 4, paragraph 7, of the Convention;
- (b) The Party concerned, by not ensuring access to a timely review procedure for access to requests for information, is not in compliance with article 9, paragraph 4, of the Convention;

- (c) The Party concerned, in not ensuring standing of environmental non-governmental organizations (NGOs) to challenge acts or omissions of a public authority or private person in many of its sectoral laws, is not in compliance with article 9, paragraph 3, of the Convention;
2. *Also endorses* the finding of the Committee with regard to communication ACCC/C/2011/63 that, because members of the public, including environmental NGOs, have in certain cases no means of access to administrative or judicial procedures to challenge acts and omissions of public authorities and private persons which contravene provisions of national laws, including administrative penal laws and criminal laws relating to the environment, such as contraventions of laws relating to trade in wildlife, nature conservation and animal protection, the Party concerned fails to comply with article 9, paragraph 3, in conjunction with paragraph 4, of the Convention;
3. *Welcomes* the recommendations made by the Committee during the intersessional period in accordance with paragraph 36 (b) of the annex to decision 1/7, and the willingness of the Party concerned to accept them, namely that the Party concerned:
- (a) Take the necessary legislative, regulatory, and administrative measures and practical arrangements to ensure that:
- (i) The procedure for having a refusal of a request for information reviewed is simplified for the requester. This could preferably be done by requiring any written refusal of a request for information to have the legal status of an “official notification” and that any such refusal is to be made as soon as possible, and at the latest within one month after the request has been submitted, unless the volume and the complexity of the information justify an extension of this period up to two months after the request;
- (ii) The available review procedures for persons who consider that their request for information under article 4 has been ignored, wrongfully refused or inadequately answered, or otherwise not dealt with in accordance with the provisions of that article, are timely and expeditious;
- (iii) Criteria for NGO standing to challenge acts or omissions by private persons or public authorities which contravene national law relating to the environment under article 9, paragraph 3, of the Convention be revised and specifically laid down in sectoral environmental laws, in addition to any existing criteria for NGO standing in the environmental impact assessment, integrated pollution prevention and control, waste management or environmental liability laws;
- (b) Develop a capacity-building programme and provide training on the implementation of the Aarhus Convention for federal and provincial authorities responsible for Aarhus-related issues, and for judges, prosecutors and lawyers;
4. *Notes* the efforts made by the Party concerned so far;
5. *Expresses its concern* that, despite nearly two years having passed since the findings of the Committee on communication ACCC/C/2010/48 were adopted at the Committee’s thirty-fifth meeting, no relevant legislative measures have been adopted yet to address the Committee’s recommendations;
6. *Recommends* that, when addressing the recommendations in paragraph 3 above, the Party concerned also ensure that members of the public, including NGOs, have access to adequate and effective administrative or judicial procedures and remedies in order to challenge acts and omissions of private persons and public authorities that contravene national laws, including administrative penal laws and criminal laws, relating to the environment;
7. *Invites* the Party concerned to submit to the Committee periodically (on 31 December 2014, 31 October 2015 and 31 October 2016) detailed information on further progress in implementing the recommendation set out above;
8. *Undertakes* to review the situation at its sixth session.

## DECISION V/9c

ON COMPLIANCE BY **BELARUS**

The Meeting of the Parties,

*Acting* under paragraph 37 of the annex to its decision I/7 on the review of compliance,

*Taking note* of the report of the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (ECE/MPPP/2014/9) and the findings of the Committee on communication ACCC/C/2009/44 (ECE/MPPP/C.1/2011/6/Add.1) concerning access to information and public participation with respect to the proposed construction of a nuclear power plant, as well as the report of the Committee on compliance by Belarus with its obligations under the Convention (ECE/MPPP/2014/12), examining the implementation by Belarus of decision IV/9b and the Committee's recommendations in its findings on communication ACCC/C/2009/44;

*Encouraged* by Belarus' willingness to discuss in a constructive manner the compliance issues in question with the Committee,

1. *Endorses* the following findings of the Committee with regard to communication ACCC/C/2009/44:

- (a) In relation to the general legal framework, recalling the Committee's findings on communication ACCC/C/2009/37 (ECE/MPPP/2011/11/Add.2):
    - (i) There is considerable uncertainty as to the participatory procedures applicable in case of nuclear activities;
    - (ii) There is lack of clarity as to the decision which is considered to be the final decision permitting an activity in terms of article 6, paragraph 9;
    - (iii) Concerning the role of the project developer, it is not in compliance with the Convention that the authority responsible for taking the decision (including the authorities responsible for the *expertiza* conclusions) are provided only with the summary of the comments submitted by the public;
  - (b) In relation to the nuclear power plant (NPP):
    - (i) By restricting access to the full version of the environmental impact assessment (EIA) report to the premises of the Directorate of the NPP in Minsk only and by not allowing any copies to be made, the Party concerned failed to comply with article 6, paragraph 6, and article 4, paragraph 1 (b), of the Convention;
    - (ii) By not duly informing the public that, in addition to the publicly available 100-page EIA report, there was a full version of the EIA report (more than 1,000 pages long), the Party concerned failed to comply with article 6, paragraph 2 (d) (vi), of the Convention;
    - (iii) By providing for public participation only at the stage of the EIA for the NPP, with one hearing on 9 October 2009, and effectively reducing the public's input to only commenting on how the environmental impact could be mitigated, and precluding the public from having any input on the decision on whether the NPP installation should be at the selected site in the first place (since the decision had already been taken), the Party concerned failed to comply with article 6, paragraph 4, of the Convention;
    - (iv) By not informing the public in due time of the possibility of examining the full EIA report, the Party concerned failed to comply with article 6, paragraph 6, of the Convention;
    - (v) By limiting the possibility for members of the public to submit comments, the Party concerned failed to comply with article 6, paragraph 7, of the Convention;
2. *Welcomes* the recommendations made by the Committee in its findings on communication ACCC/C/2009/44 (ECE/MPPP/C.1/2011/6/Add.1, para. 90), made in accordance with paragraph 36 (b) of the annex to decision I/7, and the willingness of the Party concerned to accept them, but regrets the slow progress made in implementing those recommendations since their adoption almost three years ago;

3. *Also welcomes* the serious and active engagement of the Party concerned in the compliance review process, in particular its efforts to follow the recommendations set out in paragraph 4 of decision IV/9b and paragraph 90 of the Committee's findings on ACCC/C/2009/44, as well as its efforts to provide additional information to the Committee upon request and to meet deadlines;
4. *Endorses* the finding of the Compliance Committee that the Party concerned has fulfilled paragraphs 90 (a) and 90 (e) of the Committee's findings on ACCC/C/2009/44, but has not yet taken the necessary measures to fulfil the recommendations set out in paragraphs 90 (b), (c), and (d) of those findings or paragraphs 4 (a)-(i) of decision IV/9b;
5. *Notes with regret* that the Party concerned therefore remains in non-compliance with the Convention, including through failing to implement the earlier recommendations of the Meeting of the Parties;
6. *Reiterates* its recommendation to the Party concerned to take as a matter of urgency the necessary legislative, regulatory, and administrative measures and establish the practical arrangements to ensure that, in accordance with paragraphs 4 (a)-(i) of decision IV/9b:
  - (a) The general law on access to information refers to the 1992 Law on Environmental Protection that specifically regulates access to environmental information, in which case the general requirement of stating an interest does not apply;
  - (b) There is a clear requirement for the public to be informed of decision-making processes that are subject to article 6 in an adequate, timely and effective manner;
  - (c) There are clear requirements regarding the form and content of the public notice, as required under article 6, paragraph 2, of the Convention;
  - (d) There are reasonable minimum time frames for submitting comments during the public participation procedure for all decisions under article 6 of the Convention, including those that may not be subject to an EIA decision procedure, taking into account the stage of decision-making as well as the nature, size and complexity of proposed activities;
  - (e) There is a clear possibility for the public to submit comments directly to the relevant authorities (i.e., the authorities competent to take the decisions subject to article 6 of the Convention);
  - (f) There are clear provisions imposing obligations on the relevant public authorities to ensure such opportunities for public participation as are required under the Convention, including for making available the relevant information and for collecting the comments through written submission and/or at the public hearings;
  - (g) There are clear provisions imposing obligations on the relevant public authorities to take due account of the outcome of public participation, and to provide evidence of this in the publicly available statement of reasons and considerations on which the decisions is based;
  - (h) There are clear provisions imposing obligations on the relevant public authorities to:
    - (i) Promptly inform the public of the decisions taken by them and their accessibility;
    - (ii) Maintain and make accessible to the public copies of such decisions along with the other information relevant to the decision-making, including the evidence of fulfilling the obligations regarding informing the public and providing it with possibilities to submit comments;
    - (iii) Establish relevant publicly accessible lists or registers of all decisions subject to article 6 held by them;
  - (i) Statutory provisions regarding situations where provisions on public participation do not apply cannot be interpreted to allow for much broader exemptions than allowed under article 6, paragraph 1 (c), of the Convention;
7. *Recommends*, in addition, that the Party concerned to take the necessary legislative, regulatory, and administrative measures and establish the practical arrangements to ensure

that, in accordance with paragraph 90 (b), (c), and (d) of the Committee's findings on communication ACCC/C/2009/44:

- (a) The amended legal framework clearly designates which decision is considered to be the final decision permitting the activity and that this decision is made public, as required under article 6, paragraph 9, of the Convention;
  - (b) The full content of all the comments made by the public (whether claimed to be accommodated by the developer or those which are not accepted) is submitted to the authorities responsible for taking the decision (including those responsible for the *expertiza* conclusion);
  - (c) Appropriate practical and other provisions are made for the public to participate during the preparation of plans and programmes relating to the environment;
8. *Requests* the Party concerned to provide detailed progress reports to the Committee by 31 December 2014, 31 October 2015 and 31 October 2016 on the measures taken and the results achieved in the implementation of the above recommendations;
9. *Undertakes* to review the situation at its sixth session.

## DECISION V/9d

### ON COMPLIANCE BY **BULGARIA**

*The Meeting of the Parties,*

*Acting* under paragraph 37 of the annex to its decision I/7 on the review of compliance,

*Taking note* of the report of the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (ECE/MPPP/2014/9), as well as the findings of the Committee on communication ACCC/C/2011/58 (ECE/MPPP/C. 1/2013/4) concerning access to justice on spatial plans and the Committee's report on the implementation of the recommendations contained in those findings (ECE/MPPP/2014/13),

*Encouraged* by Bulgaria's willingness to discuss in a constructive manner the compliance issues in question with the Committee,

1. *Endorses* the following findings of the Committee with regard to communication ACCC/C/2011/58:
  - (a) By barring all members of the public, including environmental organizations, from access to justice with respect to General Spatial Plans, the Party concerned fails to comply with article 9, paragraph 3, of the Convention;
  - (b) By barring almost all members of the public, including all environmental organizations, from access to justice with respect to Detailed Spatial Plans, the Party concerned fails to comply with article 9, paragraph 3, of the Convention;
  - (c) By not ensuring that all members of the public concerned having sufficient interest, in particular environmental organizations, have access to review procedures to challenge the final decisions permitting activities listed in annex I to the Convention, the Party concerned fails to comply with article 9, paragraph 2, in conjunction with article 9, paragraph 4, of the Convention;
2. *Welcomes* the recommendations made by the Committee during the intersessional period in accordance with paragraph 36 (b) of the annex to decision I/7, and the willingness of the Party concerned to accept them, namely that the Party concerned undertake the necessary legislative, regulatory and administrative measures to ensure that:
  - a) Members of the public, including environmental organizations, have access to justice with respect to General Spatial Plans, Detailed Spatial Plans and (either in the scope of review of the spatial plans or separately) also with respect to the relevant strategic environmental assessment statements;
  - b) Members of the public concerned, including environmental organizations, have access to review procedures to challenge construction and exploitation permits for the

activities listed in annex I to the Convention;

3. *Also welcomes* the efforts made so far by the Party concerned to the extent they meet the recommendations of the Committee;
4. *Expresses* its concern that neither the legislative amendments adopted so far nor any other measures taken by the Party concerned specifically address the aspects of the Bulgarian legal system which the Committee has found to be in non-compliance with the requirements of the Convention, namely, the possibilities for members of the public concerned to challenge the legality of spatial plans and construction and exploitation permits;
5. *Also expresses* its concern that the Party concerned seems to maintain the position that implementing the recommendations of the Committee is not required for its full compliance with article 9, paragraphs 2 and 3, of the Convention;
6. *Invites* the Party concerned to submit to the Committee periodically (on 31 December 2014, 31 October 2015 and 31 October 2016) detailed information on further progress in implementing the recommendation set out above;
7. *Undertakes* to review the situation at its sixth session.

