

ECO-Forum activities on the Aarhus Convention Compliance Committee

“Making the Aarhus Convention Work for Civil Society” is an NGO project aimed at helping citizens and NGOs to improve the Aarhus Convention and its implementation across Europe and Central Asia. It is being managed by the European Environmental Bureau, thanks to a grant from SRT until June 2010, with a small team of outreach workers.

www.participate.org

The Aarhus Convention Compliance Committee

*A guide prepared by the ECO-Forum legal focal points
Last update: February 2010*

The Aarhus Convention

The UNECE Aarhus Convention provides for Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters. The Convention was adopted in June 1998 and since its adoption, 44 countries (including the European Community as an individual member) have ratified the Convention. The Secretariat of the Aarhus Convention maintains a comprehensive web site of information relating to the treaty: www.unece.org/env/pp

The Aarhus Convention is unique in many ways. The Aarhus Convention is the first international treaty with the purpose of granting rights directly to the public with regard to protection of the environment. Its focus is not the protection of the environment *per se* but the procedural rights of civil society to participate in decision-making that relates to environmental matters. The Convention links environmental rights and human rights and also recognises the right to a healthy environment for every individual.

These countries are all Parties to the Convention: Albania, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, the European Community, Finland, France, Georgia, Germany, Greece, Hungary, Italy, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Tajikistan, the Former Yugoslav Republic of Macedonia, Turkmenistan, Ukraine, United Kingdom

These countries have signed the Convention which means they have declared an intent to become a Party but have not yet ratified: Iceland, Ireland, Liechtenstein, Monaco, Switzerland.

What is unique about the Aarhus Convention Compliance Committee (ACCC)?

Article 15 of the Aarhus Convention requires the Meeting of the Parties to establish arrangements for reviewing compliance with the Convention. For that purpose a “Compliance Committee” has been mandated to discuss and decide on possible violations of the Convention. Not only is the compliance committee important in itself, but the possibility for the public (individuals, NGOs etc) to directly report possible violations of the Convention to the Committee is unique in international environmental law.

Full information about the ACCC and its work, including full information on the compliance cases, is at www.unece.org/env/pp/compliance.htm.

Who are the members of the Committee?

The ACCC has nine members. Currently the chair person is Mr. Veit Koester (Denmark), and the vice chair person is Ms. Svitlana Kravchenko (Ukraine). Other members are

- Mr. Jerzy Jendroska (Poland),
- Mr. Jonas Ebbesson (Sweden),
- Mr. Merab Barbakadze (Georgia),
- Mr. Alexander Kodjabashev (Bulgaria),
- Ms. Ellen Hey (Netherlands),
- Mr. Vadim Nee (Kazakhstan) and
- Mr. Gerhard Loibl (Austria).

Several of these people have had long associations with the Convention and even took part in the negotiations. All of Committee members serve in their personal capacity (not representing any country) but nominated by Parties and, partly, NGOs (via ECO Forum).

Who can approach the Committee?

Any individual or group of individuals (including an NGO) can approach the Committee, even regarding another country (i.e. not the country of residence/citizenship) as long as it is a Party to the Convention. This is called “public trigger”. A “communication” is submitted to the Committee explaining why you think a specific country is in non-compliance with the Convention. In addition a Party to the Convention may make a submission about another Party or about its own compliance. The Secretariat of the Convention may also make a referral to the Committee.

What are the powers of the ACCC?

The Committee may:

- a) Find that a Party is compliant with the Convention in a specific case;
- b) Find that a Party is in non-compliance with the Convention in a specific case (such as an unjustified refusal to supply environmental information);

c) Find that the Party is generally in non-compliance with the Convention (regarding specific obligations). For example in one case the Committee found that a country had failed to establish a clear, transparent and consistent framework to implement public participation procedures required under the Convention;

d) Develop recommendations and other measures to be adopted by the Meeting of the Parties. If a Party agrees, the Committee can directly provide such recommendations (and take some other soft measures). The Committee has already practice of giving such recommendations.

The Meeting of the Parties of the Convention (MOP) has the highest power in the compliance procedure. It adopts the Committee's findings and measures. It is only the MOP who can take hard measures regarding a country, including declarations of non-compliance, cautions, and suspension of a country's participation in the treaty. So far the MOP has never used hard measures.

What are the procedural steps at the ACCC?

Communication

Firstly, members of the public (individuals, NGOs) have to submit a **communication** to the Committee that states why the communicant claims a Party (a country or the European Community) is in non-compliance with the Convention. The communication should relate to a country that is Party to the Convention and address facts that happened after the Convention entered into force for that country. In addition the communication should be submitted at least one year after the entry in force of the Convention for the party concerned by communication.

