Case Law of the Aarhus Convention Compliance Committee

2004–2025

Luisa Schneider and Andriy Andrusevych

Imprint

Case Law of the Aarhus Convention
Compliance Committee
2004–2025

Fourth updated and annotated edition

Authors
Luisa Schneider, Unabhängiges Institut für Umweltfragen e.V., Berlin, Germany
luisa.schneider@ufu.de
Andriy Andrusevych, Society and Environment Resource and Analysis Center, Lviv, Ukraine
andriy.andrusevych@rac.org.ua

This publication was produced within the Project BeLIFE and has received funding from the European Union's LIFE programme.

Publisher
Association Justice and Environment, z.s.
– European Network of Environmental Law Organizations
Údolní 33, 602 00 Brno, Czechia
secretariat@justiceandenvironment.org
https://justiceandenvironment.org/

Publication Date
July 2026, Brno, Czechia

Design
https://formkultur.de

DOI
10.5281/zenodo.20049598

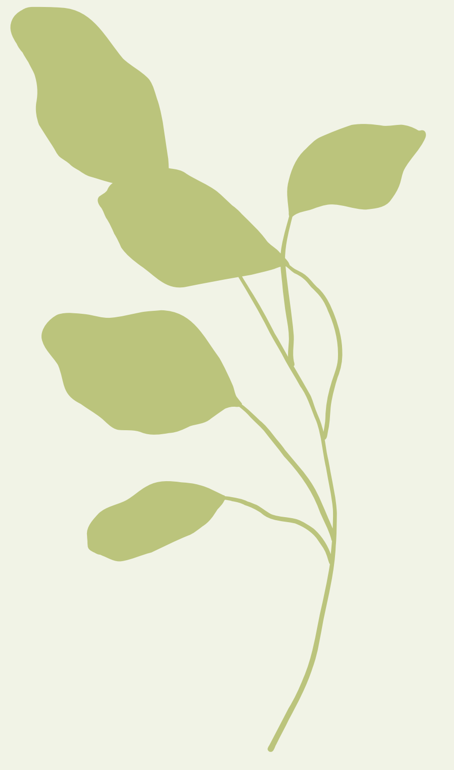
ISBN
ISBN 978-80-11-08942-9 (print)
ISBN 978-80-11-08943-6 (pdf)

Better Enforcement LIFE

Co-funded by the European Union

JUSTICE AND ENVIRONMENT
European Network of Environmental Law Organizations

Table of Contents



Abbreviations

EIA Environmental Impact Assessment

EU European Union

IPPC Integrated Pollution Prevention and Control

NGO Non-Governmental Organization

OVOS Оценка воздействия на окружающую среду – Russian acronym for environmental impact assessment

SEA Strategic Environmental Assessment

Introduction

At its first session in 2002, the Meeting of the Parties to the Aarhus Convention adopted decision I/7 on review of compliance based on article 15 of the Aarhus Convention. The decision established a compliance mechanism, including a special body – the Aarhus Convention Compliance Committee (ACCC) – to review compliance by the Parties with the Convention. The Compliance Committee plays a central role in this mechanism by reviewing specific complaints (called submissions, communications and referrals). Such review results in "findings" by the Committee in each case, often relying on interpretation by the Committee of relevant provisions of the Convention.

This case law collection presents a selected and structured overview of the findings of the ACCC covering the years 2004 to 2025. Only findings that were considered to offer new legal interpretations of the provisions of the Convention were included. Findings that merely repeat the Committee's legal interpretation from previous cases are omitted to avoid repetition. This should enable readers who are not familiar with the structure of the Convention to identify the most relevant findings in response to specific legal questions that arise when applying its provisions. It is meant to guide environmental defenders as well as legal practitioners to relevant findings of the ACCC for their work.

The material is organized according to the articles 1 to 9 of the Convention (including Annex I), allowing readers to navigate the Committee's interpretative guidance in line with the Convention's three pillars: access to information, public participation in decision-making, and access to justice in environmental matters, and beyond.

Each section of the collection contains thematically grouped excerpts and legal reasoning from the Committee's findings, highlighting key interpretations and compliance issues relevant to the respective articles. This structure enables users to trace the development of the Committee's case law article by article, facilitating comparative analysis.

To better navigate the varied topics of the different findings, headings were chosen for better understandability. These headings are intended for better orientation in the text. At many instances, key passages of the findings were summarised to shorten and enhance clarity. This summarising and rephrasing was undertaken with great care to preserve the original meaning as intended by the Committee. Any abbreviations or interpretative elements of the Committee's findings resulting from this process are not intended as an alternative interpretation, but are included solely to improve clarity and orientation. If you plan to base arguments on specific findings of the ACCC, please always consult the original texts, referenced in this case law collection. Clear references to specific cases and relevant paragraphs in the findings should help consult the original text.

Case references explained
Reference to "ACCC/C/2010/54 European Union, para. 97" means the original wording can be found in paragraph 97 of the findings in case ACCC/C/2010/54 filed in relation to the European Union

The collection contains the findings of the ACCC that were rendered in relation to a communication by the public, a request from the MoP or a submission by a Party. These decisions are endorsed by the Meeting of the Parties and therefore have an undisputed legally binding character with regards to all Parties to the Convention. Other decisions by the ACCC, for example reports in the course of a MoP follow up procedure or advice issued by the Committee are not endorsed by the Meeting of the Parties and are not included in this collection. However, they often include important legal arguments that the Committee might use in future proceedings. It is therefore recommendable to consult them as well for in-depth study of the Compliance mechanism. Currently, there is one finding by the ACCC that has not been endorsed by the Meeting of the Parties (ACCC/C/2017/150 United Kingdom). This finding was also not included in this collection.

At the end of the volume, summaries of the individual cases in chronological order are provided, along with detailed tables that cross-reference findings by article and by country. These tools are designed to support the understanding of the evolving body of Aarhus compliance case law and its practical implications.

→
https://unece.org/env/pp/cc/communications-from-the-public

https://unece.org/env/pp/cc/requests-meeting-parties

https://unece.org/env/pp/cc/implementation-decisions-meeting-parties-compliance-individual-parties

https://unece.org/env/pp/cc/requests-parties-advice-or-assistance

General Issues

1. European Union as a party

EU should have proper legal framework and monitor implementation by Member States

The Committee finds that in this respect two issues arise: first, whether the legal framework of the EU is compatible with the Convention; and, second, whether the EU has fulfilled its responsibility to monitor that its Member States, including Ireland, in implementing EU law properly meet the obligations resting on them by virtue of the EU being a party to the Convention. The EU cannot deploy its obligation to monitor the implementation of article 7 in the development of Ireland's national renewable energy action plan by relying on complaints received from the public. (ACCC/C/2010/54 European Union, para. 76, 84)

EU should either take legislative measures or provide a clear regulatory framework and/or clear instructions to Member States

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 national renewable energy action plans, to be enforced through appropriate measures by the Party concerned. (ACCC/C/2010/54 European Union, para. 87)

Lack of enforcement by the EU can lead to non-compliance

By not having in place a proper regulatory framework and/or clear instructions to implement and proper measures to enforce article 7 with respect to the adoption of national renewable energy action plans by its Member States on the basis of the Renewable Energy Directive, the EU has failed to comply also with article 3, paragraph 1. (ACCC/C/2010/54 European Union, para. 97)

EU law defines the extent of EU obligations under the Convention

The effect of the declaration by the Party concerned is that it assumes obligations to the extent that it has EU law in force; Member States remain responsible for the implementation of obligations that are not covered by EU law in force. For the sake of completeness, the Committee notes that more implementing legislation from the EU would trigger more obligations for the EU. There is a dynamic process by which the EU may assume more legal obligations over time. As the declaration explains: "The exercise of Community competence is, by its nature, subject to continuous development." (ACCC/C/2014/123 European Union, para. 89-90)

EU obligations under the Convention extend to state aid decisions

The Committee considers that the Party concerned thus clearly has law in force regarding European Commission state aid decisions, and the Party concerned has therefore assumed obligations under the Convention in this regard. (ACCC/C/2015/128 European Union, para. 95)

2. Other general issues

The Convention applies to reconsiderations and updates of activities initiated before its entry into force

The Committee notes that the original construction permit for Mochovce nuclear power plant 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. (ACCC/C/2009/41 Slovakia, para. 44)

Failures in public participation before the Convention's entry into force do not lead to non-compliance

The Party concerned cannot be in non-compliance for any failures in providing public participation that occurred at a time when the Party concerned was not subject to any obligations under the Convention. (ACCC/C/2014/112 Ireland, para. 152 f.)

The Convention is not applicable to decisions, acts and omissions by bodies or institutions which act in a legislative capacity

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. (ACCC/C/2008/32 European Union part I, para. 70)

State Parties are internationally responsible for all state organs' actions

Under international law, a Party is responsible under the Convention for the acts of all organs and emanations of the State, including local government, their planning authorities, and the courts. (ACCC/C/2015/131 United Kingdom, para. 87)

Regular non-compliance with national implementing rules leads to non-compliance with the Convention

The Committee finds that the Party concerned has a legal basis for the correct implementation of article 4, paragraph 6, namely article 15, paragraph 1, of Governmental Decision No. 878/2005. Nevertheless, the Committee considers there is enough evidence before it to conclude that, in practice, article 4, paragraph 6, of the Convention is not regularly observed by the authorities of the Party concerned. (ACCC/C/2012/69 Romania, para. 68)

No assessment of material criteria for activities under the Convention

The assessment of 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 are not addressed by the Convention. (ACCC/C/2007/22 France, para. 38)

The Convention does not have to be transposed with exact wording

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. 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. (ACCC/C/2008/31 Germany, para. 75, 77)

The Implementation Guide is no authoritative text

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, 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. (ACCC/C/2010/48 Austria, para. 56)

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.

Cross-reference table

Key Cases	Interpretation Highlights
Article 1	
ACCC/S/2004/1 and ACCC/C/2004/3 (Ukraine)	Breach of “operative provisions” is not in conformity with the objective
ACCC/C/2012/76 (Bulgaria)	Protection of the environment shall be treated as an important public interest
ACCC/C/2013/92 (Germany)	Article 1 does not grant a right to participate in a specific decision-making process

Commentary

Article 1: Objective

1. General issues under Article 1

Breach of “operative provisions” is not in conformity with the objective

Non-compliance with the operative provisions of the Convention is not in conformity with the objective of the Convention as defined in article 1. (ACCC/S/2004/1 and ACCC/C/2004/3 Ukraine, para. 36)

Deliberately challenging decisions without participating in decision-making may undermine the objectives of the Convention

The Committee considers that if NGOs were to develop a practice to deliberately opt not to participate during public participation procedures, though having the opportunity to do so, but instead to limit themselves to using administrative or judicial review procedures to challenge the decision once taken, that could undermine the objectives of the Convention. (ACCC/C/2012/76 Bulgaria, para. 68)

2. Environmental rights

Environmental rights serve to protect the right to a healthy environment, to improve the environment, and to enhance the quality and the enforcement of environmental decisions

The rights granted to the public by the Convention and its three pillars aim not only at the protection of the individual right to a healthy environment, but also at improving the environment, and enhancing the quality and the enforcement of environmental decisions. (ACCC/C/2011/57 Denmark, para. 46)

Protection of the environment shall be treated as an important public interest

The Committee considers that the requirement in article 1 for Parties to guarantee the rights of information, participation and justice "in order to contribute to the right of every person to live in an environment adequate to his or her health and well-being", makes it clear that the protection of the environment is to be treated as an important public interest. (ACCC/C/2012/76 Bulgaria, para. 63)

Article 1 does not grant a right to participate in a specific decision-making process

With respect to the communicant's allegation that the lack of inclusion of the public in Germany on the decision-making to permit Hinkley Point C amounts to a breach of article 1 by the Party concerned, the Committee concurs with the submission by the Party concerned that a right to public participation in the decision-making to permit the specific activity of Hinkley Point C cannot be derived in isolation from article 1 of the Convention. (ACCC/C/2013/92 Germany, para. 81)

Article 2 - Definitions

For the purposes of this Convention,

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

2. "Public authority" means:
(a) Government at national, regional and other level;
(b) Natural or legal persons performing public administrative functions under national law, including specific duties, activities or services in relation to the environment;
(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;
(d) The institutions of any regional economic integration organization referred to in article 17 which is a Party to this Convention.
This definition does not include bodies or institutions acting in a judicial or legislative capacity;

3. "Environmental information" means any information in written, visual, aural, electronic or any other material form on:
(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;
(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;
(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;

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

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.

Cross-reference table

Key Cases	Interpretation Highlights
Article 2(2)	
ACCC/C/2004/4 (Hungary)	**State companies** can be a “public authority”
ACCC/C/2008/32 (European Union part II)	**Administrative review bodies** are not bodies acting in a judicial or legislative capacity
ACCC/C/2011/61 (United Kingdom)	**Parliament** can be public authority
(ACCC/C/2014/105 (Hungary)	**Nuclear operators** and large electricity producers fall under public authority definition
ACCC/C/2014/120 (Slovakia)	Public authorities only excluded while acting in their **“legislative capacity”**
ACCC/C/2015/128 (European Union)	**European Commission** is a public authority
Article 2(3)	
ACCC/C/2007/21 (European Community)	**Financing agreements** can contain environmental information
ACCC/C/2014/105 (Hungary)	**Studies and analyses** may constitute “environmental information”
ACCC/C/2014/124 Netherlands	Environmental information includes **documents “referring” to it**
Article 2(5)	
ACCC/C/2010/50 (Czech Republic)	**Definition of “the public concerned”** is very broad
ACCC/C/2012/71 (Czech Republic)	Persons living within the possible range of the **adverse effects** of an activity qualify as public concerned
ACCC/C/2013/91 (United Kingdom)	**Foreign public** is part of the public concerned
ACCC/C/2013/91 (United Kingdom)	**Impacts on property, health and even quality of life** should be considered to qualify as public concerned
ACCC/C/2013/91 (United Kingdom)	Even **small risk of serious events** should be taken into account when determining the public concerned

Commentary

Article 2(2): “Public authority”

State companies can be a “public authority”

A company that is established by national law and is state-owned falls under the definition of “public authority” in accordance with article 2, paragraph 2 (b) and (c). (ACCC/C/2004/4 Hungary, para. 10)

The National Atomic Company Kazatomprom of Kazakhstan was found to be a “public authority”, as it is a legal person performing administrative functions under national law, including activities in relation to the environment (article 2, paragraph 2 (b)), performing public functions under the control of a public authority (article 2, paragraph 2 (c)), and fully owned by the State. (ACCC/C/2004/1 Kazakhstan, para. 17)

Administrative review bodies are not bodies acting in a judicial or legislative capacity

The Convention excludes from the definition of "public authority" "bodies acting in a judicial or legislative capacity", but not bodies acting in the capacity of an administrative review body. The Convention distinguishes between judicial and administrative procedures, and excludes public authorities only when they act in a judicial capacity, but not when they act by way of administrative review. (ACCC/C/2008/32 European Union part II, para. 110)

Nuclear operators and large electricity producers fall under "public authority" definition

The courts of the Party concerned have found that both national companies perform public responsibilities or services. As these courts observed, the companies' nuclear power plant is the only nuclear power plant in Hungary and plays a significant role in electricity production. A court of the Party concerned further found that its conclusion that the company performed public duties was supported by the Atomic Act and the provisions of the highly protected social interest that prevails in the peaceful uses of nuclear energy; the strict legal regime that governs the peaceful uses of nuclear energy; the system of governance and regulation and also the related responsibilities of the Government and the parliament as well as the company – through its role in electricity production. The Committee agrees that these characteristics demonstrate that the companies indeed have public responsibilities or functions, or provide public services.

The phrase "in relation to the environment" should be interpreted in a manner consistent with the objectives of the Convention. As nuclear power stations are clearly an activity within the scope of the Convention (paragraph 1 of annex I to the Convention), entities engaged in activities involving nuclear power stations, such as the construction of new reactors as in the present case, that are providing a public service, do so "in relation to the environment."

The Party concerned states that the first company is a corporation whose shares are held as to 99.91 per cent by a second company, a fully State-owned corporation. On this fact alone, it is clear that both companies are under the control of a body falling within article 2, paragraph 2 (a) of the Convention. (ACCC/C/2014/105 Hungary, para. 96-98)

European Commission is a public authority

The Party concerned is a Party to the Convention in its capacity as a regional economic integration organization. The definition of "public authority" in article 2, paragraph 2, includes, in subparagraph (d), "the institutions of any regional economic integration organization referred to in article 17 which is a Party to the Convention". Accordingly, the European Commission, as an institution of the EU as the Party concerned, is a "public authority" under article 2, paragraph 2, and thereby also for the purposes of article 9, paragraph 3.

The Committee concludes that, when acting pursuant to article 108 of the Treaty on the Functioning of the European Union, the Commission is indeed a public authority under article 2, paragraph 2, and thus is likewise a public authority for the purposes of article 9, paragraph 3. (ACCC/C/2015/128 European Union, para. 103, 107)

Parliament can be public authority

If the parliament takes decisions that are not legislative in nature but authorizes a specific project, it does not act in a legislative capacity, but rather as the "public authority". The Committee observes that if all large-scale projects were subject to parliamentary authorizations procedure and evoked article 2, paragraph 2, 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. (ACCC/C/2011/61 United Kingdom, para. 54)

Public authorities only excluded while acting in their "legislative capacity"

The reference to bodies and institutions "acting in their legislative capacity" does not exclude public authorities, including the Government, when engaged in preparing laws until the draft or proposal is submitted to the body or institution that adopts the legislation. Article 2, paragraph 2, only excludes the body or institution when it acts in its "legislative capacity". Accordingly, a parliament may act as a public authority under the Convention when it is not acting in its legislative capacity, for example when authorizing an activity or project.

This rather strict and precise understanding is also supported by the French and Russian versions of the Convention. Taking into account that the legislative process is likely to differ between the Parties, it ensures a uniform application of article 2, paragraph 2, and prevents the Parties from excluding the application of the Convention by expanding their preparatory processes so as to allow for comprehensive preparatory processes with several public authorities involved in the process without any transparency or public participation. While such comprehensive preparatory procedures are perfectly in line with the Convention, they must not be used to exclude opportunities for members of the public to request environmental information or to participate in the preparation by executive bodies of legislation to be adopted by national parliaments. Lastly, the understanding of the phrase as not including executive bodies in the preparatory proceedings when drafting legislation to be adopted by the national parliament is in line with the eleventh recital of the preamble of the Convention, whereby the Parties invite the "legislative bodies to implement the principles of this Convention in their proceedings". (ACCC/C/2014/120 Slovakia, para. 98 ff.).

A public authority may not act in legislative capacity when adopting a plan or programme

When a public authority within the meaning of article 2, paragraph 2, adopts air quality protection programmes and short-term action plans that qualify as plans or programmes under article 7, rather than authorizing specific activities or projects, this may nevertheless constitute an "act" of a "public authority" within the meaning of article 9, paragraph 3. In such a case, the public authority is not considered to act in a legislative capacity. (ACCC/C/2016/151 Poland, para. 99)

Article 2(3):

"Environmental information"

Environmental information includes documents "referring" to it

The definition of "environmental information" in article 2, paragraph 3 (b), includes any information on administrative measures affecting or likely to affect the elements of the environment. The above documents were prepared in the context of litigation to defend permits for projects in a Natura 2000 site. They were thus information prepared in order to defend administrative measures (i.e. permits) affecting or likely to affect the elements of the environment. The Committee accordingly concludes that the documents listed in paragraph 95 above are "environmental information" within the meaning of article 2, paragraph 3 (b). (ACCC/C/2014/124 Netherlands, para. 96)

"Environmental decision-making" includes potentially relevant information and is to be interpreted broadly

The term "used in environmental decision-making" in the last clause of article 2, paragraph 3 (b), should not be read as requiring that such analyses and assumptions have already been used in environmental decision-making. Such a reading is inconsistent with the Convention. Rather, it should be understood to include information that may potentially be used in environmental decision-making. Moreover, "environmental decision-making" is to be understood in its broadest sense and so is not limited to decision-making under articles 6, 7 or 8. Accordingly, a cost-benefit study on a renewable energy export programme that may potentially be used in environmental decision-making constitutes "environmental information" under article 2, paragraph 3 (b). (ACCC/C/2014/112 Ireland, para. 134, 135)

A governmental decree on land use constitutes "measures"

The issuing of government decrees on land use and planning constitutes "measures" within the meaning of article 2, paragraph 3 (b), of the Convention. (ACCC/C/2004/8 Armenia, para. 20)

A feasibility study can be environmental information

A feasibility study for a legislative amendment that would allow the import and disposal of foreign low- and medium-level radioactive waste falls under article 2, paragraph 3 (b). (ACCC/C/2004/1 Kazakhstan, para. 18)

Raw data is environmental information

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. 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). (ACCC/C/2010/53 United Kingdom, para. 74-75)

Archaeological studies are environmental information

The archaeological study contains information on the state of "cultural sites and built structures" (i.e., the Roman ruins), which "may be affected by activities or measures, including administrative measures" (i.e., the "activity" of mining, or the "administrative measure" of the archaeological discharge certificate) "affecting or likely to affect the elements of the environment" (i.e., soil, land, landscape and natural sites). In the light of the preceding analysis, the Committee considers the definition of environmental information is clearly wide enough to include the archaeological study. (ACCC/C/2012/69 Romania, para. 49)

Mining licenses and related information are environmental information

The Committee finds that the licences and other mining-related information requested, including the "quantities of non-ferrous ore" that were entitled to be extracted under those licences, are clearly "environmental information" within the scope of article 2, paragraph 3. (ACCC/C/2012/69 Romania, para. 51)

Information about activities and measures aimed at the safe operation of a nuclear facility is environmental information

The Preliminary Safety Analysis Report and the Basic Design of Mochovce Units 3 and 4 provide for activities and measures aimed at the safe operation of the nuclear facility. They thus both undoubtedly fall within the scope of article 2, paragraph 3 (b). (ACCC/C/2013/89 Slovakia, para. 80)

Financing agreements can contain environmental information

It has to be assessed on a case-by-case basis if a financing agreement contains environmental information. For instance, 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. The definition of "environmental information" provided in article 2, paragraph 3 (b), 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 is provided, and comprises the following: "administrative measures, environmental agreements, policies, legislation, plans and programmes". The use of the word "including" in this context implies that this is a non-exhaustive list, and that other types of activities or measures, such as financing agreements, that affect or are likely to affect the environment are covered by the definition. (ACCC/C/2007/21 European Community, para. 30b)

Studies and analyses may constitute environmental information

The Committee notes that the studies and analyses requested by Energiaklub, such as the feasibility study, waste strategy, as well as the "preparation of specific chapters concerning new units of the environmental licensing documentation (with option)" may include information on "the state of elements of the environment, such as air and atmosphere, water, soil, land", etc., under article 2, paragraph 3 (a). Such information may also fall under article 2, paragraph 3 (b), as "cost-benefit and other economic analyses and assumptions used in environmental decision-making". Lastly, such information can also concern the state of human health and safety, conditions of human life, inasmuch as they are or may be affected by the state of the elements of the environment under article 2, paragraph 3 (c). (ACCC/C/2014/105 Hungary, para. 100)

Permits may include environmental information

A permit is an administrative measure and it follows that any information in a permit affecting or likely to affect the elements of the environment constitutes environmental information within the meaning of article 2, paragraph 3. The information concerning the imperative reasons of overriding public interest regarding a Natura 2000 site constitutes environmental information within the meaning of article 2, paragraph 3 (b). (ACCC/C/2014/124 Netherlands, para. 88, 90)

Production-sharing agreement on extraction of mineral resources is "administrative measure" that impacts environmental elements

A production-sharing agreement, in which one party (the State) assigns the other party (the investor) the right to prospect for, explore and extract mineral resources in the designated subsoil area(s) and to perform the works related to the agreement for a specified period of time, whereas the investor undertakes to perform the assigned works at its own cost and risk, with further compensation of the costs and receipt of payment (remuneration) in the form of a portion of the profit production, is an "administrative measure" within the meaning of article 2, paragraph 3 (b). Furthermore, a production-sharing agreement concerning the extraction of mineral resources is clearly a measure "affecting or likely to affect the state of elements of the environment" such as "soil, land, landscape and natural sites" for the purposes of article 2, paragraph 3 (b). The state of other elements of the environment may be affected as a result of the extraction process as well. (ACCC/C/2014/118 Ukraine, para. 100)

Article 2(4): "The public"

Some local representative bodies can qualify as the public

The Committee concludes that community councils in Scotland qualify as "the public" within the definition of article 2, paragraph 4, due to 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. (ACCC/C/2012/68 European Union and United Kingdom, para. 83)

Article 2(5): "The public concerned"

Definition of "the public concerned" is very broad

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. (ACCC/C/2010/50 Czech Republic, para. 66)

Residents are among the public concerned

Residents living along a proposed route of power line construction are among the "public concerned". (ACCC/C/2004/2 Kazakhstan, para. 23)

Tenants are part of the public concerned

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. 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, and should therefore enjoy the same rights as other members of the public concerned. (ACCC/C/2010/50 Czech Republic, para. 67)

Statutes may be used to qualify an NGO as promoting environmental protection

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. (ACCC/C/2009/43 Armenia, para. 81)

Persons living within the possible range of the adverse effects of an activity qualify as public concerned

In this regard, the public may potentially be concerned both because of the possible effects of the normal or routine operation of the nuclear power plant and because of the possible effects in case of an accident or other exceptional incident. In both cases, the decision-making may impact not only on matters, such as property or health, but also on less measurable aspects, like quality of life. For an ultrahazardous activity such as a nuclear power plant, members of the public may be affected or be likely to be affected by, or have an interest in, the environmental decision-making within the scope of the Convention even if the risk of an accident is very small. In determining who is concerned by the environmental decision-making, the Committee also considers the magnitude of the effects if an accident should indeed occur, whether the persons and their living environment within the possible range of the adverse effects could be harmed in case of an accident, and the perceptions and concerns of persons living within the possible range of the adverse effects. (ACCC/C/2012/71 Czech Republic, para. 74)

Nuclear activities pose transboundary risks of adverse effects

It is clear to the Committee that with respect to nuclear power plants, the possible adverse effects in case of an accident can reach way beyond State borders and over vast areas and regions. (ACCC/C/2012/71 Czech Republic, para. 74)

Foreign public is part of the public concerned

The Committee notes that the definitions of the public and the public concerned in article 2, paragraphs 4 and 5, do not contain any wording that limits their scope to only the public in the Party concerned. Rather, the Committee considers that those definitions should be seen in the context of the requirements set out in article 3, paragraph 9, which requires that 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 the citizenship, nationality or domicile. (ACCC/C/2013/91 United Kingdom, para. 68)

Decisions on nuclear power plants and other ultrahazardous activities require involvement of foreign public

It is clear to the Committee that with respect to nuclear power plants, the possible adverse effects in case of an accident can reach far beyond State borders and over vast areas and regions. For decision-making that relates to complex and ultrahazardous activities such as nuclear power plants, it is therefore important to secure public participation appropriate to that activity with respect to these areas and regions both within and beyond the State borders of the Party concerned. (ACCC/C/2013/91 United Kingdom, para. 75)

Given the proximity of Almaraz nuclear power plant to the Portuguese border (100 km), the Committee considers that the public in Portugal is undoubtedly among the public affected or likely to be affected by, and having an interest in, the Ministerial Order to extend the operation of reactors I and II of Almaraz nuclear power plant until 2027 and 2028 respectively. (ACCC/C/2020/183 Spain, para. 66)

Even small risk of serious events should be taken into account when determining the public concerned

In cases concerning ultrahazardous activities, such as nuclear power plants, members of the public may be affected or likely to be affected by, or have an interest in, environmental decision-making within the scope of the Convention, even if the risk of an accident is very small. (ACCC/C/2013/91 United Kingdom, para. 75)

Impacts on property, health and even quality of life should be considered to qualify the public concerned

With respect to decisions to permit specific activities within the scope of article 6 of the Convention, the public may be concerned either because of the possible effects of the normal or routine operation of the activity in question or because of the possible effects in the case of an accident or other exceptional incident, or both. In either case, the decision to permit a particular activity may not only impact measurable factors, such as the property or health of the public concerned, but also less measurable aspects, like their quality of life. (ACCC/C/2013/91 United Kingdom, para. 73)

Factual interest is sufficient for qualifying as public concerned

Moreover, whether the public is affected or likely to be affected by environmental decision-making must not be determined only by considering the risk of adverse effects or accidents in statistical terms. In the same vein, the notion of having an interest in the environmental decision-making should include not only members of the public whose legal interests or rights guaranteed under law might be impaired by the proposed activity, but also those who have a mere factual interest (for example, in the case of a proposed activity that may affect a waterway, bird watchers interested in keeping nests intact or anglers interested in keeping waters fishable). It may also include, as is the case in many jurisdictions, persons who have expressed an interest in a given case without having stated any specific reason for their interest. (ACCC/C/2013/91 United Kingdom, para. 74)

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.

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.

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, organisations or groups promoting environmental protection and ensure that its national legal system is consistent with this obligation.

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.

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 organisations 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 penalised, 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.

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.