## DECISION V/9e

### ON COMPLIANCE BY **CROATIA**

*The Meeting of the Parties,*

*Acting* under paragraph 37 of the annex to its decision I/7 on the review of compliance,

*Taking note* of the report of the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (ECE/MP.PP/2014/9), as well as the findings of the Committee on communication ACCC/C/2012/66 (ECE/MP.PP/C. 1/2014/4) concerning public participation in the adoption of waste management plans,

*Encouraged* by Croatia's willingness to discuss in a constructive manner the compliance issues in question with the Committee,

1. *Endorses* the following findings of the Committee with regard to communication ACCC/C/2012/66:
  - (a) The present arrangements under the law of the Party concerned are not sufficiently clear to ensure that the requirement of article 7 for a transparent framework is met. Thus, the Party concerned fails to comply with article 7 of the Convention;
  - (b) The legislation in force in the Party concerned fails to provide for a consistent and uniform application throughout the territory and is not clear as regards public participation in the preparation of municipality waste management plans, and therefore is not in compliance with article 3, paragraph 1, of the Convention;
2. *Welcomes* the recommendations made by the Committee during the intersessional period in accordance with paragraph 36 (b) of the annex to decision I/7;
3. *Further welcomes* the willingness of the Party concerned to accept the Committee's recommendations, namely, that it ensure that a transparent framework is in place providing for appropriate practical and/or other provisions for the public to participate during the preparation of municipal waste management plans, by, inter alia, including municipal waste management plans in the list of plans relating to the environment which are not formally subjected to strategic environmental assessment but for which public participation is required, so that article 7 of the Convention is clearly applicable to such plans;
4. *Invites* the Party concerned to submit to the Committee periodically (on 31 December 2014, 31 October 2015 and 31 October 2016) detailed information on further progress in implementing the recommendation set out above;
5. *Undertakes* to review the situation at its sixth session.



## DECISION V/9f

ON COMPLIANCE BY THE **CZECH REPUBLIC**

*The Meeting of the Parties,*

*Acting* under paragraph 37 of the annex to its decision I/7 on the review of compliance,

*Taking note* of the report of the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (ECE/MP.PP/2014/9), as well as the findings of the Committee on communication ACCC/C/2010/50 (ECE/MP.PP/C.1/2012/11) concerning access to justice in environmental matters, the Committee's report on the implementation of the recommendations contained in those findings (ECE/MP.PP/2014/14) and the findings of the Committee on communication ACCC/C/2012/70 (ECE/MP.PP/C.1/2014/9, forthcoming) concerning public participation in the implementation of the European Union's Emission Trading System,

*Encouraged* by the Czech Republic's willingness to discuss in a constructive manner the compliance issues in question with the Committee,

1. *Endorses* the following findings of the Committee with regard to communication ACCC/C/2010/50:

- (a) Through its restrictive interpretation of "the public concerned" in the phases of the decision-making to permit activities subject to article 6 that come after the environmental impact assessment (EIA) procedure, the system of the Party concerned fails to provide for effective public participation during the whole decision-making process, and thus is not in compliance with article 6, paragraph 3, of the Convention;
- (b) By failing to impose a mandatory requirement that the opinions of the public in the EIA procedure are taken into account in the subsequent stages of decision-making to permit an activity subject to article 6, and by not providing an opportunity for all members of the public concerned to submit any comments, information, analyses or opinions relevant to the proposed activities in those subsequent phases, the Party concerned fails to comply with the requirement in article 6, paragraph 8, of the Convention to ensure that in the decision due account is taken of the outcome of the public participation;
- (c) The rights of non-governmental organizations (NGOs) meeting the requirements of article 2, paragraph 5, to access review procedures regarding the final decisions permitting proposed activities, such as building permits, are too limited, to the extent that the Party concerned fails to comply with article 9, paragraph 2, of the Convention;
- (d) By limiting the right of NGOs meeting the requirements of article 2, paragraph 5, to seek review only of the procedural legality of decisions under article 6, the Party concerned fails to comply with article 9, paragraph 2 of the Convention;
- (e) To the extent that the EIA screening conclusions serve also as the determination required under article 6, paragraph 1 (b), members of the public should have access to a review procedure to challenge the legality of EIA screening conclusions. Since this is not the case under Czech law, the Party concerned fails to comply with article 9, paragraph 2, of the Convention;
- (f) By not ensuring that members of the public are granted standing to challenge the act of an operator (private person) or the omission of the relevant authority to enforce the law when that operator exceeds some noise limits set by law, the Party concerned fails to comply with article 9, paragraph 3. Similarly, in cases of land-use planning, by not allowing members of the public to challenge an act, such as a land-use plan, issued by an authority in contravention of urban and land-planning standards or other environmental protection laws, the Party concerned fails to comply with article 9, paragraph 3, of the Convention;

2. *Also endorses* the following findings of the Committee with regard to communication ACCC/C/2012/70:

- (a) The application, including its National Investment Plan, prepared by the Party concerned under the revised rules for the European Union Emissions Trading System is a plan within the purview of article 7 of the Convention and therefore article 6, paragraphs 3, 4 and 8, apply to its preparation;

- (b) By not providing sufficient time for the public to get acquainted with the draft and submit comments, the Party concerned failed to comply with article 7, in conjunction with article 6, paragraph 3, of the Convention;
  - (c) Given that the preparation process for the application was initiated on 31 October 2009 and that, officially, the general public had only seven days to get acquainted with the draft and submit comments, starting on 19 August 2011, that is, almost two years after the start of the preparation process, the Committee finds that the Party concerned failed to comply with article 7, in conjunction with article 6, paragraph 4, of the Convention, because no early public participation was ensured, when all options were open;
  - (d) By failing to show through its written and oral submissions how the outcome of public participation was duly taken into account, the Party concerned failed to comply with article 6, paragraph 8, of the Convention;
3. *Welcomes* the recommendations made by the Committee during the intersessional period with regard to its findings on communication ACCC/C/2010/50, in accordance with paragraph 36 (b) of the annex to decision I/7;
  4. *Also welcomes* the willingness of the Party concerned to accept those recommendations, namely, to ensure that:
    - (a) Members of the public concerned, including tenants and NGOs fulfilling the requirements of article 2, paragraph 5, are allowed to effectively participate and submit comments throughout a decision-making procedure subject to article 6;
    - (b) Due account is taken of the outcome of public participation in all phases of the decision-making to permit activities subject to article 6;
    - (c) NGOs fulfilling the requirements of article 2, paragraph 5, have the right to access review procedures regarding any procedures subject to the requirements of article 6, and in this regard they have standing to seek the review of not only the procedural but also the substantive legality of those decisions;
    - (d) To the extent that the EIA screening process and the relevant criteria serve also as the determination required under article 6, paragraph 1 (b), as to whether a proposed activity is subject to the provisions of article 6, the public concerned, as defined in article 2, paragraph 5, is provided with access to a review procedure to challenge the procedural and substantive legality of those conclusions;
    - (e) Members of the public are provided with access to administrative or judicial procedures to challenge acts of private persons and omissions of authorities which contravene provisions of national law relating to noise and urban and land-planning environmental standards;
  5. *Welcomes also* the recommendation made by the Committee during the intersessional period with regard to its findings on communication ACCC/C/2012/70, in accordance with paragraph 36 (b) of the annex to decision I/7;
  6. *Further welcomes* the willingness of the Party concerned to accept that recommendation, namely, that the Party concerned, in future, shall submit plans and programmes similar in nature to the National Investment Plan to public participation as required by article 7, in conjunction with the relevant paragraphs of article 6, of the Convention;
  7. *Welcomes in addition* the efforts made by the Party concerned to start a process of legislative changes and encourages it to speed up the process;
  8. *Invites* the Party concerned to submit to the Committee periodically (on 31 December 2014, 31 October 2015 and 31 October 2016) detailed information on further progress in implementing the recommendations set out above;
  9. *Undertakes* to review the situation at its sixth session.

## DECISION V/9g

## ON COMPLIANCE BY THE EUROPEAN UNION

*The Meeting of the Parties,*

*Acting* under paragraph 37 of the annex to its decision I/7 on the review of compliance,

*Taking note* of the report of the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (ECE/MPPP/2014/9), as well as the findings of the Committee on communication ACCC/C/2010/54 (ECE/MPPP/C. 1/2012/12 and Corr.1) in connection with Ireland's renewable energy programme and the Committee's report on the implementation of the recommendations contained in those findings (ECE/MP. PP/2014/16),

*Encouraged* by the European Union's willingness to discuss in a constructive manner the compliance issues in question with the Committee,

1. *Endorses* the following findings of the Committee with regard to communication ACCC/C/2010/54:

- (a) That the Party concerned, by not having in place a proper regulatory framework and/or clear instructions to implement article 7 of the Convention with respect to the adoption of National Renewable Energy Action Plans (NREAPs) by its member States on the basis of Directive 2009/28/EC, has failed to comply with article 7 of the Convention;
- (b) That the Party concerned, by not having properly monitored the implementation by Ireland of article 7 of the Convention in the adoption of Ireland's NREAP, has also failed to comply with article 7 of the Convention;
- (c) That the Party concerned, by not having in place a proper regulatory framework and/or clear instructions to implement and proper measures to enforce article 7 of the Convention with respect to the adoption of NREAPs by its member States on the basis of Directive 2009/28/EC, has failed to comply also with article 3, paragraph 1, of the Convention;

2. *Welcomes* the recommendation made by the Committee during the intersessional period with respect to its findings on communication ACCC/C/2010/54 in accordance with paragraph 36 (b) of the annex to decision I/7;

3. *Also welcomes* the willingness of the Party concerned to accept the Committee's recommendation, namely, that it adopt a proper regulatory framework and/or clear instructions for implementing article 7 of the Convention with respect to the adoption of NREAPs. This would entail that the Party concerned ensure that the arrangements for public participation in its member States are transparent and fair and that within those arrangements the necessary information is provided to the public. In addition, such a regulatory framework and/or clear instructions must ensure that the requirements of article 6, paragraphs 3, 4 and 8, of the Convention are met, including reasonable time frames, allowing sufficient time for informing the public and for the public to prepare and participate effectively, allowing for early public participation when all options are open, and ensuring that due account is taken of the outcome of the public participation. Moreover, the Party concerned must adapt the manner in which it evaluates NREAPs accordingly;

4. *Expresses* its concern as to whether letters will provide "a proper regulatory framework and/or clear instructions for implementing article 7 of the Convention with respect to the adoption of NREAPs" and that it remains unclear how the Party concerned will "adapt the manner in which it evaluates NREAPs" in accordance with the recommendations of the Committee;

5. *Invites* the Party concerned to submit to the Committee periodically (on 31 December 2014, 31 October 2015 and 31 October 2016) detailed information on further progress in implementing the recommendations set out above;

6. *Undertakes* to review the situation at its sixth session.

## DECISION V/9h

### ON COMPLIANCE BY **GERMANY**

*The Meeting of the Parties,*

*Acting* under paragraph 37 of the annex to its decision I/7 on the review of compliance,

*Taking note* of the report of the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (ECE/MP.PP/2014/9), as well as the findings of the Committee on communication ACCC/C/2008/31 (ECE/MP.PP/C. 1/2014/8, forthcoming) concerning access to justice for environmental non-governmental organizations (NGOs),

*Encouraged* by Germany's willingness to discuss in a constructive manner the compliance issues in question with the Committee,

1. *Endorses* the following findings of the Committee with regard to communication ACCC/C/2008/31:

- (a) By imposing a requirement that to be able to file an appeal under the Environmental Appeals Act an environmental NGO must assert that the challenged decision contravenes a legal provision "serving the environment", the Party concerned fails to comply with article 9, paragraph 2, of the Convention;
- (b) By not ensuring the standing of environmental NGOs in many of its sectoral laws to challenge acts or omissions of public authorities or private persons which contravene provisions of national law relating to the environment, the Party concerned fails to comply with article 9, paragraph 3, of the Convention;

2. *Recommends* to the Party concerned that it take the necessary legislative, regulatory and administrative measures and practical arrangements to ensure that:

- (a) NGOs promoting environmental protection can challenge both the substantive and procedural legality of any decision, act or omission subject to article 6 of the Convention, without having to assert that the challenged decision contravenes a legal provision "serving the environment";
- (b) Criteria for the standing of NGOs promoting environmental protection, including standing with respect to sectoral environmental laws, to challenge acts or omissions by private persons or public authorities which contravene national law relating to the environment under article 9, paragraph 3, of the Convention are revised, in addition to any existing criteria for NGO standing in the Environmental Appeals Act, the Federal Nature Conservation Act and the Environmental Damage Act;

3. *Invites* the Party concerned to submit to the Committee periodically (on 31 December 2014, 31 October 2015 and 31 October 2016) detailed information on further progress in implementing the recommendation set out above;

4. *Undertakes* to review the situation at its sixth session.

