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Meeting of the Parties to the Convention on
Access to Information, Public Participation
in Decision-making and Access to Justice
in Environmental Matters

Compliance Committee

Thirty-first meeting

Geneva, 22–25 February 2011

Report of the Compliance Committee on its thirty-first meeting

Addendum

Compliance by Ukraine with its obligations under the Convention

I. Implementation of decision III/6f of the Meeting of the Parties

1. At its third session, the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) adopted decision III/6f on compliance by Ukraine with its obligations under the Convention (ECE/MP.PP/2008/2/Add.14).

2. Through decision III/6f, the Meeting of the Parties noted that the information submitted by the Ukraine did not fully address the recommendations set out in decision II/5b (ECE/MP.PP/2005/2/Add.8) of the Meeting of the Parties and decided to issue a caution to Ukraine, to become effective on 1 May 2009, unless Ukraine had fully satisfied certain conditions related to ensuring the effectiveness of its action plan for implementing the Convention. The successful fulfilment of those conditions was to be established by the Committee (see ECE/MP.PP/2008/2/Add.14, para. 5). The Meeting of the Parties also invited 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 (ECE/MP.PP/2008/2/Add.14, para. 6).

3. On 2 October 2008, the secretariat forwarded decision III/6f to Ukraine with a reminder concerning the requests and recommendations of the Meeting of the Parties contained therein.
4. The Party concerned submitted a draft action plan on implementing decision III/6f and a report to the Committee in October 2008. At the Committee's twenty-second meeting (17–19 December 2008), representatives of the Party concerned presented information on the process of implementation of decision III/6f, inter alia, on the basis of the progress report submitted to the Committee pursuant to paragraph 6 of that decision. They circulated the latest version of the draft action plan referred to in paragraph 5 of the decision, and informed the Committee that it had been developed in a process that included consultation with other governmental agencies and civil society organizations. The plan was being finalized and was due to be adopted by the Cabinet of Ministers by the end of 2008. Following its adoption, the plan would be provided to the secretariat by 1 January 2009.
5. By a letter dated 31 December 2008, the Party concerned provided a report on fulfilment of the conditions of decision III/6f of the Meeting of the Parties and an action plan submitted pursuant to paragraph 5 of that decision.
6. By a letter dated 9 March 2009 from the Convention secretariat, the Committee noted with appreciation the report and action plan submitted by Ukraine on or about 31 December 2008. Having considered on a preliminary basis the information contained in the report and the action plan provided by Ukraine, however, the Committee indicated that it was not convinced that the conditions set out in paragraph 5 (a) to (d) of decision III/6f had been fulfilled. In particular, the Committee had some concerns with regard to the very general nature of the action plan and its lack of clarity as to the specific step-by-step activities that the implementation of the plan might involve.
7. Through the secretariat's letter of 9 March 2009, the Committee asked Ukraine to provide, in advance of the Committee's twenty-third meeting (31 March–3 April 2009), and at the latest by 27 March 2009, further clarification on the content of the action plan.
8. By a letter dated 27 March 2009, the Party concerned responded to the secretariat's letter of 9 March 2009.
9. At its twenty-third meeting, the Committee considered all the information submitted by the Party concerned. It noted with appreciation the steps taken by Ukraine to fulfil the conditions set out in paragraph 5 (a) to (d) of decision III/6f of the Meeting of the Parties. In particular, the Committee welcomed the report and action plan submitted by Ukraine on 31 December 2008, including a number of draft laws and rulings of the Cabinet of Ministers, the capacity-building activities, the public consultations on the action plan, and the transposition of the action plan through a ruling of the Cabinet of Ministers. The Committee also noted with appreciation the letter from Ukraine sent on 27 March 2009 in response to the Committee's letter of 9 March 2009, which provides some additional clarity regarding the specific activities envisaged in the action plan.
10. At that meeting, the Committee noted that the Ministry of Environment Protection was to draft legislation to fulfil the Ruling of the Cabinet of Ministers dated 27 December 2008 #1628-p. Ukraine had not provided information, however, on specifically how it intended to address a number of the Committee's concerns set out in the secretariat's letter of 9 March 2009. In particular, the Committee mentioned that it would like to review, at the earliest appropriate opportunity, the draft legislation on a number of points, including that information within the scope of article 4 of the Convention was provided; the required form and content of the public notice; the specific time frames for the public consultation process; and the proposed wording requiring that texts of decisions, along with the reasons and considerations on which they were based, were publicly available (for the full list, see ECE/MP.PP/C.1/2009/2, annex II, para. 10).