Cross-reference table

Key Cases	Interpretation Highlights
Article 3(1)	
ACCC/C/2004/2 (Kazakhstan)	**Direct effect** of the Convention is no sufficient framework
Article 3(2)	
ACCC/C/2013/90 (United Kingdom)	**Not taking enforcement action** violates the requirement to facilitate public participation and access to justice
ACCC/C/2013/92 (Germany)	"**Shall endeavour"** is an obligation of effort
Article 3(5, 6)	
ACCC/C/2004/4 (Hungary)	**Principle of non-retrogression** does not fully apply
ACCC/C/2017/161 (Bulgaria)	No "**anti-backsliding clause**"
Article 3(8)	
ACCC/C/2008/27 (United Kingdom) ACCC/C/2010/50 (Czech Republic)	**Court costs** may amount to penalization or harassment
ACCC/C/2014/102 (Belarus)	Words **"penalized", "persecuted" and "harassed"** shall be understood in their ordinary meaning
ACCC/C/2014/102 (Belarus)	**Fourfold test** for breach of Article 3(8)
ACCC/C/2014/102 (Belarus)	Article 3(8) covers **actions of all persons and bodies**
ACCC/C/2014/102 (Belarus)	**Providing legal advice** to persons exercising their environmental rights falls under article 3 (8) protection
ACCC/C/2014/102 (Belarus)	**Organizing or participating in street action** constitutes exercise of right to participate
Article 3(9)	
ACCC/C/2012/71 (Czech Republic)	**Discrimination test**: no less favourable treatment
ACCC/S/2015/2 (Belarus)	**Translation** not always required in transboundary context

Commentary

Article 3(1):

Establishing a framework for implementation of the Convention

1. A clear, transparent and consistent framework to implement the Convention

Lack of clarity or detail in domestic legislation leads to non-compliance

Lack of clarity or detail in domestic legislative provisions demonstrates that the Party has not taken the necessary measures to establish and maintain a clear, transparent and consistent framework to implement the provisions of the Convention. (ACCC/S/2004/1 and ACCC/C/2004/3 Ukraine, para. 34)

Failure to implement Article 4 and Article 9(1) leads to non-compliance

If a Party fails to comply with its obligations under article 4 and 9, paragraph 1, by failing to prove 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, it can also be in breach of the obligation under article 3, paragraph 1, to establish a clear, transparent and consistent framework for implementation. (ACCC/C/2004/1 Kazakhstan, para. 23, 27)

Failure to implement Article 9(4) leads to non-compliance

The failure 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 can amount to non-compliance 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 Convention. (ACCC/C/2008/33 United Kingdom, para. 140)

Framework implementing Article 4(8) has to be clear, transparent and consistent

Not establishing and maintaining a clear, transparent and consistent framework to implement article 4, paragraph 8, fails to comply with article 3, paragraph 1. Any charges permitted by the framework must be reasonable in nature, with full and coherent explanations for those charges being made available to any member of the public making a request for environmental information. The presumption is for no charge to be made for the supply of environmental information upon request. A framework is unclear, confusing and inconsistent if it creates a situation whereby public authorities can calculate charges in a manner that is inconsistent and cannot be properly explained, reasoned or justified, i.e. if there are differing calculations of the appropriate charge for the information request and the term „primary information" is not explained. Such a lack of clarity may also have a deterrent effect on members of the public seeking to rely on their right to access environmental information in the first place. (ACCC/C/2017/147 Republic of Moldova, paras. 100-105)

Precedence of international agreements over national law is not enough

The requirement that the Convention be implemented through a clear, transparent and consistent framework is not met if, after the entry into force of the Convention, an implementing law establishes the precedence of international agreements over its provisions, while at the same time containing provisions that are inconsistent with the Convention. (ACCC/C/2004/5 Turkmenistan, para. 22)

The EU is obliged to transpose the Convention into EU law

The Convention is binding on EU institutions and Member States and takes precedence over legal acts adopted under the Treaty on the Functioning of the European Union (secondary legislation). Thus, EU law texts should be interpreted in accordance with the Convention. However, this does not free the EU from the obligation to transpose the Convention through a clear, transparent and consistent framework into EU law according to article 3, paragraph 1. (ACCC/C/2006/17 European Community, para. 35, 58, 59)

No obligation for public participation framework without legal requirement

If the Party concerned has no law in force requiring the preparation of plans or programmes that do not set the framework for future development consent, or requiring public participation in their preparation, it has no obligations under article 3, paragraph 1, to provide a regulatory framework for the public participation in the preparation of such plans and programmes. (ACCC/C/2014/101 European Union, para. 57)

All comments, regardless of form of submission, should be part of public evaluation

The fact that, contrary to comments on draft legislation made via a portal, comments on draft legislation submitted by email or in paper form are not included in the evaluation of the commenting process and therefore are not publicly recorded, is concerning and may lead to a situation where the results of the participation are only partially reflected in the evaluation of comments. However, if the submitter of the draft legislation is still required to take comments submitted by email or in paper form into account, and if the different treatment of comments submitted in paper form or by email as opposed to through the portal is explicitly stated in the legislative rules, the Committee does not go so far as to find the Party concerned in non-compliance with the requirement in article 3, paragraph 1, to establish and maintain a clear, transparent and consistent framework to implement article 8. (ACCC/C/2014/120 Slovakia, paras. 112 ff.)

Legal framework for costs of access to justice must be clear and transparent

Parties are not expected to ensure that prospective litigants can predict their costs down to the last euro if their action fails: by definition, litigation involves a number of imponderables. However, conferring a wide discretion to the courts when deciding litigation costs by allowing judges to apportion the costs rather than apply the "loser pays" principle and in addition establishing tariffs to guide judges when determining the other side's costs with each category of tariffs having a considerable range within it and leaving the option of considering environmental claims as either of "indeterminable" or "indeterminable of particular importance" value, with markedly different tariffs between the lower end of the former and the upper end of the latter, leads to a lack of certainty and clarity regarding the costs that claimants will face when exercising their right to access to justice in environmental matters. The practice of ordering the unsuccessful claimant to pay the same level of costs to each defendant further exacerbates this uncertainty as claimants may not be able to predict beforehand the number of parties who will become co-defendants. Not having in place a clear and transparent framework for determining costs orders against unsuccessful claimants in review procedures under article 9, paragraphs 2 and 3, is non-compliant with article 3, paragraph 1. (ACCC/C/2015/130 Italy, paras. 119-121)

Courts should adopt a consistent interpretation of NGO fee exemptions

By failing to ensure that, in review procedures subject to article 9, paragraphs 2 and 3, the courts adopt a consistent interpretation of a legislation exempting environmental NGOs from the payment of court filing fees, the Party concerned fails to comply with the obligation in article 3, paragraph 1, to establish and maintain a clear, transparent and consistent framework to implement the Convention. (ACCC/C/2015/130 Italy, para. 125)

2. Necessary legislative, regulatory and other measures

Direct effect of the Convention is no sufficient framework

In jurisdictions where the Convention has direct effect, Parties still have to take the necessary legislative, regulatory and other measures to establish and maintain a clear, transparent and consistent framework for implementation. Among others, national regulations should cover 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 public participation. (ACCC/C/2004/2 Kazakhstan, para. 28)

Article 3(2): Assisting the public

Not taking enforcement action violates the requirement to facilitate public participation and access to justice

By failing to take effective enforcement action against the operator's non-permitted activities for so long that those activities were deemed lawful and could no longer be subject to either public participation in decision-making under article 6 or access to justice under article 9, paragraph 3, the Party concerned failed to meet the requirements of article 3, paragraph 2, to endeavour to ensure that its officials and authorities facilitate the public's participation in decision-making and access to justice under the Convention. (ACCC/C/2013/90 United Kingdom, para. 159)

Assistance and guidance requirement applies to decision-making across borders

There is nothing in the wording of article 3, paragraph 2, or elsewhere in the Convention to imply that the obligation to "endeavour to ensure that officials assist and provide guidance to the public … in facilitating participation in decision-making" applies only with respect to the authorities competent to take a decision under articles 6, 7 or 8. Likewise, there is nothing in its wording to imply that the obligation applies only with respect to decision-making procedures inside the Party concerned. Rather, it is apparent to the Committee that the provisions in article 3 contain a number of obligations (such as those in article 3, paragraphs 2, 3, 4, 7 and 8) that stand alone as well as complement the other articles of the Convention. Moreover, in the light of the eighth preambular paragraph to the Convention, it is clear to the Committee that this obligation must be seen in the context of rights of the public under the Convention generally. In this regard, the Committee notes that the twenty-third preambular paragraph to the Convention specifically refers to various United Nations Economic Commission for Europe instruments, including the Espoo Convention, which envisage public participation in decision-making in the transboundary context. The Committee considers that in doing so, the Convention's preamble recognizes the importance of including the public concerned across borders in relevant decision-making. In the light of the above, it is clear to the Committee that the obligation on the Party concerned to "endeavour to ensure that officials assist and provide guidance to the public […] in facilitating participation in decision-making" applies also to decision-making procedures outside the Party concerned where authorities of the Party concerned are not competent to take decisions. (ACCC/C/2013/92 Germany, para. 84, 86)

"Shall endeavour" is an obligation of effort

Article 3, paragraph 2, requires that each Party "shall endeavour" to ensure that officials and authorities assist and provide guidance to the public in facilitating participation in decision-making. While this is an obligation of effort, rather than of result, nevertheless the efforts taken may be subject to due diligence scrutiny. Moreover, while the obligation to "endeavour to ensure", just like all other obligations in the Convention, is addressed to the Party concerned, the Committee may examine in specific cases whether a public authority or an official, as a representative of the Party concerned, took the efforts needed to meet the requirement of this provision. (ACCC/C/2013/92 Germany, para. 88)

Parties have to ensure that officials provide guidance to the public

As a minimum, article 3, paragraph 2, requires that, before a public participation procedure takes place, Parties endeavour to ensure that their officials provide guidance to the public so that the public has an adequate understanding of the relevant law, the decision-making procedure and its opportunities to participate. (ACCC/S/2015/2 Belarus, para. 158)

Parties must ensure authorities actively enforce rules

To fulfil a Party's obligations under article 3, paragraph 2, it is not enough that it merely puts in place a legal framework. It has equally an obligation to take efforts to ensure that the responsible public authorities follow the relevant rules. (ACCC/C/2015/131 United Kingdom, para. 165)

Providing inaccurate information by public authorities may violate Article 3(2)

Provision by public authorities, being emanations of the Party concerned, of inaccurate or misleading information to the public is contrary to the obligation in article 3, paragraph 2, for Parties to endeavour to assist the public to exercise its rights under the Convention. This is particularly apposite if an inaccurate statement was made one day after the public authority had filed its acknowledgement of service in response to the communicant's application for judicial review. (ACCC/C/2015/131 United Kingdom, para. 171)

Public interest triggers request to foreign country to facilitate participation

The Party concerned has not disputed that the interest of the German public in decision-making regarding construction of nuclear power plants, including Hinkley Point C, was well known to the German authorities. If the communicant's request of 28 February 2013 was not received so close to the date when the decision on Hinkley Point C was required to be taken under United Kingdom law, the Committee considers that, given that the Party concerned was aware (not least owing to the petition sent on 25 February 2013) of the strong interest of members of its public in the decision-making on Hinkley Point C, it would have been obliged by article 3, paragraph 2, to at least enquire with the United Kingdom what could be done to facilitate the participation of the German public in the decision-making. If, as a result of those efforts, it ultimately became clear that nothing further to facilitate the participation of the German public could be done, the refusal by the Party concerned of the communicant's request should have clearly demonstrated that due account had been taken of their concerns and not only of the views of the authorities. Moreover, at a minimum it should have provided the links to where the relevant information and contact details concerning the national public participation procedure could be found on the United Kingdom website. (ACCC/C/2013/92 Germany, para. 93)

Decision not to issue a screening direction does not breach Article 3(2)

A decision by the Secretary of State in the United Kingdom not to exercise his or her discretion in favour of issuing a screening direction does not entail a breach of the obligation to assist and provide guidance to the public according to article 3, paragraph 2. (ACCC/C/2015/131 United Kingdom, para. 158)

Article 3(4): Recognition and support to environmental NGOs

Non-registered NGOs

The Convention does not exclude the possibility for Parties to regulate and monitor NGO activities within their jurisdiction and stipulates no requirement to either regulate or de-regulate activities of non-registered NGOs. However, if a Party combines the prohibition of non-registered associations with overly difficult registration procedures and requirements, non-compliance has been found. (ACCC/C/2004/5 Turkmenistan, para. 20, 21)

Article 3(5) & Article 3(6): “Floor, not a ceiling” principle

Principle of non-retrogression does not fully apply

The general principle of international law of non-retrogression is not fully applicable within the scope of the Convention. The Committee found that negotiating Parties 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, see article 3, paragraph 6. However, if article 3, paragraph 6, is read together with article 3, paragraph 5 and article 1, such reduction was not generally perceived to be in line with the objective of the Convention. (ACCC/C/2004/4 Hungary, para. 17, 18)

Implementation of the Convention should be strengthened over time

In keeping with the objective set out in preambular paragraph 7 and article 1 to protect and improve the environment for the benefit of present and future generations, concomitant implementation of the rights under the Convention, in general, should be strengthened over time. (ACCC/C/2012/57 Denmark, para. 46)

No "anti-backsliding clause"

The negotiating parties did not see fit to include an "anti-backsliding clause" in the Convention's text. Consequently, to find non-compliance in a particular case, the Committee must have evidence before it that the minimum requirements set by the Convention have not been met. (ACCC/C/2017/161 Bulgaria, para. 105 – with reference to the Aarhus Convention Implementation Guide, p. 68)

No precedence to rights under other treaties

With respect to the claim by the Party concerned that article 3, paragraph 6, gives precedence to the Espoo Convention, the Committee stresses that article 3, paragraph 6, requires that there be no derogation from existing rights of the public — not the rights of Parties under any international agreements — and it therefore cannot be interpreted as giving precedence to any right of the Party concerned under the Espoo Convention. (ACCC/C/2013/92 Germany, para. 85)

Article 3(8): No penalization of persons exercising Convention rights

1. General issues under Article 3(8)

Words "penalized", "persecuted" and "harassed" shall be understood in their ordinary meaning

The terms "penalized", "persecuted" and "harassed" are not defined in the Convention, and they are to be understood according to their ordinary meaning in their context and in the light of the Convention's object and purpose. According to the ordinary meaning of the terms: "to penalize" means to impose a restriction or penalty on, to put at a disadvantage; "to harass" means to trouble or vex by repeated attacks; and "to persecute" means to seek out and subject (a person, group, organization, etc.) to hostility or ill-treatment, on grounds of political belief, religious faith, race, etc.; to oppress, to torment. As stated in the Aarhus Convention Implementation Guide, article 3, paragraph 8, "is a broadly worded provision which aims to prevent retribution of any kind." (ACCC/C/2014/102 Belarus, para. 67 – with reference to the Aarhus Convention Implementation Guide, p. 71)

Fourfold test for breach of Article 3(8)

The Committee considers that in order to demonstrate a breach of article 3, paragraph 8, by the Party concerned, four elements must be established, that is:

(a) One or more members of the public have exercised their rights in conformity with the provisions of the Convention;
(b) The member of the public or those members of the public have been penalized, persecuted or harassed;
(c) The penalization, persecution or harassment was related to the member(s) of the public's exercise of their rights under the Convention;
(d) The Party concerned has not taken the necessary measures to fully redress any penalization, persecution or harassment that did occur.

(ACCC/C/2014/102 Belarus, para. 65)

Article 3(8) applies to all situations

The exercise of these rights would include situations in which the provisions of the Convention concerning access to information, public participation in decision-making and access to justice set out in articles 4 to 9 are applicable and also situations covered by the general provisions of article 3, but is not limited to them. Accordingly, the Committee finds that article 3, paragraph 8, applies to all situations in which members of the public seek access to information, public participation or access to justice in order to protect their right to live in an environment adequate to their health or well-being. (ACCC/C/2014/102 Belarus, para. 66)

Article 3, paragraph 8, implies specific targeting

Article 3, paragraph 8, implies that persons have in some way been "targeted" for exercising their rights under the Convention. Thus, a court's designation of a claim as "totally without merit", which is provided for in the legal framework regarding applications for permission for judicial review generally, not only in cases falling under the Convention, is not in non-compliance with article 3, paragraph 8. (ACCC/C/2015/131 United Kingdom, para. 153)

Human rights approach to assessing state's intervention may be useful

In determining whether the alleged treatment amounts to penalization, persecution or harassment, the Committee notes the approaches taken within the framework of human rights instruments. Such instruments generally provide wide protection against human rights violations combined with possibilities for the State concerned to claim its actions served a legitimate aim or at least did not relate to the special characteristics of the person concerned. This approach envisages that, depending on the particular facts of the case at hand, an action taken by the State may be objective and reasonable, pursue a legitimate purpose and be proportional in one set of circumstances, and not in another. (ACCC/C/2014/102 Belarus, para. 68)

Penalization, persecution or harassment allegations must be assessed on a case-by-case basis

Whether the alleged treatment amounts to penalization, persecution or harassment must be assessed on a case-by-case basis in the light of the particular circumstances, including whether the action taken by the State is objective and reasonable, and pursues a legitimate purpose. (ACCC/C/2014/102 Belarus, para. 69)

Article 3(8) covers actions of all persons and bodies

The Committee notes that the wording of article 3, paragraph 8, is not limited in its application to acts of public authorities as defined in article 2, paragraph 2, but rather covers penalization, persecution or harassment by any State body or institution, including those acting in a judicial or legislative capacity. It also covers penalization, persecution or harassment by private natural or legal persons that the Party concerned did not take the necessary measures to prevent. (ACCC/C/2014/102 Belarus, para. 70)

Article 3(8) covers actions by Members of Parliament

Article 3, paragraph 8, covers penalization, persecution or harassment by any State body or institution, including those acting in a judicial or legislative capacity. It is intentionally not limited to "public authorities", as defined under article 2, paragraph 2, but was drafted to apply more broadly to avoid penalization, persecution or harassment "in any way" of persons exercising their rights in conformity with the Convention. The exclusion of bodies or institutions acting in a legislative capacity from the definition of "public authorities" in article 2, paragraph 2, is intended to protect the core function of legislating. Making statements during sessions of parliament that penalize, persecute or harass persons exercising their rights in conformity with the Convention cannot be considered part of that core function. The exclusion under article 2, paragraph 2, of bodies or institutions acting in a legislative capacity therefore does not apply. (ACCC/C/2017/161 Bulgaria, para. 154)

Causation is a key element of Article 3(8)

A key element of article 3, paragraph 8, is causation. The treatment amounting to penalization, persecution or harassment must have occurred because the communicant has sought to exercise his or her rights under the Convention. If a person has been penalized, persecuted or harassed but that was entirely unrelated to his or her exercise of his or her rights under the Convention, then there is no breach of article 3, paragraph 8. (ACCC/C/2014/102 Belarus, para. 71)

Evidence of difference in treatment shifts burden of proof to the State

With respect to the level and burden of proof, the Committee considers that useful guidance may be drawn from the approach taken by the European Court of Human Rights to cases of alleged discrimination under article 14 of the European Convention on Human Rights. When determining whether discrimination has occurred, the European Court of Human Rights has held that the applicant is only required to show evidence of a difference in treatment, after which the onus passes to the State to demonstrate that the difference in treatment can be justified.

Applying the above approach to article 3, paragraph 8, the Committee considers that the communicant must first establish a prima facie case that members of the public were penalized, persecuted or harassed because they sought to exercise their rights under the Convention. The burden of proof then moves to the Party concerned to show, on the balance of probabilities, that the penalization, persecution or harassment was entirely unrelated to the fact that those persons sought to exercise their rights under the Convention. (ACCC/C/2014/102 Belarus, para. 72-73)

State must prove its actions were entirely unrelated to the exercise of environmental rights

The burden of proof then moves to the Party concerned to show, on the balance of probabilities, that these events were entirely unrelated to the fact that the communicant sought to exercise their rights under the Convention. (ACCC/C/2014/102 Belarus, para. 104)

2. Actions which may qualify as penalization, harassment or persecution

Court costs

Pursuing costs of third parties in a court case in certain contexts may be unreasonable and amount to penalization or harassment within the meaning of article 3, paragraph 8. (ACCC/C/2008/23 United Kingdom, para. 53)

The Committee does not exclude that pursuing costs in certain contexts may amount to penalization or harassment within article 3, paragraph 8. (ACCC/C/2008/27 United Kingdom, para. 47)

Attacking activists in local press

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. (ACCC/C/2009/36 Spain, para. 64)

Defamation, detention, house search and arrest

Defamation, detention, house search and arrest by public authorities related to environmental activists carrying out awareness-raising activities on the potential effects of a nuclear power plant can amount to a failure to comply with article 3, paragraph 8, if the alleged facts are sufficiently substantiated and the Committee can assess with sufficient certainty the exact course of events. (ACCC/C/2009/44 Belarus, para. 65)

Prolonged or repeated presence of police

If police presence is prolonged or repeated, and if the persons concerned have reasonable grounds to believe that the presence is directed at them, such a presence may in itself constitute harassment, penalization or persecution in the sense of article 3, paragraph 8. (ACCC/C/2014/102 Belarus, para. 101)

Contact by security services

The telephoning – even just one telephone call – and visiting of persons linked to the communicant, in the context of the communicant's opposition to an activity subject to the Convention by the State Security Department "to clarify the issues related to the activity" constitutes harassment, penalization and persecution by the Party concerned in non-compliance with article 3, paragraph 8. (ACCC/C/2013/98 Lithuania, para. 158)

Documents check

The Committee finds that the detention of the communicant for a documents check lasting nearly the entire duration of the Chernobyl Way 2013 street action amounted to harassment, penalization and persecution within the meaning of article 3, paragraph 8. (ACCC/C/2014/102 Belarus, para. 107)

Members of Parliament and senior officials engaging in highly derogatory and inflammatory statements

In a Bulgarian case, Members of Parliament and senior officials, including sitting ministers as well as the then-Deputy Prime Minister, engaged in statements that ranged from accusations that the persons in question "sabotage" the local economy and engage in "blackmail" and "procedural racketeering" motivated by personal financial gain, to more direct offensive language, including the use of labels such as "green Jihadists" and a call for the deportation of an individual "in a box van" from the Party concerned. The Committee found these statements to include highly derogatory and inflammatory language that directly targets environmental NGOs and individuals exercising their rights under the Convention and thus to demonstrate a recurring pattern of harassment. (ACCC/C/2017/161 Bulgaria, para. 157-163)

3. Exercising rights

Petition against a project is a legitimate exercise of the right to participate

The Committee considers that a petition against a proposed activity that may have a significant environmental impact, such as a nuclear power plant, is a legitimate exercise of the public's right to participate in decision-making as recognized in article 1. (ACCC/C/2014/102 Belarus, para. 80)

Providing legal advice to persons exercising their environmental rights

Likewise, a member of the public who provides legal assistance to persons seeking to exercise their rights in conformity with the provisions of the Convention is thereby taking part in these persons' exercise of their rights and is consequently entitled to the protection afforded by article 3, paragraph 8. (ACCC/C/2014/102 Belarus, para. 80)

Organizing or participating in street action

The Committee considers that an authorized street action concerning an activity covered by the Convention, such as nuclear energy, constitutes a means through which the public can raise the awareness of public authorities and the wider public regarding their concerns about the potential environmental impacts of nuclear energy. The Committee thus considers that both the organization of, and participation in, an authorized action of this nature is a legitimate exercise of the public's right to participate in decision-making as recognized in article 1. (ACCC/C/2014/102 Belarus, para. 96)

Article 3(9): Prohibition of discrimination

Discriminating foreign public

Discrimination of foreigners

The exclusion of foreign citizens and persons without citizenship from the possibility to found and participate in a national NGO can constitute a disadvantageous discrimination. (ACCC/C/2004/5 Turkmenistan, para. 16)
Discrimination test: no less favourable treatment
In deciding whether the Party concerned has complied with article 3, paragraph 9, the Committee considers the general test to be whether the public concerned in Germany was given any less favourable treatment than the public concerned in Czech Republic with regard to its opportunities to participate in the procedure. (ACCC/C/2012/71 Czech Republic, para. 107)

No obligation to translate into requested language

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, 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 to disclose the translated version to the public. (ACCC/C/2010/51 Romania, para. 105)

Translation not always required in transboundary context

In a transboundary context, article 3, paragraph 9, does not require the Party of origin to translate all relevant information into the languages of all affected countries. In a case between Belarus and Lithuania on the participation of the Lithuanian public in the permitting of a nuclear power plant in Belarus, the Committee found it regrettable that the two Parties did not come to a clear agreement regarding translation of at least the main consultation documents in advance. However, it was noted that this was somewhat compensated for by the fact that English and Russian translations of the full EIA report were available. According to the 2011 national census of Lithuania, 63 % of Lithuanians spoke Russian and 30 % spoke English. Thus, the Committee does not find that the allegedly poor quality of the Lithuanian translation of the EIA report as such implied a breach of article 3, paragraph 9. (ACCC/S/2015/2 Belarus, para. 150, 151)

Article 4 - Access to environmental information

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:

(a) without an interest having to be stated;

(b) in the form requested unless:

(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.

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.

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

(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.

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

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

(b) international relations, national defence or public security;

(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;

(e) intellectual property rights;

(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.

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.

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.

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.

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.

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.

Cross-reference table

Key Cases	Interpretation Highlights
Article 4	
ACCC/S/2004/1 and ACCC/C/2004/3 (Ukraine)	The issue of **ownership of information** is irrelevant
ACCC/C/2009/37 (Belarus)	Delegating functions to **private entities** is possible
ACCC/C/2012/69 (Romania)	There is a **presumption** that **environmental information should be released**
Article 4(1)	
ACCC/C/2004/1 (Kazakhstan)	**No reason or justification** required in information request
ACCC/C/2012/69 (Romania)	Providing access to **examine is not enough**: actual copies shall be provided
ACCC/C/2013/89 (Slovakia)	**Request by e-mail** does not have to include electronic signature
Article 4(2)	
ACCC/C/2008/24 (Spain)	Total time of extensions **cannot exceed two months**
Article 4(3)	
ACCC/C/2014/105 Hungary	**"In the course of completion"** does not mean entire decision-making process
ACCC/C/2014/124 (Netherlands)	Communication between permitting authorities and permit holders are **not internal**
Article 4(4)	
ACCC/C/2005/15 (Romania)	**EIA and archaeological studies** should be disclosed
ACCC/C/2007/21 (European Community)	**Exemptions** in article 4, paragraph 4, are to be **interpreted in a restrictive way**
ACCC/C/2007/21 (European Community)	**Lack of authorisation of third party** is not a legitimate ground of refusal
ACCC/C/2013/89 (Slovakia)	**Bulk approach** to classifying information **is incompatible** with the Convention
ACCC/C/2013/89 (Slovakia)	**Public interest in disclosing**, not in withholding information
Article 4(7)	
ACCC/C/2013/93 (Norway)	**Grounds for refusal** shall be stated immediately
Article 4(8)	
ACCC/C/2008/24 (Spain)	**Fees** that significantly exceed standard commercial fees are not reasonable

Commentary

General Issues under Article 4

1. Impermissible grounds for refusal

Information already in public domain

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. (ACCC/C/2009/36 Spain, para. 57)

Regardless of volume

Information within the scope of article 4 should be provided regardless of its volume though the Parties may charge for supplying. (ACCC/S/2004/1 and ACCC/C/2004/3 Ukraine, para. 33)

The issue of ownership of information is irrelevant

The issue of ownership is not of relevance in this matter, as information (EIA materials) is used in decision-making by a public authority and should be provided to it for that purpose by the developer. (ACCC/S/2004/1 and ACCC/C/2004/3 Ukraine, para. 31)

2. In conjunction with Article 6(6)

Close to place of residence

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. (ACCC/C/2009/36 Spain, para. 61)

3. Role of private entities

Delegating functions to private entities is possible

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). (ACCC/C/2009/37 Belarus, para. 67)

4. Presumption of disclosure

There is a presumption that environmental information should be released

The Committee wishes to emphasize that once a piece of information that has been requested is found to be "environmental information" within the scope of article 2, paragraph 3 there is a presumption that it should be released. (ACCC/C/2012/69 Romania, para. 52)

5. Other issues

Article 4 does not require to have a procedure to assess whether requested information is environmental

While article 4 obliges the Parties to ensure that public authorities make environmental information available, and sets out a number of procedural requirements to that end, there is no express requirement in article 4 for a specific procedure to be followed when assessing whether requested information is environmental information. (ACCC/C/2013/93 Norway, para. 69)

Non-compliance with Article 4 only if review processes are unsuccessful

An erroneous decision by a Party when implementing the requirements of article 4 does not lead to non-compliance, provided that there are adequate review procedures. The review procedures in accordance with article 9, paragraph 1, are intended to correct any such failures in the processing of information requests at the domestic level. Only when a Party has failed to implement these procedures within a reasonable period of time, non-compliance can be found. Decisions on such a question need to be made on a case-by-case basis. (ACCC/C/2007/21 European Community, para. 33)

Information request does not have to be specifically tailored to the Convention

An information request does not have to refer to the Convention, implementing national legislation or even the fact that the request is for environmental information in order to constitute a request for environmental information under article 4. However, the Committee advises to include these indicators in a request in order to facilitate the work of the responsible public authorities. (ACCC/C/2007/21 European Community, para. 35)

Access to information under Article 4 goes beyond 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. (ACCC/C/2010/51 Romania, para. 94)

High proportion of refused requests for environmental information does not amount to non-compliance per se

The Committee considers that the fact that a proportion, even a substantial proportion, of requests are refused on the basis that the entity to which the request is made is not a public authority or that the request does not concern environmental information does not in itself amount to non-compliance with the Convention. (ACCC/C/2016/141 Ireland, para. 85)

There is no basis to "defer" a request for environmental information

The Convention provides no basis on which to "defer" a request for environmental information. The requested information must either be provided within the time frames in article 4, paragraph 2, or the request must be refused within the time frames in article 4, paragraph 7, and the reason(s) for the refusal, based on one or more of the grounds in article 4, paragraph 3 or 4, explained. (ACCC/C/2021/186 Portugal, para. 90)

Article 4(1): Provision of information upon request

1. No interest to be stated

No reason or justification required in information request

An information request does not have to include reasons for which the information is requested. Article 4, paragraph 1 (a), explicitly rules out to require such a justification. (ACCC/C/2004/1 Kazakhstan, para. 20, 25)

2. In form requested

Providing access to examine information is not enough: actual copies shall be provided

According to article 4, paragraph 1, it is not sufficient to respond to a request for information from the public under article 4 by simply providing access to examine the information free of charge. Article 4, paragraph 1, expressly requires the applicant to be provided with copies of the actual documentation. (ACCC/C/2012/69 Romania, para. 55)

Request by e-mail does not have to include electronic signature

The Committee is of the opinion that requiring a certified electronic signature every time a request is filed by electronic mail would seriously limit access to information under article 4 and if that were the case the Party concerned would be in non-compliance with that provision. (ACCC/C/2013/89 Slovakia, para. 86)

Failure to provide information in the form of a CD-ROM

By failing to ensure that the public authority provided the environmental information in the form requested (in the form of a CD-ROM at a cost of €13, instead of paper copies of the documentation of 600 pages at a cost of €2.05 /page), Spain failed to comply with article 4, paragraph 1 (b). (ACCC/C/2008/24 Spain, para. 70)

Information close to place of residence or entirely in electronic form

According to article 4, paragraph 1 lit. b, the public authority has to make available to the public "copies" of the actual documentation. This requires 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. It is not enough if access to information is restricted e.g. to the site of the Directorate of the nuclear power plant in Minsk only and no copies could be made. (ACCC/C/2009/44 Belarus, para. 69)

Translation into other languages is not covered by "the form requested"

The obligation in article 4, paragraph 1 (b), to provide the information in "the form requested" 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. Only if a translation is already available to the authorities, access to this translation has to be granted. (ACCC/C/2010/51 Romania, para. 107)

If requested, copies must be provided as such

If copies of documentation are requested, compliance with article 4, paragraph 1, cannot be achieved by "extracting" pieces or fragments of environmental information from those documents and making only the extracted environmental information available but not the underlying document. Nor can a request for a particular document containing environmental information be refused simply because another document that contains the same environmental information has already been made available to the public. Rather, the requested document itself, including all the environmental information contained therein, must be made available. (ACCC/C/2014/124 Netherlands, para. 93)

Article 4(2): Time limits for responding and supplying the requested information

Grounds for and limits of possible extension

Heavy workload may justify delay

In certain circumstances a temporarily heavy workload may cause some delays. In no circumstances, however, can it justify lack of any response at all to requests for information or providing it later than two months after the request. (ACCC/C/2009/36 Spain, para. 56)

Total time of extensions cannot exceed two months

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. (ACCC/C/2008/24 Spain, para. 74)

Article 4(3): General grounds for refusal

Confidentiality clauses cannot override a Party's obligation to disclose environmental information

The grounds for non-disclosure set out in article 4, paragraphs 3 and 4, are exhaustive. Accordingly, the inclusion of a clause in an agreement between a Party to the Convention and a third party that imposes a blanket prohibition on the disclosure of the terms of that agreement, and other information related thereto has no effect on the Party's obligations to provide access to environmental information upon request under article 4. (ACCC/C/2014/118 Ukraine, para. 107 f.)