## DECISION V/9i

### ON COMPLIANCE BY **KAZAKHSTAN**

*The Meeting of the Parties,*

*Acting* under paragraph 37 of the annex to its decision I/7 on the review of compliance,

*Taking note* of the report of the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (ECE/MP.PP/2014/9) and the findings of the Committee on communication ACCC/C/2010/59 (ECE/MP.PP/C. 1/2013/9) concerning public participation for a road corridor project, as well as the report of the Committee on compliance by Kazakhstan with its obligations under the Convention (ECE/MP.PP/2014/17) examining the implementation by Kazakhstan of decision IV/9c and the Committee's recommendations in its findings on communication ACCC/C/2010/59,

*Encouraged* by Kazakhstan's willingness to discuss in a constructive manner the compliance issues in question with the Committee,

1. *Welcomes* the solid efforts made by the Party concerned to implement decision IV/9c, including the studies on access to justice carried out by the Party concerned in 2011-2012 and 2013, and the efforts of the Party concerned to implement the action points set out in the latter study, such as the Supreme Court's drafting of the regulatory statute "On several issues in application of legislation by the courts when reviewing civil cases on environmental disputes";
2. *Encourages* the Party concerned to continue to implement the action points set out in its 2013 study on access to justice, and to report on these through its national implementation reports;
3. *Endorses* the finding of the Compliance Committee that the Party has fulfilled the requirements of decision IV/9c, and specifically the condition in paragraph 4 of that decision;
4. *Also endorses* the following findings of the Committee with regard to communication ACCC/C/2010/59:
  - (a) By not providing the requirement for informing the public in a timely manner, and by not specifying the means of informing the public other than publication in the mass media, the Party concerned fails to ensure that the public is informed in an adequate, timely and effective manner and thus fails to comply with article 6, paragraph 2, of the Convention;
  - (b) By not establishing consistent and clear legal requirements for making the information relevant to decision-making accessible for the public, the Party concerned fails to comply with article 6, paragraph 6, of the Convention;
  - (c) By allowing the submission of public comments only on the OVOS report at the stage of State environmental *expertiza*, and by limiting the range of the public comments only to those containing reasoned argumentation, the legislation of the Party concerned fails to guarantee the full scope of the rights envisaged by the Convention and thus fails to comply with article 6, paragraph 7, of the Convention;
  - (d) By not establishing appropriate procedures to promptly notify the public about the environmental *expertiza* conclusions and by not establishing appropriate arrangements to facilitate public access to these decisions, the Party concerned fails to comply with article 6, paragraph 9, of the Convention;
4. *Welcomes* the recommendations made by the Committee during the intersessional period in its findings on communication ACCC/C/2010/59 (ECE/MPPP/C. 1/2013/9, para. 70), made in accordance with paragraph 36 (b) of the annex to decision I/7, and the willingness of the Party concerned to accept them and the efforts it has made so far to address them;
5. *Endorses* the finding of the Compliance Committee that the legislative measures taken so far by the Party concerned to implement the recommendations set out in the Committee's findings on communication ACCC/C/2010/59 alone are not sufficient to fulfil those recommendations;
6. *Regrets* that the Party thus remains in non-compliance with article 6, paragraphs 2, 6, 7, and 9, of the Convention on public participation in decision-making;
7. *Invites* the Party concerned to continue its efforts to address the recommendations of the Committee on communication ACCC/C/2010/59, namely, to take the necessary legislative, regulatory and administrative measures and practical arrangements to ensure that:
  - (a) Mandatory requirements for the public notice are detailed by law, such as the obligation to inform the public in a timely manner and the means of public notice, including the obligation that any information relevant for the decision-making is also available on the website of the public authority competent for decision-making;
  - (b) There is a clear possibility for any member of the public concerned to submit any comments on the project-related documentation at different stages of the public participation process, without the requirement that these comments be reasoned;
  - (c) There is a clear responsibility of the relevant public authorities to:

- (i) Inform the public promptly of the decisions they have taken and of how the text of the decisions can be accessed;
  - (ii) Maintain and make accessible to the public, through publicly available lists or registers, copies of the decisions taken and other information relevant to the decision-making, including evidence of having fulfilled the obligation to inform the public and provide it with opportunities to submit comments;
8. *Requests* the Party concerned to submit to the Committee by 31 December 2014, 31 October 2015 and 31 October 2016 detailed information on its further progress in implementing the above recommendations, including drafts of any legislation being prepared for that purpose;
9. *Undertakes* to review the situation at its sixth session.

## DECISION V/9j

### ON COMPLIANCE BY ROMANIA

*The Meeting of the Parties,*

*Acting* under paragraph 37 of the annex to its decision I/7 on the review of compliance,

*Taking note* of the report of the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (ECE/MPPP/2014/9), as well as the findings of the Committee on communication ACCC/C/2010/51 (ECE/MPPP/C.1/2014/12, forthcoming) concerning Romania's nuclear energy strategy and the planned construction of a nuclear power plant,

*Encouraged* by Romania's willingness to discuss in a constructive manner the compliance issues in question with the Committee,

1. *Endorses* the following findings of the Committee with regard to communication ACCC/C/2010/51:

- (a) Since the authorities did not respond at all to two of the three information requests submitted by the communicant in relation to the decision-making process regarding the proposed construction of a new nuclear power plant, the Party concerned failed to comply with article 4, paragraph 1, in conjunction with paragraphs 2 and 7, of the Convention;
- (b) With respect to the communicant's third information request, by not ensuring that the requested information regarding the possible locations for the nuclear power plant was made available to the public, and by not adequately justifying its refusal to disclose the requested information under one of the grounds set out in article 4, paragraph 4, of the Convention, taking into account the public interest served by disclosure, the Party concerned failed to comply with article 4, paragraphs 1 and 4, of the Convention;
- (c) By not providing sufficient time for the public to get acquainted with the draft 2007 Energy Strategy and to submit comments thereon, the Party concerned failed to comply with article 7, in conjunction with article 6, paragraph 3, of the Convention;

2. *Recommends* that the Party concerned:

- (a) Take the necessary legislative, regulatory and administrative measures to ensure that public officials are under a legal and enforceable duty:
  - (i) To respond to requests of members of the public to access environmental information as soon as possible, and at the latest within one month after the request was submitted, and, in the case of a refusal, to state the reasons for the refusal;
  - (ii) To interpret the grounds for refusing access to environmental information in a restrictive way, taking into account the public interest served by disclosure, and in stating the reasons for a refusal to specify how the public interest served by disclosure was taken into account;
  - (iii) To provide reasonable time frames, commensurate with the nature and complexity of the document, for the public to get acquainted with draft strategic documents subject to the Convention and to submit their comments;

- (b) Provide adequate information and training to public authorities about the above duties;
- 3. *Invites* the Party concerned to submit to the Committee periodically (on 31 December 2014, 31 October 2015 and 31 October 2016) detailed information on its further progress in implementing the recommendations set out above;
- 4. *Undertakes* to review the situation at its sixth session.

## DECISION V/9k

### ON COMPLIANCE BY **SPAIN**

*The Meeting of the Parties,*

*Acting* under paragraph 37 of the annex to its decision I/7 on the review of compliance,

*Taking note* of the report of the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (ECE/MPPP/2014/9), as well as the report of the Committee on compliance by Spain with its obligations under the Convention (ECE/MPPP/2014/20) examining the implementation of decision IV/9f,

*Encouraged* by Spain's willingness to discuss in a constructive manner the compliance issues in question with the Committee,

1. *Welcomes* the efforts made by the Party concerned to meet the recommendations of the Committee and the significant progress it has achieved in that respect;
2. *Endorses* the finding of the Committee that the Party concerned has seriously and actively engaged in efforts to follow the recommendations set out in paragraphs 5, 6 and 9 of decision IV/9f, to the extent that the Party concerned is no longer in a state of non-compliance with the provisions of article 3, paragraph 8, article 4, paragraphs 1 (a), (b) and 2, and article 6, paragraphs 3 and 6, of the Convention with respect to the specific points of non-compliance identified in the Committee's findings on communications ACCC/C/2008/24 (ECE/MPPP/C.1/2009/8/Add.1) and ACCC/C/2009/36 (ECE/MPPP/C.1/2010/4/Add.2);
3. *Also endorses* the findings of the Committee that the Party has failed to take sufficient measures to comply with article 4, paragraph 8, of the Convention with respect to the fees charged by the Murcia City Council for copies of environmental information, and to take sufficient efforts to overcome remaining obstacles to the full implementation of article 9, paragraphs 4 and 5, with respect to legal aid to non-governmental organizations (NGOs);
4. *Notes* with regret that the Party concerned therefore remains in non-compliance with the Convention through failing to implement some of the earlier recommendations of the Meeting of the Parties;
5. *Recommends* that the Party concerned take as a matter of urgency the necessary measures to ensure that the fees charged by the Murcia City Council for the provision of copies of land use and urban planning information are reasonable and are set out in a publicly available schedule of fees;
6. *Also recommends* that the Party concerned take measures by 30 November 2014 to ensure that the remaining obstacles to the full implementation of article 9, paragraphs 4 and 5, of the Convention with respect to legal aid to NGOs are overcome;
7. *Requests* the Party concerned to provide detailed progress reports to the Committee by 31 December 2014, 31 October 2015 and 31 October 2016 on the measures taken and the results achieved in accordance with the above recommendation;
8. *Undertakes* to review the situation at its sixth session.

## DECISION V/9I

### ON COMPLIANCE BY **TURKMENISTAN**

The Meeting of the Parties,

*Acting* under paragraph 37 of the annex to its decision I/7 on the review of compliance,

*Taking note* of the report of the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (ECE/MPPP/2014/9) and the report of the Compliance Committee on compliance by Turkmenistan with its obligations under the Convention (ECE/MPPP/2014/21) examining implementation of decision IV/9g,

*Encouraged* by the willingness of Turkmenistan in recent months to discuss in a constructive manner the compliance issues in question with the Committee,

1. *Welcomes* the engagement of the Party concerned in the compliance review process during the intersessional period, including its efforts to implement decision IV/9g;
2. *Endorses* the finding of the Committee that, through article 4, paragraph 2, article 11, paragraphs 1 and 5, and article 18, paragraph 1, of the 2014 Act on Public Associations, the Party concerned has fulfilled decision IV/9g to the extent that it is no longer in non-compliance with article 3, paragraph 9, of the Convention with respect to the rights of non-citizens to found and participate in public associations;
3. *Also endorses* the finding of the Committee that, in the light of the recent legislative developments, the Party concerned has fulfilled decision IV/9g to the extent that it is no longer in non-compliance with the obligation in article 3, paragraph 1, of the Convention to provide a clear, transparent and consistent framework to implement the Convention with respect to the points of non-compliance set out in decision IV/9g;
4. *Furthermore endorses* the finding of the Committee that, while the recent legislative developments are welcome, in the light of the lack of clarity as to how the prohibition on activities of unregistered associations set out in article 7, paragraph 2, of the 2014 Act on Public Associations is to be applied in practice, it is not in a position to conclude that the Party concerned is no longer in non-compliance with article 3, paragraph 4, of the Convention and the Party concerned thus remains in non-compliance with that provision;
5. *Decides* to lift the caution that entered into force on 1 January 2013;
6. *Recommends* that by 30 November 2014 the Party concerned provide information through an official statement to confirm, to the satisfaction of the Committee, that:
  - (a) The concept of “citizen” in article 9, paragraph 2, of the 2014 Law on Nature Protection includes any natural person, i.e., also foreign citizens and persons without citizenship, and that the concept of “natural persons” in article 11, paragraph 1, of the 2014 Act on Public Associations includes foreign citizens and persons without citizenship;
  - (b) The intended interpretation of article 4, paragraph 2, of the 2014 Act on Public Associations is that foreign citizens and persons without citizenship may, in the same way as citizens of Turkmenistan, become founders of public associations;
  - (c) With respect to activities of non-registered associations within the scope of the Convention, article 9 of the 2014 Law on Nature Protection prevails over the prohibition on activities of non-registered associations in article 7, paragraph 2, of the 2014 Act on Public Associations and other relevant legislation (e.g. as *lex specialis*, in the form of a special law which prevails over a more general law);
7. *Invites* the Party to organize meetings (e.g., round tables, workshops or conferences) with broad public participation, open to all members of the public and dedicated to:
  - (a) Sharing experiences in activities carried out by associations, organizations and groups promoting environmental protection in the Party concerned;
  - (b) Ensuring the consistency of the national legal system of the Party concerned with the obligation set out in article 3, paragraph 4, of the Convention;

and to report on these meetings by 30 November 2015 as well as in its national implementation report to the sixth session of the Meeting of the Parties;



8. *Mandates* the Committee to confirm whether the Party concerned has sufficiently fulfilled the requirements of paragraph 6 above to the extent that it is no longer in non-compliance with article 3, paragraph 4, of the Convention;

9. *Undertakes* to review the situation at its sixth session.