11. Also at its twenty-third meeting, the Committee found that Ukraine had fulfilled the conditions set out in paragraph 5 (a) to (d) of decision III/6f of the Meeting of the Parties to the extent that the caution issued by the Meeting of the Parties through decision III/6f should not become effective. However, the Committee found that Ukraine was not yet fully in compliance with its obligations under the Convention and it therefore reserved the right to make further recommendations to the Meeting of the Parties, including to recommend to the issuing of a new caution if the Committee found that its concerns relating to the points highlighted had not been satisfactorily met.

12. By letter of 16 April 2009, the United Nations Economic Commission for Europe (UNECE) Executive Secretary informed the Party concerned of the evaluation and findings of the Committee at its twenty-third meeting.

13. On 20 November 2009, the non-governmental organization Environment-People-Law (EPL) provided information to the Committee and, on 30 November 2009, Ukraine submitted its progress report on the implementation of the decision at issue.

14. At its twenty-sixth meeting (15–18 December 2009), the Committee took note of the information submitted by the Party concerned and EPL. There was a discussion in open session which included interventions by representatives of the Party concerned and Romania as well as EPL. The Committee welcomed the report received from Ukraine, while noting the concerns expressed by Romania and EPL.

15. After hearing the interventions, the Committee requested Ukraine to provide the secretariat with the full texts of the draft law “On amendment to article 25 of the Law of Ukraine on Environmental Protection” and the draft decree of the Cabinet of Ministers of Ukraine “On approval of the provision and dissemination of environmental information” immediately in the Ukrainian language and in an English translation by 1 January 2010. The Committee also requested Ukraine to provide the full text of the draft Decree of the Cabinet of Ministers of Ukraine “On approval of public participation in decision-making in the field of environmental protection” in both Ukrainian and English language versions by 1 February 2010. The secretariat would circulate the correspondence to the Committee and to the other parties concerned.

16. The Committee also requested Ukraine to post the Ukrainian texts of the three draft laws on its website on or before the date they provided them to the secretariat. It was noted that it would be good practice for Ukraine to make draft legislation available on its website as a matter of course. The Committee asked Romania and EPL to provide any comments they might have on the draft legislation to the secretariat by 14 January 2010 in respect of the legislation to be submitted to the secretariat immediately, and by 14 February 2010 in respect of the draft legislation to be submitted on 1 February. Again, the secretariat would circulate the correspondence without delay to the Committee and to the other parties concerned. The Committee agreed to consider the draft legislation and any comments received at its twenty-seventh meeting.

17. By e-mail of 29 December 2009, Ukraine provided the Committee with the Ministry of Environmental Protection’s Web link to the draft Decree of the Cabinet of Ministers of Ukraine “On the amendments to article 25 of the law of Ukraine on Environmental Protection” (in Ukrainian), which related to environmental information, and indicated that budget constraints prevented its translation into English. The e-mail also attached the draft law “On amendment to article 25 of the Law of Ukraine on Environmental Protection”. The e-mail stated that that draft law had been available for public comment during July and August 2009, and the public’s comments were currently being processed.

18. EPL provided comments on and a translation in English of the draft decree of the Cabinet of Ministers of Ukraine “On approval of the provision and dissemination of

environmental information” on 14 and 22 January 2010, respectively. Romania provided comments on 3 February 2010.

19. By e-mail of 15 March 2010, Ukraine informed the Committee of progress in respect of the decree of the Cabinet of Ministers of Ukraine “On public participation”. In particular, a working group had been established to consider two different versions of the draft regulation on public participation and to agree one single draft.

20. The Committee sent several reminders to Ukraine (on 23 April, 30 July and 14 October 2010) regarding the submission of its progress report on the implementation of decision III/6f.

21. On 2 November 2010, EPL sent a report on progress by Ukraine in implementation of the decision.

22. In early 2010, the two national focal points designated by Ukraine both left their posts. By e-mail of 3 December 2010, the Ministry of Environment Protection informally advised the secretariat of a new national focal point. Despite requests, the secretariat has yet to receive formal notification of the designation of the new national focal point.

23. Ukraine submitted its national implementation report on 7 December 2010 in the Russian language.

24. On 3 February 2011, Ukraine submitted to the Committee a report on the implementation of the action plan adopted by Cabinet of Ministers Instruction No. 1628-r of 27 December 2008.

25. At its thirty-first meeting, the Committee considered the progress made by Ukraine in implementing the decision III/6f. It took note of the information submitted by Ukraine during the intersessional period, as well as the information in the national implementation report for 2008–2011.

26. The Committee notes that the action plan submitted to the Committee in October 2008 set the end of 2009 as a deadline for the implementation of all the relevant legislative or administrative actions. However, the action plan submitted to the Committee on 3 February 2011 demonstrates that, to date, most of the laws are still in a drafting stage with the competent authorities and none have actually been implemented, with the exception of one training organized for officials of the Ministry of Environment, all training and capacity-building activities are planned for 2011.