Information used in decision-making cannot be closed based on the reason they are used in decision-making process

The Committee considers that, by maintaining a legal framework that provides that access to requested environmental information and documents involved in preparing a decision or contained in proceedings that have not been concluded may be deferred until the decision is taken, the case or proceedings is or are closed, the Party concerned fails to comply with article 4, paragraph 2, in conjunction with article 4, paragraph 3 (c). (ACCC/C/2021/186 Portugal, para. 131)

1. In the course of completion or concern

"In the course of completion" does not mean entire decision-making process

The Committee makes clear that the phrase "materials in the course of completion" in article 4 paragraph 3 (c), 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. (ACCC/C/2014/105 Hungary, para. 107)

Completed and submitted study is not "material in the course of completion"

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 according to article 4, paragraph 3. 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. 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. (ACCC/C/2010/51 Romania, para. 82, 85, 87)

An environmental impact study submitted by the developer is not "materials in the course of completion" under article 4, paragraph 3(c). Rather it is a completed document. Any subsequent versions submitted by the developer to the public authority are likewise completed documents. (ACCC/C/2021/186 Portugal, para. 108)

A draft document does not itself means it is "in the course of completion"

The Committee considers that the mere status of something as a draft does not automatically bring it under the exception of "materials in the course of completion". The words "in the course of completion" suggest that the term refers to individual documents that are actively being worked on by the public authority. Once the requested documents are no longer "in the course of completion" they must be disclosed, even if they are still unfinished and even if the decision to which they pertain has not yet been taken. "In the course of completion" suggests that the document will have more work done on it within some reasonable time frame. (ACCC/C/2014/124 Netherlands, para. 107)

2. Internal communications

Internal communication is solely meant to protect free exchange of views

The Committee considers that the underlying purpose of such an exception is to give a public authority's officials the possibility to exchange views freely. Accordingly, not every document that is communicated internally can be considered as an "internal communication". For instance, factual matters and the analysis thereof may be distinguished from policy perspectives or opinions. (ACCC/C/2013/93 Norway, para. 71)

Routinely denying access to information may amount to violation of Article 4

If it were shown that the public authorities routinely denied access to information, including assessments (legal, environmental, technical or otherwise), by referring to it as internal communication, thus denying access to assessments informing its internal decision-making relating to the environment, this could very well constitute non-compliance with article 4, paragraph 1. (ACCC/C/2013/93 Norway, para. 72)

The "purpose" of the communications is not determinative as to whether communications are "internal" or not

Whilst the Province may have chosen to seek assistance from the developers in the preparation of the litigation defending the permits, this does not render their communications internal. Nor does the fact that the Province and the developers may each have had an interest in defending the permits in court, or that they agreed that their communications should remain confidential, make their communications internal within the meaning of article 4, paragraph 3 (c). In this regard, the Committee clarifies that the "purpose" of the communications is not determinative as to whether communications are "internal" or not. (ACCC/C/2014/124 Netherlands, para. 100)

Communication between permitting authorities and permit holders are not internal

It is clear to the Committee that communications between a public authority and a permit holder cannot be considered to be internal. Likewise, communications exchanged between a public authority and any persons acting on the permit holders' behalf cannot be internal either. (ACCC/C/2014/124 Netherlands, para. 101)

Article 4(4): Special grounds for refusal

Exemptions in Article 4(4) are to be interpreted in a restrictive way

The exemptions for disclosure of environmental information in article 4, paragraph 4, are not be read as meaning that public authorities are only required to release environmental information where no harm to the interests concerned is identified. Article 4, paragraph 4, requires the exemptions to be interpreted in a restrictive way, taking into account the public interest served by disclosure. If there is 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. (ACCC/C/2007/21 European Community, para. 30c)

Criteria for exceptions must be as clear as possible

The criteria in legislation for exceptions under article 4, paragraph 4 (a), should be as clear as possible, so as to reduce the discretionary power of authorities to select which proceedings should be confidential or what constitutes "commercial and industrial information", 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. (ACCC/C/2010/51 Romania, para. 89, 90)

1. Proceedings of public authorities

"Proceedings" in Article 4(4)(a), relate to a concrete event

The phrase "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 a nuclear power plant, as confidential, it cannot under this provision treat as confidential all the actions undertaken by public authorities in relation to selecting feasible locations for a nuclear power plant, including all the related studies and documents. In particular, national legislation may provide for the confidentiality of operational and internal procedures of an authority. (ACCC/C/2010/51 Romania, para. 89)

2. International relations, national defence or public security

Bulk approach to classifying information is incompatible with the Convention

The Committee stresses that an approach where whole categories of environmental information are unconditionally declared as confidential and for which no release is possible is incompatible with article 6, paragraph 6, in conjunction with article 4, paragraph 4. In the context of a decision-making procedure subject to article 6 and with respect to requests for information under article 4 generally, by adopting an approach in the Directive on Sensitive Information whereby whole categories of nuclear-related environmental information are unconditionally declared as confidential and for which (contrary to the general legal regulation in the Freedom of Information Act) no release is possible, and for failing to require that any grounds for refusal are interpreted in a restrictive way, taking into account the public interest served by disclosure and whether the information relates to emissions into the environment, the Party concerned has failed to comply with article 4, paragraph 4, as well as article 6, paragraph 6, in conjunction with article 4, paragraph 4. (ACCC/C/2013/89 Slovakia, para. 83-84)

3. Commercial and industrial confidentiality

Restricted commercial confidentiality for State companies

The scope of application of the commercial confidentiality exemption is limited if a state company that meets the definition of "public authority" according to article 2, paragraph 2 (b) and (c) is concerned. (ACCC/C/2004/4 Hungary, para. 10)

Public bodies can have "legitimate economic interests"

The provision of article 4, paragraph 4 (d), can 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. (ACCC/C/2010/51 Romania, para. 91)

4. Intellectual property rights

EIA and archaeological studies should be disclosed

A general exemption of EIA studies from disclosure is 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. The disclosure of EIA studies in their entirety should be the rule, with the possibility for exempting parts being an exception of the rule. EIA studies are conducted for inclusion in the public file of administrative procedures. Therefore, the author or developer should not have the right to withhold the information from public disclosure based on intellectual property law. In jurisdictions where copyright laws apply to EIA studies, they cannot justify a general exclusion of such studies from public disclosure, in particular if the information has to be made available as part of the public participation procedure according to article 6, paragraph 6. If the disclosure of parts of an EIA study is denied, the grounds for refusal are to be interpreted in a restrictive way, taking into account the public interest served by the disclosure. The decision to deny disclosure should be clear and transparent as to the reasoning for non-disclosure. (ACCC/C/2005/15 Romania, para. 28-30, ACCC/C/2012/69 Romania, para. 59)

5. The interests of a third party

Lack of authorisation of third party is no legitimate ground for refusal

The fact that a third party has not authorized the release of a document does not constitute a legitimate basis under the Convention for failing to provide environmental information. (ACCC/C/2007/21 European Community, para. 31b)

6. Protection of the environment to which the information relates

Redacting information on locations of endangered species is legitimate

Recognizing the possibility that disclosure to the wider public concerned may result in adverse effects on the breeding sites of the mussels, the Committee found that the Party concerned was not in non-compliance with article 4 by withholding the redacted [for the locations of the freshwater pearl mussels] information in the circumstances of this case. (ACCC/C/2009/38 United Kingdom, para. 77)

7. Public interest test

Public interest in disclosing, not in withholding information

The Committee points out that section 3, paragraph 14, of the Nuclear Act requires public authorities to take into account the public interest in withholding the information whereas the Convention requires authorities to do the opposite, i.e., to take into account the public interest in disclosure. (ACCC/C/2013/89 Slovakia, para. 82)

Public interest is not limited to environment

Chapter 10 (5) (1) refers to the information's "significance from an environmental point of view". However, there are a variety of public interests in disclosure that do not merely concern the "environmental significance" of the requested information. In this regard, the Committee draws attention to the Convention's ninth, tenth and eleventh preambular paragraphs, which highlight a number of public interests in access to information, including the accountability of and transparency in decision-making. (ACCC/C/2019/173 Sweden, para. 79)

Article 4(5): Referrals to other authorities who have information

Onward referral is a legitimate practice

The "onward referral" is a legitimate practice under article 4, paragraph 5, subject to two conditions:

· the request for information is referred to another "public authority";

· an onward referral does not compromise compliance with the obligation to 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.

(ACCC/C/2009/37 Belarus, para. 66-69)

Article 4(6): Separation and disclosure of non-exempted information

Case-by-case examination is needed to identify information not to be redacted

Moreover, the analysis of what was to be exempted and what disclosed should have been on a document by-document basis. The Committee notes that such an analysis is also missing in the decision of the Bucharest Court of Appeal. The Committee stresses that the classification of an entire type of environmental information as exempt from disclosure runs contrary to the letter and spirit of the Convention. (ACCC/C/2012/69 Romania, para. 63)

Documents must be fully disclosed, information under Article 4 (3) and (4) may be redacted

If a member of the public makes a request for a document that comprises environmental information under article 2, paragraph 3, the full text of that document must be disclosed except for any information that is withheld from disclosure under article 4, paragraphs 3 and 4. In those cases, in accordance with article 4, paragraph 6, the information exempted from disclosure may be redacted. However, the rest of the document must be disclosed. (ACCC/C/2014/118 Ukraine, para. 109)

Article 4(7): Procedure for refusing an information request

1. Refusal in writing

"Positive silence" concept cannot be applied to access to information

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. Article 4, paragraph 7, specifically prohibits a Party from using the concept of "positive silence" for information requests. ACCC/C/2009/36 Spain, para. 57-58)

2. Reasons for refusal to be stated

Providing reasons is important for further review

The Committee notes that providing a statement of reasons under article 4, paragraph 7, not only helps the administration and the public to understand the Convention, but also provides higher administrative authorities and the court with a better basis to assess whether the officials have correctly implemented the law. Under the legal system where declassification of information takes additional time, a statement of reasons for a refusal of a request for information can also reduce the duration of a procedure. (ACCC/C/2012/69 Romania, para. 72)

Grounds for refusal shall be stated immediately

The Committee notes that the duty to state reasons is of great importance, not least to enable the applicant to be in a position to challenge the refusal for information under the procedures stipulated in article 9, paragraph 1. It is, therefore, inadequate if these reasons are only provided at a very late stage, as the applicant will potentially only then be able to fully formulate the grounds for challenging the decision. (ACCC/C/2013/93 Norway, para. 82)

3. Information on the review procedure to be provided

Refusal in writing prepares for access to justice

One of the purposes of the refusal in writing according to article 4, paragraph 7, 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. (ACCC/C/2010/48 Austria, para. 56)

Article 4(8): Costs (charges)

1. Reasonable costs

Fees that significantly exceed standard commercial fees are not reasonable

Given that the commercial fee for copying was €0.03 per page, which seemed to be generally equivalent to the standard commercial fee for copying in the United Nations Economic Commission for Europe countries, the Committee concluded that the charge of €2.05 per page for copying could not be considered reasonable. (ACCC/C/2008/24 Spain, para. 79)

Reasonable, transparent fees safeguard fair access to environmental information

Given the importance of the right of access to environmental information to achieve the objective of the Convention and also the wording of article 4, paragraph 8, the presumption is that such information should be supplied free of charge, but Parties may allow charges provided that they do not exceed a reasonable amount. The Convention safeguards this requirement by obliging public authorities to make available to applicants a schedule of charges that 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. The requirement in article 4, paragraph 8, for the charge to be reasonable is thus a safeguard for the effective exercise of the Convention's rights and duties. A schedule of charges can help protect against abuse and inconsistency of charges. It also strengthens the ability of members of the public to access information if they know in advance what it will cost. (ACCC/C/2017/147 Republic of Moldova, para. 86)

Access must be free; supply charges must reflect the public interest

The Convention does not permit any charge to be levied for simply having access to information and any charges for supplying environmental information must be calculated while recognizing and bearing in mind that such information is held in the public interest. (ACCC/C/2017/147 Republic of Moldova, para. 87)

Charges must be minimal, transparent, justified, and must not deter access

When determining whether the amount of any charge under article 4, paragraph 8, is reasonable, account must be taken of the objective of access to environmental information, the public interest in the protection of the environment, the recognition that public authorities hold environmental information in the public interest, the economic circumstances of the public in general and of the requester, and the justification given for the amount charged. It follows that any such charge should be duly explained, reasoned and justified and must not appear unreasonable to the public. Any charges for supplying environmental information must be based on a transparent calculation and, while they may include a contribution towards the material costs for supplying the environmental information, they must not include the cost of the initial production, collection or acquisition of the information itself or any other indirect cost. Thus, information held by public authorities should be provided for free or at no more than the reasonable material costs of supplying the requested information (e.g. postage or copying costs). Lastly, any charge must not have a deterrent effect on persons wishing to obtain information, effectively restricting their right of access to information. (ACCC/C/2017/147 Republic of Moldova, para. 88 f.)

Frameworks must not be interpreted in a way that limits access to information

Any legal framework allowing for charges must not be interpreted or applied in a way that may have a deterrent effect on persons wishing to obtain environmental information or that may restrict their right of access to environmental information, nor in any event be, or appear to the public to be, unreasonable. (ACCC/C/2017/147 Republic of Moldova, para. 96)

Charges higher than monthly salary deter public access to information

Quoting charges of an amount far in excess of the average monthly salary in the Party concerned and without clear and consistent reasoning has a deterrent effect on members of the public seeking to exercise their right to environmental information under the Convention. (ACCC/C/2017/147 Republic of Moldova, para. 95)

2. Schedule of charges

Unclear or unjustified charging schedules violate requirement for reasonable, predictable fees

Establishing and maintaining a schedule of charges that does not meet the requirement to ensure that any charge for supplying information does not exceed a reasonable amount, is in non-compliance with article 4, paragraph 8. The requirement is not met, if i.e. the application of the schedule in practice can lead to different approaches to calculating the charges, none of them being reasonable or adequately justified, and thus can give rise to charges that are not predictable, reasonable or justified. (ACCC/C/2017/147 Republic of Moldova, para. 98 f.)

Article 5 - Collection and dissemination of environmental information

1. Each Party shall ensure that:

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

(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.

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

(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 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, computerised and publicly accessible database compiled through standardised 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(3) and (4).

Cross-reference table

Key Cases	Interpretation Highlights
Article 5(1)	
ACCC/C/2015/131 (United Kingdom)	**Public authorities must hold and update** required environmental information
Article 5(3)	
ACCC/C/2015/131 (United Kingdom)	**“Easily accessible” electronic databases** must be free, minimally restricted, user-friendly, timely updated, and allow immediate retrieval without formal access requests
Article 5(7)	
ACCC/C/2014/112 (Ireland)	Whether **information “frames” a policy proposal** depends on stage of decision-making and its relevance

Commentary

General Issues under Article 5

Delegating functions to private entities

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 (b) respectively. (ACCC/C/2009/37 Belarus, para. 69)

Article 5(1): Collecting, possessing and disseminating environmental information

Information relevant to public authorities' functions

Public authorities should possess all relevant information when developing plans or projects

This implies that public authorities competent for the development of plans, policies, strategies or projects in relation to wind energy should be in possession of all relevant available information. (ACCC/C/2012/68 European Union and United Kingdom, para. 85)

Public authorities must hold and update required environmental information

Article 5, paragraph 1 (a), imposes an obligation on Parties to ensure that their public authorities possess and update at least the environmental information that they are required to collect and maintain under national law. It is implicit in article 5, paragraph 1 (a), that the public authority possesses the required environmental information at the relevant time. For example, for a proposed activity subject to EIA, article 5, paragraph 1 (a), requires that the decision-maker possesses the EIA report at the time it takes the decision to permit the activity. (ACCC/C/2015/131 United Kingdom, para. 89, 90)

EIA studies are minimum relevant information

Public authorities are required to hold environmental information that as a minimum includes EIA studies in their entirety, including specific methodologies of assessment and modelling techniques used in their preparation, article 5, paragraph 1 (a) and (b). (ACCC/C/2005/15 Romania, para. 27)

Article 5(3): Environmental information to progressively become available in electronic databases

"Easily accessible" electronic databases must be free, minimally restricted, user-friendly, timely updated, and allow immediate retrieval without formal access requests

The requirement that electronic databases be "easily accessible" has several components including that: access is free of charge; registration requirements, if any, are kept to a minimum without the need for personal identification; databases have a user-friendly interface with easy-to-use search functions including, where relevant, the possibility to easily identify all documents relevant to particular procedures; and the databases are systematically organized and well-structured. "Easily accessible" also entails that the information is accessible in a timely fashion. This has at least two aspects. First, the information must be promptly uploaded onto websites once it comes into the public authority's possession. Second, the information must be immediately retrievable when using the database. Information cannot be "easily accessible" from a website if the public effectively has to make an access-to-information request under article 4 to gain access to the information in the database. (ACCC/C/2015/131 United Kingdom, para. 102 f.)

Prompt access to all relevant information that authorities are required to possess and update required

Article 5, paragraph 3 (d), must include, as a minimum, the environmental information relevant to their functions that public authorities are required to possess and update in accordance with article 5, paragraph 1 (a). This means that, in those Parties where national law requires that all documents be submitted to public authorities in electronic form, those documents must be available promptly through electronic databases. However, the obligation in 5, paragraph 3 (d), goes beyond that. In similar vein to the word "progressively" in article 5, paragraph 3, first sentence, the phrase "provided that such information is already available in electronic form" in the final clause of article 5, paragraph 3, must be read in the light of the general availability of electronic documentation and communication in the present day, more than two decades after the Convention's adoption. It is clear to the Committee that this reference should no longer constitute a valid reason for not making available all environmental information that is otherwise covered by article 5, paragraph 3 (d). (ACCC/C/2015/131 United Kingdom, para. 104 f.)

Posting documents after 18 months is not prompt

By posting documents related to a planning application that the public authority was required by law to possess on the online planning register over 18 months after planning permission was granted, the Party concerned fails to promptly make the information accessible and by that fails to comply with article 5, paragraph 3 (d). The information has to be easily accessible in a time frame that facilitates the application of national law implementing article 9, paragraph 2. (ACCC/C/2015/131 United Kingdom, para. 111, 114)

Incomplete database as a "one-stop shop" source for planning documents violates article 5, paragraph 3 (d)

By maintaining an electronic database that the public authority holds out to be a "one-stop shop" to access all documents related to planning applications, when it in fact is not, the Party concerned fails to comply with the requirement in article article 5, paragraph 3, to ensure that the environmental information within the scope of article 5, paragraph 3 (d), is "easily accessible". (ACCC/C/2015/131 United Kingdom, para. 120)

Article 5(7): Information concerning environmental policymaking, dealings with the public under the Convention and the performance of public functions relating to the environment

Whether information "frames" a policy proposal depends on stage of decision-making and its relevance

The question of whether particular information "frames" a policy proposal under article 5, paragraph 7 (a), depends on the stage of the decision-making and on the relevance of that information to the decision-making. Such "framing" information is usually mentioned in the explanatory memorandum or other official justification for the proposal, even if not in the text of the proposal itself. For instance, if the formation of a renewable energy export program appears to be in a rather early stage, a cost-benefit study on that programme, which concludes that exporting renewable energy is "worth exploring further", does not seem to be important in framing a major environmental policy proposal. Therefore, the Party concerned is not yet under an obligation to proactively publish the study. (ACCC/C/2014/112 Ireland, para. 141, 142)

Facts and analyses of facts for environmental policy proposals

There is a key interrelationship between the requirements of article 5(7)(a) and article 7

It is vital that a Party give the public all facts and analyses of facts it considers relevant and important in framing major environmental policy proposals, as well as when plans and programmes relating to the environment are being prepared and discussed. There is in this respect a key interrelationship between the requirements of article 5, paragraph 7 (a), and article 7, as the publication of facts and analyses of facts under the former helps to ensure that the public has the relevant information it needs to make its participation in the related decision-making under article 7 effective. (ACCC/C/2014/105 Hungary, para. 120)

"Framing" refers to information that supports or underpins the decision-making on the policy proposal

Article 5, paragraph 7 (a), requires each Party to proactively disclose the facts and analyses of facts which it considers relevant and important in "framing" the proposal. In determining whether particular information "frames" a policy proposal, the Committee points out that "framing" refers to information that supports or underpins the decision-making on the policy proposal prior to that decision being taken. It does not refer to analyses or other environmental information generated as a result of that environmental policy proposal. That does not mean, however, that article 5, paragraph 7 (a), required the proactive disclosure of all studies, analyses and materials generated by that project, but only the information that, because of its relevance and importance, frames the proposal. (ACCC/C/2014/105 Hungary, para. 122-123)

Article 6 - Public participation in decisions on specific activities

1. Each Party:

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

(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

(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:

(a) the proposed activity and the application on which a decision will be taken;

(b) the nature of possible decisions or the draft decision;

(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;

(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

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

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

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.

4. Each Party shall provide for early public participation, when all options are open and effective public participation can take place.

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.

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(3) and (4). The relevant information shall include at least, and without prejudice to the provisions of Article 4:

(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;

(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

(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 inquiry with the applicant, any comments, information, analyses or opinions that it considers relevant to the proposed activity.

8. Each Party shall ensure that in the decision due account is taken of the outcome of the public participation.

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.

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.

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.

Cross-reference table

Key Cases	Interpretation Highlights
Article 6	
ACCC/C/2008/24 (Spain)	**EIA is not mandatory** under the Convention
ACCC/C/2009/37 (Belarus)	**Environmental expertiza** is a decision-making process
ACCC/C/2009/37 (Belarus)	**Delegating public participation functions to private entities** is possible
ACCC/C/2012/71 (Czech Republic)	**Country of origin** bears ultimate responsibility for ensuring public participation
ACCC/C/2013/90 (United Kingdom)	**Retrospective legalising of an activit**y without public participation is fully against article 6
ACCC/C/2013/92 (Germany)	Article 6 imposes no obligation with regard to decision-making **in another country**
Article 6(1)	
ACCC/C/2007/21 (European Community)	Decision to **provide a loan or financial support** does not fall under article 6
ACCC/C/2010/50 (Czech Republic)	**EIA screening decisions** fall under article 6, paragraph 1 (b)
ACCC/C/2012/71 (Czech Republic)	**Nuclear activities are ultrahazardous** and invariably of wide public concern
Article 6(2)	
ACCC/S/2004/1 and ACCC/C/2004/3 (Ukraine)	**Means of notification** depend on the nature of the project
ACCC/C/2009/43 (Armenia)	**What is early** depends on the size and complexity of the project
ACCC/C/2011/59 (Kazakhstan)	**Mass media notification** is not enough
ACCC/C/2012/71 (Czech Republic)	**Country of origin** bears final responsibility for notifying foreign public
ACCC/C/2013/91 United Kingdom	**Effective notification** requires identifying the public concerned
Article 6(3)	
ACCC/C/2009/37 (Belarus)	**Setting only maximum time frames** for public participation is not reasonable
ACCC/C/2010/50 (Czech Republic)	**No limitation of public participation** to EIA procedure
Article 6(4)	
ACCC/C/2006/16 (Lithuania)	A **clear and transparent sequencing of permitting decision**s is required
ACCC/C/2006/16 (Lithuania)	No meaningful public participation is possible **after** the construction or commencement of the activity
ACCC/C/2006/17 (European Community)	**Tiered decision-making** allows for discretion
ACCC/C/2012/71 (Czech Republic)	Use of an **"envelope" or "black box" approach** may be justified
ACCC/C/2014/104 (Netherlands)	Public participation after **zero or other options were excluded** does not meet requirement "when all options are open"
Article 6(5)	
ACCC/C/2006/16 (Lithuania)	The **developer** cannot be solely relied upon for providing for public participation
Article 6(6)	
ACCC/S/2004/1 and ACCC/C/2004/3 (Ukraine)	Examination is not limited to **environmental impact statement**
ACCC/C/2008/24 (Spain)	**Free for examination** only
ACCC/C/2011/59 (Kazakhstan)	Information should be available from **decision-making authority**
ACCC/C/2012/69 (Romania)	Providing **free access** does not mean providing a copy

Key Cases	Interpretation Highlights
Article 6(7)	
ACCC/C/2006/16 (Lithuania)	**Comments cannot be restricted** to the public concerned or motivated/reasoned proposals
ACCC/C/2009/37 (Belarus)	Public shall be able to submit **comments directly to public authorities**
ACCC/C/2012/71 (Czech Republic)	**Public hearing** is not a requirement
Article 6(8)	
ACCC/S/2004/1 and ACCC/C/2004/3 (Ukraine)	**Too short time frames** do not allow to take any comments into account in a meaningful way
ACCC/C/2008/24 (Spain)	**Due account** does not mean a **right to veto**
ACCC/C/2009/37 (Belarus)	**Reliance solely on developer** is not sufficient
Article 6(9)	
ACCC/C/2004/8 (Armenia)	Access to a decision through **database** is not informing
ACCC/C/2013/98 (Lithuania)	The decision must include the **public's comments and information on how they were treated**
Article 6(10)	
ACCC/C/2009/41 (Slovakia)	Public participation is "**appropriate**" when updating or reconsidering nuclear or similar activities
ACCC/C/2009/41 (Slovakia)	Clause "**mutatis mutandis, and where appropriate**" does not imply complete discretion of a party
ACCC/C/2014/104 (Netherlands)	**Life-time extensions** usually justify "appropriateness" of public participation
ACCC/C/2014/104 (Netherlands)	**Project's duration** is an operating condition
ACCC/C/2014/121 (European Union)	EU obligations under **IED** are limited
ACCC/C/2014/121 (European Union)	**Reconsiderations of permits under IED** may be example of a reconsideration or update of operating conditions in the sense of the Convention
ACCC/C/2016/143 (Czech Republic)	**Periodic safety reviews (PSR) of nuclear reactors** fall under article 6 (10)

Commentary

General Issues under Article 6

1. Environmental assessments

EIA is not mandatory under the Convention

The Convention does not make the EIA a mandatory part of public participation. Public participation is a mandatory part of the EIA, but an EIA is not necessarily a part of public participation. The Committee, however, in principle acknowledges the importance of environmental assessment, whether in the form of an EIA or in the form of an SEA, for the purpose of improving the quality and the effectiveness of public participation. (ACCC/C/2008/24 Spain, para. 82-83)

Even a non-permitting EIA is part of decision-making process

Since the EIA procedure is normally linked closely to decisions that determine whether or not a proposed activity may proceed, it should thus be regarded as part of the decision-making process regardless of the fact that in the Czech legal framework the EIA statement is not a permitting decision per se. Furthermore, according to the evidence before the Committee, the EIA procedure is the principal procedure in the Party's legal framework to address environmental concerns and to allow broad public participation. (ACCC/C/2012/71 Czech Republic, para. 60)

Environmental *expertiza* is a decision-making process

The conclusions of the environmental ***expertiza*** shall be considered as a decision whether to permit a project: OVOS and the ***expertiza*** in Belarus shall be considered jointly as the decision-making process constituting a form of an EIA procedure. (ACCC/C/2009/37 Belarus, para. 74)

Voluntary public environmental *expertiza* is insufficient to implement Article 6

The organization of a public environmental ***expertiza*** is not a mandatory part of the decision-making, and therefore it cannot be considered as a primary tool to ensure implementation with the provisions of article 6. (ACCC/C/2009/37 Belarus, para. 76)

Steps to ensure public participation should commensurate with the size and possible environmental impact of the project

The assessment of whether a Party concerned is in compliance with article 6 depends on whether the steps taken to ensure public participation are commensurate with the size and possible environmental impact of the project. (ACCC/C/2012/68 European Union and United Kingdom, para. 97)

2. Transboundary issues

Country of origin bears ultimate responsibility for ensuring public participation

The Committee stresses that, whether in a domestic or transboundary context, the ultimate responsibility for ensuring that the public participation procedure complies with the requirements of article 6 lies with the competent authorities of the Party of origin. (ACCC/C/2012/71 Czech Republic, para. 69).