### DECISION V/9m ON COMPLIANCE BY **UKRAINE**

*The Meeting of the Parties,*

*Acting* under paragraph 37 of the annex to its decision I/7 on the review of compliance,

*Taking note* of the report of the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (ECE/MPPP/2014/9) and the report of the Compliance Committee on compliance by Ukraine with its obligations under the Convention, examining implementation of decision IV/9h (ECE/MPPP/2014/22),

*Encouraged* by the willingness of Ukraine throughout most of the current intersessional period to discuss in a constructive manner the compliance issues in question with the Committee,

1. *Welcomes* the constructive engagement of the Party concerned throughout most of the intersessional period with respect to the follow-up on decision IV/9h;

2. *Endorses*, however, the finding of the Committee with respect to decision IV/9h that, as the legislative measures proposed by the Party concerned during the intersessional period to fulfil the requirements of paragraph 2 of decision II/5b have not been adopted and no longer exist even in draft form, Ukraine has failed to meet the requirements of both decision II/5b and paragraph 5 of decision IV/9h of the Meeting of the Parties;

3. *Also endorses* the finding of the Committee that the Party concerned thus remains in non-compliance with article 4, paragraph 1, of the Convention on access to information, numerous provisions of article 6 concerning public participation in decision-making and article 3, paragraph 1, requiring a clear, transparent and consistent framework to implement the Convention;

4. *Expresses* its deep concern at the absence of concrete results by the Party concerned in implementing decision IV/h during this intersessional period;

5. *Reiterates* paragraph 5 of decision IV/9h and calls upon the Party concerned to implement the measures requested by the Meeting of the Parties in decision II/b as a matter of urgency, namely for the Party to bring its legislation and practice into compliance with the provisions of the Convention, and in particular:

- (a) To provide for public participation of the kind required by article 6 of the Convention (article 6, paragraph 1 (a), and, in connection with this, article 6, paragraphs 2 to 8, and article 6, paragraph 9 (second sentence));
- (b) To ensure that information is provided by public authorities upon request (article 4, paragraph 1);
- (c) To address the lack of clarity with regard to public participation requirements in environmental impact assessment and environmental decision-making procedures for projects, such as time frames and modalities of a public consultation process, requirements to take its outcome into account and obligations with regard to making information available in the context of article 6, in order to ensure a clear, transparent and consistent framework for the implementation of the Convention (article 3, paragraph 1);

6. *Decides to:*

- (a) Maintain the caution currently in place since the fourth session of the Meeting of the Parties;
- (b) Provide for the caution to be lifted if the Party concerned has adopted the necessary measures to bring its legislation into full compliance with the provisions of the Convention, in particular fully satisfying the conditions set out in paragraph 5 above, and has notified the secretariat of this fact by 31 December 2015;

7. *Requests* the Compliance Committee to establish the successful fulfilment of the conditions set out in paragraph 5 above;
8. *Also requests* the Compliance Committee to report to the Meeting of the Parties at its sixth session on whether the Party concerned has fulfilled the conditions set out in paragraph 5 above, with a view to assisting the Meeting of the Parties in deciding whether to suspend the special rights and privileges accorded to Ukraine under the Convention;
9. *Invites* the Party concerned to provide detailed progress reports to the Committee:
  - (a) By 30 November 2014, regarding the proposed process of legislative reform, including the steps taken so far and future steps to be taken, the proposed timetable for doing so and the consultation plan;
  - (b) By 1 March 2015, enclosing the text of the draft law(s);
  - (c) By 31 October 2016, regarding the results achieved in the further implementation of the above recommendations;
10. *Undertakes* to review the situation at its sixth session

## DECISION V/9n

ON COMPLIANCE BY

### THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

*The Meeting of the Parties,*

*Acting* under paragraph 37 of the annex to its decision I/7 on the review of compliance,

*Taking note* of the report of the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (ECE/MPPP/2014/9), the findings of the Committee on communication ACCC/C/2010/53 (ECE/MPPP/C.1/2013/3) concerning the rerouting of traffic through a residential area of Edinburgh and the findings of the Committee on communication ACCC/C/2012/68 (ECE/MPPP/C.1/2014/5) regarding Scotland's renewable energy programme, as well as the report of the Compliance Committee on compliance by the United Kingdom of Great Britain and Northern Ireland with its obligations under the Convention, examining implementation of decision IV/9i (ECE/MP.PP/2014/23),

*Taking note also* of paragraphs 38 and 40 of the report of the Compliance Committee's thirty-sixth meeting (Geneva, 27-30 March 2012) (ECE/MPPP/C.1/2012/2), concerning communications ACCC/C/2011/64 and ACCC/C/2012/65, respectively,

*Encouraged* by the willingness of the United Kingdom to discuss in a constructive manner the compliance issues in question with the Committee,

1. *Welcomes* the constructive ongoing engagement of the Party concerned throughout the intersessional period with respect to the follow-up on decision IV/9i;
2. *Endorses*, however, the findings of the Committee with respect to decision IV/9i that, despite the Party's serious and active efforts to implement the recommendations made by the Committee to the Party with its agreement and welcomed by the Meeting of the Parties through paragraph 4 of decision IV/9i, the Party concerned has not yet fully addressed the points of non-compliance identified in paragraph 3 (a)-(d) of that decision, and in particular that:
  - (a) By not taking sufficient measures to ensure that the costs for all court procedures subject to article 9 in England and Wales, Scotland and Northern Ireland are not prohibitively expensive and, in particular, by not providing clear legally binding directions from the legislature or the judiciary to this effect, the Party concerned continues to fail to comply with article 9, paragraph 4, of the Convention;
  - (b) In the light of the above finding that the Party concerned has failed to take sufficient measures to ensure that the costs for all court procedures subject to article 9 in England and Wales, Scotland and Northern Ireland are not prohibitively expensive, the Party concerned has failed to sufficiently consider the establishment of appropriate assistance mechanisms to remove or reduce financial barriers to access to justice, as required by article 9, paragraph 5;

- (c) By still not ensuring clear time limits for the filing of all applications for judicial review within the scope of article 9 of the Convention in England and Wales, Scotland and Northern Ireland, nor a clear date from when the time limit started to run, the Party concerned continues to fail to comply with article 9, paragraph 4, of the Convention;
- (d) By not having taken the necessary legislative, regulatory and other measures to establish a clear, transparent and consistent framework to implement article 9, paragraph 4, the Party concerned continues to fail to comply with article 3, paragraph 1, of the Convention;
3. *Also endorses* the findings of the Committee with regard to communication ACCC/C/2010/53 that by not providing the requested raw data to the public the Party concerned failed to comply with article 4, paragraph 1, of the Convention for a certain period, but that since the raw data are now provided to the public, the Party concerned is no longer in non-compliance with article 4, paragraph 1, of the Convention;
4. *Endorses in addition* the Committee's decision at its thirty-sixth meeting to apply its summary proceedings procedure (ECE/MP.PP/C.1/2010/4, para. 45) with respect to the allegations in communication ACCC/C/2011/64 that judicial review was prohibitively expensive, as the issue of costs had already been extensively considered by the Committee in its findings on communication ACCC/C/2008/33 and subsequently by the Meeting of the Parties in decision IV/9i (ECE/MP.PP/C.1/2012/2, para. 38);
5. *Endorses also* the Committee's decision at its thirty-sixth meeting to apply its summary proceedings procedure with respect to the allegations in communication ACCC/C/2012/65 on cross-undertakings on damages, in the light of its findings on communication ACCC/C/2008/33 and decision IV/9i of the Meeting of the Parties (ECE/MP.PP/C.1/2012/2, para. 40);
6. *Furthermore endorses* the findings of the Committee with regard to communication ACCC/C/2012/68 that, because the United Kingdom's National Renewable Energy Plan (NREAP) was not subjected to public participation, the Party concerned failed to comply with article 7 of the Convention;
7. *Notes with regret* that the Party concerned therefore remains in non-compliance with the Convention, including through failing to implement the earlier recommendations of the Meeting of the Parties;
8. *Reiterates* its recommendation through decision IV/9i that the Party concerned take urgent action to:
- (a) Further review its system for allocating costs in all court procedures subject to article 9, and undertake practical and legislative measures to ensure that the allocation of costs in all such cases is fair and equitable and not prohibitively expensive;
- (b) Further consider the establishment of appropriate assistance mechanisms to remove or reduce financial barriers to access to justice;
- (c) Further review its rules regarding the time frame for the bringing of applications for judicial review to ensure that the legislative measures involved are fair and equitable and amount to a clear and transparent framework;
- (d) Put in place the necessary legislative, regulatory and other measures to establish a clear, transparent and consistent framework to implement article 9, paragraph 4, of the Convention;
9. *Recommends* with respect to the Committee's findings on communication ACCC/C/2012/68 that the Party concerned in future submit plans and programmes similar in nature to NREAPs to public participation as required by article 7, in conjunction with the relevant paragraphs of article 6, of the Convention;
10. *Notes* the commitment of the Party concerned to ensure, through the continued operation of the domestic systems put in place to enable the decisions of public authorities to be reviewed, that the practice of releasing raw data in appropriate circumstances in ongoing decision-making processes is maintained;
11. *Requests the Party* concerned to provide detailed progress reports to the Committee by 31 December 2014, 31 October 2015 and 31 October 2016 on the measures taken and the results achieved in implementation of the above recommendations;
12. *Undertakes* to review the situation at its sixth session.

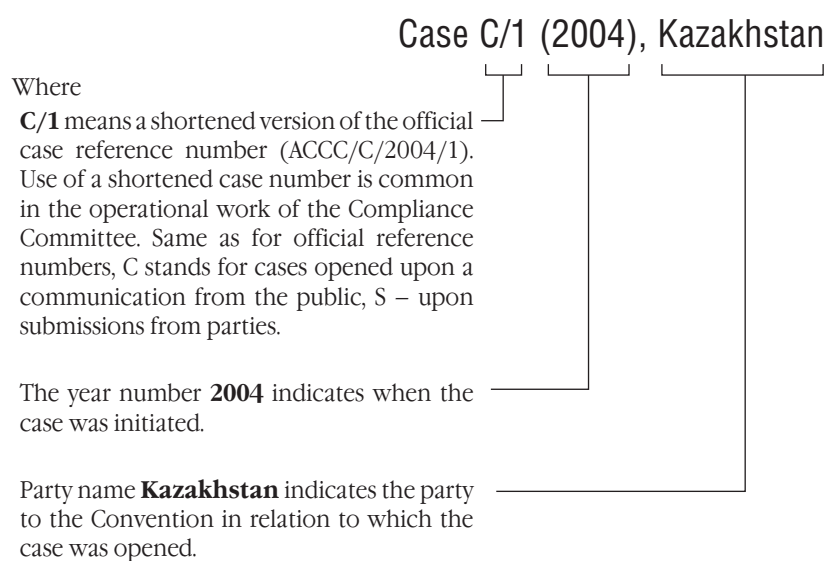
## PART IV

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### **SUMMARIES OF CASES**

This section presents brief descriptions of the cases with findings by the Compliance Committee included and referred to in Parts I-III of this publication. All descriptions are taken from the relevant decisions (findings & recommendations) of the Compliance Committee, except for a few additional explanations.

The titles of the summaries indicate information as explained below:



**ACCC/C/2004/1** — is the official reference number of the case.

**Case S/1 (2004), Ukraine**  
**ACCC/S/2004/1**

This case was merged with case C/3 (2004). See case summary C/3 (2004) below.

**Case C/1 (2004), Kazakhstan**  
**ACCC/C/2004/1**

On 7 February 2004, the Kazakh non-governmental organization Green Salvation submitted a communication to the Committee alleging non-compliance by Kazakhstan with its obligations under article 4, paragraphs 1 and 7, article 6, paragraph 6, and article 9, paragraph 1, of the Aarhus Convention.

The communication concerned access to information related to the proposed draft act on the import and disposal of radioactive waste in Kazakhstan held by the National Atomic Company Kazatomprom. The communicant claims that its right to information was violated when a request to Kazatomprom for information purporting to substantiate a proposal to import and dispose of foreign radioactive waste was not answered. Subsequent appeal procedures in courts of various jurisdictions and instances failed, in the communicant's view, to meet the requirements of article 9, paragraph 1, of the Convention. According to the communication, the lawsuits were rejected first on grounds of jurisdiction and subsequently on procedural grounds as the courts did not acknowledge the right of a non-governmental organization to file a suit under article 9, paragraph 1, in its own name rather than as an authorized representative of its members.

**Case C/2 (2004), Kazakhstan**  
**ACCC/C/2004/2**

On 17 March 2004, the Kazakh non-governmental organization Green Salvation submitted a communication to the Committee alleging violation by Kazakhstan of its obligations under article 6, paragraphs 2 to 4 and 6 to 8, and article 9, paragraphs 3 and 4, of the Aarhus Convention.

The communication alleged that the Party concerned had failed to provide for an adequate public participation procedure in accordance with article 6 of the Convention in a permitting procedure for the construction of high-voltage overhead electric power lines in the Gornyi Gigant district in Almaty. Various court proceedings had thus far failed to resolve the matter.

**Case C/3 (2004), Ukraine**  
**ACCC/C/2004/3**

On 5 May 2004, the Ukrainian non-governmental organization Ecopravo-Lviv submitted a communication to the Committee alleging non-compliance by Ukraine with its obligations under article 1 and article 6, paragraphs 2 to 4 and 6 to 9, of the Aarhus Convention.

The communication concerned a proposal to construct a navigation canal in the Danube Delta passing through an internationally recognized wetland. The communicant claimed that by failing to provide for proper public participation in a decision-making process on State 'environmental expertisa' linked with the technical and economic evaluation of the proposed project and to provide access to documentation relevant to the process, the Party had failed to comply with its obligations under article 6 of the Convention. The communicant had sought redress in two instances of the domestic court system, winning in the first instance and losing in the appellate court.

On 7 June 2004, the Government of Romania made a submission alleging failure by Ukraine to comply with the provisions of article 6, paragraph 2 (e), of the Convention by failing, in the opinion of the submitting Party, to ensure that the public affected by the Bystre Canal project in the Danube Delta was informed early in the decision-making procedure that the project was subject to a national and transboundary environmental impact assessment procedure.

In a letter to the Committee dated 26 November 2004, the submitting Party provided further information. It reiterated its claim that the Party concerned was not in compliance with article 6, paragraph 2 (e), when read in conjunction with article 2, paragraph 5, or with article 6, paragraph 7, and article 3, paragraph 9, of the Convention. In support of its position, it cited *inter alia* the failure of the Party concerned to involve various non-governmental organizations, including Ukrainian, Romanian and international ones, that had expressed interest in or concern about the canal, in the decision-making on any of the phases of the project.

The Committee, having noted that the communication and submission were closely related in their subject matter, considered them side-by-side at its sixth meeting on 15-17 December 2004. However, taking into account the related process of establishing an inquiry commission under the Espoo Convention aimed at determining whether the activity was likely to have a significant transboundary environmental impact, it agreed that it would consider the question of compliance with the part of article 6, paragraph 2 (e), relating to environmental impact assessment in a transboundary context in the light of the findings of the inquiry procedure being undertaken under the Espoo Convention. That inquiry was expected to establish whether or not the activity was indeed subject to a transboundary environmental impact assessment procedure. It therefore agreed to defer discussions on those aspects of the submission and communication and to restrict its discussions to other aspects.