27. The Committee, however, is aware of a couple of training activities organized in the framework of several projects relating to the Aarhus Convention and the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention). The Committee has also been informed that the a Law on “access to information” has been recently passed by Parliament, while a new release of the Law of Ukraine “On information” was to come into effect on 9 May 2011. In the view of EPL, the new laws provide for access to environmental information according to the Convention, but there is a need to complement them with provisions relating to the information that public authorities are required to hold and the disclosure of environmental impact assessment-related documentation.

28. In order to ensure the comprehensive review of compliance by Ukraine, the Committee invited Ukraine, as well as the communicant whose communication had initially triggered the review of compliance by Ukraine, to comment on the draft of the present report. Comments were received from EPL on 10 March 2011 and from the Party concerned on 17 March 2011.

29. EPL, in its comments of 10 March 2011, inter alia, alleged that when the draft Decree of the Cabinet Ministers of Ukraine “On approval of public participation in

decision-making in the field of environmental protection” was available on the website of the Ministry in July-August 2009, members of the public submitted comments, but they were never informed about how their comments had been treated. The draft law was posted again on the website of the Ministry in February 2011 and comments were accepted. According to EPL, the draft has not been adopted yet. EPL also notes that the draft law, if it comes into effect, will fully address the Committee’s recommendations on public participation. However, EPL alleges that a new Law “On regulation of city-building activity” was passed by Parliament on 17 February 2011. The new law will come into effect three months after its official publication and, according to EPL, it does not provide for public participation either during the stage of *expertiza*,¹ or during the procedure for issuing a building permit.

30. The Party concerned, in its submission of 10 March 2011, informed the Committee of the current reorganization of the Ministry of Environment Protection and provided clarification on a number of measures taken to address the recommendations of decision III/6f, such as the draft “Procedure of public involvement in discussion of decision-making issues which could affect the environmental state” (the Committee understands that this is the same draft act as the draft Decree of Cabinet Ministers of Ukraine “On approval of public participation in decision-making in the field of environmental protection”), an English translation of which was submitted to the Committee for its review on 17 March 2011, while a revised and detailed action plan is expected to be sent to the Committee by end of March 2011. Also, at its thirty-first meeting (11-14 April 2011), the Committee took note of the letter of the Party concerned of 11 April 2011, informing the Committee about future actions envisaged under the draft Decree of the Cabinet of the Ministers “On approval of the order of the public involvement to the consideration of the issues on making decisions, which likely to have an influence on the environment” [i.e., on public involvement in decision-making that was likely to have an environmental impact]. It decided that the letter did not change the substance of the report containing the conclusions and recommendations of the Committee to the Meeting of the Parties with respect to follow-up by Ukraine with decision III/6f.²

II. Conclusions

31. The Committee wishes to note the engagement of the Party concerned, demonstrated by its correspondence with the Committee during the intersessional period. However, the Committee notes with regret the very slow progress by the Party concerned in implementing decisions II/5b and subsequently III/6f.

32. While appreciating the information provided by the Party concerned in its letter of 17 March 2011, the Committee also notes that the majority of the laws are still in draft or rough draft form, and that there is a need for the Party concerned to address the recommendations of the Meeting of the Parties in paragraph 5 of decision III/6f as soon as possible.

¹ “State environmental review” or “ecological expertise” mechanism formally established in the former Soviet Union in the second half of the 1980s.

² While the Committee’s report concerning compliance by Ukraine was an addendum to the Committee’s report on its thirty-first meeting (22-25 February 2011), the Committee at its thirty-second meeting requested the secretariat to include reference to the letter from the Party concerned dated 11 April 2011, in the part of the report dealing with the facts. That would be possible, since the report of the thirty-first meeting of the Committee had not yet been produced as an official United Nations document (see ECE/MP.PP/C.1/2011/4, para. 30).

33. Having considered the information available to it, the Committee concludes that Ukraine has failed to implement the measures referred to in paragraph 5 of decision III/6f of the Meeting of the Parties.

III. Recommendations

34. In the light of the above, with reference to the fact that a caution was issued by the Meeting of the Parties at its third session, which did not become effective after the review and assessment of the Committee, the Committee recommends that the Meeting of the Parties may wish to (a) confirm its earlier finding of non-compliance, and (b) consider issuing a caution or suspending, 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, as set out in paragraphs 37 (f) and (g) of the annex to decision I/7, taking into account that no real and efficient steps have been taken by the Party concerned to implement the measures referred to in decision III/6f, and that these measures partly reflect measures already referred to in decision II/5b adopted in 2005.

35. The Meeting of the Parties may also wish to explore the possibility that an expert mission organized by the Committee members and other experts, as appropriate, be undertaken with a view to assisting the Party concerned in implementing the measures referred to in decision III/6f, including the review of and advice on the amendments of the laws and the trainings scheduled in 2011, and to invite the Party concerned to accommodate such a mission.