In cases which are not subject to a transboundary procedure under another international instrument such as the Espoo Convention, ensuring the effective participation of the public concerned, both domestic and foreign, is the sole responsibility of the competent public authority of the Party of origin. (ACCC/C/2013/91 United Kingdom, para. 71)

Article 6 imposes no obligation with regard to decision-making in another country

It is common ground between the Party concerned and the communicant that the authorities competent to take the decision to permit the Hinkley Point C nuclear power plant are those of the United Kingdom and not Germany. Furthermore, there was no transboundary procedure under the Espoo Convention or EIA Directive within which the German authorities were required to carry out tasks under the joint responsibility of the "concerned Parties". The Committee finds that article 6 does not impose any obligations on Germany with respect to the decision-making to permit the Hinkley Point C nuclear power plant. (ACCC/C/2013/92 Germany, para. 79-80)

Public participation obligations extend to foreign public

The scope of obligations related to public participation in decision-making with respect to proposed activities subject to article 6 is not limited to the public only in the Party concerned. In cases where the area potentially affected by a proposed activity crosses an international border, members of the public in the neighbouring country will be members of the "public concerned" for the purposes of article 6. (ACCC/C/2013/91 United Kingdom, para. 68-69)

Public's interest should be taken into account when considering response to a transboundary notification

In the case of a formal notification from another country, the Committee considers that when deciding whether to enter into a transboundary procedure under applicable international or European Union regimes, a mere awareness by the Party of a strong interest of its own public in the outcome of the decision-making subject to the environmental impact assessment procedure is a relevant consideration to be taken into account, even without a clear request from its public, when deciding whether to enter into the transboundary procedure in order to facilitate the participation of its public in that decision-making. (ACCC/C/2013/92 Germany, para. 91)

3. Multiple decision-making

Application of public participation procedures to multiple permits

In a system of several permitting decisions which provides for public participation only in some or one of those decisions, non-compliance with article 6 depends on the legal effects of each decision. It has to be examined to what extent the specific decision "permits" the activity in question. However, it is not required that a full-scale public participation procedure is carried out on every level of decision-making. A reduced procedure could be in compliance with article 6 if the concerned stage of the permitting decision is not environment-related, of minor or peripheral importance or of limited environmental relevance. On the other hand, carrying out only one public participation procedure in a situation of multiple consecutive permits might only be in compliance with article 6 if one permitting decision embraces all significant environmental implications of the activity in question. (ACCC/C/2006/17 European Community, para. 41, 42)

Significance test for the requirement of public participation with multiple permits

The public participation procedure must cover all consecutive permitting decisions of an activity that have environmental relevance. If there are other permitting decisions related to the same activity that do not include full public participation, and could still significantly change the main features or environmental impacts of the activity, or cover important environmental issues not addressed in the earlier decisions, then this does not meet the requirements of article 6. (ACCC/C/2006/17 European Community, para. 43)

Significance test in EU context

In an EU context, the significance test for the requirement of public participation with multiple permits must take a slightly different approach. The test fails if the relevant EU legislation allows the Member States to make the relevant decisions for a specific activity without proper notification and opportunities for participation. However, the Committee can assess this only on a case-by-case basis. For instance, the Committee found with regard to the multi-layered permit of a landfill in Lithuania that under both the EIA Directive and the Directive on Integrated Pollution Prevention and Control public participation is mandatory in case of the two main permitting decisions applicable to landfills. Thus, in this specific regard the EU legal framework complies with the Convention. (ACCC/C/2006/17 European Community, para. 44-46)

4. Other general issues

Retrospective legalising of an activity without public participation is fully against Article 6

When activities that (a) may have significant environmental effects become immune from enforcement action four years after they have been substantially completed and (b) are retrospectively permitted (without any environmental assessment or any environmental conditions being included in the permit), without any opportunity for the public to participate in that decision-making, they are fundamentally inconsistent with the requirement to ensure effective public participation (and access to justice) under the Convention. (ACCC/C/2013/90 United Kingdom, para. 111-113)

No rubber-stamping of projects of "national importance"

With respect to the role of public authorities, the Committee finds the view of the Party concerned that when issuing EIA/SEA decisions the competent authorities should not "question" a project/investment proposal that was designated by a superior authority as being of national importance to be out of step with the Convention. If the role of authorities when issuing EIA/SEA decisions was to merely rubber-stamp the policy decisions taken at a higher level, it would effectively deprive the environmental decision-making of any significance and make public participation in such procedures meaningless. (ACCC/C/2012/76 Bulgaria, para. 66)

Environmental authorities are not protected by Article 6

The exclusion of environmental authorities from the decision-making falls outside the scope of the Convention. (ACCC/C/2004/4 Hungary, para. 15)

Delegating public participation functions to private entities is possible

While reliance on the developer in providing for public participation raises doubts as to whether such an arrangement is fully in line with the Convention, it does 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. 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). (ACCC/C/2009/37 Belarus, para. 77-78)

Impartiality of consultants

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. (ACCC/C/2009/37 Belarus, para. 80)

General spatial plans do not qualify as article 6 decisions

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. (ACCC/C/2011/58 Bulgaria, para. 63)

Providing the public with access to justice cannot compensate for failing to comply with the requirements of Articles 6, 7 or 8

The Committee, without entering into the merits of the issue, emphasizes however that, contrary to what the Party concerned appears to suggest, providing the public with access to justice cannot compensate for failing to comply with the requirements of articles 6, 7 or 8. (ACCC/C/2014/121 European Union, para. 79)

No closed groups

Any discussions in closed groups (for example, within certain professional groups or employees of certain enterprises) or in closed advisory groups cannot 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. (ACCC/C/2009/44 Belarus, para. 84)

The public participation procedure must include both NGOs and individual members of the public; it must be based on objective criteria and not on discretionary power to pick individual representatives of certain NGOs or other stakeholder groups. In this context, participation in closed advisory groups cannot be considered as public participation meeting the requirements of the Convention. (ACCC/C/2010/51 Romania, para. 109) in the decision-making, including the public concerned outside its territory, have a reasonable chance to learn about the proposed activities and their possibilities to participate. (ACCC/C/2012/71 Czech Republic, para. 74)

Article 6(1): Scope of application (activities)

Scope of Article 6(1) extends to all decisions

All sorts of decisions regarding the permit of activities that are listed in Annex I are subject to the full range of public participation procedures under article 6. (ACCC/C/2006/16 Lithuania, para. 55)

Delimitation of plan and permit decision: Article 6 / Article 7

Detailed plans that 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 can generate such legal effects as to constitute a permit decision under article 6. The delimitation of plan (article 7) and permit (article 6) does not depend on the label the decision in question is given by the national authority, but on its function and legal effects. (ACCC/C/2006/16 Lithuania, para. 58)

1. Activities listed in annex I

Nuclear power plant is no local project

A project of such a magnitude and potential environmental impact as a nuclear power plant can by no means be subjected to participatory procedures designed for the local level only. Furthermore, the designation of a project as "national" or "local" should be the responsibility of the public authorities and not of the developer. (ACCC/C/2009/44 Belarus, para. 62)

Nuclear activities are ultrahazardous and invariably of wide public concern

The Committee is convinced that in the case of decision-making on ultrahazardous activities like a nuclear power plant, being activities invariably of wide public concern, particular attention must be taken at the stage of identifying the public concerned and selecting the means of notification in order to ensure that all those who potentially could be concerned

2. Other activities which may have a significant effect on the environment

EIA screening decisions fall under Article 6(1)(b)

An EIA screening decision contains for each case individually 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. Accordingly, the outcome of the EIA screening process constitutes a determination under article 6, paragraph 1 (b). (ACCC/C/2010/50 Czech Republic, para. 82)

EIA screening determination serves as Article 6(1)(b) determination

A "positive" EIA screening determination is a determination that the activity is likely to have significant effects on the environment and thus an EIA must be carried out. In line with the above findings, it is also a determination under article 6, paragraph 1 (b), that the activity is subject to the provisions of article 6. (ACCC/C/2013/90 United Kingdom, para. 83)
A negative screening opinion is a determination by the Party concerned under article 6, paragraph 1 (b), that the provisions on public participation in article 6 do not apply to the proposed activity. (ACCC/C/2015/131 United Kingdom, para. 122)

Appropriate assessment determination under Habitats Directive serves as Article 6(1)(b) determination

The decision to carry out an appropriate assessment under article 6, paragraph 3, of the Habitats Directive is therefore a determination that an activity is likely to have a significant effect on the Special Area of Conservation. It is likewise a determination under article 6, paragraph 1 (b), that the activity is subject to the provisions of article 6. Importantly, it is not the outcome of the appropriate assessment that is the determination for the purposes of article 6, paragraph 1 (b), but the fact that it is determined that an appropriate assessment must be carried out. (ACCC/C/2013/90 United Kingdom, para. 84)

Decision to provide a loan or financial support does not fall under Article 6

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. (ACCC/C/2007/21 European Community, para. 36)

Setup of preconditions and tender launch do not amount to permit decision

Resolutions to choose modalities, location, concessionaires or specific forms of processing that are instrumental to the formation of a specific installation as well as a resolution to launch a tender procedure do not necessarily imply that a permit decision according to article 6, paragraph 1, has been taken. This is particularly not the case if the procedural law provides a framework that requires a permit from a competent authority at a later stage in the process. (ACCC/C/2007/22 France, para. 32, 34)

Waste being used for energy recovery in cement plant is both an update and activity change

The expansion of the waste to be used for energy recovery in a cement plant is both an update in the operating conditions of the cement activity pursuant to article 6, paragraph 10, and a change of the activity within the meaning of paragraph 22 of annex I, subject to article 6, paragraph 1 (b). (ACCC/C/2014/99 Spain, para. 86)

Hybrid bill can be a permit

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, 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.

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.
(ACCC/C/2011/61 United Kingdom, para. 53, 56)

Article 6(2): Notification of the public

Informing of umbrella decisions

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. (ACCC/C/2005/12 Albania, para. 63)

Notifying and involving foreign public

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. (ACCC/S/2004/1 and ACCC/C/2004/3 Ukraine, para. 28)

For the above reasons, the Committee finds that, by not ensuring that the public concerned in Germany had a reasonable chance to learn about the proposed activity and the opportunities for the public to participate in the respective decision-making, the Party concerned failed to comply with article 6, paragraph 2, with regard to the decision-making on Hinkley Point C. (ACCC/C/2013/91 United Kingdom, para. 84)

The Committee also finds that, by not providing a clear requirement in its legal framework to ensure that public authorities, when selecting means of notifying the public, are bound to select such means which, bearing in mind the nature of the proposed activity, would ensure that all those who potentially could be concerned, including the public concerned outside its territory, have a reasonable chance to learn about the proposed activity, the Party concerned fails to comply with article 6, paragraph 2, with respect to its legal framework. (ACCC/C/2013/91 United Kingdom, para. 85)

Country of origin bears final responsibility for notifying foreign public

Ultimately it is for the competent public authorities of the Party of origin to ensure that the public participation procedure complies with the requirements of article 6, also in situations where the foreign public is involved. In cases that are subject to a transboundary procedure under an international treaty, the Party of origin remains responsible under the Convention for the adequate, timely and effective notification of the public concerned in the affected country, either by carrying out the notification itself or by making the necessary efforts to ensure that the affected Party has done so effectively. (ACCC/C/2012/71 Czech Republic, para. 72)

Residents are part of the "public concerned"

Residents living along a proposed route of power line construction are among the "public concerned" and have to receive notice of a hearing, including all the details required under article 6, paragraph 2. (ACCC/C/2004/2 Kazakhstan, para. 23)

Impact of failure to comply with Article 6(2) on other obligations

The failure to notify members of the public concerned in accordance with article 6, paragraph 2, entails non-compliance with other provisions set out in article 6. As a consequence, members of the public do not receive notice in sufficient time as required under article 6, paragraph 3, they do not have the opportunity for early and effective participation according to article 6, paragraph 4, are able to provide input in accordance with article 6, paragraph 7, or have their views taken into account as required by article 6, paragraph 8. (ACCC/C/2004/2 Kazakhstan, para. 24)

1. Early in the process

Rules must clearly require timely and effective notice

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, in terms of timely notification. (ACCC/C/2011/59 Kazakhstan, para. 48, 50)

What is early depends on the size and complexity of the project

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. (ACCC/C/2009/43 Armenia, para. 65)

One week to examine documentation is not enough

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. (ACCC/C/2009/43 Armenia, para. 67)

No objection raised does not mean the Convention is respected

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. (ACCC/C/2009/43 Armenia, para. 67)

2. Adequate, timely and effective manner

"Adequate, timely and effective manner" in EU law

Both the EIA Directive and the Directive on Integrated Pollution Prevention and Control provide for early and effective notification. It is not necessary that the relevant EU legislation repeats the same formulation of the Convention, as long as it ensures adequate implementation of the Convention. (ACCC/C/2006/17 European Community, para. 47-50)

The public notice has to describe the nature of the possible decision in order to be adequate

When the public is informed about 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, this notification cannot be considered as "adequate" and properly describing "the nature of possible decisions" as required by the Convention. (ACCC/C/2006/16 Lithuania, para. 66)

Incorrect information is not "adequate and effective"

The obligation in 6, paragraph 2, to provide "adequate and effective" notice, requires that the information in the notice is correct, for instance the public concerned must be correctly notified about the time frame during which relevant documentation is available and the deadline for comments to be submitted. The public must be able to rely on this information and should not have to double-check that it is correct. (ACCC/C/2013/98 Lithuania, para. 101 f)

Example of adequate public notice

Adequate public notice is given when the public authority publishes a public inquiry notice in two local daily newspapers, information about the decision-making procedure is made available on the public authority's website, and the notice contains information about the dates and locations of the inquiries, as well as the places where the information is publicly available. (ACCC/C/2007/22 France, para. 42)

3. Effective means of notification

Placement of public notice must have a sufficient public reach to count as effective informing

The public is informed in an "effective manner" about an activity, when all those who potentially could be concerned have a reasonable chance to learn about proposed activities and their possibilities to participate. An effective manner would be to publish the information about possibilities to participate in the EIA procedure in local press as a popular daily local newspaper, rather than in a weekly official journal. If all local newspapers are issued only on a weekly basis, the authority must choose the publication with more copies in circulation. (ACCC/C/2006/16 Lithuania, para. 67)

Mass media notification is not enough

The Committee finds that 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. (ACCC/C/2011/59 Kazakhstan, para. 66)

Whether the notification is effective depends on the particular means employed

The circumstances of the case 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. (ACCC/C/2009/43 Armenia, para. 70)

Means of notification depend on the nature of the project

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. (ACCC/S/2004/1 and ACCC/C/2004/3 Ukraine, para. 28)

Effective methods must be used for notification

Public authorities should ensure that they use effective methods of notification to engage the public. If experience shows that the chosen methods do not lead to the participation of the public concerned, those methods should be reconsidered. A lack of attendance alone does not necessarily indicate that the notice was ineffective. However, non-compliance with article 6, paragraph 2, may be found if there is evidence that the methods used failed to ensure effective notification. (ACCC/C/2013/98 Lithuania, para. 98)

Press articles are not a public notice

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. (ACCC/C/2009/37 Belarus, para. 86)

Means of notification should correspond to project nature

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. (ACCC/C/2012/68 European Union and United Kingdom, para. 97)

The Committee finds that, by not providing a clear requirement in its legal framework to ensure that public authorities, when selecting means of notifying the public, are bound to select such means which, bearing in mind the nature of the proposed activity, would ensure that all those who potentially could be concerned, including the public outside its territory, have a reasonable chance to learn about the proposed activity, the Party concerned has failed to comply with article 6, paragraph 2, with respect to its legal framework. (ACCC/C/2012/71 Czech Republic, para. 79)

Web-site notice is not enough

Moreover, notice on the Ministry's web page would not in itself be enough in order to ensure effective notification of the public, as it is not reasonable to expect members of the public to proactively check the Ministry's website on a regular basis just in case at some point there is a decision-making procedure of concern to them. (ACCC/C/2012/71 Czech Republic, para. 76)

Effective notification requires identifying the public concerned

While not explicitly mentioned in article 6, paragraph 2, it goes without saying that proper identification of the public concerned is an essential precondition for ensuring the correct implementation of that provision. In order to effectively notify the public concerned, it is first necessary to identify who the public concerned may include. (ACCC/C/2013/91 United Kingdom, para. 78)

Enabling self-identification of public concerned is a good practice

The Committee commends the approach adopted in the 2008 Planning Act pursuant to which members of the public may also self-enrol as among the public concerned. (ACCC/C/2013/91 United Kingdom, para. 78)

4. Notifying about nuclear and other ultra-hazardous activities

Ultrahazardous activities require particular attention and choice of means of notification

The Committee is convinced that in the case of decision-making on ultrahazardous activities like a nuclear power plant, being activities invariably of wide public concern, particular attention must be taken at the stage of identifying the public concerned and selecting the means of notification in order to ensure that all those who potentially could be concerned in the decision-making, including the public concerned outside its territory, have a reasonable chance to learn about the proposed activities and their possibilities to participate. (ACCC/C/2012/71 Czech Republic, para. 74)

Relying on the local self-government and local means is insufficient for ultrahazardous activities

More generally, the Committee notes that, while a legal framework that chiefly relies on the affected territorial self-governing units using locally specific ways of informing the public may well be adequate for activities whose potential effect on the environment would be confined to that locality, it may be insufficient for ultrahazardous activities that are invariably of wide public concern (whether specific activities subject to article 6 or in the context of plans and programmes subject to article 7). (ACCC/C/2012/71 Czech Republic, para. 76)

Notifying the public in emergency zones around nuclear power stations is not enough

The Committee finds that by requiring that only the public living in the "municipalities whose administrative territory includes an internal or external part of the emergency planning zone" (i.e., within a radius of 13 kilometres) be notified, the Party concerned failed to ensure that all the public that potentially could be concerned had a reasonable chance to learn about proposed activities. (ACCC/C/2012/71 Czech Republic, para. 77)

5. Minimum information to be included in the public notice

Notifying only time and venue of a public hearing is insufficient

The Committee notes that only very basic information about the hearing, namely its timing and venue, was provided in advance. If a hearing is to be held, the public concerned should be notified of its opportunities to participate in that hearing, e.g., the format of the hearing, the format in which the public may make interventions, and any time limits on those interventions. This is particularly important in the case of a foreign public concerned. (ACCC/C/2012/71 Czech Republic, para. 80)

Requirement to indicate availability of information does not regulate what information should be available

Article 6, paragraph 2 (d) (vi), does not, however, itself regulate what environmental information relevant to the proposed activity is to be made available. Rather, that is addressed in article 6, paragraph 6, which obliges the competent public authorities to give the public concerned access to all available information relevant to the decision-making process. (ACCC/C/2013/89 Slovakia, para. 77)

Name and email address of contact point have to be provided

Adequate information under article 6, paragraph 2 (d) (vi) and (v), requires a specific contact point in the public authority to be named and preferably an email address to be provided. (ACCC/S/2015/2 Belarus, para. 94)

In a transboundary context, notice of a hearing has to be provided in national language

In order to be effective, the notice of a public hearing in a transboundary context should be published in the media in the language of the foreign public concerned as well as in the language of the Party of origin. (ACCC/S/2015/2 Belarus, para. 107)

Article 6(3): Time frames for public participation

1. (Un-) reasonable duration of public participation (specific examples)

Timeframe of 60 or 90 days can be sufficient

The Committee considers that 60 working days was a reasonable time frame in the present case to analyse over 6,000 pages of complex documentation related to an environmental impact study. (ACCC/C/2021/186 Portugal, para. 142)

An allocated timeframe of 90 days for the decision-making has been regarded as sufficient also to provide for public involvement regarding the construction of expressways. (ACCC/C/2004/4 Hungary, para. 12)

Six weeks can be sufficient

Six weeks for the public to inspect the provided documents and prepare for the public inquiry in the case of the permitting of a domestic waste disposal plant, and 45 days for public participation and for the public to submit comments, information, analyses or opinions to the proposed activities meet the requirement of reasonable time frames according to article 6, paragraph 3. (ACCC/C/2007/22 France, para. 44)

10 working days for public participation are not enough for a decision on a major land fill or mining project

In order to meet the requirement to provide "reasonable time frames", 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. Time frames have to be adapted to the complexity and impacts of the projects, with longer time frames for more complex projects. The time frame of only 10 working days 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. (ACCC/C/2006/16 Lithuania, para. 69, 70)

The Committee considers that 10 working days is manifestly not a reasonable time frame for the public to participate in a decision-making process involving 1,776 files of technical documentation. (ACCC/C/2021/186 Portugal, para. 146)

Three days for public participation is never enough

If members of the public can get access to the preparation documents of a public hearing only three days in advance of the hearing, such a time frame can under no circumstances be considered a reasonable time frame to get acquainted with the documentation and participate effectively. (ACCC/C/2013/88 Kazakhstan, para. 103)

20 working days is the minimum time frame to inspect EIA report and submit comments

10 working days to inspect the EIA report and comment before the hearing and another 10 working days after the hearing to comment should be considered the minimum time frame from which the setting of longer time frames is not only possible but in fact recommended for proposed activities with more significant environmental impacts or affecting a large number of people. That should be made clear by accompanying guidance to the national legal framework on public participation. A time frame of 19–25 working days to prepare and provide comments on an EIA report on the construction of an overhead power line can be reasonable. (ACCC/C/2013/98 Lithuania, para. 103, 104, 106)

20 working days to comment special plan and SEA report on construction of overhead power line are sufficient

The time frames of 20 working days each for the public to submit comments on the special plan concept and the SEA report concerning the construction of an overhead power line is sufficient. (ACCC/C/2013/98 Lithuania, para. 106)

17 hour long public hearing is not a reasonable

Concerning the hearing's duration, neither party disputes that the hearing lasted from 10 a.m. until 3 a.m. the next morning (i.e., 17 hours), the Committee considers that organizing the hearing in such a manner was not acceptable. Article 6, paragraph 3, requires that the time frame for each phase of the public participation procedure must be reasonable and enable the public to participate effectively. The public cannot be expected to participate effectively if its opportunity to be heard comes only after it has been already sitting in the hearing for more than a full working day. Nor does it ensure that the public authorities present are in a fit state to take due account of that participation. (ACCC/C/2012/71 Czech Republic, para. 88)

2. Timing of participation

Hearing after start of construction

The requirement of setting up "reasonable time-frames" for public participation procedure is not met if the construction of a project starts before a hearing as part of the public participation procedure has taken place. (ACCC/C/2004/2 Kazakhstan, para. 25)

Public participation during Christmas or official holidays

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. (ACCC/C/2008/24 Spain, para. 92)

Holidays in other countries may be ignored

Moreover, holiday periods in countries of the region differ, especially during summer. The Committee considers it would be unworkable if the Convention required Parties to entirely avoid organizing public participation procedures during other Parties' holiday periods. (ACCC/C/2012/71 Czech Republic, para. 85)

3. Different phases and other issues

Setting only maximum time frames is not reasonable

An approach (whereby only maximum time frames for public participation are set) 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 cannot be considered as meeting the requirement of setting reasonable time frames under article 6, paragraph 3. (ACCC/C/2009/37 Belarus, para. 90)

No limitation of public participation to EIA procedure

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. A limitation of the rights of NGOs to participate after the EIA stage, and of individuals, which may only participate if their property rights are directly affected does not comply with article 6, paragraph 3, as it constitutes a failure to provide for effective public participation during the whole decision-making process. (ACCC/C/2010/50 Czech Republic, para. 67)

Tiered decision-making procedure: the importance of each stage needs to be assessed

The Party concerned indicates that a large amount of the EIA documentation (namely eight of its volumes) deals with the archaeological patrimony of the proposed Rosia Montana site. The Committee considers that this clearly leads to a conclusion that the archaeological site and its legal status are not of minor or peripheral importance. In the Committee's view the issuance of the archaeological discharge certificate was a fundamental step in the decision-making process which resulted in a significant change of the subject matter of the EIA. In the present case there is a clear relation between the two procedures: the EIA and the procedure for issuing the archaeological discharge certificate. Thus, in this case the two decisions were part of a "tiered decision-making procedure". (ACCC/C/2012/69 Romania, para. 81)

No tacit approval can be envisaged when consultation on revised EIA documentation is longer than 10 days

Accordingly, the Committee finds that, by maintaining a legal framework under which revised EIA documentation is granted tacit approval if the public is given longer than 10 working days to comment on the revised documentation, the Party concerned fails to comply with the requirement in article 6(3) that public participation procedures include reasonable time frames for the public to prepare and participate effectively. (ACCC/C/2021/186 Portugal, para. 150)

Article 6(4): Early public participation

1. When all options are open

A reduced EIA procedure still has to comply with the Convention

If national law reduces or curtails public participation procedures in EIA, the provisions still have to comply with the requirement of early public participation when all options are open. However, non-compliance is hard to assess if the national regulation under scrutiny has not yet been implemented in practice by national authorities. (ACCC/C/2004/4 Hungary, para. 11)

Use of an "envelope" or "black box" approach may be justified

The Committee finds that, so long as the public concerned, including the public concerned in Germany, will be provided with the opportunity to participate effectively in the stage of the decision-making at which the exact designs or technical specifications (including the risk factors and potential environmental impacts of each) are under consideration, the use of an "envelope" or "black box" approach at the EIA stage does not, in itself, constitute non-compliance with the requirement in article 6, paragraph 4, to provide for early public participation when all options are open. (ACCC/C/2012/71 Czech Republic, para. 93)

It must be possible for the authority to turn down the application

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. Only the formal de jure possibility to turn down an application is not enough if in practice in the concerned jurisdiction an application never or hardly ever is rejected in comparable circumstances. If the scope of the permitting authority is already limited due to earlier decisions, to comply with the Convention the Party concerned should have also ensured public participation during the earlier stages of decision-making. (ACCC/C/2007/22 France, para. 38, 39)

Public participation after zero or other options were excluded does not meet requirement "when all options are open"

The Committee further considers that even if, as the Party asserts, the 2006 Covenant formally limited the duration of the licence from an indefinite period to 2033, it thereby agreed the date on when the plant was to cease operation, which was an important aspect of the decision-making procedure concerning the nuclear power plant.The possibility for the competent authorities to refuse to grant the 2013 licence amendment solely on the grounds of nuclear safety does not equate to all options being open in accordance with article 6, paragraph 4. (ACCC/C/2014/104 Netherlands, para. 74-82)

Limitation of public participation by preceding inter-state consultations

Limiting the options in practice for the location of the border crossing of an overhead power line by setting that location through inter-state consultations before the public participation procedures had been concluded, precludes the possibility for the public to participate when all options on the crossing point were open. (ACCC/C/2013/98 Lithuania, para. 115)

All options have to clearly appear open to the public concerned

In order to comply with article 6, paragraph 4, it must be ensured that all options are not just legally open but also can clearly be seen to be open to the public concerned. Selecting the title "overhead power line" for the decree and listing only characteristics of an above-ground transmission line in the public notice and brochures conveys a strong message to the public concerned that overhead technology had already been selected and thus the requirements of article 6, paragraph 4, are not met, even if it is still possible to opt for an underground alternative. (ACCC/C/2013/98 Lithuania, para. 121)

Authorities may favour certain options but must consider and justify alternatives

Nothing in article 6, paragraph 4, precludes the right of the competent authorities to select their preferred option (or options) and promote it (or them); nor does it require that all options studied by the competent authorities, for example those considered in passing at an early exploratory stage, be presented to the public. However, it does imply that members of the public should be able in their comments to challenge the options put forward in the draft plan and to propose other options. This has a bearing on the obligation in article 6, paragraph 8, to take due account of the outcome of the public participation as it requires the competent authorities to consider the option or options suggested by the public and provide reasons for not accepting them. (ACCC/C/2014/100 United Kingdom, para. 84)

No preclusion of alternatives due to potential funding

It is crucial that potential funding, such as European funding agreements, does not preclude proper consideration of alternatives because this could deprive public participation of any meaning. (ACCC/C/2013/98 Lithuania, para. 124)

Municipal decision to "cooperate" with the developer does not exclude locational alternatives

The Committee does not consider that the "in principle" decision of the municipality to "cooperate" with the developer regarding Autena wind park, as noted in that letter, demonstrates that it was no longer possible legally and factually for the province to decide not to include Autena polder as a potential wind park location in the Provincial Spatial Structural Vision first partial revision following the public participation procedure. (ACCC/C/2020/181 Netherlands, para. 127)

2. Multiple decision-making

A clear and transparent sequencing of permitting decisions is required

State parties have to put in place a clear and transparent sequencing of permitting decisions, so that it is clear to the public what is being decided and which options are under consideration at each stage. (ACCC/C/2006/16 Lithuania, para. 76)

Tiered decision-making allows some discretion

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. Parties have a certain range of discretion as to which options are discussed at what stage of decision-making. (ACCC/C/2006/17 European Community, para. 51)

Providing public participation at later stages is not enough if no public participation took place at earlier stages

Once a decision to permit a proposed activity in a certain location has already been taken without public involvement, providing for such involvement in the other decision-making stages that will follow 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". (ACCC/C/2005/12 Albania, para. 79)

Early public participation when all options are open takes place within a tiered decision-making process.

The requirement for "early public participation when all options are open" applies to all stages of decision-making, which can involve consecutive strategic decisions under article 7 (such as policies, plans and programmes) and following individual decisions under article 6 (such as authorizing basic parameters, location, technical design or technological details related to specific environmental standards). Whenever during these consecutive stages public participation is required under the Convention, "it should be provided early in the procedure, when all options are open and effective public participation can take place". This requirement is not met, if options are already ruled out before the public participation takes place (e.g. whether to build a landfill or a waste incinerator) and only two possible locations are presented (ACCC/C/2006/16 Lithuania, para. 71, 72; ACCC/C/2006/17 European Community, para. 51, 52)

Public participation must be carried out before implementing a production-sharing agreement

Establishing a legal framework in which public participation under article 6 of the Convention will only be carried out once a production-sharing agreement is already at the implementation stage fails to comply with the requirement of early participation when all options are open according to article 6, paragraph 4. (ACCC/C/2014/118 Ukraine, para. 133)

3. After the construction started or completed

No meaningful public participation is possible after the construction or commencement of the activity

The public has to have the opportunity to participate in the decision-making process before the events on the ground have effectively eliminated alternative options. If a permitting process for integrated pollution prevention and control starts after the construction is finalized, this can only be in compliance with the Convention if the public already has had the opportunity to participate in the decision-making on those technological choices at an earlier stage. (ACCC/C/2006/16 Lithuania, para. 73, 74; ACCC/C/2006/17 European Community, para. 53-55)

For an activity likely to have a significant effect on the environment, such as the lagoons in the present case, it can never meet the requirement of article 6, paragraph 4, for "early public participation, when all options are open" for the decision to permit the activity to be taken after the activity has already commenced or the construction has taken place. (ACCC/C/2013/90 United Kingdom, para. 94)

Hearing after start of construction is too late

The requirement of ensuring "early public participation when all options are open" is not met if the construction of a project starts before a hearing as part of the public participation procedure has taken place. (ACCC/C/2004/2 Kazakhstan, para. 25)

Public participation after the construction was completed is not effective

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. 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.

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 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.
(ACCC/C/2009/41 Slovakia, para. 63-64)

Article 6(5): Developers (permit applicants) and the public

The developer cannot be solely relied upon for providing for public participation

It is implicit in the provisions of article 6, paragraph 2 (d) (iv) and (v), and article 6, paragraph 6, that relevant information for public participation should be available directly from the public authority, and that comments should be submitted to the public authority. Reliance solely on the developer for providing for public participation is not in line with these provisions. (ACCC/C/2006/16 Lithuania, para. 78)

Developer's involvement under control of the public authorities

Observations regarding the role of the developers (project proponents) (See "General Issues" above) 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.
(ACCC/C/2009/37 Belarus, para. 81)

Article 6(6): Access to all information relevant for decision-making

1. Access for examination

Information should be provided by decision-making authority

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.
(ACCC/C/2011/59 Kazakhstan, para. 54)

Exclusive reliance on the developer

An approach whereby the obligation to provide the public with the relevant information rests only with the developer is not in line with the Convention. (ACCC/C/2009/37 Belarus, para. 92)

Only during public participation procedure

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. (ACCC/C/2008/24 Spain, para. 96)

Close to place or residence or entirely in electronic form

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. (ACCC/C/2009/36 Spain, para. 61)

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. (ACCC/C/2009/36 Spain, para. 62)

Providing free access does not mean providing a copy

Providing free access to examine the requested documentation does not amount to providing a copy of the requested information. (ACCC/C/2012/69 Romania, para. 55)

2. All relevant information

Examination is not limited to environmental impact statement

Obligation to provide the public concerned with an opportunity to examine relevant details is certainly not limited to publication of an environmental impact statement. Had some of the requested information fallen outside the scope of article 6, paragraph 6, it would still be covered by the provisions of article 4, regulating access to information upon request. (ACCC/S/2004/1 and ACCC/C/2004/3 Ukraine, para. 32)

Information on technology to be used may be relevant

Information regarding the specific technology to be used is clearly of relevance for the decision-making on whether to permit the nuclear power plant and is therefore subject to the requirements of article 6, paragraph 6. (ACCC/C/2012/71 Czech Republic, para. 95)

Not only summary of comments

It does not comply with the Convention if the authority responsible for taking the decision is 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. (ACCC/C/2009/44 Belarus, para. 64)

Full EIA report has to be disclosed

The public has to be informed in due time of the possibility of examining the full EIA report, which is a critical document containing important details about a proposed project. This is not the case if the public is only informed about the existence of the full EIA report during the public hearing. (ACCC/C/2009/44 Belarus, para. 80)

The term "options" in Article 6(4) is wider than "alternatives studied" in Article 6(6)

The Committee considers the term "options" used in 6, paragraph 4, to be wider than the term "alternatives studied" found in article 6, paragraph 6 (e). "Options" refers to all the possible courses of action that the decision-maker may choose or the public may propose, including the "zero option" (as stated in ACCC/C/2009/38 (United Kingdom), para. 82).