#### **Case C/4 (2004), Hungary** **ACCC/C/2004/4**

On 7 May 2004, the Hungarian non-governmental organization Clean Air Action Group submitted a communication to the Committee alleging non-compliance by Hungary with its obligations under article 6 and article 9, paragraphs 2 to 4, of the Aarhus Convention.

The communication concerned the alleged incompatibility of the new Hungarian Act on Public Interest and Development of the Expressway Network (hereafter Expressway Act) with the provisions of the Aarhus Convention. The alleged non-compliance related to the special process of decision-making established by the Act for construction of expressways. According to the communicant, the procedure established by the Act notably differs from procedures for decision-making on other specific activities with potential adverse effects of the same significance, *inter alia* with regard to decision-making authority, the practicalities of ensuring public participation procedures, the status of the decision, timeframes, and procedures for appeal.

#### **Case C/5 (2004), Turkmenistan** **ACCC/C/2004/5**

On 15 March 2004, the secretariat, having become aware of certain information in the public domain on Turkmenistan's new Act on Public Associations and in line with its mandate under paragraph 17 of the annex to decision I/7, wrote to the Government of Turkmenistan to seek further information on the matter. The Government of Turkmenistan acknowledged the letter by reply dated 26 March 2004 but did not provide a substantive reply to the questions raised.

On 10 May 2004, the Moldovan non-governmental organization Biotica submitted a communication to the Committee alleging non-compliance by Turkmenistan with its obligations under article 3, paragraphs 4 and 9, of the Aarhus Convention.

The communication concerned the newly adopted Act of Turkmenistan on Public Associations. The communicant claims that through the adoption of the Act in November 2003, a new regime for registration, operation and liquidation of non-governmental organizations, the Party is in breach of the provisions of article 3, paragraph 4, of the Convention which requires it to provide for appropriate recognition of and support to associations, organizations or groups promoting environmental protection and to ensure that its national legal system is consistent with this obligation. It also alleges non-compliance by the Party with its obligation under article 3, paragraph 9, to provide the possibility for the public to exercise their rights under the Convention without discrimination as to citizenship, nationality, domicile or location of an entity's registered seat. The communication included several attachments, including opinions of an international organization.

The Communicant in its communication asked that part of it should be kept confidential. The Commission held that this request should be honoured on the basis of paragraph 29 of decision I/7 (see MPPP/C.1/2004/4, paragraph 30).

### **Case C/6 (2004), Kazakhstan** **ACCC/C/2004/6**

On 3 September 2004, Ms. Gatina, Mr. Gatin and Ms. Konyushkova of Almaty, Kazakhstan (hereinafter the communicant), submitted a communication to the Compliance Committee alleging non-compliance by Kazakhstan with its obligations under article 9, paragraphs 3 and 4, of the Aarhus Convention.

The communication concerns access to justice in appealing the failure of the Almaty Sanitary-Epidemiological Department and Almaty City Territorial Department on Environmental Protection to enforce domestic environmental law with regard to operation of an industrial facility for storage of cement and coal and production of cement-based materials (hereafter "the facility"). The communicants claim that their right of access to administrative or judicial review procedures guaranteed under article 9, paragraph 3, of the Convention were violated when a court repeatedly failed to consider a part of a lawsuit related to the failure to act by the public authorities. The communicants further claim that unjustified delay in review of the claim, failure to notify the plaintiffs of the scheduled court hearing, review by the court of the claim in absence of the parties and failure by the court to inform the plaintiffs of its decision in the case constituted breach of the requirements of article 9, paragraph 4, of the Convention with regard to fair, equitable and timely procedures providing adequate and effective remedies.

### **Case C/8 (2004), Armenia** **ACCC/C/2004/8**

On 20 September 2004, three Armenian non-governmental organizations (NGOs), the Center for Regional Development/Transparency International Armenia, the Sakharov Armenian Human Rights Protection Center and the Armenian Botanical Society, submitted a communication to the Committee alleging non-compliance by Armenia with its obligations under article 4, paragraphs 1 and 2; article 6, paragraphs 1–5 and 7–9; article 7; article 8; and article 9, paragraph 2, of the Aarhus Convention.

The communication concerns access to information and public participation in the decision-making on modification of land use designation and zoning as well as on the leasing of certain plots in an agricultural area of Dalma Orchards. The communicants claim that their right to information, guaranteed under article 4, paragraphs 1 and 2, of the Convention, was violated by the public authorities' failure to respond to information requests and to provide adequate and complete information. The communicants also claim that, in adopting the relevant decrees, the Government failed to notify the public about the decision-making process; to ensure public participation in it, including by taking account of the public comments; and to publish the adopted decisions. They allege that these omissions constituted failure to comply with multiple provisions of articles 6 and 7 of the Convention. They also allege that adoption of government decrees without a public participation procedure contravenes article 8 of the Convention. They further claim that a failure to address the administrative appeals challenging the relevant decisions and a failure to provide for an appropriate judiciary appeal procedure constitute noncompliance with article 9, paragraph 2, of the Convention.

### **Case C/11 (2005), Belgium** **ACCC/C/2005/11**

On 3 January 2005, the Belgian non-governmental organization Bond Beter Leefmilieu Vlaanderen VZW (BBL; hereinafter the communicant) submitted a communication to the Committee alleging non-compliance by Belgium with its obligations under article 2, paragraph 5, article 3, paragraph 1, and article 9, paragraphs 1 to 4, of the Aarhus Convention.



The communication concerns access to justice for environmental organizations in Belgium. The communicant claims that Belgian legislation and case law do not comply with the “third pillar” of the Convention, namely with the provisions requiring access to justice in environmental matters. More specifically, the concept of “interest” as a criterion for standing before the Belgian judiciary is too narrowly interpreted – for example, by the Council of State in cases concerning construction permits and planning decisions. This constitutes a barrier to wide access to justice for environmental organizations. Hence, the communicant argues, Belgian law is not in compliance with article 9 of the Aarhus Convention.

#### **Case C/12 (2005), Albania** **ACCC/C/2005/12**

On 27 April 2005, the Albanian non-governmental organization (NGO) Alliance for the Protection of the Vlora Gulf (also translated as Civil Alliance for the Protection of the Vlora Bay) submitted a communication to the Committee alleging violation by Albania of its obligations under article 3, paragraph 2; article 6, paragraph 2; and article 7 of the Convention.

The communication alleged that the Party concerned had failed to notify the public properly and in a timely manner and to consult the public concerned in the decision-making on planning of an industrial park comprising, inter alia, oil and gas pipelines, installations for the storage of petroleum, three thermal power plants and a refinery near the lagoon of Narta, on a site of 560 ha inside the protected National Park. The communicant also alleged that the Party failed to make appropriate provision for public participation in accordance with article 7 of the Convention.

#### **Case C/15 (2005), Romania** **ACCC/C/2005/15**

On 5 July 2005, the Romanian non-governmental organization (NGO) Alburnus Maior submitted a communication to the Compliance Committee alleging violation by Romania of its obligations under article 6, paragraphs 3, 4, 7 and 8, of the Convention.

The communication alleged that the Party concerned had failed to comply with the provisions of article 6 of the Convention regarding decision-making on the environmental impact assessment (EIA) for the Rosia Montana open-cast gold mine proposal, in particular at the scoping stage of the procedure.

#### **Case C/16 (2006), Lithuania** **ACCC/C/2006/16**

On 13 March 2006, Association Kazokiskes Community (Lithuania), represented by Mr. Ulrich Salburg and Ms. Ramune Duleviciene, hereinafter “the communicant”, submitted a communication to the Compliance Committee alleging non-compliance by the Republic of Lithuania with its obligations under article 6 and article 9, paragraph 2, of the Convention.

The communication concerns a landfill in the village of Kazokiskes in the municipality of Elektrenai Vilnius. The communicant alleges that the Lithuanian authorities failed to comply with provisions of article 6 of the Convention with respect to decision-making on the establishment of the landfill. The communicant further alleges that it had no opportunity to challenge the decision on the establishment of the landfill, in particular due to the fact that it had not received the relevant decisions.

#### **Case C/17 (2006), European Community** **ACCC/C/2006/17**

On 12 June 2006, Association Kazokiskes Community (Lithuania), represented by Mr. Ulrich Salburg and Ms. Ramune Duleviciene (hereinafter “the communicant”) submitted a

communication to the Compliance Committee alleging non-compliance by the European Community with its obligations under article 6, paragraphs 2 and 4, and article 9, paragraph 2, of the Convention.

The communication concerns compliance with the requirement of article 6 of the Convention in connection with Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (IPPC Directive) and the decision of the European Commission to co-finance a landfill in Kazokiskes (Lithuania). The communicant alleges that the European Community institutions failed to comply with provisions of article 6 of the Convention regarding decision-making concerning co-financing of establishment of the landfill. The communicant further alleges general failure on the part of the European Community to correctly implement provisions of the Convention into the Community law, in particular through the provisions of the IPPC Directive.

### **Case C/18 (2006), Denmark** **ACCC/C/2006/18**

On 3 December 2006, Mr. Søren Wiium-Andersen (hereinafter the communicant), a resident of Denmark, submitted a communication to the Committee alleging non-compliance by Denmark with its obligations under article 9, paragraph 3, of the Convention.

The communication concerns access to justice for individuals in Denmark. The communicant claims that Danish law does not provide him with any means to challenge the alleged failure of Denmark to correctly implement the European Community Directive 79/409/EEC on the Conservation of Wild Birds (Birds Directive). In a letter to the secretariat, dated 20 December 2006, the communicant clarified that his communication concerns the lack of a right for him to have access to a review or appeal procedure concerning the implementation of the Birds Directive in Denmark.

### **Case C/21 (2007), European Community** **ACCC/C/2007/21**

On 14 August 2007, the Albanian non-governmental organization (NGO) Civic Alliance for the Protection of the Bay of Vlora (Albania) submitted a communication to the Committee alleging a failure by the European Community to comply with its obligations under article 6 of the Convention.

The communication alleged that the European Community, through the European Investment Bank (EIB), was not in compliance with the Convention's article 6 by virtue of its decision to finance the construction of a thermo-power plant (TPP) in Vlora, Albania, without ensuring proper public participation in the process. The communicant claimed that the project had not been carried out in accordance with the public participation requirements of the national legislation or those of the Convention, to which both the European Community and Albania were Parties.

The communication is related to communication ACCC/C/2005/12, submitted earlier by the same communicant and alleging non-compliance by Albania with the Convention, inter alia, in relation to decision-making with respect to the TPP in Vlora considered by the Committee in the period 2005–2007 (ECE/MPPP/C.1/2007/4/Add.1).

### **Case C/22 (2007), France** **ACCC/C/2007/22**

On 21 December 2007, the three French associations L'Association de Défense et de Protection du Littoral du Golfe de Fosse-sur-Mer, Le Collectif Citoyen Santé Environnement de Port-Saint-Louis-du-Rhône, and Fédération d'Action Régionale pour l'Environnement (hereinafter the communicant), represented by Mr. Jean-Daniel Chetrit of Cabinet Pichavant-Chetrit, submitted a communication to the Committee, alleging non-compliance by France with its obligations under article 3, paragraph 1, article 6, paragraphs 1, 2, 3, 4, 5 and

8, and article 9, paragraphs 2 and 5, of the Convention.

The communication alleges that the Party concerned failed to provide for public participation in the decision-making processes that led to the construction by Communauté Urbaine Marseille Provence Métropole (CUMPM) of a centre for the processing of waste by incineration at Fos-sur-Mer. First, in not arranging for the public concerned to participate properly in this decision-making procedure, it is alleged that France failed to comply with its obligations under article 6 of the Convention. Second, France is alleged to have also violated that article by not correctly transposing the list of activities mentioned in article 6, paragraph 1 (a), of the Convention and featuring it in its annex I. Moreover, the communication alleges that in neglecting to take remedial action with respect to the case law of the Conseil d'Etat, which according to the communicant denies the public concerned by a project the opportunity to avail itself directly of the provisions of article 6, paragraphs 4, 5 and 8, and article 9, paragraph 5, of the Convention, France failed to comply with its obligations under the Convention. More specifically, according to the communication:

- (a) The CUMPM failed to provide for public participation, as set out in article 6, paragraph 4, of the Convention, before adopting, on 20 December 2003, resolutions which decided (i) on the particular method of processing household wastes, basically through incineration, (ii) on the site for the installations, and (iii) to resort to a public service concession procedure for the construction and management of the installations;
- (b) The information made available by CUMPM about the project through a press release in July 2004 was provided at too late a stage and did not reach the public concerned, thus resulting in a violation of article 6, paragraph 4, of the Convention;
- (c) The decision of the National Commission for Public Debate on 28 September 2004 to reject a request for a public debate violated article 6 of the Convention;
- (d) CUMPM did not provide for public participation in accordance with article 6 of the Convention before adopting the resolution, on 13 May 2005, that approved the choice of concessionaire for the waste treatment project and defined the modalities for the processing of the waste;
- (e) In the authorization procedure in 2005 and 2006, the Prefect of Bouches-du-Rhône failed to provide for effective public participation when all options were open, as set out in article 6 of the Convention, by informing members of the public at too late a stage about the authorization procedure, limiting the public inquiry to only three locations and allowing too short a period of time for participation in the decision-making process;
- (f) Members of the public did not have access to justice to challenge the resolutions of 20 December 2003;
- (g) In violation of article 9 of the Convention, members of the public were not granted access to justice to challenge the omission of not arranging a public debate before the National Commission for Public Debate in 2004;
- (h) Members of the public did not have access to justice to challenge the authorization by the Prefect on 12 January 2006, and it is impossible in France to obtain the suspension and/or annulment of a decision taken at the end of a decision-making process;
  - (i) Members of the public did not have access to justice to challenge the construction permit, given on 20 March 2006;
  - (j) The lack of clear legislation to implement the provisions of the Convention constitutes a violation of article 3, paragraph 1, of the Convention.