Admissibility

Once the Committee has received the communication it preliminarily determines whether the communication fulfils the procedural requirements, for example checking that the Convention has already entered into force for that country and that the complaint sufficiently refers to subject matters of the Convention. Thus there are two possibilities for the Committee to decide: admissible or inadmissible. The preliminary admissibility decision is done very quickly by the Committee, usually in the first meeting after the communication was submitted, even if there are only few days between decision and meeting.

Discussion at Committee meeting

If the communication is admissible the case goes onto the agenda of a future ACCC meeting. The communicant and the concerned party may participate in the meeting and the discussions. If additional information is needed the Committee can ask both the party and the communicant to provide this. More complicated cases may be discussed by the Committee at more than one meeting. Anyone can participate in the meetings of the Committee (as observer) and even speak. The only exception is the very latest stage of developing findings and recommendations when the meeting is closed to all except the Committee.

Findings and recommendations by the Committee

If a case is ready for decision the Committee prepares draft "findings and recommendation" that serve as the "decision" of the ACCC. The party concerned and the communicant may comment on the draft. If there are no substantive comments on the draft recommendation (regarding issues that could not have been addressed before), it can be adopted as final in a future meeting, otherwise further consideration of the case can follow.

Submission to the Meeting of the Parties

The ACCC finding and recommendation are submitted to the Meeting of the Parties (MoP) to the Convention. The MoP may approve the findings of the Committee and may take measures against a specific country as noted above.

How much time does the Committee need to decide?

The Committee takes relatively quick decisions as compared to national litigation and international arbitration cases. The average time between the date of an initial communication and the final conclusions of the Committee is 389 days (at end of November 2006; see *Veit Koester: The Compliance Committee of the Aarhus Convention*, in *Environmental Policy and Law*, 37/2-3 (2007), page 83 for details). The ACCC meets, on average, four times a year. It had its first meeting in March 2003 and became operational with regard to communications in October 2003. The schedule of the Committee meetings is available at www.unece.org/env/pp/. Normally it is sufficient to submit a communication two weeks before next meeting to have it considered at the next meeting of the Committee.

How many communications have been submitted to the Committee until now?

Until December 2009 **44 communications** were submitted to the Committee. It is interesting to note that eight of the first ten communications came from Eastern Europe and Central Asia (four cases from Kazakhstan, two from Armenia, one from Turkmenistan and Ukraine), whereas only two came from Western Europe (Poland, Hungary). In contrast communications 11 to 19 came from Western Europe only (Hungary, Poland, Belgium, Albania, Romania, Lithuania, European Community, Denmark, and United Kingdom). The twentieth communication was submitted by an NGO from Kazakhstan in May 2007 while communications 21 to 28 again concern Western Europe only (EC, France, UK, Spain, Albania, Austria, UK, and Denmark respectively). The Committee received one submission (by Romania concerning Ukraine) and no referrals by the secretariat.

28 cases were closed until now either by decision in the case or because the case was not admissible. **Nine cases were not admissible** until now. Ten cases found parties in non compliance, whereas in **eight cases** parties were in **compliance** with the Convention. Currently 16 cases are pending.

Summaries of the cases with respective Weblinks on UN-ECE Website have been prepared by ECO-Forum focal points team but for the definitive information, including copies of all correspondence and reports of ACCC meetings, please refer to the official web site: www.unece.org/env/pp.

The European ECO-forum published a compilation on the **ACCC case law** in 2008. This publication covers all ACCC decisions that were taken until the 3. MoP in Riga in June 2008. All interpretations of the ACCC regarding certain Articles of the Convention are covered in this publication. This can be used for NGOs, practitioners, courts and legislative decision makers to correctly apply the Convention on national level and facilitates the assessment whether a country is in compliance with the Convention.

Download English/Russian

http://www.enpi.org.ua/fileadmin/user_upload/publications/CL3_en_web.pdf

http://www.enpi.org.ua/fileadmin/user_upload/publications/CL3_ru_web.pdf

ECO-Forum NGO legal focal points

One of the major objectives of this NGO project is the establishment of “focal points” in the European ECO-Forum Network. These are NGOs who work on legal issues related to the Aarhus Convention on regional, national and/or Convention levels. Under this project, their work includes the aim of helping NGOs based in countries that have ratified the Aarhus Convention to effectively use the rights and possibilities of the Convention

- by giving **individual advice** and support in respect of complaints by NGOs,
- by providing continuous information on the activities of the **Aarhus Convention Compliance Committee (ACCC)**, and
- by organizing **training workshops** on the Aarhus Compliance mechanisms (held in Geneva, during ACCC meetings).

Organisations designated as legal focal points

Region of Eastern Europe and Central Asia (EECCA)

Resource & Analysis Center "Society and Environment"

Ukraine

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Western, Central and South Eastern Europe

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Monitoring Aarhus Compliance Committee meetings in Geneva

Earthjustice

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If you have further questions, please send us an email or call us if you have legal questions on the Aarhus Convention with regard to

- Access to Information
- Public Participation in decision making
- Access to Justice