The "alternatives studied" are those options that were elaborated and studied by the applicant. (ACCC/C/2014/100 United Kingdom, para. 101)

All relevant information must be made available at the start of public participation procedure

If, at the commencement of the public participation procedure, the competent public authority holds any information relevant to the decision-making and does not make it available at the start of the public participation procedure, that would not meet the requirements of article 6, paragraph 6. (ACCC/C/2021/186 Portugal, para. 157)

3. Free of charge

Free for examination only

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. (ACCC/C/2008/24 Spain, para. 95)

4. Minimum list of information to be provided

Limited scope of EIA

Limiting an EIA procedure to the consideration of waste and pollution issues does not necessarily address all significant effects of the proposed activity on the environment. Article 6 could be significantly undermined by limiting the scope of a permitting process to some types of environmental effects. (ACCC/C/2004/2 Kazakhstan, para. 30)

Minimal list of must-to-provide information cannot be exhaustive

Accordingly, the Committee finds that, by maintaining a legal framework that does not require all documents relevant to the decision-making held at that time by the competent public authority to be made accessible to the public concerned during the public participation procedure, the Party concerned fails to comply with article 6, paragraph 6. (ACCC/C/2021/186 Portugal, para. 166)

Article 6(7): Submitting comments

1. Any comments

Comments cannot be restricted to the public concerned or motivated/reasoned proposals

According to article 6, paragraph 7, the public should be allowed to submit any comments, information, analyses or opinions in public participation procedures. Thus, comments cannot be restricted to the public concerned or only to motivated proposals by the public. (ACCC/C/2006/16 Lithuania, para. 80)

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. (ACCC/C/2011/59 Kazakhstan, para. 59)

2. In writing

Public shall be able to submit comments directly to public authorities

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. (ACCC/C/2009/37 Belarus, para. 94)

Establishing a system whereby comments submitted by the public during the EIA procedure are to be in the first instance submitted to an entity not required to be independent from the developer, and not to the competent public authority itself, is non-compliant with article 6, paragraph 7. (ACCC/C/2013/98 Lithuania, para. 137)

Public discussions via TV or newspapers

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. (ACCC/C/2009/37 Belarus, para. 95)

Public should be able to submit comments on the proposed activity itself

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 article 6, paragraph 7. (ACCC/C/2011/59 Kazakhstan, para. 57)

Period for written comments should preferably extend beyond public hearing

This means that there was no opportunity for the public concerned to submit written comments in the light of what it learned at the hearing itself. The Committee notes that preferably the time frame for submitting written comments in a public participation procedure should extend for a reasonable time beyond the date of any public hearing in order that the public concerned has the possibility to submit comments in the light of what it learns at the hearing. (ACCC/C/2012/71 Czech Republic, para. 105)

3. Public hearings

Public hearing is not a requirement

Article 6, paragraph 7, of the Convention does not require the hearing to be a vehicle through which public authorities must demonstrate how they have already taken of the public's written comments. Rather, the hearing is an opportunity for the public to be heard and also offers the opportunity for the applicant to present the project and respond to questions and comments. The Committee notes that neither Czech nor international law require that the country of origin organize a formal hearing in the territory of the affected country. Moreover, article 6, paragraph 7, does not require a hearing to be conducted in all cases, but, rather, as appropriate, bearing in mind the need to ensure effective public participation in the decision-making.
(ACCC/C/2012/71 Czech Republic, para. 87, 110)

Parties have wide discretion on how hearings are conducted

The discretion granted to Parties as to how hearings should be conducted includes the relative speaking orders of experts, officials and others presenting the activity and representatives of affected local communities. It also includes the hearing structure itself, e.g., separate sessions for questions and comments or discussion. The Committee therefore considers that limiting the number of questions or comments to three questions or comments per turn is a legitimate way to structure a hearing. (ACCC/C/2012/71 Czech Republic, para. 101)

Rules for hearings, if any, shall be clear, transparent and non-discriminatory

Parties may choose to codify the rules for public hearings in detail in their legislation or by way of established administrative practice. Alternatively, the rules for public hearings may be set case by case by the authorities responsible for each hearing. Whichever approach is taken, Parties must ensure that the rules to be applied are clear, transparent and consistent, as required by article 3, paragraph 1, and non-discriminatory, as required by article 3, paragraph 9. Furthermore, in accordance with article 3, paragraph 2, Parties should endeavour to ensure that officials provide guidance to the public so that it knows and understands the rules to be applied during the hearing in advance. As mentioned above, this is of particular importance in the case of the foreign public concerned, which may be entirely unfamiliar with how hearings are conducted in the Party of origin. (ACCC/C/2012/71 Czech Republic, para. 100)

No limitation in hearing to comments by the public

The organizer of a hearing is by no means 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. (ACCC/C/2009/44 Belarus, para. 82)

Hearing on work-day during working hours problematic

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. (ACCC/C/2009/44 Belarus, para. 83)

Police and security officers at public hearings

If private security services or police officers are to be used at public hearings to maintain public order, they must in no way restrict the opportunity of the public to participate in the decision-making procedure and submit comments. (ACCC/C/2013/88 Kazakhstan, para. 110)

Article 6(8): Taking due account of public participation

1. Due account

Due account ≠ veto

Requirement to take due account of the outcome of public participation does not amount to the right of the public to veto the decision. (ACCC/C/2008/24 Spain, para. 98)

Due account ≠ acceptance by local community

Article 6, paragraph 8, 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. (ACCC/C/2008/24 Spain, para. 98)

Not all comments to be accepted, but all seriously considered

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. (ACCC/C/2008/24 Spain, para. 99)

Due account not only to the outcome of EIA procedures

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. Czech law does not require that the authorities issuing the permitting decision fully uphold the content of the EIA opinion. While the Czech EIA procedure provides for public participation, the Committee considers that the legal framework does not ensure that in the permitting decision due account is taken of the outcome of public participation. (ACCC/C/2010/50 Czech Republic, para. 71)

Addressing comments in EIA decision meets requirement of due account

With respect to ensuring that the legal framework of the Party concerned establishes a clear requirement to take due account of the outcome of public participation, the Committee considers that, in the context of the EIA procedure, this requirement is met through annexes 5 and 6 to the 2015 EIA Act, which state that the EIA statement must include a "settlement" of the comments received on the notification and on the expert report. (ACCC/C/2013/106 Czech Republic, para. 94)

No comments can be considered to "count less"

The Committee emphasizes that a system whereby only the comments of certain members of the public are duly taken into account, while others are disregarded or considered to "count less" by the decision-making authorities, would not be consistent with the Convention. (ACCC/C/2013/106 Czech Republic, para. 97)

Limiting consideration to "validly made" submissions is not "taking due account"

A legal framework which requires a decision-maker to consider "validly made" submissions and observations in relation to the environmental impacts of a proposed development could potentially engage article 6, paragraph 8, and also article 6, paragraph 7, if there is substantial evidence that these provisions have the effect that only certain submissions and observations are considered. (ACCC/C/2014/112 Ireland, para. 144)

2. Other issues under Article 6(8)

*Reliance on developer is not sufficient

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. (ACCC/C/2009/37 Belarus, para. 96)

Responses to public's comments and evaluation must come from public authority itself

It is necessarily required that the public's comments are considered by the competent public authority and it is incompatible with the Convention if a consultant of the developer prepares the responses to the comments received and the reasoned evaluation of the comments for the competent public authority. (ACCC/C/2013/98 Lithuania, para. 138)

Legal obligation for authority to consider public participation outcome

It is fundamental for compliance with article 6, paragraph 8, that there should be a clear obligation in the legal framework for the competent public authority itself to take due account of the outcome of the public participation. (ACCC/C/2013/98 Lithuania, para. 139)

*Too short time frames do not allow to take any comments into account in a meaningful way

The timeline 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. (ACCC/S/2004/1 and ACCC/C/2004/3 Ukraine, para. 29)

If authorities use tables to record public comments, tables must also clearly explain how each comment was considered

While paragraph 179 of the Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters indicates that Parties may opt to record all the comments received from members of the public in a table grouped into clusters, the table must also explain how these were handled. This means that, where the public authority has accepted the substance of a comment, it must explain how that is reflected in the decision taken. Conversely, where the public authority has rejected the substance of a comment, it must explain its reasons for doing so. Where a public authority has accepted the substance of a comment only in part, it must explain what has been incorporated into its subsequent decision and what has been omitted. For those parts that are not accepted on their substance, the public authority must explain clearly and in appropriate detail why they were not accepted. Whether the competent public authority decides to provide a written response to each comment received or to group comments in clusters related to certain issues, it must still demonstrate in a clear, transparent and traceable way how due account has been taken of each comment received. (ACCC/C/2014/119 Poland, para. 93 f.)

No obligation for participation on previously rejected options if participation took place earlier

There is nothing in the Convention that requires public participation on options that were rejected at an earlier stage of tiered decision-making, provided that public participation took place at that earlier stage. (ACCC/C/2014/112 Ireland, para. 147)

Convention does not prescribe a specific procedure for taking due account

The Convention does not impose a specific procedure to be followed by the Parties to demonstrate how due account was taken of the public's comments under article 6, paragraph 8. (ACCC/C/2020/181 Netherlands, para. 89)

Article 6(9): Informing of final decision

1. Promptly informing

Access to a decision through database is not informing

Even though the decrees in question had not been published but they could be now accessed through an electronic database, such an approach does not satisfy the requirement of article 6, paragraph 9, to promptly inform the public of the decision. (ACCC/C/2004/8 Armenia, para. 31)

No requirement to proactively publish the final decision

There is no requirement to proactively publish the final decision, but the public has to be informed about the decision and has the right to have access to the decision and the reasons and considerations on which it is based. (ACCC/C/2006/16 Lithuania, para. 81)

Time period for information has to be adequate with respect to review procedures

The time period for informing the public about the decision has to be reasonable bearing in mind the relevant time frames for initiating review procedures under article 9, paragraph 2. Further, the manner of informing and the documentation of the reasons on which a decision is based should consider these time frames and other requirements for the review procedures under article 9, paragraph 2. (ACCC/C/2006/16 Lithuania, para. 84)

For the final decision, notification methods in the sense of article 6, paragraph 2, are the minimum to inform public

As a good practice, the methods used to notify the public concerned under article 6, paragraph 2, should be utilized as a minimum for informing the public under article 6, paragraph 9, of the decision once taken, recalling that the latter requires the public generally to be informed, and not just the public concerned. (ACCC/C/2014/99 Spain, para. 103)

Informing public only via internet is not enough

Informing the public about the decision taken exclusively by means of the internet does not meet the requirement of article 6, paragraph 9. Relying solely on publishing the decision electronically may exclude members of the public who do not use the Internet regularly or do not have easy access to it from the possibility of being effectively informed about the decision that has been taken. (ACCC/C/2014/99 Spain, para. 104 f.)

2. Reasons and consideration for the decision

The decision must include the public's comments and information on how they were treated

In order to provide evidence of having taken due account of the outcome of public participation it is not sufficient if the decision merely states when the public hearings were held and cites the document reference of the minutes of the meetings but neither summarizes the comments received from the public nor provides information on how they were treated. (ACCC/C/2013/98 Lithuania, para. 142)

Individual replies alone do not fulfil obligation to publicly justify decisions

Individual "private" replies - writing individually to each member of the public who submitted comments – may serve as an additional practice but on its own cannot meet the requirement in article 6(9) to publicly show the reasons on which the decision is based, including how the public's comments have been taken into account. (ACCC/C/2013/98 Lithuania, para. 143)

Article 6(10): Public participation when reconsidering or amending the decision

Legal effect of a decision determines whether it falls under article 6(10) or Annex I(22)

When determining whether the 2008 decision-making on a nuclear power plant amounted to a reconsideration or an update of the operating conditions by a public authority, according to article 6, paragraph 10, or a change to or an extension in itself that met the criteria of Annex I, the Committee considers the legal effects of the three 2008 decisions together. (ACCC/C/2009/41 Slovakia, para. 53)

1. Where appropriate

Public participation is "appropriate" when updating or reconsidering nuclear or similar activities

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. (ACCC/C/2009/41 Slovakia, para. 57)

2- or 5-year extension is by no means minimal and justifies public participation being appropriate

It is clear to the Committee that an extension of an activity's duration by five years is by no means minimal. In this regard, the Committee cannot agree with the submission by the Party concerned that no change in the operating conditions of the quarry took place and that, therefore, there was no need for further public participation. Based on the above, the Committee concludes that it was "appropriate", and thus required, to apply the provisions of article 6, paragraphs 2–9, to the decision-making on the 2013 permits. (ACCC/C/2013/107 Ireland, para. 84, 86)

It is clear that the extension of an activity's permitted duration for more than two years is not just a minimal time. It was therefore appropriate, and thus required, to provide for public participation in the decision to extend the end date of the Pontevedra plant. (ACCC/C/2014/122 Spain, para. 96)

The Committee considers that, if an extension of two years for a chlorine and derivatives production facility was not a minimal time, then an extension of seven to eight years for a nuclear power plant, which, by its nature, is an ultrahazardous activity, certainly cannot be considered to be a minimal time. (ACCC/C/2020/183 Spain, para. 52)

Life-time extensions usually justify "appropriateness" of public participation

The Committee considers that, except in cases where a change to the permitted duration is for a minimal time and obviously would have insignificant or no effects on the environment, it is appropriate for extensions of duration to be subject to the provisions of article 6. In this regard, the Committee considers it inconceivable that the operation of a nuclear power plant could be extended from 40 years to 60 years without the potential for significant environmental effects. (ACCC/C/2014/104 Netherlands, para. 71)

Life-time extension of a nuclear power plant cannot be considered as having "insignificant" effects on the environment

The Committee notes that prolonging the operation of a nuclear power plant results in the continuation of the various environmental impacts of said nuclear power plant over a longer period of time. This includes the generation of additional radioactive waste and other emissions for the period of the extension. The natural resources used in the operation of a nuclear power plant will also be required for a longer period of time. Furthermore, extending the period of a nuclear power plant's operation means that the period in which a nuclear accident could occur is also extended. It is therefore not conceivable that the prolongation of an activity of the nature and scale of a nuclear power plant, including Almaraz nuclear power plant, would have no or insignificant effects on the environment. (ACCC/C/2020/183 Spain, para. 53)

2. "Mutatis mutandis"

Clause "mutatis mutandis, and where appropriate" does not imply complete discretion of a party

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. 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. (ACCC/C/2009/41 Slovakia, para. 55-56)

Mutatis mutandis simply means "with necessary changes"

The reference in article 6, paragraph 10, to "mutatis mutandis" simply means "with the necessary changes". In other words, when applying the provisions of article 6, paragraphs 2–9, to a reconsideration or an update of the operating conditions for an article 6 activity, the public authority applies those paragraphs with the necessary changes. (ACCC/C/2014/104 Netherlands, para. 70)

Rather than conveying some discretion for the Parties whether or not to apply these provisions, it refers to the changes necessary due to the nature of the given decision-making procedure. (ACCC/C/2014/121 European Union, para. 96)

3. Reconsiderations and updates

Project's duration is an operating condition

The Committee considers that the permitted duration of an activity is clearly an operating condition for that activity, and an important one at that. Accordingly, any change to the permitted duration of an activity, be it a reduction or an extension, is a reconsideration or update of that activity's operating conditions. It follows that any decision permitting the nuclear power plant to operate beyond 2014 amounted to an update of the operating conditions. (ACCC/C/2014/104 Netherlands, para. 65)

The Committee considers that, by permitting reactors I and II of Almaraz nuclear power plant to operate beyond their permitted end date, the Ministerial Order updated the operating conditions of Almaraz nuclear power plant, an activity subject to article 6. (ACCC/C/2020/183 Spain, para. 46)

Reconsiderations or updates are not linked to EIA

As a preliminary point, the Committee notes that there is nothing in the wording of article 6, paragraph 10, to limit its application only to reconsiderations or updates that are themselves subject to environmental impact assessment. Rather, it is clear to the Committee that article 6, paragraph 10, applies to a reconsideration or update of the operating conditions for an activity subject to article 6, irrespective of whether the reconsideration or updating process is itself required to undergo an environmental impact assessment. (ACCC/C/2013/107 Ireland, para. 77)

Periodic safety reviews of nuclear reactors fall under Article 6(10) and require public participation

Based on the foregoing, the Committee considers that, because of the "regulatory review" stage, a periodic safety review is a "reconsideration" of the nuclear power plant's operating conditions within the meaning of article 6, paragraph 10. Moreover, should the regulatory body's review of the periodic safety review report find that certain measures should be applied, those measures will constitute an "update" of the nuclear power plant's operating conditions within the meaning of article 6, paragraph 10, too. Accordingly, the Party concerned is required by article 6, paragraph 10, to determine whether or not it is "appropriate" and thus required, to carry out public participation under article 6, paragraphs 2–9, on the 10-year periodic safety reviews for the Dukovany nuclear power plant. The regulatory review stage of a periodic safety review is accordingly "capable of changing the basic parameters" of the nuclear power plant, including determining whether the licensing basis and operating conditions for the nuclear power plant remain valid or should be changed. The Committee therefore considers it is "appropriate" and thus required, for the Party concerned to apply the provisions (ACCC/C/2016/143 Czech Republic, para. 118, 123)

4. Links with Industrial Emissions Directive (EU)

EU obligations under Industrial Emissions Directive are limited

The Committee concludes that the Party concerned has not assumed obligations under the Convention regarding non-substantial changes of installations, nor regarding any time extensions of operation, extensions of capacities or other modifications of permit conditions that do not meet the requirements of article 24, paragraph 1 (b) of the Directive. The Committee will accordingly limit its considerations to the publication of new best available technique conclusions and developments in the best available techniques, operational safety requirements and compliance with new or revised environmental quality standards. (ACCC/C/2014/121 European Union, para. 90)

Reconsiderations of permits under the Industrial Emissions Directive may be an example of a reconsideration or update of operating conditions

The Committee notes that the relevant provisions of the Industrial Emissions Directive in the case of the publication of new best available technique conclusions and developments in the best available techniques, operational safety requirements and compliance with new or revised environmental quality standards (article 21, paragraphs 3, 4 and 5 (b) and (c) of the Industrial Emissions Directive) expressly refer to the reconsideration and, where necessary, updating of the permit conditions. In addition to the wording of these provisions, the Committee considers that, substantively, the reconsideration of permit conditions related to these three cases are clear examples of a reconsideration or update of operating conditions in the sense of the Convention. (ACCC/C/2014/121 European Union, para. 93, 105–118)

Public participation required for significant changes or unaddressed aspects

Specifically, if the reconsideration or update of an activity's operating conditions is capable of significantly changing the basic parameters of the activity, or will address significant environmental aspects of the activity not already covered by the permitting decision, and no public participation process meeting the requirements of the Convention is foreseen, this would not meet the requirements of the Convention. The Committee emphasises that it is not the actual outcome of the reconsideration or the update that is determinative of whether public participation should be carried out. Rather, in line with the Committee's findings on communication ACCC/C/2006/17 (European Community), the key criterion is whether the reconsideration or update is "capable of" changing the activity's basic parameters or will "address" significant environmental aspects of the activity. In this regard, the scope of what is to be considered "appropriate" must be even more limited if the update of the operating conditions may itself have a significant effect on the environment. However, it is not decisive whether the operating conditions of the activity will indeed ultimately be updated or will in fact have significant environmental effects. Likewise, it is immaterial that, if the operating conditions are updated, the updated conditions could in some respects have a beneficial effect on the environment, human health and safety. The crucial point is whether the reconsideration or update is "capable of" changing the activity's basic parameters or will "address" significant environmental aspects of the activity. (ACCC/C/2014/121 European Union, para. 101, 103, 104)

The Committee considers that since the 2013 update of the permit for the Pontevedra plant under paragraph 2 (f) of the first transitional provision required the public authority to address a significant environmental aspect of the plant's activity, namely the elevated level of mercury and the possibility of resulting soil and groundwater contamination, it was appropriate, and thus required, for the public authority to provide for public participation in that update. (ACCC/C/2014/122 Spain, para. 93)

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(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.

Cross-reference table

Key Cases	Interpretation Highlights
Article 7	
ACCC/C/2004/8 Armenia	**No precise boundary** between decisions under articles 6 and 7
ACCC/C/2009/43 Armenia	No clear definition of **plans and programs**
ACCC/C/2010/54 European Union	**Two weeks** is not enough time for public participation
ACCC/C/2012/70 Czech Republic	There is a clear obligation to **seriously consider the outcome of public participation** (due account)
ACCC/C/2012/70 Czech Republic	There is an obligation to **demonstrate that due account was taken**
ACCC/C/2013/88 Kazakhstan	**Broad interpretation** of plans and programs “relating to the environment”
ACCC/C/2014/101 European Union	**Only plans required by law** are subject to mandatory public participation
ACCC/C/2014/105 Hungary	Elements of a “**typical**” plan or programme
ACCC/C/2014/105 Hungary	“**Policies**” refer to strategic documents, not being plans or programs
ACCC/C/2014/105 Hungary	While softer, requirements on public participation in preparation of policies set **minimal standards**
ACCC/C/2016/144 Bulgaria	**Public notice** must contain accurate information

Commentary

General Issues under Article 7

No precise boundary between decisions under Articles 6 and 7

The Convention does not establish a precise boundary between article 6–type decisions and article 7–type decisions. (ACCC/C/2004/8 Armenia, para. 28)

Public participation needed for reconsideration or modification of plans and programmes

Article 7 "should be interpreted as including within its scope all reconsiderations or modifications of plans and programmes relating to the environment". Any reconsideration or modification in itself amounts to the preparation of a plan or programme subject to article 7, including minor modifications. (ACCC/C/2017/149 Greece, para. 101)

No obligation for provision for public participation if no legal requirement and no framework for future development consent

If the Party concerned has no law in force that would require preparation of a plan or programme itself or that would require public participation with respect to plans or programmes, that do not set the framework for future development consent, the Party concerned has no obligations to make appropriate practical and/or other provisions for the public to participate during the preparation of such plans and programmes. (ACCC/C/2014/101 European Union, para. 56)

Public participation in the development of preceding strategies does not exclude the need to provide for public participation in subsequent planning

National renewable energy action plans are plans or programmes under article 7 and as such are subject to public participation. The fact that the United Kingdom's Renewable Energy Strategy, which informed the national renewable energy action plan, 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. (ACCC/C/2012/68 European Union and United Kingdom, para. 100)

EU state aid and financial assistance decisions do not fall under Articles 6 or 7

In this case the decisions taken by the Party concerned to approve state aid for the European Commission's regulatory fitness and performance programme and to approve financial assistance for the interconnector, on their own, do not amount to decisions under articles 6 or 7. (ACCC/C/2010/54 European Union, para. 74)

Pre-existing political agreements can effectively restrict options

While this draft was subject to public participation, the Committee considers that the pre-existing political commitment made between the national Government and the provinces effectively precluded any realistic option to reject the increased target following public participation. (ACCC/C/2020/181 Netherlands, para. 109)

Article 7: Public participation in preparation of plans and programs

1. Plans and programmes relating to the environment

Elements of a "typical" plan or programme

A typical plan or programme:
(a) is often regulated by legislative, regulatory or administrative provisions;
(b) has the legal nature of a general act (often adopted finally by a legislative branch);
(c) is initiated by a public authority, which
(d) provides an organized and coordinated system that sets, often in a binding way, the framework for certain categories of specific activities (development projects), and which
(e) usually is not sufficient for any individual activity to be undertaken without an individual permitting decision.

The Committee makes clear that these characteristics of a plan or programme are those that "typical". They are neither exhaustive nor elements that must each be satisfied in order to come within the scope of article 7. (ACCC/C/2014/105 Hungary, para. 127, 130)

The typical elements of plan or programme are neither exhaustive nor necessary

The elements of a plan or programme set out in ACCC/C/2014/105 Hungary, para. 127, 130, are described as typical and are thus "neither exhaustive nor elements that must necessarily each be satisfied in order to come within the scope of article 7". The elements should rather help to identify strategic documents which fall within the scope of article 7. For example, a transitional national plan under the European Union's Industrial Emissions Directive can qualify as a plan or programme within the meaning of article 7, despite not having the legal nature of a general act. (ACCC/C/2017/149 Greece, para. 82, 84, 91)

A plan has to have legal effects

A plan in accordance with article 7 has to have legal effects, e.g. confer a right to construct or operate a project, use a specific site or entail legal effects amounting to that of the applicable planning instruments, in order to require a public participation procedure. (ACCC/C/2007/22 France, para. 33)

It is the substance, not the title, of the document what makes it a plan under Article 7

The fact that a document bears in its title the word "plan" does not necessarily mean that it is a plan under article 7; rather, it is necessary to consider the substance of the document. (ACCC/C/2012/70 Czech Republic, para. 49)

No clear definition of plans and programs

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. (ACCC/C/2009/43 Armenia, para. 49)

Plans and programmes can include existing as well as future activities

The scope of article 7 is not limited to the setting of a framework only for future activities. Rather, a plan or programme may cover existing activities, as it is the case for example for land-use plans. (ACCC/C/2017/149 Greece, para. 87)

Plans and programmes can have a transitional character

The validity of a plan or programme for a specified period of time is common for plans and programmes that fall within the scope of article 7. Thus, for example, the fact that a plan is valid for only four years does not exclude it from the scope of article 7. (ACCC/C/2017/149 Greece, para. 87)

Broad interpretation of plans and programmes "relating to the environment"

Whether a particular plan or programme relates to the environment should be determined with reference to the implied definition of 'environment' found in the definition of 'environmental information' (article 2, paragraph 3). The following types of plans, programmes and policies may be considered as relating to the environment:

(a) those that may have a significant effect on the environment and require strategic environmental assessment;
(b) those that may have a significant effect on the environment but do not require strategic environmental assessment;
(c) those that may have an effect on the environment but the effect would not be significant; and
(d) those intended to help protect the environment. (ACCC/C/2013/88 Kazakhstan, para. 128 – with reference to the Aarhus Convention Implementation Guide, p. 176)

Plans and programmes "relating to the environment" do not have to have a significant effect on the environment

In contrast to specific activities covered under article 6 and commonly considered as those "which may have a significant effect on the environment", plans and programmes under article 7 have to be "relating to the environment". Accordingly, the concept of plans and programmes "relating to the environment" is much broader than that of specific activities covered by article 6. Article 7 also applies to those plans and programmes which may have an effect on the environment without the effect being significant and those plans or programmes intended to promote environmental protection. (ACCC/C/2014/100 United Kingdom, para. 90, 92)

2. Examples for plans and programmes

Waste management plans

The Vilnius Country Waste Management Plan constitutes a plan "relating to the environment" with regard to article 7. The land use plan establishes the preconditions for the permitting of a landfill in the region concerned. (ACCC/C/2006/16 Lithuania, para. 55)

Municipal waste management plans

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.

The fact that the waste management plans are not mentioned in the national legislation 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. (ACCC/C/2012/66 Croatia, para. 39)

National renewable energy action plans

The Committee finds that Ireland's national renewable energy action plan constitutes a plan or programme relating to the environment subject to article 7 because it sets the framework for activities by which Ireland aims to enhance the use of renewable energy in order to reduce greenhouse gas emissions, based on the Renewable Energy Directive. (ACCC/C/2010/54 European Union, para. 75)

Member States applications for free allowances under the EU Emissions Trading System

The application, including its national investment plan, prepared by the Party concerned under the revised rules for the EU Emissions Trading System, is a plan within the purview of article 7. (ACCC/C/2012/70 Czech Republic, para. 53)

Plan to develop a world-class ski resort

A plan to develop a world-class ski resort has found to constitute a plan under article 7 if it is called a "plan" (even though the label is not decisive), it is in the form of a general act, adopted by the Prime Minister, it was initiated by the Ministry of Industry, which is also responsible for monitoring the implementation of the plan, if it sets the framework for a certain category of specific activities (such as a timetable, allocation of tasks, deadlines, expected results and sources of funding), and if it is not in itself sufficient for permitting the construction of the project as such. (ACCC/C/2013/88 Kazakhstan, para. 126)

Regional (voivodeship) spatial development plan

A voivodeship spatial development plan has the legal nature of a general act that sets a framework for more specific activities in the future and which will subsequently be implemented by a more detailed plan at local level and, accordingly, constitutes a "plan" within the meaning of that term in article 7. (ACCC/C/2014/119 Poland, para. 77)

Transitional national plan under the European Union's Industrial Emissions Directive

A transitional national plan under the European Union's Industrial Emissions Directive can be considered a plan or programme and thus fall within the scope of article 7. The preparation of the transitional national plan is regulated by EU law and implemented in national law through executive measures, in this case by the Greek Ministry of Environment, Energy and Climate Change. The transitional national plan was initiated by the Greek Ministry of Environment, Energy and Climate Change and thus by a public authority. The transitional national plan furthermore sets a binding framework for the large combustion plants included therein but is not sufficient for an individual activity to be undertaken. Although the transitional national plan applies only to the specific large combustion plants it lists and thus lacks the legal character of a general act, it still qualifies as a plan or programme under article 7, as it meets all other relevant criteria set out in finding ACCC/C/2014/105 Hungary, para. 127, 130. (ACCC/C/2017/149 Greece, para. 83-91)

Public participation for local investment plans highly appropriate

Given the growing significance of the cooperative endeavours between public and private actors in the UK 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. (ACCC/C/2010/45 and ACCC/C/2011/60 United Kingdom, para. 82)

3. Transparent and fair framework

Article 7 has to be implemented through clear procedural requirements

It is not enough to comply with article 7 that national legislation states the rights of the public to participate in the preparation of plans and programmes in general, unaccompanied by clear procedural requirements either in regulation or established administrative practice on how to ensure these rights. (ACCC/C/2013/88 Kazakhstan, para. 118)

"Transparent and fair framework" applies to the overall system and each specific participation procedure

The requirement in article 7 to make provisions for the public to participate within a "transparent and fair framework" covers both the transparency and fairness of the general framework of the Party concerned for public participation in plans and programmes and also the transparency and fairness of the public participation procedure carried out on a particular plan or programme. (ACCC/C/2014/100 United Kingdom, para. 105)

4. Informing the public

Public notice must contain accurate information

By not ensuring that the public notice for the proposed general spatial plan amendment contained accurate information on "the proposed activity" and "the nature of the possible decision" nor any of the other information required by article 6, paragraph 2 (a)–(e), except for the location, date and time of the hearing, the Party concerned failed to comply with article 7 in conjunction with article 6, paragraph 2. (ACCC/C/2016/144 Bulgaria, para. 127)

When amending plans or programmes, their texts and draft amendments must be made available

Without engaging in an examination of what other information relevant to the decision-making should also have been made available to the public, the Committee finds that, by not making the texts of the existing general spatial plan and the proposed general spatial plan amendment effectively available to the public, the Party concerned failed to comply with the requirement in article 7 to provide the necessary information to the public. (ACCC/C/2016/144 Bulgaria, para. 129)

Article 6 (6) as guidance for interpreting information requirements in Article 7

While not directly applicable, article 6, paragraph 6, may accordingly serve as a source of guidance in the application of the requirement in article 7 to provide "the necessary information" to the public, provided that the differences between decisions on specific activities and plans and programmes are taken into account. Therefore, the obligation in article 7 to provide "the necessary information to the public" requires to (a) actively disseminate the information indicated in article 6, paragraph 2, including information about the opportunities to participate and availability of the relevant information and (b) to make available to the public all information that is in the possession of the competent authorities and is relevant to the decision-making and is to be used for that purpose. The relevant information under category (b) would normally include the following information: The main reports and advice issued to the competent authority; Any information regarding possible environmental consequences and cost-benefit and other economic analyses and assumptions to be used in the decision-making; An outline of the main alternatives studied by the competent authority. (ACCC/C/2014/100 United Kingdom, para. 89, 94)

Mere information to the public is not public participation

While article 7 requires to provide the "necessary information to the public", this is only one of a number of requirements set out in article 7 and is not sufficient to provide an opportunity for the public to participate. (ACCC/C/2017/149 Greece, para. 105)

5. Time frames

Reasonable period between notice and hearing

A 2–4-day period is clearly insufficient both to enable the public to ensure their availability to attend the hearing and also to prepare for the hearing in order to participate effectively. The Committee considers that, by not ensuring a reasonable time frame between the public notice of the hearing on the proposed amendment to a project and the hearing itself, the Party concerned failed to comply with article 7 in conjunction with article 6, paragraph 3. (ACCC/C/2016/144 Bulgaria, para. 133, 135)

Two weeks is not enough time for public participation

Public participation under article 7 must meet the standards of the Convention, including article 6, paragraph 3, 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. (ACCC/C/2010/54 European Union, para. 83)

7 days is not enough time

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. (ACCC/C/2012/70 Czech Republic, para. 57)

11 days too short for participating in drafting of energy plan

11 days to get acquainted with the draft of an energy plan and submit comments is not a reasonable time frame for public participation in the case of such a document, according to the obligation under article 7, conjunction with article 6, paragraph 3. This is also the case if some members of the public had been able to submit comments also outside the scope of these 11 days. (ACCC/C/2010/51 Romania, para. 110)

12 working days is too short for participating in transitional national plan

A period of 17 working days, of which 12 were working days, is too short a time frame for the public to participate effectively in the preparation of the proposal of a transitional national plan under the European Union Directive on Industrial Emissions. (ACCC/C/2017/159 Spain, para. 97-99)

6. Early participation

Public participation at the end of a two year process is not "early participation"

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. (ACCC/C/2012/70 Czech Republic, para. 58)

7. Due account

There is a clear obligation to seriously consider the outcome of public participation

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. (ACCC/C/2012/70 Czech Republic, para. 60)

There is an obligation to demonstrate that due account was taken

A requirement to make accessible the reasons and considerations on which the decision is based is not expressly provided for in article 7. Nevertheless, the Party concerned has the obligation to demonstrate that it has fulfilled its obligations under article 6, paragraph 8. (ACCC/C/2012/70 Czech Republic, para. 62)

Parties shall both take due account of the public participation and demonstrate how they did so

The national legislation requires that a report ("protocol") be made of the public consultations and discussions, which is to be included with the documentation for the expert council and the municipal council. In the present case, six public hearings were held on the proposed amendment to a plan. The report of these six hearings is a 1-page summary, of which only a total of eight lines are dedicated to summarizing the comments received in the course of these six separate hearings. Therefore, the

Committee finds that the Party concerned, by: (a) Failing to ensure that due account is taken of the outcome of public participation in decision-making on proposed plans and amendments; (b) Failing to demonstrate, in a transparent and traceable way, how due account was taken of the public participation in the decision-making on the proposed amendment to the plan, the Party concerned has failed to comply with article 7 in conjunction with article 6, paragraph 8. (ACCC/C/2016/144 Bulgaria, para. 137, 143)

8. Identification of the public for participation

Identifying a certain public should not be used to restrict public participation

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. (ACCC/C/2012/70 Czech Republic, para. 59)

Targeted consultation can only be complementary

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. (ACCC/C/2010/54 European Union, para. 83)

Article 7 (last sentence): Public participation in preparation of policies

"Policies" refer to strategic documents that are not plans or programs

The term "policies" applies to other kinds of strategic documents, subject to preparation and/or adoption by an authority. On this point, a policy under article 7 need not be adopted in the form of a parliamentary resolution. (ACCC/C/2014/105 Hungary, para. 129, 135)

See also Article 5(7), pages 50 ff.