### Case C/23 (2008), United Kingdom

#### ACCC/C/2008/23

On 21 February 2008, Mr. Morgan and Mrs. Baker of Keynsham, United Kingdom, (hereinafter “the communicants”), represented by Mr. Paul Stookes of Richard Buxton Environmental & Public Law, submitted a communication to the Committee, alleging non-compliance by the United Kingdom of Great Britain and Northern Ireland with its obligations under article 9, paragraph 4, of the Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters (hereinafter “the Aarhus Convention” or “the Convention”).

The communicants alleged that the Party concerned failed to ensure the availability of fair, equitable, timely and not prohibitively expensive review procedures in their private nuisance proceedings against Hinton Organics (Wessex) Ltd (hereinafter, “the operator”) seeking an injunction to prohibit offensive odours arising from the operator’s waste composting site near the communicants’ homes. Following the discharge (cancellation) of an interim injunction in respect of the offensive odours, the communicants were ordered to pay the costs of the operator and added parties (the Environment Agency and Bath & North East Somerset Council) amounting to approximately £25,000.

### Case C/24 (2008), Spain ACCC/C/2008/24

On 13 May 2008, the Spanish non-governmental organization (NGO) Association for Environmental Justice (Asociación para la Justicia Ambiental (AJA)) submitted a communication to the Compliance Committee on behalf of itself and the Association of Senda de Granada Oeste Neighbours (hereinafter collectively the communicant),<sup>1</sup> alleging non-compliance by Spain with article 4, paragraph 8, article 6, paragraphs 1 (a), 2 (a), 2 (b), 4 and 6, and article 9, paragraphs 2, 3, 4, and 5, of the Aarhus Convention. The communicant included supporting documents as annexes to the communication.

The communicant first alleges that responses to information requests were excessively delayed and argues that by imposing a fee for environmental information related to decision-making on a residential development project in the city of Murcia, Spain, the Party concerned failed to comply with article 4, paragraph 8, and article 6, paragraph 6, of the Convention.

The communicant next alleges that proper public participation was not provided for in the context of the decision-making processes concerning the land use planning for and the implementation of the urbanization project in a residential area, and also concerning the decision of the City of Murcia to allocate special land for that purpose. This constitutes, according to the communicant, failure of the Party concerned to comply with article 6, paragraphs 1 (a), 2 (a), 2 (b) and 4, of the Convention.

The communicant finally claims that the Party concerned was in non-compliance with article 9 of the Convention. It alleges that the refusal by the courts to suspend administrative decisions that lacked an environmental impact assessment (EIA), as well as the length of the related judicial review procedure, were not in compliance with article 9, paragraph 4. The communicant furthermore claims that imposing high court costs on a non-profit organization, while there were no assistance mechanisms available to offset such costs, constituted a failure by the Party concerned to comply with the requirements of article 9, paragraphs 2, 3, 4 and 5.

### Case C/26 (2008), Austria ACCC/C2008/26

On 15 July 2008, the Nein Ennstal Transit-Trasse - Verein fuer Menschen- und Umweltgerechte Verkehrspolitik (NETT – No to the Enns Valley Transit Route: Organization for a socially and environmentally responsible transport policy), represented by Dr. Rolf-Michael Seiser and with powers of attorney granted to MMag. Johannes Pfeifer, hereinafter “the communicant”, submitted a communication to the Committee alleging failure by Austria to comply with its obligations under article 7, in conjunction with article 6, paragraphs 3, 4 and 8, article 8 and article 9, paragraphs 2, 3 and 4, of the Convention.

The communication concerns decision-making processes related to the consideration of alternative transport solutions in the Enns Valley in the Austrian Province of Styria and to the proposed introduction of a 7.5 tonnage restriction for lorries on route B 320, as well as a link between the two decision-making processes:

- (a) In its initial communication the communicant alleges that in the decision-making process regarding the consideration of alternative transport solutions for the Enns Valley, the Austrian authorities failed to comply with article 7, in conjunction with article 6, paragraphs 3, 4 and 8, of the Convention by not providing for adequate public par-

ticipation in that decision-making process. In relationship thereto, the communicant also alleges that Austrian authorities failed to comply with article 2, paragraph 5, of the Convention by not allowing the communicant to participate in the decision-making process. In addition, the communicant alleges that the Austrian authorities failed to comply with article 8 of the Convention by not providing adequate public participation opportunities in connection with decision-making on executive regulations. The communicant further alleges that no opportunity to challenge relevant decisions was available and thus that Austrian authorities failed to comply with article 9 of the Convention.

- (b) In its initial communication with respect to the proposed introduction of a 7.5 tonnage restriction for lorries on route B 320, the communicant alleges that the Austrian authorities failed to comply with article 7 in conjunction with article 6, paragraphs 3, 4 and 8, of the Convention by not providing for adequate public participation. The communicant also alleges that the Austrian authorities failed to comply with article 8 of the Convention by not providing adequate public participation in connection with decision-making on executive regulations. The communicant furthermore alleges failure to comply with article 9 of the Convention because procedures were not available to challenge the omission to introduce the ban.
- (c) The communicant also submits that there is a link between the two decision-making processes in that the proposed introduction of the 7.5 tonnage restriction for lorries on route B 320 would diminish the need for large-scale transport alternatives in the Enns Valley.

### Case C/27 (2008), United Kingdom ACCC/C/2008/27

On 18 August 2008, Cultra Residents' Association (hereinafter, "the communicant") submitted a communication to the Committee, alleging non-compliance by the United Kingdom of Great Britain and Northern Ireland with its obligations under articles 3, 7 and 9 of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (hereinafter, "the Aarhus Convention" or "the Convention").

The communicant alleged that the Party concerned failed to comply with article 3 of the Convention by making the decision to expand Belfast City Airport operations through a "private" Planning Agreement, a type of instrument enforceable only between its contracting parties and which allows the public no right of appeal other than judicial review. The communicant also alleged that, in making the Planning Agreement, the Party concerned failed to comply with the public participation requirements under the Convention, in particular by opting for an "examination in public" instead of a public inquiry. In addition, the communicant alleged that its rights under article 9 of the Convention were violated when it was ordered to pay the full costs (£39,454) of the Department of Environment for Northern Ireland (hereinafter, "the Department of Environment") following the dismissal of its application for judicial review proceedings.

### Case C/30 (2008), Moldova ACCC/C/2008/30

On 3 November 2008, the Moldovan non-governmental organization "Eco-TIRAS" International Environmental Association of River Keepers (hereinafter the communicant or Eco-TIRAS) submitted a communication to the Committee alleging a failure by Moldova to comply with its obligations under article 3, paragraph 2, and article 4, paragraphs 1 and 2, of the Convention.

The communication alleged that by failing to provide information on contracts for rent of land of the State Forestry Fund, the Republic of Moldova was not in compliance with article 3, paragraph 2, and article 4, paragraphs 1 and 2, of the Convention. The communication further alleged that by adopting Regulation No. 187 of 20 February 2008 "On approval of the Regulation on the rent of Forest Fund for Hunting and Recreational Activities" (hereinafter Regulation No. 187) that set out a broad rule with regard to the confidentiality of

the information received from the rent holder, the Party concerned was not in compliance with article 3, paragraph 1, and article 4, paragraph 4, of the Convention.

### **Case C/31 (2008), Germany** **ACCC/C/2008/31**

On 1 December 2008, the non-governmental organization (NGO) ClientEarth, supported by the NGO Nature and Biodiversity Conservation Union (Naturschutzbund Deutschland), (collectively, the communicant), submitted a communication to the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) alleging that Germany failed to comply with the Convention's provisions on access to justice.

Specifically, the communication alleges that the legislation of the Party concerned establishes criteria for standing for environmental NGOs which are narrower in scope than those set out in article 9, paragraph 2, of the Convention and also does not ensure that members of the public concerned may challenge the procedural legality of any decision subject to article 6, as required by article 9, paragraph 2.

In addition, the communication alleges that, by failing to provide environmental NGOs with the possibility to challenge acts and omissions of private persons and public authorities which contravene environmental law when the "impairment of rights" criterion is not satisfied, the Party concerned fails to comply with article 9, paragraph 3, in conjunction with article 9, paragraph 4, of the Convention.

### **Case C/32 (2008), European Union** **ACCC/C/2008/32**

On 1 December 2008, the non-governmental organization (NGO) ClientEarth (hereinafter the communicant), supported by a number entities and a private individual, submitted a communication to the Committee alleging a failure by the European Union (EU) to comply with its obligations under article 3, paragraph 1, and article 9, paragraphs 2, 3, 4 and 5, of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).

The communication alleges that by applying the "individual concern" standing criterion for private individuals and NGOs that challenge decisions of EU institutions before the Court of Justice of the European Union (the European Court of Justice (hereinafter the ECJ) and the General Court or Court of First Instance (CFI)) (hereinafter, collectively, the EU Courts), the EU fails to comply with article 9, paragraphs 2–5, of the Convention. The communication further alleges that the law adopted by the EU in the form of a regulation in order to comply with the provisions of the Convention (hereinafter the Aarhus Regulation), fails to grant to individuals or entities, other than NGOs, such as regional and municipal authorities, access to internal review; and that the scope of this internal review procedure is limited to appeals against administrative acts of an individual nature. As a result, the EU fails to comply with article 3, paragraph 1, and article 9, paragraph 2, of the Convention. Finally, the communication alleges that by charging the applicants before the EU Courts with expenses of an uncertain and possibly prohibitive nature in the event of the loss of their case, the EU fails to comply with article 9, paragraph 4, of the Convention. Additionally, the communication alleges also a breach of article 6 by not providing for public participation, and related access to justice, in decision-making related to certain decisions taken by EU institutions.

### **Case C/33 (2008), United Kingdom** **ACCC/C/2008/33**

On 2 December 2008, ClientEarth, the Marine Conservation Society and Mr. Robert Latimer (hereinafter collectively "the communicants") submitted a communication to the Compliance Committee, alleging non-compliance by the United Kingdom of Great Britain

and Northern Ireland with its obligations under article 9, paragraphs 2, 3, 4 and 5 of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (hereinafter “the Aarhus Convention” or “the Convention”).

The communicants allege that the Party concerned, in respect of the law of England and Wales, has failed to comply with article 9 of the Convention both generally and in relation to a specific case. The general allegations of non-compliance relate to the lack of substantive review in procedures for judicial review, the prohibitively expensive costs of judicial review proceedings, the lack of rights of action against private individuals for breaches of environmental laws and the restrictive time limits for judicial review. The allegation of non-compliance in the specific case relates to the alleged failure of the Party concerned to provide access to justice to challenge a Government licence issued to the Port of Tyne in northern England that allows for the disposal and protective capping of highly contaminated port dredge materials at an existing marine disposal site called “Souter Point”, approximately four miles off the coast.

### Case C/35 (2008), Georgia ACCC/C/2008/35

1. On 16 December 2008, the Caucasus Environmental NGO Network (hereinafter the communicant or CENN) submitted a communication to the Committee alleging a failure by Georgia to comply with its obligations under article 6, paragraphs 2 and 4, of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).

The communication alleged that by failing to inform the public concerned in a timely, adequate and effective manner about possibilities for public participation in decision-making on issuing licences for long-term forest use, the Party concerned was not in compliance with article 6, paragraph 2, of the Convention. The communication further alleged that by failing to provide for early public participation in the issuance of special licences for long-term forest use, the Party concerned was not in compliance with article 6, paragraph 4, of the Convention.

### Case C/36 (2009), Spain ACCC/C/2009/36

On 2 March 2009, the Spanish non-governmental organization (NGO) “Plataforma Contra la Contaminación del Almendralejo” (hereinafter the communicant) submitted a communication to the Committee alleging the failure by Spain to comply with its obligations under article 3, paragraph 8, article 4, paragraphs 1 and 2, article 6, paragraphs 4 and 5, and article 9, paragraphs 1 and 5, of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).

The communication alleges a general failure of the Party concerned to implement several provisions of the Convention. In particular, the communicant alleges that by failing to ensure that public authorities provide environmental information upon request in a timely manner and without the need to state an interest, the Party concerned is not in compliance with article 4, paragraphs 1 and 2, of the Convention; that by failing to ensure that its public authorities allocate sufficient time for public consultations on complex projects and provide appropriate access to project documentation, the Party concerned is not in compliance with article 6, paragraphs 4 and 5, of the Convention; and that by excluding small NGOs from legal aid for bringing cases to the courts, the Party concerned is not in compliance with article 9, paragraphs 1 and 5, of the Convention. The communication presents a number of cases to support the allegations of non-compliance. Finally, the communicant alleges non-compliance with article 3, paragraph 8, of the Convention, because its members have been publicly insulted and harassed by the Mayor of Almendralejo in the mass media.

