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Thomas ALGE
OEKOBUERO

European ECO-Forum

2nd Session: Approaching the Compliance Committee

Who can approach the ACCC?

Decision I/7, para. 18

Modus operandi, page 29-30

Any member of the public

- natural or legal persons
- in particular NGOs, individuals
- even communities (case 39 Austria)

The person approaching the ACCC with a “communication”
is the “**communicant**”

Who can approach the ACCC?

- Communicant can be located (or registered) outside the country concerned
- Not necessary to be represented by attorney or legal expert
 - but it is more likely to be successful if legal experts help with the preparation

Conditions for approaching the ACCC?

- Country concerned needs to be party of the Convention (“party concerned”)
- 12 months after the Convention entered into force (90 days after it was deposited) for the party concerned
 - A party may notify that it is unable to accept the considerations of communications for not more than four years (“opt out”)
 - Has not happened until now

WHEN to approach the ACCC?

- Case Belgium
 - Cases in communication happened before AC entered into force
 - But the ACCC took up the case and said that
 - if Belgium would not change its legal position (legislation or practice) it would be in non-compliance; however formally in compliance

What (kind of cases) can be brought before the ACCC?

What do you think you can bring before the committee?

What (kind of cases) can (not) be brought before the ACCC?

- A communication has to refer to the non-compliance of a party to the Convention
- The issue has to refer to specific articles of the Convention
 - you must not focus on environmental problems
 - only procedural issues regarding the three pillars of the Convention are relevant

Types of non-compliance

A communication may address any of the following issues:

- **General failure** by a Party to take the necessary legislative, regulatory or other (e.g. institutional, budgetary) measures (... to implement the Convention..)
 - Case Armenia (Nr 8)

Types of non compliance

Specific legislation, regulations or other measures implementing the Convention which fail to meet the specific requirements determined by the Convention

- e.g: case Belgium (Article 9/3)
- Lithuania/EC (Article 6)
- Hungary cases (Article 6)

Types of non compliance

Specific events

- Like acts, omissions or
- Situations which demonstrate a failure of the state authorities to comply with or enforce the Convention
- Possibly what you think it is a “case”
 - *Case UK (19)*
 - *Case Denmark (18)*
 - *Case EC/Lithuania (16/17)*
 - *Case Romania (15)*
 - *Case 41 Slovak Republic*

When you have national case, what issues are relevant for the ACCC?

Example:

Waste incineration permit without public participation
(Article 6)

- Is only this case in non-compliance or any waste incineration case in this country?
- Was it false “application” or “legislation”?

The communicant has to state what kind of non-compliance he/she alleges

e.g: specific case, legislation

The ACCC can however take up a single activity case (e.g individual permit) and open it to wider review of non-compliance (if a specific act appears to be in non compliance)

What violations can be brought before the ACCC?

- **reference to Articles of AC**
 - if you provide facts
 - and legal problems
 - it must be sure to what articles of the Convention they refer to and
 - to what aspect and provisions of the articles concerned

Example: Lack of injunctions, Article 9 par 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. (...)**”

If no injunctions are granted access to justice could be not effective and this could be invoked as to Article 9 par 4

What violations can be brought before the ACCC?

- No facts such as environmental problems or impacts are relevant at the ACCC
 - Bad examples:
 - “This nuclear powerplant is very dangerous.”
 - “This road destroys protected sites”
- Be concise do not lose yourself in national and legal details
 - Bad examples:
 - “Discussion forums were set up to discuss the road issue”
 - “Austria ratified the Alpine Convention”

What violations can be brought before the ACCC?

- If possible show bad practice in one or more cases and make reference to respective national laws

- If you claim legislation is in non-compliance
 - prove it by cases
 - or strong arguments, why there are no cases
 - E.g case Hungary was rejected for that reason

What else to consider regarding recommendations?

Take into account the existing case law of the ACCC as well as pending cases

You can also use this case law in national litigation

Importance of Articles 0 to 3

*“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.” (ACCC Case 11)*

Importance of Articles 0 to 3

“...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,...”

(Cases 1, 2, 4, 5, 12) Aarhus Compliance Training 2010

Cases relating to Articles

Article 4 (information)

- Case 1 Kazakhstan
- Case 8 and 9 Armenia
- Case 24 Spain
- Case 28 Denmark
- Case 29 Poland
- Case 30 Moldova
- Case 36 Spain
- Case 44 Belarus



Article 6 (public participation)

Cases 1-4, 8, 10, 12, 13, 15-17, 19, 22 to 25; 29, 35 to 46

Hungary cases, motorway permits (EIA)
prepared well, but lack of practice

Lithuania/EC – permit proceedings: What is early and
effective public participation?, role EC vs member
states

NPP cases Belarus and Slovak Republic

UK, Armenia permitting cases

Article 9

- Cases 1, 2, 4, 6-8, 10, 11, 13, 16-18, 20, 22, 23, 24, 26, 27, 28; 31 to 33; 36; 38-40; 43; Austria (submitted March 2009)

- most are Article 9.2, 9.3
 - good examples: see case law book
 - Belgium 11; Denmark 18; Germany 31, EC 32; UK 33;

- Art 9.4 important in practice
 - see case law book
 - Case 24 Spain; UK 23 and 27;

Article 7, reference to Article 8

Armenia (case 8)

- obligation to establish framework in order to implement Article 7 of the Convention
- the use of legal form “legislation” (legally binding rules) does not necessarily mean it is Article 8 ;
 - it depends on content and nature of the decision and procedure

Bad example:

2 cases from Poland (case 7, 14)

Case 7, 14

- did not refer to Aarhus
- concerned damage compensation and unsuccessful litigation
- documents provided were in Polish language only

Bad example:

Austria, Case 26, Article 7 to 9

- strong national case from political perspective
- no consultation with other legal experts and NGOs
- major issues are not relevant for Aarhus
- overloaded with national political details
- only very little substance in practice

Good example:

Belgium, Case 11, Article 9/3

Prepared well

- collection of cases that show fault application of Article 9/3
- the subject matter of a case is not important
- It is the procedural rights regarding Aarhus

Spain, Case 24

- Art 6 + 9.2
- Similar cases provided