While softer, requirements on public participation in preparation of policies set minimal standards

It is evident from the wording of article 7, final sentence, that the obligation to provide for public participation in policies is somewhat "softer" than that regarding plans and programmes. The Convention does however impose certain minimum obligations with respect to the opportunities for the public to participate in the preparation of policies. Of these, the following are of particular relevance to the present case.

First, article 7, final sentence, refers to "the public" in general. Thus, it would not suffice if the opportunities to participate in the preparation of a policy were only provided to selected stakeholders.

Second, article 5, paragraph 7 (a), requires each Party to proactively disclose the facts and analyses of facts which it considers relevant and important in "framing" major environmental policy proposals. (ACCC/C/2014/105 Hungary, para. 139-142)

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.

Cross-reference table

Key Cases	Interpretation Highlights
Article 8	
ACCC/C/2014/120 Slovakia	Obligation on public participation in article 8 softer than obligations in articles 6 and 7, gives **greater leeway**
ACCC/C/2009/44 Belarus	**Broad scope of obligations** under article 8
ACCC/C/2014/120 Slovakia	Article 8 applies to **preparation of legislation by executive bodies**
ACCC/C/2014/120 Slovakia	**All comments have to be considered**, even if not all can be accepted

Commentary

General Issues under Article 8

Measures must not be legally binding as long as requirements are met in practice

As long as the measures in place in the Party concerned ensure that the requirements of article 8 are fully met in practice, there is no express requirement in the Convention that those measures be enshrined in a legally binding form. (ACCC/C/2014/120 Slovakia, paras. 115)

Article 8: Public participation in preparation of laws and rules by public authorities

1. Striving to promote effective public participation

Obligation on public participation in Article 8 softer than obligations in Articles 6 and 7

The obligation to "strive to promote effective public participation at an appropriate stage" expresses a somewhat "softer" nature than the obligations set out in articles 6 and 7, meaning that the Parties must show that they make efforts to provide for public participation in the preparation of legislation and other generally applicable legally binding normative instruments. In comparison with articles 6 and 7, article 8 gives the Parties greater leeway in deciding how to fulfil this obligation. (ACCC/C/2014/120 Slovakia, para. 103)

2. Rules that may have a significant effect on the environment

Broad scope of obligations under Article 8

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. (ACCC/C/2009/44 Belarus, para. 61)

Article 8 applies to preparation of legislation by executive bodies

Article 8 clearly applies also to the preparation of legislation by executive bodies to be adopted by national parliaments. Although the terms "legislation" and "laws" do not appear in the provision, the wording of article 8 and the ordinary meaning given to its terms nevertheless support the inclusion of legislation and other normative instruments of a similar character. The article refers to "generally applicable legally binding normative instruments", which is exactly what legislation is. Also, the term "generally applicable legally binding normative instruments" is included in addition to "executive regulations". If article 8 was only intended to apply to such regulations by the executive branch, then there would be no reason to add the reference to generally applicable legally binding normative instruments. (ACCC/C/2014/120 Slovakia, para. 95 ff.).

Article 8 not applicable to legislative acts introduced by Members of Parliament

Article 8 applies "during the preparation by public authorities" of executive regulations and other generally applicable legally binding rules. The definition of "public authorities" in article 2, paragraph 2, expressly excludes bodies or institutions acting in a legislative capacity. Therefore, a legislative act that is introduced by Members of Parliament, exercising their legislative powers to introduce and adopt new legislation, falls within the article 2, paragraph 2, exclusion for bodies or institutions acting in a legislative capacity, and, as a result, is outside the scope of article 8. (ACCC/C/2017/161 Bulgaria, para. 93)

Government's decrees are not necessarily "legally binding rules"

The decrees in question do not fall under generally applicable legally binding rules. Rather, they seem to constitute a form of adopting decisions on plans for designation of land (article 7) and to some extent a form of decisions mandating specific activities (article 6). (ACCC/C/2004/8 Armenia, para. 34)

Traffic regulation orders can fall under Article 8

A traffic regulation order 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. (ACCC/C/2010/53 United Kingdom, para. 83)

3. Elements of the public participation procedure

Parties have discretion as to how public participation should be organized

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. Parties are then left with some discretion as to the specificities of how public participation should be organized. (ACCC/C/2010/53 United Kingdom, para. 84)

4. Due account to be taken

All comments have to be considered, even if not all can be accepted

The conclusion of the Committee on article 6, paragraph 8: "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. (ACCC/C/2008/24 Spain, paras. 98 f.)" is also pertinent to the obligation in article 8 that the "result of the public participation shall be taken into account as far as possible". (ACCC/C/2014/120 Slovakia, para. 107)

Explanations must be attached to final act

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. (ACCC/C/2010/53 United Kingdom, para. 86)

Article 9 - Access to justice

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.

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.

2. Each Party shall, within the framework of its national legislation, ensure that members of the public concerned
(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.
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.
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.

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.

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.

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.

Cross-reference table

Key Cases	Interpretation Highlights
Article 9	
ACCC/C/2004/2 Kazakhstan	**Unfavourable court decision** does not mean denial of access to justice
ACCC/C/2005/11 Belgium	The **label of the decision in domestic law** is not decisive when determining how to categorize a decision under the Convention
Article 9(1)	
ACCC/C/2008/30 Moldova	Final court decisions have to be **fully implemented**
ACCC/C/2015/134 Belgium	At least one review procedure must be **expeditious and free or inexpensive**
Article 9(2)	
ACCC/C/2008/31 Germany	**Procedural legality** has to be assessed by courts
ACCC/C/2008/31 Germany	No limitation of review only to decisions that violate legal provisions "serving the environment"
ACCC/C/2010/45 and ACCC/C/2011/60 United Kingdom	An **executive body is not a sufficient review body** in the sense of article 9, paragraph 2
ACCC/C/2010/48 Austria	**Impairment of rights** criteria has to be interpreted broadly
ACCC/C/2012/76 Bulgaria	**Participation in decision-making** cannot be a standing criteria
ACCC/C/2013/90 United Kingdom	Court must be able to **consider all facts, evidence and arguments**
ACCC/C/2016/137 Germany	**Three core requirements for legal standing** of environmental NGOs in article 9, paragraph 2, procedures.
ACCC/C/2016/138 Armenia	In **tiered decision-making** legality of each decision must be subject to review, while not each decision separately
ACCC/C/2019/162 Denmark	**Distance** cannot be the only standing criterion for individuals
Article 9(3)	
ACCC/C/2005/11 Belgium	**Actio popularis** not required, but barring all is not allowed
ACCC/C/2005/11 Belgium	**Presumption** of access
ACCC/C/2006/18 Denmark	**Legal interest** should not bar effective access to legal remedies
ACCC/C/2006/18 Denmark	**EU law** as "provisions of its **national law** relating to the environment" in Member States
ACCC/C/2008/31 Germany	Requirement of **"impairment of subjective rights"** can contravene wide access to justice
ACCC/C/2008/32 European Union part I	**EU law can be national law**
ACCC/C/2008/32 European Union part II	**Broad scope** of provisions relating to environmental law
ACCC/C/2008/32 European Union part II	No discretion as to **acts or omission** that may be excluded
ACCC/C/2008/32 European Union part II	**Direct concern** requirement too narrow
ACCC/C/2008/33 United Kingdom	**Substantial and procedural provisions** have to be considered
ACCC/C/2011/63 Austria	Term **"environment"** is understood broadly
ACCC/C/2013/81 Sweden	**Distance** cannot be the only standing criterion for individuals
ACCC/C/2013/85 and ACCC/C/2013/86 United Kingdom	**At least one judicial procedure** has to comply with article 9, paragraphs 3 and 4

Key Cases	Interpretation Highlights
Article 9(4)	
ACCC/C/2004/4 Hungary	The **cumulative effect of provisions** can lead to non-compliance
ACCC/C/2006/17 European Community	Access to justice only **after the start of construction** is too late
ACCC/C/2008/24 Spain	**Suspension** is meaningless if decision was executed already
ACCC/C/2008/24 Spain	**"Loser pays" principle** cannot be applied in cases against public authorities
ACCC/C/2008/27 United Kingdom	**Fairness for the claimant**
ACCC/C/2008/27 United Kingdom	**Fair costs** take account of public interest pursued
ACCC/C/2008/33 United Kingdom	**Rules on timing** in judicial review procedures
ACCC/C/2008/33 United Kingdom	**Equality of arms** should be secured
ACCC/C/2011/57 Denmark	**Fair** means free from prejudice, favouritism or self-interest
ACCC/C/2011/57 Denmark	What is **"prohibitively expensive"** depends on several factors of the system as a whole
ACCC/C/2011/57 Denmark	**Fees in environmental cases** should not be compared to fees in commercial cases
ACCC/C/2012/76 Bulgaria	**Effective injunctive** relief should prevent irreversible damage to the environment
ACCC/C/2012/76 Bulgaria	**Courts should make their own assessment** of the risk to environment when deciding whether to grant **injunctive relief**
ACCC/C/2013/81 Sweden	**Fair** means to know the **reasons for a decision**
ACCC/C/2013/90 United Kingdom	What is **prohibitively expensive** shall be assessed in wider context
ACCC/C/2013/93 Norway	Time limits set out in article 4, paragraphs 2 and 7, are indicative for **"timely"**
ACCC/C/2014/105 Hungary	**Time frames for disclosing information** upon court's decision is a matter of article 9, paragraph 4, not article 4, paragraph 2
ACCC/C/2013/106 Czech Republic	**Automatic suspensive effect** is not required
ACCC/C/2013/106 Czech Republic	**"Timely"** does not mean that duration of court review must be set by a law
ACCC/C/2015/131 United Kingdom	**Proportionate approach** on costs based on stage of proceedings
Article 9(5)	
ACCC/C/2015/130 Italy	Concrete, ongoing steps to **establish assistance mechanisms** necessary; continuing obligation
ACCC/C/2015/130 Italy	Article 9, paragraph 5, does not specify the **exact form of assistance mechanisms**
ACCC/C/2016/142 United Kingdom	Parties must take **concrete steps** to consider assistance mechanisms

Commentary

General Issues under Article 9

Unfavourable court decision is not a denial of access to justice

An adverse court decision in itself does not necessarily imply a denial of access to justice. If appeal processes are lengthy due to different interpretations of existing legal provisions, the problem rather lies with the lack of a clear legal framework according to article 3, paragraph 1, than with a lack of access to justice under article 9. (ACCC/C/2004/2 Kazakhstan, para. 27)

Not only wording of national transposition but also implementation practice is relevant

In order to assess non-compliance with article 9, the Committee considers court practice as shown through relevant case law. 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. If the wording of national legislation appears to contradict the Convention, case law can be assessed in order to test whether the line of interpretation by courts or other national authorities nevertheless meets the requirements of the Convention. (ACCC/C/2008/31 Germany, para. 65, 67)

The label of the decision in domestic law is not decisive

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. (ACCC/C/2005/11 Belgium, para. 29)

See also Article 7, pages 80 ff.

Discretion to use ouster clauses

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 exclusively through acts enjoying the protection of ouster clauses would be to effectively prevent the use of access to justice provisions. (ACCC/C/2004/8 Armenia, para. 38)

The EU is not required to adopt access to justice legislation

The European Union obligations only arise where obligations are covered by Community law in force, and as is common ground between the Parties, there is no relevant Community law in force. The Committee accordingly finds that, in the circumstances of this case, not adopting a directive on access to justice does not amount to non-compliance with article 9 by the Party concerned. (ACCC/C/2014/123 European Union, para. 94-95)

Article 9(1): Access to a review procedure relating to information requests under Article 4

1. Access to an expeditious and inexpensive procedure

At least one review procedure must be expeditious and free or inexpensive

It is implicit in article 9, paragraph 1, that the domestic legal system must always make provision for the public to have access to a review procedure established by law that is expeditious and either free of charge or inexpensive. In other words, regardless of how a Party decides to structure its review procedures for the purpose of article 9, paragraph 1, there must always be at least one review procedure that is expeditious and either free of charge or inexpensive. (ACCC/C/2015/134 Belgium, para. 102)

Ombudsman can be considered a review a procedure under Article 9(1)

The Parliamentary Ombudsman is an inexpensive, independent and impartial body established by law through which members of the public can request review of an information request made under article 4. The Committee therefore finds that the Parliamentary Ombudsman of the Party concerned constitutes a review procedure within the scope of the second sentence of article 9, paragraph 1. (ACCC/C/2013/93 Norway, para. 86)

2. Expeditious

Courts should be provided with guidance on expeditious access to justice

The requirement to ensure access to an expeditious procedure established by law entails that a regulation has to be in place providing clear guidance to the judiciary as to the meaning of an expeditious procedure in cases related to access to information. In case of direct applicability of the Convention's provisions and no transposition into the national legislation, the Party has to provide guidance to the judiciary with regard to the direct applicability. (ACCC/C/2004/1 Kazakhstan, para. 21, 22, 26)

No obligation to establish more than one expeditious review procedure

A Party is not required to ensure access to more than one expeditious review procedure fulfilling the requirements of article 9, paragraph 1, second subparagraph. (ACCC/C/2016/141 Ireland, para. 89)

Time limits set out in Article 4(2) and (7), are indicative for "expeditious"

While article 4, paragraphs 2 and 7, do not directly apply to such reconsideration, the Committee sees no reason why a public authority should need more time to reconsider its decision at the request of an Ombudsman, a court or the original applicant than when deciding a request for information by a member of the public in the first place. Accordingly, when considering in these contexts whether the procedure is "expeditious" or "timely" under article 9, paragraphs 1 and 4, respectively, the time limits set out in article 4, paragraphs 2 and 7, are indicative. (ACCC/C/2013/93 Norway, para. 90)

To evaluate the requirement to provide an expeditious review procedure under article 9, paragraph 1, the time frames set down in article 4, paragraphs 2 and 7 have to be considered. Article 4, paragraph 2 requires a public authority to make the requested information available as soon as possible and, at the latest, within one month of the request, with the possibility of an extension for a period of up to two months in cases where the volume and complexity of a request justifies such an extension. Similar time frames apply in the context of article 4, paragraph 7, concerning refusal of a request. These time frames provide a benchmark when considering what timeframe for determining appeals would qualify as being expeditious under article 9, paragraph 1. (ACCC/C/2015/134 Belgium, para. 111)

2,5 year is neither timely, not expeditious

Considering the time taken (nearly two-and-a-half years) for the completion of the Ombudsman procedure, and in particular the time taken for the Ministry's reconsideration decision (11 months) and the Ombudsman's final conclusion (nearly 8 months thereafter), the Committee finds that in this case the Party concerned failed to comply with the requirements in article 9, paragraph 1, second sentence, and article 9, paragraph 4, to ensure an "expeditious" and "timely" procedure. (ACCC/C/2013/93 Norway, para. 91)

3. Inexpensive

Only one "free or inexpensive" review required

In its finding ACCC/C/2016/141 Ireland, paras. 90-92, the Committee held that "a Party is not required to ensure access to more than one expeditious review procedure fulfilling the requirements of article 9, paragraph 1, second subparagraph". By the same logic, a Party is not required to ensure access to more than one review procedure that is "free or inexpensive" within the meaning of article 9, paragraph 1, second subparagraph, although, of course, the requirement in article 9, paragraph 4, that the procedure not be prohibitively expensive will still apply. (ACCC/C/2014/112 Ireland, para. 154)

4. Binding final decisions

Final court decisions have to be fully implemented

Article 9, paragraph 1, 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. If a public agency has the possibility not to comply with a final decision of a court of law under article 9, paragraph 1, then doubts arise as to the binding nature of the decisions of the courts within a given legal system. The Committee thus found non-compliance with article 9, paragraph 1, in a case, where a Moldovan public authority did not provide the communicant with the copies of requested contracts even though the final decision of a national court of appeal ordered the public authority to do so. (ACCC/C/2008/30 Moldova, para. 35)

Binding decision does not have to be directly enforceable

A decision is binding in the sense of article 9, paragraph 1, if it is possible to bring proceedings before a judicial body to enforce the decision of an administrative body against a public authority to release environmental information. (ACCC/C/2015/134 Belgium, para. 119, 120)

Article 9(2): Access to a review procedure relating to decisions, acts or omissions subject to Article 6 and other relevant provisions of the Convention

Court decision can lead to non-compliance with article 9, paragraph 2

If the wording of national legislation on standing for environmental NGOs does not contradict article 9, paragraph 2, but national courts apply them to exclude NGOs from reviewing decisions under article 6 of the Convention, article 9, paragraph 2, is not complied with. (ACCC/C/2011/62 Armenia, para. 36)

1. Judicial or other independent and impartial body

An executive body is not a sufficient review body in the sense of Article 9(2)

Procedures by way of which an applicant whose planning decision has been refused may appeal that decision before an executive body do not constitute a court of law or independent and impartial body established by law in the sense of article 9, paragraph 2. This is so even though in the course of such an appeal members of the public concerned may be heard. Accordingly, 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 in the United Kingdom, as executive bodies, are not sufficient review bodies in the sense of article 9, paragraph 2. (ACCC/C/2010/45 and ACCC/C/2011/60 United Kingdom, para. 84)

Review by a nuclear regulator of its own decision does not qualify as independent and impartial procedure

Review under article 9, paragraph 2, need not be before a court of law. However, in that case, there must be access to a review procedure before "an independent and impartial body established by law". The president of the State Office for Nuclear Safety is clearly not independent and impartial from the State Office for Nuclear Safety itself, even if the is required by law not to have taken part in the decision-making on the decision subject to review.

Accordingly, since the review by the President of the State Office for Nuclear Safety is not independent or impartial from the State Office for Nuclear Safety itself, this procedure does not meet the requirement in article 9, paragraph 2, to provide access to a review procedure before an independent and impartial body established by law. (ACCC/C/2016/143 Czech Republic, para. 129–130)

2. Review of procedural legality

Procedural legality has to be assessed by courts

It is inconsistent with the Convention to allow, in theory, members of the public to challenge the procedural legality of decisions covered by article 6, while in practice such challenges are routinely dismissed by the courts as inadmissible or unfounded—on the basis that the alleged procedural errors are deemed insignificant to the outcome (i.e., that the decision would have remained the same even without the procedural flaw). (ACCC/C/2008/31 Germany, para. 83)

3. Review of substantive legality

It is enough that environmental aspects of a decision can be appealed

A final siting decision issued by ministerial decree, with limited appeal options, can be in compliance with article 9, paragraph 2, as long as an appeal is possible concerning the environmental aspects of the decision. (ACCC/C/2004/4 Hungary, para. 13)

No limitation of review only to decisions that violate legal provisions "serving the environment"

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 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, 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. (ACCC/C/2008/31 Germany, para. 78)

Courts have to consider all evidence and explain their conclusions

A review of the substantive legality of the permit conditions would require the court to clearly assess this discrepancy in the Parties' evidence. Yet, the communicant's evidence on this matter is not identifiably addressed in the judgment at all. On this point, the Committee underlines that the court must clearly and demonstrably examine all the evidence before it and explain why it reaches the conclusion it does. (ACCC/C/2013/90 United Kingdom, para. 138)

Relying solely on expert evidence does not meet the review standard required under Article 9(2)

By not undertaking its own assessment of whether the screening criteria were met and thus whether the development was "likely to have significant effects on the environment by virtue of factors such as its nature, size or location" but instead relying on the evidence of the public authority that the screening decision had been properly carried out, the standard of review applied by the court in this case did not meet the requirement to provide for the review of the substantive legality of decisions subject to article 6 as required by article 9, paragraph 2. (ACCC/C/2013/90 United Kingdom, para. 133)

In tiered decision-making the legality of each decision must be subject to review

The Committee considers that, together, the mining permit and the expertiza conclusions are part of the tiered decision-making to permit the article 6 activity. As such, the substantive and procedural legality of each of these "documents" must be subject to review under article 9, paragraph 2. This does not mean that each "document" must necessarily be challengeable on its own. Rather, it is sufficient for the purposes of article 9, paragraph 2, if the substantive and procedural legality of each such "document" can be reviewed in the context of the mining permit or licence itself.

The Committee accordingly considers that the fact that the positive expertiza conclusion of the Ministry of Nature Protection cannot be reviewed separately does not in itself amount to non-compliance with the requirements of article 9, paragraph 2, provided that members of the public can actually challenge the positive expertiza conclusion of the Ministry of Nature Protection either together with any subsequent decision, or together with the final decision/permit (in the present case, the mining licence extensions). (ACCC/C/2016/138 Armenia, para. 83, 85)

4. Environmental assessments

Court must be able to consider all facts, evidence and arguments

While recognizing that different legal systems may have differing approaches regarding the precise nature of the review procedure provided for the purpose of article 9, paragraph 2, this provision requires that a reviewing body must review all the facts, evidence and arguments before it and, based on that review, determine whether the contested decision is lawful. This requires the court to carry out its own assessment, in the light of all the evidence before it, as to whether the applicable legal requirements were met.

For example, in a challenge to the substantive legality of an EIA screening decision, the court must make its own assessment, based on all the evidence put before it, as to whether the proposed activity was likely to have a significant effect on the environment and thus to require an EIA. It would not be sufficient to merely check that the decision-maker carried out the correct procedural steps for determining whether a project was likely to have significant effects. Nor does it suffice for the court to check that the decision-maker had formally applied the correct legal test and that the decision-maker had convinced itself that that test was met in a particular case. (ACCC/C/2013/90 United Kingdom, para. 119-120)

Where SEA substitutes EIA, SEA statement should be subject to article 9(2)

In cases where the SEA procedure substitutes the EIA procedure for annex I activities (and consequently, an SEA statement is issued instead of an EIA decision), the SEA procedure should be considered as an integral part of the decision-making procedure in the sense of article 6. Consequently, the members of the public concerned should have access to judicial review of the SEA statement under the conditions of article 9, paragraph 2. (ACCC/C/2011/58 Bulgaria, para. 57)

When EIA decisions are missing, final permits must be subject to review

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. (ACCC/C/2011/58 Bulgaria, para. 79)

Final permits must be subject to review for compliance with EIA decisions

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. (ACCC/C/2011/58 Bulgaria, para. 80)

For non-construction projects EIA or SEA decisions must be subject to review

At least for one category of annex I activities (tourism and recreation projects), it was demonstrated to the Committee that the EIA decision can be substituted by the SEA statement. 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. (ACCC/C/2011/58 Bulgaria, para. 81)

EIA decisions do not have to be subject to court review if relevant claims can be raised when challenging subsequent decisions

In this regard, the Party concerned states that, while it is not immediately possible to challenge the binding EIA statement itself, the EIA statement is fully reviewable within an appeal against any subsequent decision for which it has served as a basis. The Committee considers that there is nothing in the Convention to prevent Parties from establishing such a system on the condition that all relevant claims can still be brought when challenging the subsequent decision and that adequate, effective and timely remedies are available at that time, including that injunctive relief is provided where appropriate. (ACCC/C/2013/106 Czech Republic, para. 101)

5. Standing: sufficient interest

Three core requirements for legal standing of environmental NGOs in Article 9(2) procedures

The ACCC has defined three cumulative requirements to assess whether national standing requirements for environmental NGOs are in compliance with articles 2, paragraph 5, and 9, paragraph 2:

1. Requirements must be clearly defined
2. Requirements must be consistent with the objectives of the Convention, including the objective of giving the public concerned wide access to justice; and thus that they are not unreasonably exclusionary
3. Requirements must not cause excessive burden on environmental NGOs.

(ACCC/C/2016/137 Germany, para. 100)

Burden of proof

Burden of proof for the fulfilment of requirements for legal standing of environmental NGOs in article 9, paragraph 2, procedures in national law falls on the Party concerned. (ACCC/C/2016/137 Germany, para. 101)

Unreasonably exclusionary requirements

A standing criterion that precludes all organisations lacking open membership with full voting rights for members from accessing review procedures fails to comply with articles 2, paragraph 5, and 9, paragraph 2. (ACCC/C/2016/137 Germany, para. 102-117)

Parties have wide discretion in how they determine what constitutes a sufficient interest

The Committee notes that there is a wide variety of legal traditions among the Parties to the Convention and a wide range of approaches to the question of standing in the context of access to justice. As long as each of the requirements of article 9, paragraph 2, are fully met in practice, those requirements may be implemented in each Party's national legal framework in a manner that best accords with the Party's own particular legal tradition. This means that, in certain Parties, some or all of the Convention's obligations will be directly enforceable before the courts. In other Parties, the Convention's obligations may be implemented through codification in legislation. And in yet other Parties, the Convention's obligations may be implemented through the case law of the courts and other domestic review bodies. (ACCC/C/2019/162 Denmark, para. 100)

6. Standing: Example for permissible requirements

A requirement for environmental NGOs to assert that the challenged decision affects their objectives does comply with the Convention

The requirement that an environmental NGO must assert that promotion of the objectives of environmental protection in accordance with its field of activity, as defined in its by-laws, is affected by the challenged decision complies with article 9, paragraph 2. 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 as they see fit. (ACCC/C/2008/31 Germany, para. 71, 72)

7. Standing: Examples for overly restrictive requirements

No exclusion of local NGOs

It is not in conformity with the Convention if local NGOs as such are excluded from participation in decision-making on projects in other parts of the country or on nation-wide projects, programmes, etc. (ACCC/C/2004/5 Turkmenistan, para. 19)

Access to justice for NGOs only after participation in prior procedures is too restrictive

In Czech Republic, 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. (ACCC/C/2010/50 Czech Republic, para. 78)

Participation in decision-making cannot be a standing criteria

The Convention does not make participation in the administrative procedure a precondition for access to justice to challenge the decision taken as a result of that procedure, and introducing such a general requirement for standing would not be in line with the Convention. (ACCC/C/2012/76 Bulgaria, para. 68)

Standing to challenge the decisions under Article 6 cannot be granted as exception

The Committee makes clear that providing standing to challenge decisions subject to article 6 as an exceptional occurrence falls far short of meeting the requirements of article 9, paragraph 2. (ACCC/C/2016/143 Czech Republic, para. 135)

Distance cannot be the only standing criterion

Whilst under the legal framework of the Party concerned distance may be a very important criterion for standing, it cannot be the only one. A legal framework that denies standing to everyone whose residence or property is located more than a certain distance from the activity in question is too strict since it does not permit any additional specific circumstances to be taken into account. Such an approach would therefore be inconsistent with the objective of ensuring that the public concerned has wide access to justice as required under article 9, paragraph 2. (ACCC/C/2019/162 Denmark, para. 82)

8. Standing: Impairment of a right

Impairment of rights criterion has to be interpreted broadly

An impairment of right standing criterion for individuals does not run counter to the objective of wide access to justice. However, the definitions of "neighbours" or other such terms relation to locus standi for individuals found in national legislation have to be interpreted by the national courts in the light of the Convention's objectives. If national courts in general adopt a line where neighbours are not entitled to invoke environmental provisions that go beyond the impairment of rights doctrine, this would not comply with article 9, paragraph 2. (ACCC/C/2010/48 Austria, para. 63, 66)

Tenants can have standing

If national courts systematically interpret a national provision in such a way that the "rights" that have been "created, nullified or infringed" by the administrative procedure refer only to property rights and do not include any other possible rights or interests of the public relating to the environment (including those of tenants), this may hinder wide access to justice and run counter to the objectives of article 9, paragraph 2. (ACCC/C/2010/50 Czech Republic, para. 76)

Article 9(3): Access to review contraventions of national environmental law

1. Access to administrative or judicial procedures

Access to justice is assessed with attention to the general picture

Compliance by a Party with article 9, paragraph 3, depends on to what extent national law effectively blocks members of the public from access to justice in general, or if remedies are available to the public to actually challenge the act or omission in question. To this end, article 9, paragraph 3, should be read in conjunction with articles 1 to 3, 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/C/2006/18 Denmark, para. 30)

At least one judicial procedure has to comply with Article 9(3) and (4)

If the legal system of the Party concerned provides for more than one procedure through which members of the public can challenge a particular act or omission contravening national law related to the environment, it is sufficient that at least one of these procedures meets all the requirements of article 9, paragraphs 3 and 4. However, it would be in keeping with the goals and spirit of the Convention to maintain several such procedures meeting all these requirements. For any procedure to be considered a fully adequate alternative to another, it must be available to at least the same scope of members of the public, enable them to challenge at least the same range of acts and omissions, provide for at least as adequate and effective remedies, and meet all the other requirements of article 9, paragraphs 3 and 4. (ACCC/C/2013/85 and ACCC/C/2013/86 United Kingdom, para. 78, 79)

No requirement to guarantee successful claims

The requirement that members of the public meeting the criteria, if any, laid down in national law have access to administrative or judicial procedures to challenge acts and omissions that contravene provisions of national law relating to the environment does not mean that the claims must, in every case, be successful. Rather, it requires that the reviewing body properly review the alleged contravention of national law to the standard required by article 9, paragraph 3. (ACCC/C/2014/120 Slovakia, para. 115)

2. Examples for administrative or judicial procedures

Complaint under Article 1 (h) of EU's Regulation 659/1999 does not meet Article 9(3) standards

Even if an environmental NGO is indeed recognized to be an "interested party" under article 1 (h) of EU Regulation 659/1999, a mere right to ask for a formal investigative procedure by the Commission under article 108, paragraph 2, of the Treaty on the Functioning of the European Union does not meet the requirements of article 9, paragraph 3. Moreover, a right to ask the Commission to carry out an investigative procedure under article 108, paragraph 2, of the Treaty on the Functioning of the European Union is far from a right to challenge the decision consequently taken by the Commission under article 108, paragraph 2, as a result of that investigative procedure.