### Case C/37 (2009), Belarus ACCC/C/2009/37

On 14 March 2009, members of the public (hereinafter, “the communicant”) submitted a communication to the Compliance Committee alleging a failure by Belarus to comply with its obligations under article 4, paragraph 1, and article 6, paragraphs 2, 3, 6, 7, 8, and 9, of the Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters (Aarhus Convention; the Convention). The communicant requested confidentiality regarding its identity and parts of the communication.

The communication alleges that by failing to make information available to the public with regard to the hydropower plant project on the Neman River in Belarus (hereinafter, “the HPP project”), which is currently under implementation, the Party concerned failed to comply with article 4, paragraph 1, and article 6, paragraph 6, of the Convention. The communication further alleges that by failing to notify and consult adequately with the public in the decision-making process for the HPP project, the Party concerned failed to comply with the requirements of article 6, paragraphs 2, 3, 7, 8 and 9, of the Convention.

### Case C/38 (2009), United Kingdom ACCC/C/2009/38

On 7 May 2009, Road Sense (hereinafter the communicant) submitted a communication to the Committee, alleging non-compliance by the United Kingdom with its obligations under the preamble and articles 1, 3, 4 and 5, paragraph 1, article 6, paragraphs 2, 4, 5, 7 and 9, and article 9, paragraphs 2 and 3, of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) in respect of the procedures adopted in the promotion of the proposed construction of a road by-pass around the Scottish city of Aberdeen, known as the Aberdeen Western Peripheral Route (AWPR). The proposed AWPR involves the construction of 46 kilometres of offline dual carriageway, typically of two-lane standard, with junctions connecting it to the existing network of trunk and non-trunk roads around Aberdeen.

The communication alleges that the Party concerned has breached articles 1, 3 and 4 of the Convention by failing to provide information on the state of the environment and the status of protected species which would be impacted by the AWPR. It alleges that the Party concerned failed to ensure that the environmental information provided in the Environmental Statement for the AWPR and the Report to Inform an Appropriate Assessment for the crossing of the River Dee Special Area of Conservation was fit for that purpose, and thereby failed to meet the requirements of the preamble to the Aarhus Convention and its article 3. It also alleges that the Party concerned has breached article 5 by not providing information which could enable the public to take measures to prevent or mitigate harm arising from a threat to those protected species.

Moreover, the communication alleges that the Party concerned has breached article 6 by failing to seek public comment on the proposed route for the AWPR in an open way, by failing to provide information on new objectives for the proposal and by failing to invite the public to submit any comments, information, analyses or opinions on the proposed route. It further alleges that the introduction of a new objective for the regional strategic transport plan without any public participation was in breach of article 7. It alleges that the Party concerned restricted the scope and circumstances of a public inquiry into the AWPR in a manner contrary to the principles of justice enshrined in articles 7 and 9. Finally, it alleges that the lack of access for the public in Scotland to an open and inexpensive review procedure before a court of law and/or another independent and impartial body established by law to challenge the substantive and procedural legality of the proposed AWPR is in breach of article 9.

### Case C/41 (2009), Slovakia ACCC/C/2009/41

On 1 July 2009, the Austrian non-governmental organization (NGO) Global 2000/Friends of the Earth Austria (hereinafter, “the communicant”), in collaboration with Friends of the



Earth Europe (FoEE), Greenpeace Slovakia and International, Za Matky Zem and VIA IURIS, and with the legal support of Oekobuero, submitted a communication to the Compliance Committee alleging a failure by Slovakia to comply with its obligations under article 6 of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (hereinafter “the Aarhus Convention” or “the Convention”).

The communication alleges that, with regard to the Mochovce Nuclear Power Plant (hereinafter, “the Mochovce NPP”), by failing to provide for public participation in the decision-making process for a construction permit additional to the one already granted in 1986, as well as related permits in 2008, the Party concerned failed to comply with article 6, paragraphs 1, 4 and 10 of the Convention. The communicant also alleges that, since it was not possible to appeal against the different decisions due to restricting standing requirements in Slovak law and by generally not providing for access to justice in environmental matters in its legislation, the Party concerned fails to comply with article 9, paragraphs 2, 3 and 4, of the Convention.

### Case C/43 (2009), Armenia ACCC/C/2009/43

On 23 September 2009, the Armenian non-governmental organization (NGO) Transparency International Anti-corruption Centre, in collaboration with the associations Ecodar and Helsinki Citizens' Assembly of Vanadzor (hereinafter, collectively, the “communicant”), submitted a communication to the Compliance Committee alleging failure by Armenia to comply with its obligations under article 6, paragraphs 2, 4, 8, 9 and 10, and article 9, paragraph 2, of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).

The communication concerns the issuance and renewal of licences to a developer for the exploitation of copper and molybdenum deposits in the Lori region of Armenia. It alleges that the Party concerned failed to comply with article 6, paragraphs 2, 4, 8, 9, and 10, of the Convention by (a) not informing the public concerned early in the licensing decision-making; (b) not providing for early and effective public participation; (c) not taking into account the outcome of public participation in the decision-making; and (d) not informing the public at all about the decision to renew the licences or informing it only after their issuance. Also, the communication alleges that by not recognizing the interest of the communicants to challenge the legality of the licences in the Armenian courts, and dismissing their application, the Party concerned failed to comply with article 9, paragraph 2, of the Convention.

### Case C/44 (2009), Belarus ACCC/C/2009/44

On 10 December 2009, European ECO Forum (hereinafter the communicant), a coalition of citizens' organizations and non-governmental organizations (NGOs), submitted a communication to the Compliance Committee alleging that Belarus had failed to comply with its obligations under article 3, paragraphs 1 and 8, article 4, paragraph 1, article 6, paragraphs 2, 4, 6 and 7, article 7 and article 8 of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) in relation to a project to construct a nuclear power plant (NPP).

Prior to the submission of its communication, on 8 October 2009, the communicant had sent the information contained in the present communication in the form of an amicus memorandum in the context of communication ACCC/C/2009/37, concerning compliance by Belarus in relation to a hydropower project. During consideration of communication ACCC/C/2009/37, the Committee had noted that some elements of the amicus memorandum went beyond the scope of the communication at issue, in that, for instance, one of the main allegations of the amicus memorandum concerned the inadequate national legislation on public participation in decision-making on nuclear issues, and the substantial transboundary character of the NPP. The Committee decided through its electronic decision-making procedure not to expand the consideration of communication

ACCC/C/2009/37 to any new facts or allegations brought about by the amicus memorandum that fell outside the scope of or were not directly relevant to that communication. The findings of communication ACCC/C/2009/37 were adopted by the Committee at its twenty-ninth meeting (21–24 September 2010).

Communication ACCC/C/2009/44 alleges that the Party concerned, by not providing complete and accurate information to citizens and NGOs that had requested information relating to an NPP, failed to comply with article 4, paragraph 1, of the Convention. The communication further alleges that the Party concerned by (a) not properly informing the public about the decision authorizing the construction of the NPP, (b) not ensuring early public participation, (c) not providing all information relevant to the decision-making and (d) not allowing NGOs and the public concerned to submit their comments and views during the organized hearings, failed to comply with the provisions of article 6, paragraphs 2, 4, 6 and 7 of the Convention. It further alleges that the Party concerned, by not taking any steps to provide for the public to participate in the adoption of generally applicable rules on public participation in the field of nuclear energy, failed to comply with articles 7 and 8 of the Convention. The communication also alleges that the Party concerned put pressure on activists trying to promote their views on nuclear energy issues in Belarus, and as a result it failed to comply with its obligation under article 3, paragraph 8, of the Convention.

Also, the communication contains a general allegation that the Party concerned, by not taking the necessary legislative and regulatory measures to implement the provisions of article 6, paragraphs 2, 3, 8 and 9, failed to comply with article 3, paragraph 1, of the Convention.

### **Case C/45 (2010), United Kingdom ACCC/C/2010/45**

On 10 September 2010, the Kent Environment and Community Network (the ACCC/C/2010/45 communicant), submitted a communication to the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) alleging that the United Kingdom of Great Britain and Northern Ireland had failed to comply with several obligations under the Convention (communication ACCC/C/2010/45).

The communication originally alleged a general failure of the United Kingdom to properly implement the provisions of article 9, paragraphs 2 (b), 3, 4 and 5, of the Convention. To illustrate this failure, the communication referred to the planning application for the Sainsbury's superstore in Hythe, Kent (the superstore).

On 12 June 2011, the ACCC/C/2010/45 communicant submitted additional information to the Committee in response to the Committee's request, including new allegations of non-compliance by the United Kingdom with article 6, paragraphs 1 (b), 2, 3, 4, 6, 8, 9, and 10, article 7 and article 9, paragraphs 2 and 3, of the Convention.

The case was subject to joint consideration with C/60 (and partly through summary proceedings procedure).

### **Case C/48 (2010), Austria ACCC/C/2010/48**

On 13 March 2010 the Coordination Office of Austrian Environmental Organizations (Oekobuero) (hereinafter, the communicant) submitted a communication to the Committee alleging the failure of Austria to comply with its obligations under article 3, paragraph 1, article 4, paragraphs 2 and 7, and article 9, paragraphs 1, 2, 3 and 4 of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention). On 2 June 2010, the communicant submitted a revised version of the communication.

The communication alleges that the Austrian legal system lacks a clear, transparent and consistent framework implementing the access to justice provisions of the Convention; hence, according to the communication, the Party concerned fails to comply with article 3,

paragraph 1, of the Convention. The communication also alleges a failure of Austrian law to comply with the time limits in article 4, paragraph 2. In conjunction with this, the communication alleges non-compliance with article 9, paragraph 1, of the Convention. The communication further alleges non-compliance with article 9, paragraph 2, of the Convention, asserting that members of the public concerned do not have access to justice through the procedures on environmental impact assessment and on integrated pollution prevention and control to challenge breaches of public participation procedures under article 6. The communication focuses on alleged non-compliance by the Party concerned with article 9, paragraph 3, of the Convention, asserting that members of the public do not have access to justice regarding acts and omissions from private persons and public authorities in environmental matters, due to the impairment of rights doctrine in Austrian administrative law. The communication also alleges non-compliance with article 9, paragraph 4, on the ground that in many cases access to justice is not adequate and effective, injunctions are not granted, procedures may be prohibitively expensive or not fair, and with regard to requests for information under article 4, access to justice is not timely.

### Case C/50 (2010), Czech Republic ACCC/C/2010/50

On 14 June 2009, the Czech organization Environmental Law Service (Ekologický právní servis) (hereinafter, the communicant), submitted a communication to the Compliance Committee alleging a failure by the Czech Republic to comply with its obligations under article 3, paragraph 1, article 6, paragraphs 3 and 8, and article 9, paragraphs 2, 3 and 4, of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).

The communication alleges that the law and practice of the Party concerned provides for a restrictive definition of who may be parties in environmental decision-making due to the so called "impairment of rights doctrine", thus restricting standing for individuals in a number of cases, relating, among others, to land-use and building permits. The communication further alleges that the Party concerned provides limited rights to non-governmental organizations (NGOs) to challenge the substantive and procedural legality of environmental permits falling under article 6 of the Convention; and that the Party concerned does not provide for review procedures with respect to administrative omissions regarding activities subject to article 6. For these reasons, the communication alleges that the Party concerned fails to comply with article 9, paragraph 2, of the Convention, especially with respect to the review of issues under article 6, paragraphs 3 and 8. The communicant also alleges that, in the light of the above, article 2, paragraph 5, is not properly transposed into Czech legislation.

The communication further alleges that because a considerable part of the members of the public, including NGOs, have no access to court procedures for the review of acts and omissions relating to the environment, including those relating to land-use plans, the Party concerned fails to comply with article 9, paragraph 3, of the Convention. It also alleges that because courts may order injunctive relief only in very few cases, remedies are ineffective in environmental matters and that the Party concerned thus fails to comply with article 9, paragraph 4, of the Convention. Finally, the communication alleges that the Party concerned in general fails to provide for a sufficiently clear, transparent and consistent framework on access to justice, as required by article 3, paragraph 1, of the Convention.

### Case C/51 (2010), Romania ACCC/C/2010/51

On 2 September 2010, Greenpeace Central and Eastern Europe (Greenpeace CEE) Romania and the Romanian non-governmental organization (NGO) Centre for Legal Resources (collectively, the communicant) submitted a communication to the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention). The communication alleged the failure of Romania to comply with its obligations under article 3, paragraphs 2 and 9, article 4, paragraphs 1, 4 and 6, article 6, paragraphs 3, 4, 6, 7, 8 and 9,

article 7 and article 9, paragraph 4, of the Convention in relation to Romania's energy strategy and the planned construction of a nuclear power plant (NPP).

Specifically, the communication alleges non-compliance by the Party concerned with respect to three decisions: the decision to build a new NPP; the decision(s) regarding the location, technology, and other matters for the proposed construction of the NPP; and the adoption of the energy strategy.

Regarding the decisions relating to the NPP, the communication alleges that the Party concerned failed to comply with article 3, paragraph 2, and article 4, paragraphs 1, 4 and 6, of the Convention, because the authorities did not assist members of the public in seeking access to information and did not respond to requests for information concerning the project. The communication also notes that because of the lack of project-related information available to the public, there is no clarity on whether the decisions fall under article 6 or 7 of the Convention, but that, in any event, those decisions were taken without public consultation in contravention of the Convention's public participation provisions. The communication also alleges that the available remedies are not adequate, effective, fair, equitable, timely and publicly available, as required by article 9, paragraph 4, of the Convention.