Based on the foregoing, it is clear to the Committee that a complaint to the Commission under articles 1 (h) and 20 (2) of Regulation 659/1999 does not provide access to an administrative or judicial procedure to challenge a Commission decision on state aid measures under article 108, paragraph 2, of the Treaty on the Functioning of the European Union. (ACCC/C/2015/128 European Union, para. 117-118)

Possibility to intervene in an ongoing annulment procedure is insufficient

The Party concerned refers to the possibility for NGOs to intervene in judicial proceedings before the Court of Justice of den European Union in support of one of the parties to the case in accordance with article 40(2) of the Statute of the Court of Justice of the European Union. The Committee notes, however, that this possibility can under no circumstances replace an NGO's right to independently initiate a challenge to an act or omission that contravenes European Union law relating to the environment, since it is entirely dependent on a third party deciding to bring proceedings under article 263, paragraph 4, of the Treaty on the Functioning of the European Union. (ACCC/C/2015/128 European Union, para. 121)

Participating in the preparation of a plan does not constitute a remedy in the sense of Article 9(3)

The right of the public to participate in the preparation of a draft plan under article 7 does not displace the rights in article 9 to have access to justice to challenge the plan once adopted. The possibility for members of the public to participate in the decision-making on a draft air quality plan in no way amounts to, or substitutes, the right of access to an administrative or judicial procedure set out in article 9, paragraph 3 to challenge an air quality plan, once approved, which contravenes national law relating to the environment. (ACCC/C/2016/151 Poland, para. 111)

The right to ask a public authority to take action is not a "challenge" in the sense of Article 9(3)

The right to ask a public authority to take action does not amount to a "challenge" in the sense of article 9, paragraph 3, and especially not if the commencement of action is at the discretion of the authority. Rather, members of the public must be able to actively participate in the process of reviewing the acts or omissions, the legality of which they question. The process must also meet all the requirements of article 9, paragraph 4. If the Party opts to provide for access to justice through administrative review procedures, those procedures must fully compensate for any absence of judicial procedures. (ACCC/C/2013/85 and ACCC/C/2013/86 United Kingdom, para. 84)

The mere right to address an illegal activity is no sufficient remedy

Article 9, paragraph 3, requires more than the right to address an administrative agency about an illegal activity. 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. (ACCC/C/2006/18 Denmark, para. 28)

The mere right to challenge a subsequent permitting decision based on a plan is not enough

If members of the public only have the possibility to challenge subsequent decisions permitting activities subject to EIA listed in a forest management plan, the requirement in article 9, paragraph 3, to provide access to an administrative or judicial procedure to challenge the forest management plan itself is not fulfilled. The Convention draws a clear difference between access to justice according to article 9, paragraph 2, which focuses on EIA procedures, and access to justice according to article 9, paragraph 3, which applies in "addition and without prejudice to the review procedures referred to in" article 9, paragraphs 1 and 2. The fact that access to justice is available to challenge the environmental conditions of a subsequent activity subject to an EIA does not remove the separate and additional obligation to provide access to administrative or judicial procedures to challenge the forest management plan. (ACCC/C/2017/154 Poland, para. 125-128)

Civil claim for environmental damage is no adequate remedy against a plan

The possibility to bring a civil claim for environmental damage addressing the consequences of a forest management plan, such as logging in specific areas, is not enough to fulfil the requirement of article 9, paragraph 3, to be able to challenge the plan itself. The civil claim may result in damages or injunctive relief but does not examine, or affect, the legal validity of the forest management plan itself. Furthermore, the civil claim solely concerns the prevention or remedy of environmental damage. Article 9, paragraph 3, provides access to justice to challenge any contravention of national law relating to the environment and is not limited only to contraventions that have already resulted in, or will imminently result in, environmental damage. (ACCC/C/2017/154 Poland, para. 132, 133)

Private nuisance proceedings in general fall under Article 9(3)

In general, private nuisance proceedings should be considered as judicial procedures aimed to challenge acts or omissions by private persons and public authorities that contravene national law relating to the environment in the sense of article 9, paragraph 3. The fact that the law of private nuisance primarily relates to protecting the rights of individual property owners to enjoy their land does not exclude that it at the same time regularly concerns various components of the environment and aims to protect them. In practice, the principal criteria for assessing the Convention's applicability to a specific private nuisance case would be whether the nuisance complained of affects the "environment" in the broad meaning of this term (e.g. through noise, odours, smoke, dust, vibrations, chemicals, waste or other similar pollutants). (ACCC/C/2013/85 and ACCC/C/2013/86 United Kingdom, para. 73)

Private nuisance proceedings cannot be substituted by other more general proceedings

For any procedure to be considered as a fully adequate alternative to another, it must be available to at least the same scope of members of the public, enable them to challenge at least the same range of acts and omissions, provide for at least as adequate and effective remedies, and meet all the other requirements of article 9, paragraphs 3 and 4. In the case of private nuisance procedures in the United Kingdom, the possibility for members of the public to report alleged nuisances to the responsible administrative authorities (regulators), and then subsequently to complain to the ombudsman, does not provide for adequate alternatives to private nuisance proceedings. These possibilities are not connected with any procedural rights enabling members of the public to effectively commence a procedure to review the act or omission allegedly causing the nuisance, to actively participate in such proceedings, or to enforce adequate remedies. Furthermore, the ombudsman cannot deal with the alleged nuisance as such, but may only review the actions of the regulator and provide recommendations. Also, judicial review of complaints to the relevant regulator, local authority or ombudsmen, as well as statutory nuisance proceedings and private prosecution are no adequate alternative to a private nuisance claim. (ACCC/C/2013/85 and ACCC/C/2013/86 United Kingdom, para. 79, 85, 88, 102, 103)

Compensation or damages can constitute remedies in the sense of Article 9

In cases in which an injunction or abatement order is not a reasonable solution, compensating the claimant with damages may be the only adequate and effective remedy. This does not mean that the case is not related to the environment any more. The adequacy of effective remedies requires that the relief granted achieves the purpose of the review procedure. This may involve compensating for past harm, preventing future harm, and/or restoring the original state. While monetary compensation is often insufficient to fully address environmental harm, it may still offer some degree of satisfaction to those affected. (ACCC/C/2013/85 and ACCC/C/2013/86 United Kingdom, para. 99 – with reference to the Aarhus Convention Implementation Guide, p. 200)

3.Provisions of national law relating to the environment

Broad scope of provisions relating to environmental law

Article 9, paragraph 3, requires to provide a right of challenge where an act or omission — any act or omission whatsoever by a public authority, including any act implementing any policy or any act under any law — contravenes law relating to the environment. A review procedure that is only possible where a public authority has adopted an act under environmental law is too narrow and does not comply with the broad scope of article 9, paragraph 3. (ACCC/C/2008/32 European Union part II, para. 99)

The term “laws relating to the environment” is broader than “environmental laws”

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. For instance, 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. (ACCC/C/2011/63 Austria, para. 52, 55)

Term “environment” is understood broadly

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. (ACCC/C/2011/63 Austria, para. 54)

Substantial and procedural provisions have to be considered

Although article 9, paragraph 3, does not explicitly mention the substantive or procedural legality of an act or omission – unlike paragraph 2 – this does not imply that restricting the ability to challenge acts or omissions that contravene substantive or procedural provision is consistent with the Convention. (ACCC/C/2008/33 United Kingdom, para. 124)

4. Example for a law relating to the environment

The law of private nuisance is a law relating to the environment

The United Kingdom law of private nuisance is part of the United Kingdom's law relating to the environment and therefore within the scope of article 9, paragraph 3. (ACCC/C/2008/23 United Kingdom, para. 45)

5. Acts and Omissions

No discretion as to acts or omission that may be excluded

Article 9, paragraph 3, does not allow Parties any discretion as to the acts or omissions that may be excluded from implementing laws. With regard to regulatory acts, it is not in compliance with the Convention to enable members of the public to only bring "actions for annulment of acts of general application other than legislative acts", but not for other regulatory acts. Also, the restriction to regulatory acts that do not entail implementing measures does not comply with article 9, paragraph 3. With regard to administrative acts, it is not in compliance with the Convention to bar measures that have no legally binding and external effects from review. (ACCC/C/2008/32 European Union part II, para. 52, 68, 69, 76–78, 102, 103)

Not only acts of individual scope are covered

There is no reason to construe the concept of 'acts' in article 9, paragraph 3, as covering only acts of individual scope. Furthermore, there is no correlation between measures of general application and measures taken by a public authority acting in a judicial or legislative capacity. It follows that a provision on access to justice that covers only acts of individual scope fails to correctly implement article 9, paragraph 3. (ACCC/C/2008/32 European Union part II, para. 51)

Not limited to "general" acts

An act in the sense of article 9, paragraph 3, is not limited to those with the legal nature of a general act. This can be deduced from the fact that article 9, paragraph 3, also provides for access to justice to challenge acts of private persons, which will never have the legal character of "general acts". (ACCC/C/2017/154 Poland, para. 100)

Internal acts are covered

There is nothing in the wording of article 9, paragraph 3, that would exclude acts of an "internal" nature from its scope. If an act or omission by a public authority or private person is capable of contravening national law relating to the environment, then it is an act or omission within the meaning of article 9, paragraph 3. (ACCC/C/2017/154 Poland, para. 99)

Acts and omissions by private persons are covered

Article 9, paragraph 3, applies to acts and omissions by both public authorities and private persons. For example, a forest management plan prepared by a private forest owner, whether a natural or legal person, will fall within the scope of 9, paragraph 3, and may therefore be challenged. (ACCC/C/2017/154 Poland, para. 107)

Failure to enforce national law constitutes an omission

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. (ACCC/C/2004/6 Kazakhstan, para. 30)

Failure to provide effective remedies in a review procedure concerning an omission

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. (ACCC/C/2004/6 Kazakhstan, para. 31)

6. Examples for challengeable acts and omissions under Article 9(3)

In general, SEA statements are subject to Article 9(3)

In other cases, the SEA procedure forms a part of the process for the preparation of a plan relating to the environment according to article 7. The possibility of members of the public to challenge the SEA statement should then be ensured in accordance with article 9, paragraph 3. (ACCC/C/2011/58 Bulgaria, para. 58)

Spatial plans are subject to Article 9(3)

The characteristics of the General Spatial Plans indicate 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. 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. (ACCC/C/2011/58 Bulgaria, para. 64, 69)

Excess of noise limits must be challengeable

The national standing criteria are too strict in the sense of article 9, paragraph 3, if an operator exceeds some noise limits set by law, and 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. (ACCC/C/2010/50 Czech Republic, para. 85)

Land-use plans have to be challengeable

The national standing criteria are too strict in the sense of article 9, paragraph 3, if an authority has issued a land-use plan in contravention of urban and land-planning standards or other environmental protection laws, and a considerable portion of the public, including NGOs, cannot challenge this act of the authority. (ACCC/C/2010/50 Czech Republic, para. 85)

Air quality protection programme or a short-term action plan

Environmental NGOs, where they meet the criteria, if any, laid down in national law, need to have access to administrative or judicial procedures to challenge air quality protection programmes and short-term action plans which contravene national law relating to the environment. (ACCC/C/2016/151 Poland, para. 111)

Air quality plans implementing the EU Ambient Air Quality Directive

Air quality plans that implement the EU Ambient Air Quality Directive and that are for instance drafted by the mayor and adopted by the municipal council of the respective municipality, constitute "acts and omissions" by "private persons and public authorities" which contravene provisions of "national law relating to the environment" according to article 9, paragraph 3. (ACCC/C/2017/161 Bulgaria, para. 138)

Acts and omissions on nature conservation

Article 9, paragraph 3, entails the obligation for Parties 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. (ACCC/C/2006/18 Denmark, para. 28)

Access to justice not restricted to some types of procedures

Under Austrian law, access to justice in environmental matters is only open to members of the public in procedures that are consolidated under the EIA or IPPC procedures, or if they can prove that they may be adversely affected by environmental damage, or if civil law remedies may apply. Outside of this scope, access to justice especially for NGOs is not possible. Thus, the Austrian national legislation does not fulfil the requirements of article 9, paragraph 3, concerning other acts and omissions. An Ombudsman for the Environment does not make up for this finding, if they have no standing in procedures of many sectoral laws relating to the environment and further have discretion whether or not to bring a case to court despite the request of a member of the public, including an NGO. (ACCC/C/2010/48 Austria, para. 72-74)

7. Provisions of EU law

EU law as "provisions of its national law relating to the environment" in Member States

Applicable EU law relating to the environment should be considered to be part of the domestic, national law of a Member State and thus falling under the scope of article 9, paragraph 3, when assessing acts and omissions by a Member State which contravene EU law. (ACCC/C/2006/18 Denmark, para. 27)

EU law can be national law

"National law" in the sense of article 9, paragraph 3, when applied to the EU should be interpreted as referring to the domestic law of the EU. (ACCC/C/2008/32 European Union part I, para. 76)

System of preliminary ruling by ECJ not sufficient

The possibility for members of the public to request national courts to ask for a preliminary ruling of the European Court of Justice 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 an 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 neither in itself meets the requirements of access to justice in article 9, nor compensates for the strict jurisprudence of the EU Courts. (ACCC/C/2008/32 European Union part I, para. 89, 90)

EU state aid decisions are acts in the meaning of Article 9(3)

A Commission decision taken under article 108, paragraph 2, of the Treaty on the Functioning of the European Union has the important legal effect of declaring a state aid measure to be compatible with the internal market. It is final in that it endows the respective Member State with the right to implement the measure. The Committee therefore considers that a Commission decision on state aid measures under article 108, paragraph 2, of the Treaty on the Functioning of the European Union is clearly an "act" within the meaning of article 9, paragraph 3, of the Convention.

It is clear from the judgment of the Court of Justice that a Commission decision on state aid measures may contravene European Union environmental law, and that this is the case regardless of the justification given for the aid provided by the Member State. Consequently, in the light of the Court of Justice's judgment, the Committee considers it beyond argument that state aid decisions can potentially contravene European Union "law relating to the environment", within the meaning of article 9, paragraph 3. (ACCC/C/2015/128 European Union, para. 102, 111)

8. Standing: Restrictions with regard to the claimant

Actio popularis not required, but barring all is not allowed

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 such strict criteria that they effectively bar all or almost all environmental organizations. (ACCC/C/2005/11 Belgium, para. 35)

Presumption of access

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. (ACCC/C/2005/11 Belgium, para. 36)

Legal interest should not bar effective access to legal remedies

Parties can apply general criteria of a legal interest (e.g. of the sort found in Danish law) or of demonstrating a "direct or individual concern". However, the application of these criteria must not effectively bar all or almost all members of the public from challenging acts and omissions related to domestic environmental laws. (ACCC/C/2006/18 Denmark, para. 31)

Requirement of "impairment of subjective rights" can contravene wide access to justice

If the requirement in national law for standing of NGOs to challenge decisions under article 9, paragraph 3, sets out the "impairment of subjective rights", it can contravene the wide access to justice as an objective of the Convention. This would be the case if legislative guarantees are absent that require 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 regardless of the invocation of subjective rights. Only if a broad interpretation of the term "impairment of subjective right" was to become a general practice of national courts in all areas of national law relevant to the Convention, compliance could be assured. (ACCC/C/2008/31 Germany, para. 99)

No restrictions to NGOs only

The term "members of the public" includes, but is not limited to, NGOs. It follows that a provision that bars all members of the public except NGOs from standing fails to correctly implement article 9, paragraph 3. (ACCC/C/2008/32 European Union part II, para. 93)

Standing for environmental NGOs if they have "support from the public"

If there is the general standing criteria for associations to have at least 100 members, but if associations with less than 100 members are entitled to standing so long as they can show they have the "support from the public" and have been active at least three years, this complies with article 9, paragraph 3. (ACCC/C/2013/81 Sweden, para. 85)

Standing for affected individuals

A provision for standing for individuals in environmental cases, that states "A person whom the decision concerns may appeal against it, provided that the decision affects him adversely and is subject to appeal." is in line with article 9, paragraph 3. This is also applicable where the provision is interpreted by national courts in such a manner that, in principle, any individual who may suffer harm or be subjected to other forms of disadvantage as a result of an environmentally detrimental activity authorized by a permit decision is regarded as a concerned party. However, the mere existence of a purely theoretical or wholly negligible risk of harm or inconvenience shall not suffice. In the context of building permits, the Supreme Administrative Court of Sweden has held that such decisions are deemed to concern — in addition to the applicant — the owners of properties immediately adjoining the property to which the building permit pertains, as well as the owners of nearby properties that are particularly affected, having regard to the nature and extent of the proposed measure, the natural conditions of the site, and other relevant factors. (ACCC/C/2013/81 Sweden, para. 86, 87)

EU: Plaumann test too restrictive

The Plaumann test as it is applied by the European Courts and the jurisprudence that has followed the Plaumann case is too restrictive to meet the criteria of the Convention. 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 cases before the European Court of Justice. (ACCC/C/2008/32 European Union part I, para. 86, 87)

Direct concern requirement too narrow

A direct concern criterion requiring that an NGO is only directly concerned with a contested measure unless the measure in question directly affects the organization's legal position is too restrictive. Standing to such an organisation would always be denied when it acted purely for the purposes of promoting environmental protection. While Parties have a margin of discretion when establishing criteria for the purposes of article 9, paragraph 3, that margin of discretion does not allow them to exclude all NGOs acting solely for the purposes of promoting environmental protection from redress. (ACCC/C/2008/32 European Union part II, para. 73)

Participation does not guarantee standing to challenge decision

The right under the Convention to participate in decision-making in environmental matters is separate from the right to have access to justice in environmental matters. Participation by a member of the public in an administrative procedure does not automatically bestow upon that person a right of standing under article 9, paragraph 3, to challenge an act or omission related to that procedure, unless such a right would be in accordance with the criteria for standing laid down in the national law. (ACCC/C/2015/135 France, para. 74)

9. Standing: Restrictions with regard to the subject matter

Distance cannot be the only standing criteria

It is not in compliance with article 9, paragraph 3, to exclude standing to challenge an act or omission concerning a wind turbine only with reference to distance. Rather, other criteria such as noise and vibration or shadow flicker, safety considerations or damage to the environment at large should also be taken into account. It follows that it would not be legitimate to exclude from standing everyone more than a certain distance, for example 1.5 kilometres, away from a wind turbine, on the basis of distance alone. (ACCC/C/2013/81 Sweden, para. 98–101)

Wide access to justice in the area of administrative penal law and criminal law

Access 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. (ACCC/C/2011/63 Austria, para. 64)

No separate review for SEA statements is possible

At the same time, the fact that the SEA statement cannot be reviewed separately does not amount to non-compliance with the requirements of article 9, paragraphs 2 and 3, of the Convention, provided that members of the public can actually challenge the SEA statement together with the decision adopting the subsequent plan or programme (e.g. spatial plan). (ACCC/C/2011/58 Bulgaria, para. 60)

Denying access to challenge both SEA statement and general/detailed spatial plan at the same time is not in line with Article 9(3)

The Spatial Development Act explicitly prevents any person from challenging the General Spatial Plans in court. 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. Therefore, the Party concerned fails to comply with article 9, paragraph 3, of the Convention. 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. (ACCC/C/2011/58 Bulgaria, para. 66, 70)

Article 9(4): General minimum standards for all relevant review procedures, decisions and remedies

Failure to provide review procedure leads to non-compliance with Article 9(4)

The Committee finds that, by failing to provide any procedure under article 9, paragraph 3, through which members of the public are able to challenge decisions on state aid measures taken by the European Commission under article 108, paragraph 2, of the Treaty on the Functioning of the European Union that contravene European Union law relating to the environment, the Party concerned also fails to provide an adequate and effective remedy regarding such decisions as required by article 9, paragraph 4. (ACCC/C/2015/128 European Union, para. 128)

1. Adequate and effective remedies

The cumulative effect of provisions can lead to non-compliance

If individual provisions are found not to conflict with the requirement to provide adequate and effective remedies, it is still possible that their cumulative effect will result in non-compliance. (ACCC/C/2004/4 Hungary, para. 14)

Interim measures can be an adequate and effective remedy

The refusal of a court to impose interim measures can amount to non-compliance with article 9, paragraph 4. (ACCC/C/2007/22 France, para. 48)

Start of large projects may put pressure on courts

The Committee moreover considers that for a major installation like this, when a construction permit has been granted and the construction is carried out, there may be considerable pressure on a court not to stop the activity and not to annul the permit decision for lack of public participation. Even if it were to do so, the construction in itself is likely to cause significant environmental effects. (ACCC/C/2009/41 Slovakia, para. 46)

2. Examples for inadequate and/or ineffective remedies

Access to justice only after the start of construction is too late

It is incompatible with article 9 if no opportunity for access to justice is given in relation to any permit procedures until after the construction of a project has started. Access to justice must be provided when it is effectively possible to challenge the decision permitting the activity in question. (ACCC/C/2006/17 European Community, para. 56)

Time frames for disclosing information upon court's decision is a matter of Article 9(4), not Article 4(2)

Regarding the time that it took the developers to disclose the requested information after the courts ordered them to do so, the Committee notes that this is a matter of adequate and effective remedies under article 9, paragraph 4, rather than the time frame for responding to information requests under article 4, paragraph 2. (ACCC/C/2014/105 Hungary, para. 115)

No adequate and effective remedy provided when environmental information is disclosed 16 months after court order

By disclosing a requested environmental information more than 16 months after a court had ordered it to be disclosed the Party concerned failed to ensure that the information was disclosed promptly after the court's decision and therefore failed to comply with the requirement in article 9, paragraph 4, to provide an adequate and effective remedy for the review of environmental information requests. (ACCC/C/2014/118 Ukraine, para. 145 f.)

Dormant court rulings are not adequate or effective remedies

The Committee considers that the fact that the Supreme Court's ruling lay dormant for more than a year without any action by the courts, the Commissioner for Environmental Information or the public authority concerned demonstrates a failure by the Party concerned to ensure adequate and effective remedies for the review of environmental information requests.

The Committee finds that, by maintaining a system whereby courts may rule that information requests fall within the scope of the Access to Information on the Environment Regulations without issuing any directions for their adequate and effective resolution thereafter, the Party concerned fails to comply with the requirement in article 9, paragraph 4, to ensure adequate and effective remedies for the review of environmental information requests. (ACCC/C/2016/141 Ireland, para. 124, 127)

Annulment of SEA decisions should be accompanied by a mechanism to prevent execution of a plan

As the chronology of decisions and judgments set out in paragraphs 50 and 52–59 above shows, despite the subsequent annulment of the SEA screening decision, the mechanism of preliminary enforcement enabled the Municipality of Plovdiv to take the decision approving the General Spatial Plan amendment, which was unappealable, before the SEA screening decision was annulled by the courts. It is therefore clear to the Committee that, despite the Party concerned's strong contention to the contrary, the possibility for members of the public to challenge SEA Decisions, and SEA screening decisions, does not provide an adequate and effective remedy to prevent the execution of unlawful General Spatial Plans and General Spatial Plan amendments. (ACCC/C/2016/144 Bulgaria, para. 112)

Screening direction requests are no adequate remedies

If the request for a screening direction in the United Kingdom was the only review procedure through which members of the public could challenge a negative screening opinion, the discretionary nature of a screening direction by the Secretary of State would indeed fail to meet the requirement to ensure an adequate and effective remedy under article 9, paragraph 4. However, if members of the public also have the possibility to challenge a screening opinion and an alleged failure to undertake screening through judicial review, the discretionary nature of a request for a screening direction from the Secretary of State does not amount to a failure to provide adequate and effective remedies under article 9, paragraph 4. (ACCC/C/2015/131 United Kingdom, para. 136 f.)

3. Injunctive relief

Suspension is meaningless if decision was executed already

A decision on whether to grant suspension as a preventive measure should be issued before the decision is executed. In the present case, 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 progress. (ACCC/C/2008/24 Spain, para. 112)

Likewise, making a designation of projects being of national importance by a superior authority a decisive factor in deciding to grant an order for preliminary enforcement would neglect the need for a balancing of interests, which should be the key factor in any determination on whether to grant interim relief. (ACCC/C/2012/76 Bulgaria, para. 66)

Effective injunctive relief should prevent irreversible damage to the environment

The Committee confirms that, as submitted by the communicant, the requirement in article 9, paragraph 4, that injunctive relief and other remedies be "effective" includes, inter alia, an implicit requirement that those remedies should prevent irreversible damage to the environment. (ACCC/C/2012/76 Bulgaria, para. 69)

Theoretical availability is not enough

A system, where the court held that the request for suspension of an initial planning decision was too early (and, therefore, denied) and later the court held it was too late in relation to a subsequent decision (because the initial decision was already taken) indicates that while injunctive relief is theoretically available, it is not available in practice. This is not in compliance with article 9, paragraph 4. (ACCC/C/2008/24 Spain, para. 104, 105)

The protection of the environment must be a major factor to be taken into account by courts in deciding whether to grant injunctive relief

For the courts it should be irrelevant whether the public raised any concerns during the earlier public participation procedure. Likewise, the grounds upon which the EIA/SEA decision is challenged in the main proceeding should be irrelevant also. Rather, if a risk of damage to the environment is put forward as a ground for appealing the order for preliminary enforcement, then — in accordance with the requirement in article 9, paragraph 4, to ensure adequate and effective remedies to prevent environmental damage — the protection of the environment must be a major factor to be taken into account by the court in deciding the appeal.

Given that the EIA/SEA decision is itself challenged in the main proceeding, this will require that the reviewing body, when considering the appeal against an order for preliminary enforcement, undertakes its own assessment as to whether there is any risk of damage to the environment should the activity proceed while the challenge to the EIA/SEA decision is still pending. This assessment must be carried out on the basis of all the facts and arguments before it, and taking into account the particularly important public interest in the protection of the environment and the need for precaution with respect to preventing environmental harm. (ACCC/C/2012/76 Bulgaria, para. 71, 72)

Court should not rely on EIA conclusions when deciding on injunctive relief

When considering an appeal of an order for preliminary enforcement of a challenged EIA/SEA decision, instead of reviewing the extent to which the criteria are met in the light of the proportionality principle and the requirement to assess all the facts and arguments significant for the case, the courts rely heavily on the conclusions contained in the EIA/SEA decision, despite the fact that the legality of that decision is being challenged in the main proceeding. The Committee considers that the courts' approach is not in accordance with the requirement in article 9, paragraph 4, to provide adequate and effective remedies. (ACCC/C/2012/76 Bulgaria, para. 76)

Courts should independently assess environmental risks for injunctive relief

With respect to appeals of orders for preliminary enforcement challenged on the ground of potential environmental damage, the Committee finds that a practice in which the review bodies rely on the conclusions of the contested EIA/SEA decision, rather than making their own assessment of the risk of environmental damage in the light of all the facts and arguments significant to the case, taking into account the particularly important public interest in the protection of the environment and the need for precaution with respect to preventing environmental harm, does not ensure that such procedures provide adequate and effective remedies to prevent environmental damage. Therefore, the Party concerned fails to comply with article 9, paragraph 4. (ACCC/C/2012/76 Bulgaria, para. 77)

Financial guarantees are possible but need to be adequate

While the Convention does not preclude the use of financial guarantees per se in judicial procedures covered by the Convention (and indeed guarantees may in appropriate cases play a useful role in helping to protect the environment), they may in practice be applied in a manner counter to article 9, paragraph 4. This could be the case when a financial guarantee imposed as a condition for upholding an order for preliminary enforcement is not set at a level that would be a disincentive to the taking of action that may cause environmental damage or, alternatively, that would provide an adequate remedy for any harm caused.

The case law before the Committee appears to show that courts tend to uphold orders for preliminary enforcement if a financial guarantee is imposed, without first considering whether the amount of the guarantee would be adequate to redress any environmental and other harm suffered should the work go ahead, and the appellant then succeeds in the substantive proceeding. If the courts indeed do so, the Party concerned would fail to comply with article 9, paragraph 4. (ACCC/C/2012/76 Bulgaria, para. 79, 80)

Court must consider requests for injunctive relief

The Committee emphasizes that it is implicit from the wording of article 9, paragraph 4, that in a review procedure within the scope of article 9 the courts are required to consider any application for injunctive relief to determine whether the grant of such relief would be appropriate, bearing in mind the requirement to provide fair and effective remedies. The Committee also notes the importance of court decisions being provided with supporting reasoning and in a timely manner. This is an essential part of a fair and timely procedure, not least because the reasons may be needed in order to mount an appeal. The right of a reasoned decision is also a right under the European Court of Human Rights. (ACCC/C/2013/89 Slovakia, para. 97)

Automatic suspensive effect is not required

Concerning the communicant's allegation that the Party concerned fails to comply with article 9, paragraph 4, because filing court proceedings against a decision of an administrative authority does not have automatic suspensive effect, the Committee does not consider that automatic suspensive effect is necessarily required to comply with article 9, paragraph 4, although it can be a very useful mechanism through which to prevent environmental damage. (ACCC/C/2013/106 Czech Republic, para. 113)

4. Fair and equitable

Fairness is for the claimant

"Fairness" in article 9, paragraph 4, refers to what is fair for the claimant, a member of the public, not the defendant, a public body. (ACCC/C/2008/27 United Kingdom, para. 45)

"Fairness" in article 9, paragraph 4, refers to what is fair for the claimant, not the defendant. (ACCC/C/2008/33 United Kingdom, para. 135)

Proper notification of the parties to the court case

A procedure which allows for a court hearing to commence without proper notification of the parties involved, cannot be considered a fair procedure in the meaning of article 9, paragraph 4. (ACCC/C/2004/6 Kazakhstan, para. 28)

Fair means free from prejudice, favouritism or self-interest

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. (ACCC/C/2011/57 Denmark, para. 44)
Fair means to know the reasons for a decision
The requirement in article 9, paragraph 4, for review procedures to be "fair" should be read as a requirement to ensure that claimants are able to know the reasons for the decision of the review body, inter alia, to enable the claimants to challenge that decision where they so choose. (ACCC/C/2013/81 Sweden, para. 96)

Distinguishing between individuals and legal persons is not in itself unfair

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. (ACCC/C/2011/57 Denmark, para. 44)

Court decision to be communicated to the parties

The Committee found that the failure to communicate the court decision to the parties constitutes a lack of fairness and timeliness in the procedure. (ACCC/C/2004/6 Kazakhstan, para. 29)

It is unfair to start appeal deadlines from the judgment date instead of the date it is received

Calculating the time-frame for the public to challenge a decision from the date of the judgment, and not the date on which the judgment was made available to the claimant, is manifestly unfair. Moreover, it creates an incentive for courts not to make the written version of their decisions promptly available, knowing that there will then be less opportunity for those decisions to be challenged. Therefore, maintaining a legal framework in which cassation appeals under article 9, paragraph 2, must be brought within 20 days of the date on which the contested judgment was drawn up, rather than from the date on which the claimant received the full text of that judgment, is non-compliant with the requirement that review procedures under article 9, paragraph 2, be fair in accordance with article 9, paragraph 4. (ACCC/C/2014/118 Ukraine, para. 143 f.)