In addition, the communication alleges that the energy strategy was approved without public consultation, in contravention of article 7 of the Convention. The communication also alleges that, because the authorities did not make any effort to consult the interested public and because they refused to provide information in English, the Party concerned failed to comply with article 3, paragraphs 2 and 9, of the Convention. Finally, by not responding to information requests, the Party concerned failed to comply with article 4, paragraph 1, of the Convention.

### **Case C/53 (2010), United Kingdom** **ACCC/C/2010/53**

On 26 November 2010, the Moray Feu Traffic Subcommittee of Lord Moray's Feuars Committee (the communicant), representing the interests of Moray Feu residents, submitted a communication to the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) alleging that the United Kingdom of Great Britain and Northern Ireland had failed to comply with its obligations under the Convention.

The communicant alleges that its rights under all three pillars of the Convention have been breached, and in particular articles 1, 3, 4, 5, 6, 7 and 9. First, the communicant alleges that the City of Edinburgh Council has failed to collect relevant environmental information and to provide environmental information that it already possesses upon request. Second, the communicant alleges that it has been denied meaningful participation with respect to the permanent rerouting of traffic through the residential area of the Moray Feu, Edinburgh, in order to make room for a light rapid transit system, the Edinburgh Tram Network. Third, the communicant alleges that, through the use of a private Act of Parliament to approve the tram system, residents of the Moray Feu have been denied access to justice regarding a significant infringement on their environment.

### **Case C/54 (2011), European Union** **ACCC/C/2011/54**

On 15 October 2010, a member of the public, Mr. Pat Swords (the communicant), submitted a communication to the Compliance Committee alleging a failure by the European Union (EU) (the Party concerned) to comply with its obligations under articles 5 and 7 of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), in relation to Ireland's renewable, especially wind, energy policy.

The communication alleges that public authorities in Ireland and the Party concerned failed to disseminate information concerning the Renewable Energy Feed-In Tariff I

(REFIT I) programme in Ireland — a programme supported by the Party concerned both by means of direct funding and by approving State aid — in a timely, accurate and sufficient manner. This information related both to the programme in general and to the carrying out of strategic environmental assessment (SEA). Therefore, according to the communication, the Party concerned failed to comply with article 5 of the Convention. The communication also alleges that Ireland, in adopting its REFIT I programme, did not comply with EU SEA legislation (i.e., the SEA Directive),<sup>2</sup> and that the Party concerned approved State aid for REFIT I without ensuring that Ireland, as an EU member State, had complied with EU law. Therefore, the Party concerned failed to comply with article 7 of the Convention. In addition, the communication alleges that the Party concerned, by providing financial assistance to Ireland for the interconnector project, one of the elements for the implementation of REFIT I, failed to comply with the Convention because the project was not subject to environmental impact assessment (EIA), as required under EU law, and did not comply with the public participation provisions of the Convention.

The communication also alleges that the Party concerned did not comply with the Convention by failing to properly monitor implementation of EU law related to the Convention (specifically on access to information, dissemination of information and public participation) by Ireland (not a Party to the Convention) with respect to Ireland's National Renewable Energy Action Plan (NREAP).

### Case C/57 (2011), Denmark

#### ACCC/C/2011/57

On 26 January 2011, the non-governmental organization (NGO) Dansk Ornitologisk Forening — BirdLife Denmark (DOF) (Danish Ornithological Society) (hereinafter the communicant) submitted a communication to the Committee alleging the failure of Denmark to comply with its obligations under article 9, paragraphs 2, 3, 4 and 5, of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).

Specifically, the communication alleges that the Party concerned fails to comply with the requirements of article 9, paragraphs 2 to 5, of the Convention because the new fees regime before the Danish Nature and Environmental Appeal Board (NEAB), which came into effect since 1 January 2011, imposes fees on NGOs for bringing appeals to NEAB that are much higher than before and different from the fees imposed on private individuals.

### Case C/58 (2011), Bulgaria

#### ACCC/C/2011/58

On 9 February 2011, the Balkani Wildlife Society (the communicant), submitted a communication to the Compliance Committee alleging that Bulgaria had failed to comply with its obligations under article 9, paragraphs 2 and 3, of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).

The communication alleges that the Party concerned fails to implement article 9, paragraphs 2 and 3, of the Convention with respect to access to administrative or judicial review procedures for environmental non-governmental organizations and members of the public to challenge acts that contravene national environmental legislation. The communicant alleges it is not possible to appeal the outcomes of the strategic environmental assessment (SEA) of plans and programmes — “SEA statements” issued under the Environmental Protection Act (EPA). In addition, it alleges that members of the public do not have access to review procedures to challenge orders for the adoption of spatial plans or construction permits and exploitation permits issued under the Spatial Development Act (SDA) that contravene European Union (EU) or national environmental legislation.

### Case C/59 (2011), Kazakhstan

#### ACCC/C/2011/59

On 13 March 2011, the Kazakh public association, National Analysis and Information Resource (the communicant), submitted a communication to the Compliance Committee

under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) alleging a failure of Kazakhstan to comply with its obligations under article 6, paragraphs 7, 8 and 9, of the Convention.

The communication alleges that by limiting the communicant's opportunity to participate in the decision-making on and to express its opinion during the conduct of the state environmental review (expertiza) for the "South West Roads Project: Western Europe-Western China International Transit Corridor" (Road Corridor Project), in the South Kazakhstan Oblast, a project financed by the International Bank for Reconstruction and Development (IBRD), among others, the Party concerned failed to comply with the provisions of article 6, paragraphs 7, 8 and 9, of the Convention.

### **Case C/60 (2011), United Kingdom** **ACCC/C/2011/60**

On 28 March 2011, a member of the public, Mr. Terence Ewing (the ACCC/C/2011/60 communicant), submitted a communication to the Committee alleging that the United Kingdom had failed to comply with its obligations under the Convention.

In particular, the communication alleged that the Party concerned, by not providing the right for oral presentations to third party objectors at planning committee hearings of local authorities, was not in compliance with article 3, paragraphs 1 and 9, and article 6, paragraph 7, of the Convention. The communication also alleged that only applicants whose applications were refused had the right of appeal before the Planning Inspector; and that third party objectors had only the possibility to apply for judicial review to the High Court, an avenue that was not adequate, effective, fair or equitable, and which might be prohibitively expensive. For these reasons, the communication alleged that the Party concerned failed to comply with article 3, paragraph 1, and article 9, paragraphs 2, 3 and 4, of the Convention.

The case was subject to joint consideration with C/45.

### **Case C/61 (2011), United Kingdom** **ACCC/C/2011/61**

On 21 August 2011, a member of the public, Mr. Terence Ewing (the communicant) submitted a communication to the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) alleging that the United Kingdom of Great Britain and Northern Ireland had failed to comply with its obligations under Convention.

The communication alleges a failure of the United Kingdom to comply with provisions of the Convention on public participation and access to justice in relation to the planning and construction of the Crossrail project in the metropolitan London area. In particular, the communication alleges that the Crossrail Act 2008 misapplied the requirements for obtaining consent relating to conservation areas and listed buildings, which normally provided for public participation, and thus that the Party concerned is not in compliance with article 6, paragraph 7, of the Convention. The communication also alleges that this constitutes non-compliance with article 3, paragraphs 1 and 9, of the Convention. In addition, the communication alleges that as a result of the Crossrail Act misapplying the requirements for obtaining consent relating to conservation areas and listed buildings, there were no planning or Conservation Area Consents or Listed Building Consents to challenge and this, according to the communication, constitutes non-compliance with article 9, paragraphs 2, 3 and 4, as well as with article 3, paragraph 1, of the Convention.

### **Case C/62 (2011), Armenia** **ACCC/C/2011/62**

On 6 September 2011, the non-governmental organization (NGO) Ecoera (the communicant), submitted a communication to the Compliance Committee under the Convention

on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) alleging that Armenia had failed to comply with its obligations under article 9, paragraphs 2, 3 and 4, of the Convention.

The communication concerns compliance by the Party concerned related to subsequent developments on matters addressed by the Committee in its findings on communication ACCC/C/2009/43 (ECE/MPPP/2011/11/Add.1), endorsed by the Meeting of the Parties to the Convention at its fourth session (Chisinau, 29 June–1 July 2011) through decision IV/9a, (see ECE/MPPP/2011/2/Add.1). The communication alleges that, following the facts described in that communication, the Party concerned now failed to comply with article 9, paragraphs 2, 3 and 4, of the Convention, because recent jurisprudence of the Cassation Court has reversed its earlier jurisprudence with respect to the standing of NGOs in environmental matters.

### **Case C/63 (2011), Austria** **ACCC/C/2011/63**

On 1 December 2011, the non-governmental organization (NGO) Vier Pforten — Stiftung für Tierschutz gemeinnützige Privatstiftung (the communicant) submitted a communication to the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) alleging that Austria had failed to comply with its obligations concerning the access to justice provisions of the Convention.

Specifically, the communication alleges that the Party concerned fails to provide for access to justice for members of the public, including NGOs, in administrative penal and judicial criminal proceedings in respect of contraventions of national law relating to the environment. Therefore, according to the communication, the Party concerned is not in compliance with article 9, paragraphs 3 and 4, of the Convention.

### **Case C/66 (2012), Croatia** **ACCC/C/2012/66**

On 24 January 2012, the non-governmental organization (NGO) Association for Nature, Environment and Sustainable Development “Sunce” (the communicant) submitted a communication to the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) alleging that Croatia had failed to comply with its obligations under the Convention concerning public participation with regard to plans and programmes.

Specifically, the communication alleges that the Party concerned failed to comply with article 7 of the Convention because of the adoption of waste management plans at the county and city level without inspection control and public participation, as required under the Croatian Environmental Protection Act (EPA) and further regulated by special laws.

### **Case C/68 (2012), European Union and United Kingdom** **ACCC/C/2012/68**

On 12 March 2012, a member of the public, Ms. Christine Metcalfe on behalf of the Avich and Kilchrenan Community Council, submitted a communication to the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) alleging that the European Union (EU) and the United Kingdom of Great Britain and Northern Ireland had failed to comply with their obligations in relation to the renewable energy programmes and two related projects — for a wind farm and its access route — in the area of Argyll, Scotland.

Specifically, the communication relates to the implementation of the renewable energy programme in Scotland and two specific projects in the Avich and Kilchrenan area of

Argyll related to that programme, i.e., the Carriag Gheal wind farm and the linked access West Loch Awe Timber Haul Route. The communicant alleges that the authorities at the EU, United Kingdom and Scottish administrative levels failed to provide information to the public, as required by articles 4 and 5 of the Convention, regarding the implementation of the renewable energy programme, which involved also the implementation of a number of individual wind energy projects, such as the farm and the access route. The communication also alleges that due to the lack of transparency, effective public participation was impeded, contrary to articles 6 and 7 of the Convention. Finally, the communication alleges that there are no adequate review procedures for members of the public to challenge the failures of access to information and public participation as required by article 9, paragraphs 1 and 2, of the Convention, while the costs for engaging in such procedures are prohibitively high, contrary to article 9, paragraph 4, of the Convention.

The communication also raises concerns with regard to the adoption process of a recent European Commission communication on renewable energy policy (Renewable Energy: a major player in the European Energy market" (COM(2012) 271)) and compliance by the EU with the public participation provisions of the Convention.

### **Case C/70 (2012), Czech Republic** **ACCC/C/2012/70**

On 9 May 2012, the Czech non-governmental organization (NGO), Environmental Law Service (Ekologický právní servis) (the communicant), submitted a communication to the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) alleging the failure of the Czech Republic to comply with its obligations under article 7, in conjunction with article 6, paragraphs 3, 4 and 8, of the Convention.

Specifically, the communication alleges that the Party concerned prepared its application to the European Commission for free allocation of allowances, including its national investment plan, under the revised rules for the European Union (EU) Emissions Trading System (ETS), without proper public participation, as required under article 7, in conjunction with article 6, paragraphs 3, 4 and 8, of the Convention.





THIS IS THE THIRD EDITION OF THE CASE LAW OF THE AARHUS CONVENTION COMPLIANCE COMMITTEE.

IT ATTEMPTS TO SUMMARIZE THE PRACTICE OF THE COMPLIANCE COMMITTEE OF THE AARHUS CONVENTION. SINCE ITS ESTABLISHMENT IN 2002 BY THE FIRST MEETING OF THE PARTIES OF THE AARHUS CONVENTION, THE COMMITTEE HAS DEALT WITH NUMEROUS ISSUES RELATED TO THE PRACTICAL IMPLEMENTATION OF THE CONVENTION BY THE PARTIES. IN MANY CASES, THE COMMITTEE HAD TO INTERPRET AND APPLY THE CONVENTION'S PROVISIONS TO SPECIFIC SITUATIONS BROUGHT TO ITS ATTENTION BY THE PUBLIC AND PARTIES, AS WELL AS ITS OWN RULES OF PROCEDURES.

THEREFORE, A SUBSTANTIAL BODY OF CASE LAW WAS DEVELOPED BY THE COMMITTEE DURING 2004-2014.

UNDERSTANDING THIS CASE LAW MAY HELP POLICYMAKERS AND PRACTITIONERS APPLY AND USE THE CONVENTION IN A MORE EFFECTIVE AND UNIFORM WAY, PROMOTING COMMON STANDARDS FOR THE PRACTICAL ENFORCEMENT OF ENVIRONMENTAL HUMAN RIGHTS IN THE UN ECE REGION.



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