Possibility for extensions do not replace the need for fair initial appeal deadlines

The fact that the court may grant an extension, at its discretion, in case of a delay by the public authority in making the screening opinion promptly available, is not at all the same as establishing a fair rule on the time frame for bringing a challenge in the first place. (ACCC/C/2015/131 United Kingdom, para. 131)

Giving review possibilities only to developers is unfair

The Committee finds that, by maintaining a legal framework under which developers of proposed activities subject to article 6 are entitled to a full merits review of the decision on the proposed activity, but other members of the public seeking to challenge the same decision are not, the Party concerned fails to ensure that review procedures under article 9, paragraph 2, are fair as required by article 9, paragraph 4. (ACCC/C/2013/90 United Kingdom, para. 146)

A one-instance court review can be "fair" and "equitable" and provide "adequate and effective remedies"

In order to consider that a restriction to a one-instance court review is unfair, inequitable or fails to provide an adequate and effective remedy, it has to be shown that the restriction resulted in first instance decisions being null, inadmissible or unlawful, or that they have failed to ensure a correct and uniform application of the relevant laws in practice. Article 9 does not explicitly require Parties to put in place two-instance court review procedures or for review bodies to deliberate on their cases for a certain minimum period of time. As such, the introduction of one-instance court review for environmental information requests does not in itself amount to non-compliance with article 9, paragraph 4, provided that the review procedure provides "adequate and effective remedies" and is "fair, equitable, timely and not prohibitively expensive". If a one-instance court review resulted in inconsistent rulings, this would mean that the Party concerned failed to comply with the requirement in article 3, paragraph 1, to establish and maintain a "clear, transparent and consistent framework" to implement the Convention's provisions. (ACCC/C/2017/161 Bulgaria, para. 107, 115, 116)

5. Unfair costs

Fair costs take account of public interest pursued

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 and thus amounted to non-compliance. (ACCC/C/2008/27 United Kingdom, para. 45)

Proportionate approach on costs based on stage of proceedings

Courts should adopt a proportionate approach on costs in the light of the stage of the proceedings. Failure to do so may create uncertainty and act as a deterrent for potential claimants. A costs order in the United Kingdom against the communicant of the full amount up to the cost cap of £5,000, the maximum amount possible for an Aarhus claim brought by an individual, that was awarded only for the permission (i.e. a very early) stage in proceedings, is not considered fair and equitable. (ACCC/C/2015/131 United Kingdom, para. 140 f.)

Putting costs of third parties only on the plaintiff is not fair and equitable

Court's order that the communicants pay the whole of the added parties legal costs (without the operator, respondent in the case, being ordered to contribute at all) was unfair and inequitable and constitutes stricto sensu non-compliance with article 9, paragraph 4. (ACCC/C/2008/23 United Kingdom, para. 52)

Ordering claimants which are members of the public to pay substantial costs to third parties that choose of their own accord to intervene in a proceeding could allow third parties to effectively prevent the public from mounting court challenges to permits, thus making the procedure unfair. (ACCC/C/2013/98 Lithuania, para. 148)

Fees that aim at deterring NGOs from lodging appeals are not fair and equitable

By requiring NGOs to pay cassation appeal fees more than five times higher than those applicable to sole traders, public authorities, and entities exercising public functions, without objective justification and apparently in order to deter appeals, these fees restrict access to justice under article 9 and fail to meet the article 9, paragraph 4, requirement that review procedures be "fair and equitable". (ACCC/C/2017/161 Bulgaria, para. 125-127)

Having to pay full fees again for amending an environmental claim is unfair

Charging full fees for a second time only to amend an already existing claim within the scope of article 9, paragraphs 2 and 3, fails to comply with the requirement of article 9, paragraph 4, that such procedures be fair and not prohibitively expensive. The typical character of environmental claims has to be taken into account. In this regard, time-frames for filing such claims are often short. Moreover, unless the filing of claims has suspensive effect, work on the challenged activity may continue after the claim has been lodged, resulting in further matters that the claimant may wish to add to the initial claim. Lastly, important information about the actual or potential environmental impacts may only come to light after the original claim has been filed. These characteristics mean that, through no fault of the claimant, claims within the scope of article 9, paragraphs 2 and 3, may need to be amended during the course of the procedure. There is no justification for charging the full filing fee again for the addition of further arguments in cases within the scope of article 9, paragraphs 2 and 3. Rather, doing so is both unfair and may have a deterrent effect on environmental claimants presenting relevant aspects of their claim that, through no fault of their own, could not have been presented at an earlier stage. (ACCC/C/2015/130 Italy, para. 79 f.)

"Loser pays" principle cannot be applied in cases against public authorities

A system where the related costs are being imposed on the appellant when a natural or legal person loses in the court of first instance against a public authority, appeals the decision and loses again, is not in compliance with article 9, paragraph 4, of the Convention. (ACCC/C/2008/24 Spain, para. 110)

Requiring claimants to pay full litigation costs for other voluntarily joining parties is unfair and deters access to justice

It is unfair within the meaning of article 9, paragraph 4, to require claimants in cases within the scope of article 9, paragraphs 2 and 3, to pay the costs of public authorities, developers or other entities who choose to join the proceeding of their own accord. In fact, the practice of awarding each defendant (whether parte resistente or controinteressato in the Italian legal system) the full sum of litigation fees creates an incentive for additional parties to join the proceeding, knowing that the majority of the legal costs will be carried by the first-named defendants and cognisant that their involvement will add considerably to the claimant's potential financial exposure. In this way, the current practice of awarding each defendant the same quantum of litigation fees is unfair and may have a significant deterrent effect on claimants seeking access to justice under the Convention. (ACCC/C/2015/130 Italy, para. 95 f.)

Cost order based on higher hourly rate than actual contracted rate is unfair

Ordering the communicant to pay a costs order calculated on the basis of an hourly rate that was considerably higher than the actual contracted rate, fails to comply with the requirement that cost orders in procedures within the scope of article 9, paragraph 2, be fair and equitable in accordance with article 9, paragraph 4. (ACCC/C/2015/131 United Kingdom, para. 146)

Setting low cost recovery rates only for self-represented litigants is unfair

By setting a significantly lower hourly rate (i.e. less than one-tenth of the sum of a legally represented party) at which successful "litigants in person" are entitled to recover their costs in procedures subject to article 9, the Party concerned fails to ensure that such procedures are fair and equitable as required by article 9, paragraph 4. (ACCC/C/2015/131 United Kingdom, para. 150)

Awarding costs against the public for refusal to accept settlement offer is not fair and has deterring effect

The Committee considers that this situation is clearly neither fair nor equitable. Rather, the significant costs order against the communicant can be seen as a kind of sanction against the communicant in this case. It is clear to the Committee that such costs orders will deter persons contemplating referring contraventions to a judge in order to enforce the obligation imposed by the law on the competent public authority.

The Committee finds that, by awarding significant costs against the communicant because he refused the Council's offer to settle, in circumstances under which the communicant was entitled to apply for the recovery of his costs, the Party concerned failed to provide for a fair and equitable review procedure under article 9, paragraph 3, as required by article 9, paragraph 4. (ACCC/C/2016/142 United Kingdom, para. 115-116).

6. Timely

Time limits set out in Article 4(2) and (7) are indicative for "timely"

While article 4, paragraphs 2 and 7, do not directly apply to such reconsideration, the Committee sees no reason why a public authority should need more time to reconsider its decision at the request of an Ombudsman, a court or the original applicant than when deciding a request for information by a member of the public in the first place. Accordingly, when considering in these contexts whether the procedure is "expeditious" or "timely" under article 9, paragraphs 1 and 4, respectively, the time limits set out in article 4, paragraphs 2 and 7, are indicative. (ACCC/C/2013/93 Norway, para. 90)

Rules on timing in judicial review procedures

With regard to time limits for the application for a judicial review, 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. (ACCC/C/2008/33 United Kingdom, para. 138)

Long review of denials to provide to information related to decision-making procedure is neither timely nor effective

The communicants have put before the Committee eight court proceedings regarding requests for access to information to which they have been party. At the time the list of cases was provided to the Committee, after over two years of proceedings one of the cases had been concluded. The other cases were all ongoing, several for more than two years and one for well over three years. The Committee notes that in at least one instance the information requested was relevant to an ongoing environmental decision-making procedure subject to the Convention. Since the court procedure did not provide access to the requested information within a time frame that would enable that information to be used in the ongoing environmental decision-making procedure, the Committee finds that the court procedure for access to the requested information was neither timely nor provided an effective remedy as required under article 9, paragraph 4. (ACCC/C/2012/69 Romania, para. 85, 88)

Review procedure accessible only after more than one year is too long

Parties are required to ensure that any person has access to a review procedure when it believes that its request for information has not been properly dealt with in accordance with article 4. This is to be done "within the framework of national legislation". However, national legislation has to fulfil some minimum requirements set by the Convention, such as to ensure that a person has access to a "timely" procedure and an "effective remedy". It is not in line with article 9, paragraph 4, if the requester may have to wait for longer than one year after its initial request for information until they can access a review procedure. This includes a case where national legislation 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. (ACCC/C/2010/48 Austria, para. 58, 59)

"Timely" does not mean that duration of court review must be set by a law

With respect to the first allegation, article 9, paragraph 4, requires that the procedures covered by article 9 be timely. It does not, however, necessarily require Parties to set out in law specific time frames within which the courts must decide cases. (ACCC/C/2013/106 Czech Republic, para. 111)

"Timely" in access to information cases must be assessed in the context of any ongoing public participation procedures

This falls well short of recognizing that time will be an essential factor whenever information has been requested for the purposes of an ongoing public participation procedure or when deciding whether to challenge a particular decision before the courts. The Committee is aware that the Office of the Commissioner for Environmental Information carries out a full review of the facts and the law, but that cannot justify systemic delays that prevent members of the public from exercising their rights under the Convention to participate in decision-making or seek access to justice regarding the environment. (ACCC/C/2016/141 Ireland, para. 104, 106)

Sequential review procedures must be timely at all stages

Where review procedures are to be used sequentially and not as alternatives, the Party concerned will fail to meet the requirement in article 9, paragraph 4, that review procedures under article 9, paragraph 1, are timely, if one of those review procedures is not timely. (ACCC/C/2014/112 Ireland, para. 158)

Six week time limit can be timely

The obligation in article 9, paragraph 4, to ensure timely and fair review procedures does not require that the time limit for bringing judicial review in a claim under article 9, paragraph 2, be as long as seven months. A six-week time limit on seeking judicial review of planning decisions does not per se, without substantiated allegations, fail to meet the requirement in article 9, paragraph 4, that such procedures be timely and fair. (ACCC/C/2015/131 United Kingdom, para. 134)

11 to 19 months for a decision of a remedy for an access to information request is not timely

When submitting a request for access to information that is initially denied, and when the period between the first appeal against the negative decision or administrative inaction and the actual release of the requested information ranges from 11 to 19 months, these time frames are excessive and do not meet the timeliness requirement set forth in article 9, paragraph 4. (ACCC/C/2015/134 Belgium, para. 137, 140)

The date of public notification is clearly determinable

The date from when the decision became known to the public is a clear and certain date: it is the date that the contested decision was notified publicly and the text of the decision made accessible to the public (see article 6, paragraph 9). (ACCC/C/2015/131 United Kingdom, para. 130)

European Court of Human Rights jurisprudence is not directly applicable in the context of Article 9(4)

The jurisprudence of the European Court of Human Rights deals with cases of greater variety than access to environmental information cases. For that reason, the Committee does not find the European Court of Human Rights jurisprudence to be directly applicable when considering allegations under article 9, paragraph 4, in relation to article 9, paragraph 1. However, some of the criteria used by the European Court of Human Rights, such as the complexity of the factual or legal issues raised by the case or the issue at stake for the applicant, are relevant here also. (ACCC/C/2012/69 Romania, para. 87)

7. Prohibitively expensive costs

What is "prohibitively expensive" depends on several factors of the system as a whole

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 the Danish Nature and Environmental Appeal Board; and
(c) the fees for access to justice in environmental matters as compared with fees for access to justice in other matters in Denmark. (ACCC/C/2011/57 Denmark, para. 48)

NGOs financial capacity to meet the court costs depends on many factors

The financial capacity of any particular NGO to meet the cost of access to justice, as in this case, may depend on a number of factors, including the amount of the membership fee, the number of members and the amount of resources allocated for access to justice activities in comparison with other activities, among other factors. (ACCC/C/2011/57 Denmark, para. 47)

Fees in environmental cases should not be compared to fees in commercial cases

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 the Danish Nature and Environmental Appeal Board have more the nature of appeals to the first group of bodies than appeals regarding primarily commercial interests. (ACCC/C/2011/57 Denmark, para. 51)

What is prohibitively expensive shall be assessed in wider context

In the present case, the Committee has before it the sum of legal fees paid by the communicant, but no information on whether it may have been possible to offset or mitigate some of these costs, for example, through use of a conditional fee agreement, or by instructing one barrister rather than two. Accordingly, while acknowledging that the sum of the communicant's legal fees is extremely high, the Committee is not in a position to make a finding on this point. (ACCC/C/2013/90 United Kingdom, para. 149)

Equality of arms should be secured

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. (ACCC/C/2008/33 United Kingdom, para. 132)

Requiring evidence of financial need to reduce legal costs is a reasonable condition for access to justice

The fact that access to procedures under article 9, paragraph 2 and 3, should be the presumption, not the exception, does not prevent the parties from imposing reasonable requirements which the members of the public must meet to be granted the protection against prohibitive costs provided in article 9, paragraph 4. The court practice to require that the unsuccessful party provides sufficient evidence to substantiate its financial situation in order for the court to exercise its discretion to reduce the case preparation allowance in any particular case on the basis of the financial capacity of the party, is not unreasonable or excessively burdensome. (ACCC/C/2014/111 Belgium, para. 76, 78)

8. Examples for prohibitively expensive costs

£39,454 costs are prohibitively expensive

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. (ACCC/C/2008/27 United Kingdom, para. 44)

£8,000 costs are prohibitively expensive

In circumstances where a claimant pursues judicial review to advance the public interest in environmental protection, and the sole available mechanism is an application for permission to apply for judicial review, it constitutes a prohibitively expensive procedure if, having already borne its own legal costs in bringing a public interest claim, the claimant is ordered to pay £8,000 to the defendant upon refusal of permission. (ACCC/C/2012/77 United Kingdom, para. 73, 74)

A €1.320 case preparation fee may hinder access to environmental justice

A basic case preparation allowance of 1.320€ could potentially represent a prohibitive financial barrier to access to justice in environmental matters for some members of the public, including some environmental NGOs taking into account the other costs typically involved in court proceedings, including own-side costs. (ACCC/C/2014/111 Belgium, para. 69 ff.)

Filing fees of €650 at first instance and €950 at second instance are prohibitively expensive

Filing fees of €650 at first instance and €950 at second instance for review procedures within the scope of article 9, paragraphs 2 and 3, render each of those procedures prohibitively expensive within the meaning of article 9, paragraph 4 (taking the economic situation in Italy as a basis). (ACCC/C/2015/130 Italy, para. 76)

Litigation fees ranging from €2,000 to €5,000 per defendant may be prohibitively expensive in multi-defendant cases

Litigation fees ranging from €2,000 to €5,000 per defendant may be prohibitively expensive in cases with multiple defendants and added costs such as the court filing fee, value added tax and a contribution to the national pension and welfare fund, even when the lowest level of litigation fee is awarded to each defendant. (ACCC/C/2015/130 Italy, para. 97)

If filing and litigation fees are prohibitively expensive, punitive costs based on them are also prohibitively expensive

If the filing and litigation fees are themselves prohibitively expensive, the same must by definition apply to the punitive costs, given that they are calculated as multiples of those fees. (ACCC/C/2015/130 Italy, para. 103)

The mere possibility of prohibitively expensive punitive costs is enough

When assessing whether the punitive costs provided for under the national legal framework are prohibitively expensive under the Convention, it does not matter whether, in fact, such costs have been applied in practice by the courts. The mere possibility that these costs could be imposed on claimants in environmental cases may in itself have a deterrent effect and unfairly discourage members of the public from seeking access to justice with respect to environmental matters. (ACCC/C/2015/130 Italy, para. 104)

Mandatory dual representation in courts

A system of compulsory dual representation in courts may potentially entail prohibitive expenses for the public. (ACCC/C/2009/36 Spain, para. 67)

Prohibitively expensive cross-undertakings in damages

If courts require claimants to provide cross-undertakings in damages that could result in liabilities amounting to several thousand or even hundreds of thousands of pounds, this could lead to injunctive relief not being pursued due to the potential costs involved. If the claimant is legitimately pursuing environmental concerns involving public interest, such effects would amount to prohibitively expensive procedures that are not in compliance with article 9, paragraph 4. (ACCC/C/2008/33 United Kingdom, para. 133)

9. Examples for not prohibitively expensive costs

£5,130 costs may not be prohibitively expensive

The quantum of the order, under which the communicants were held to be liable for the £5,130 costs of the added parties, was not prohibitively expensive. (ACCC/C/2008/23 United Kingdom, para. 49)

A cost system which allows for flat-rate contributions with fixed limits (75 € to 11,000 €) and judicial discretion is not prohibitively expensive

A legal framework on costs of judicial procedures, requiring the losing party to pay a fixed case preparation allowance to the winning party is in accordance with the Convention, if this allowance is a flat contribution to cover legal fees and costs, with set minimum and maximum amounts—ranging from 75 € to 11,000 €. This is especially the case if judges have discretion to adjust this amount by considering the financial situation of the losing party, the complexity of the case, any contractual fee arrangements for the winning party, and whether the situation is clearly unreasonable. The losing party can also request a reduction based on their financial circumstances, within the same limits. Importantly, the minimum allowance of 75 € is not considered prohibitively expensive for the public, including environmental NGOs, under article 9, paragraph 4. (ACCC/C/2014/111 Belgium, para. 66 f., 70, 71)

Punitive costs for vexatious or manifestly unfounded claims are not inherently objectionable

In itself, the possibility to impose punitive costs on claimants who persist with manifestly unfounded arguments, or who act or pursue claims vexatiously, may not be objectionable, nor may be the fact that the amount of the punitive cost in such cases is to be calculated as a percentage or multiple of the filing or litigation fees. (ACCC/C/2015/130 Italy, para. 103)

The costs for professional legal representation can only account for prohibitively expensive costs if legal representation is mandatory or common

If professional legal representation is not mandatory in a review procedure and similar review procedures take place without legal representation, the costs for facultative professional legal representation cannot be used as an argument for a prohibitively expensive review procedure, if other procedural costs are low. (ACCC/C/2015/134 Belgium, para. 151, 152)

Article 9(5): Facilitating effective access to justice

1. Financial and other barriers to access to justice

Concrete, ongoing steps to establish assistance mechanisms necessary; continuing obligation

The requirement to consider the establishment of appropriate assistance mechanisms to remove or reduce financial barriers to access to justice, demands concrete and visible steps to consider that mechanisms, it does not suffice for Parties merely to declare that they are considering, or intend to consider, introducing such mechanisms. This is a continuing obligation: even if a Party has reviewed its costs system in the past, that does not relieve it from the requirement to revisit the matter as needed. (ACCC/C/2015/130 Italy, para. 106 f.)

Article 9(5) does not specify the exact form of assistance mechanisms

Article 9, paragraph 5, does not prescribe the exact form that an assistance mechanism must take. For instance, the exclusion of income from non-commercial activities when calculating an environmental NGO's eligibility for legal aid may be a useful assistance mechanism to remove or reduce financial barriers on access to justice. (ACCC/C/2015/130 Italy, para. 112)

Parties must take concrete steps to consider assistance mechanisms

Article 9, paragraph 5, requires Parties to consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice. To comply with this provision, it does not suffice for Parties merely to declare that they are considering, or intend to consider, introducing such mechanisms. Concrete and visible steps to consider such mechanisms must be taken. The Committee points out that this is a continuing obligation: even if a Party has reviewed its system in the past, that does not relieve it from the requirement to revisit the matter as needed. (ACCC/C/2016/142 United Kingdom, para. 117–118)

Small NGOs cannot be excluded from legal aid

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. (ACCC/C/2009/36 Spain, para. 66)

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 [1] 1/(except research installations for the production and conversion of fissionable and fertile materials whose maximum power does not exceed 1 kW continuous thermal load),

· 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 tonnes per hour,

· installations for the processing of ferrous metals:

(i) hot-rolling mills with a capacity exceeding 20 tonnes 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 tonnes of crude steel per hour;

· ferrous metal foundries with a production capacity exceeding 20 tonnes 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 tonnes per day for lead and cadmium or 20 tonnes 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 m3.

3. Mineral industry:

· installations for the production of cement clinker in rotary kilns with a production capacity exceeding 500 tonnes per day or lime in rotary kilns with a production capacity exceeding 50 tonnes per day or in other furnaces with a production capacity exceeding 50 tonnes 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 tonnes per day,

· installations for melting mineral substances including the production of mineral fibres with a melting capacity exceeding 20 tonnes 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 tonnes per day, and/or with a kiln capacity exceeding 4 m3 and with a setting density per kiln exceeding 300 kg/m3.

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 fertilisers (simple or compound fertilisers);

(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 tonnes per hour,

· installations for the disposal of non-hazardous waste with a capacity exceeding 50 tonnes per day,

· landfills receiving more than 10 tonnes per day or with a total capacity exceeding 25000 tonnes, excluding landfills of inert waste.

6. Waste-water treatment plants with a capacity exceeding 150000 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 tonnes per day.

8. (a) Construction of lines for long-distance railway traffic and of airports 2/with a basic runway length of 2100 m or more [2].

(b) Construction of motorways and express roads [3].

(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.

9. (a) Inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1350 tonnes.

(b) Trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1350 tonnes.

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 2000 million cubic metres/year and where the amount of water transferred exceeds 5 % 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 tonnes/day in the case of petroleum and 500000 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) 40000 places for poultry;

(b) 2000 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 200000 tonnes 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 tonnes per day,

· plants for the tanning of hides and skins where the treatment capacity exceeds 12 tonnes of finished products per day,

(a) Slaughterhouses with a carcase production capacity greater than 50 tonnes 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 tonnes per day.

(ii) vegetable raw materials with a finished product production capacity greater than 300 tonnes per day (average value on a quarterly basis).

(c) Treatment and processing of milk, the quantity of milk received being greater than 200 tonnes 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 tonnes 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 tonnes per year,

· installations for the production of carbon (hard-burnt coal) or electrographite by means of incineration or graphitisation.

20. Any activity not covered by paragraphs 1 to 19 above where public participation is provided for under an environmental impact assessment procedure in accordance with national legislation.

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(1)(a) of this Convention. Any other change or extension of activities shall be subject to Article 6(1)(b) of this Convention.

[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 Organisation (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.

Cross-reference table

Key Cases	Interpretation Highlights
Annex I(20)	
ACCC/C/2008/35 Georgia	**De facto EIA** included
ACCC/C/2015/135 France	Annex I, paragraph 20, requires **public participation within EIA** process under national law
Annex I(22)	
ACCC/C/2009/41 Slovakia	Without an established **threshold**, any change or extension of the activity falls under paragraph 22

Commentary

Paragraph 20: Any other activity which requires public participation under national EIA

Public participation in EIA procedures

A national law that requires the results of public participation to be presented as part of an ecological expertise does fall under the definition of national legislation according to Annex I, paragraph 20. (ACCC/C/2004/2 Kazakhstan, para. 22)

Stricter national provisions

The provision of Annex I, paragraph 20, has the effect that a Party with national requirements for public participation in EIA procedures that go beyond the list of Annex I, paragraphs 1–19 , can be in non-compliance when its public participation procedure in such a case does not comply with the requirements of the Convention. However, a Party without these stricter national provisions would not be in non-compliance in a similar case, even though its system would be less in harmony with the objective of the Convention. (ACCC/C/2004/2 Kazakhstan, para. 31)

De facto EIA included

The Committee notes that even if Annex I, paragraph 20, 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. (ACCC/C/2008/35 Georgia, para. 46)

National threshold for EIA is sufficient for determining extension

Since an extension of 7.33 hectares is above the five hectare threshold laid down in Irish law for a mandatory environmental impact assessment, the Committee considers that, in accordance with paragraph Annex I, paragraph 22, permit was an extension of an activity where the extension itself meets the threshold set out in Annex I, paragraph 20. The permit was thus also a decision that permitted an activity subject to article 6, paragraph 1 (a). (ACCC/C/2013/107 Ireland, para. 73)

EIA conducted in practice triggers Annex I(20), regardless of national thresholds

Although the extension fell below the threshold prescribed in national law for a mandatory EIA to be carried out, an EIA, including public participation, was carried out prior to the grant of the permit. Accordingly, the Committee considers that the permit was a decision to permit an activity subject to an EIA procedure, including public participation, in accordance with national law as set out in Annex I, paragraph 20, and therefore, an activity subject to article 6, paragraph 1 (a). (ACCC/C/2013/107 Ireland, para. 74)

Annex I(20) requires public participation within EIA process under national law

The mere fact that the legislation of the Party concerned provides for some form of public participation in the preparation of ministerial orders does not in itself satisfy the requirements of Annex I, paragraph 20. Rather, the public participation procedure must have been carried out as part of an environmental impact assessment procedure in accordance with national legislation. (ACCC/C/2015/135 France, para. 56)

Paragraph 22: Changes to or extensions of activities

See also Article 6(10), pages 76 ff.

Without an established threshold, any change or extension of the activity falls under Annex I(22)

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 Annex I, paragraph 22, 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. (ACCC/C/2009/41 Slovakia, para. 58)

Case summaries

ACCC/C/2004/1 (Kazakhstan)

Party concerned: Kazakhstan
Filed by: Green Salvation
Findings date & UN reference number:
18 February 2005 (ECE/MP.PP/C.1/2005/2/Add.1)
Articles considered by the Committee:
2(2)–(5); 3(1); 4(1)–(2); 9(1)
Cited at pages: 17, 20, 26, 38, 94

The case concerns access to information related to a proposed draft act on the import and disposal of radioactive waste in Kazakhstan held by the National Atomic Company Kazatomprom in the form of a feasibility study. The Committee found non-compliance with article 4, paragraph 1 and 2 as Kazakhstan has failed to ensure that bodies performing public functions implement these provisions, and non-compliance with article 9, paragraph 1 due to the lengthy review procedure and denial of standing to a non-governmental organization in a lawsuit on access to environmental information. Furthermore, the Committee saw in the joint non-compliance of article 4, paragraphs 1, 2 and article 9, paragraph 1 also a general non-compliance with the obligation in article 3, paragraph 1 to establish a clear, transparent and consistent framework to implement the Convention.

ACCC/C/2004/2 (Kazakhstan)

Party concerned: Kazakhstan
Filed by: Green Salvation
Findings date & UN reference number:
18 February 2005 (ECE/MP.PP/C.1/2005/2/Add.2)
Articles considered by the Committee:
2(5); 3(1); 6(1)(a); 6(1)(b), 6(2)–(4); 6(6)–(9); 9(2)
Cited at pages: 22, 27, 61, 65, 68, 71, 93, 124

The communication alleged failure to provide for an adequate public participation procedure for the construction of high-voltage overhead electric power lines in the Gornyi Gigant district in Almaty. The Committee found that the Government of Kazakhstan did not comply fully with article 6, paragraph 1 (a), and Annex I, paragraph 20, and, in connection with this, article 6, paragraphs 2, 3, 4, 7 and 8 as they failed to notify residents of the construction area of a public hearing. It stated that the provision of Annex I, paragraph 20, has the effect that a Party with national requirements for public participation in EIA procedures that go beyond the list of Annex I, paragraph 1–19, can be in non-compliance when its public participation procedure in such a case does not comply with the requirements of the Convention.#

ACCC/C/2004/3 (Ukraine)

Party concerned: Ukraine
Filed by: Ecopravo-Lviv
Findings date & UN reference number:
18 February 2005 (ECE/MP.PP/C.1/2005/2/Add.3)
Articles considered by the Committee:
1; 3(1); 4(1); 6(1)(a); 6(2); 6(6)–(9)
Cited at pages: 14, 26, 37, 60, 62, 70, 74

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. The Committee found non-compliance with article 4, paragraph 1 and with various provisions of the article 6. It also found 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 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. The findings in this case were combined with case ACCC/S/2004/1 (a submission by Romania on the same matter).

ACCC/C/2004/4 (Hungary)

Party concerned: Hungary
Filed by: Clean Air Action Group
Findings date & UN reference number:
18 February 2005 (ECE/MP.PP/C.1/2005/2/Add.4)
Articles considered by the Committee:
1; 2(2); 3(5)–(6); 6(4); 9(2); 9(4)
Cited at pages: 17, 29, 42, 57, 64, 66, 96, 107

The communication concerned the alleged non-compliance related to the special process of decision-making established by the new Hungarian Act on Public Interest and Development of the Expressway Network. It was alleged that 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, time frames, and procedures for appeal. The Committee found that, while the contested Act reduces the opportunities for public participation in decision-making as well as the opportunities for access to justice in comparison with previously existing legislation in this field, it does not, prima facie, fall below the minimum level of public participation and access to justice required by the Convention. However, the final assessment of compliance with the Convention in this case would also depend on its practical implementation, which had not yet taken place at the time of the findings.

ACCC/C/2004/5 (Turkmenistan)

Party concerned: Turkmenistan
Filed by: Biotica (Moldavia)
Findings date & UN reference number:
18 February 2005 (ECE/MP.PP/C.1/2005/2/Add.5)
Articles considered by the Committee:
3(1); 3(4); 3(9)
Cited at pages: 26, 29, 33, 98

The case concerned the adoption of the Act of Turkmenistan on Public Associations, a new regime for registration, operation and liquidation of NGOs, that among other things excluded foreign citizens from participating in national Turkmen NGOs. The Committee found that the Act was in breach of article 3, paragraph 4 due to a combination of a prohibition of non-registered associations with overly difficult registration procedures and requirements, and in breach of the principle of non-discrimination from article 3, paragraph 9 as the Act limits the membership in Turkmen public associations to citizens of Turkmenistan. Furthermore, the Committee found that by enacting provisions that are not in compliance with article 3, paragraph 4 and article 3, paragraph 9, Turkmenistan also failed to comply 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.

ACCC/C/2004/6 (Kazakhstan)

Party concerned: Kazakhstan
Filed by: individuals
Findings date & UN reference number: 16 June 2006 (ECE/MP.PP/C.1/2006/4/Add.1)
Articles considered by the Committee:
9(3)–(4)
Cited at pages: 103, 110, 111

The case concerns access to justice in appealing the failure of the sanitary-epidemiological agency 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. The Committee found 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.

ACCC/C/2004/8 (Armenia)

Party concerned: Armenia
Filed by: Center for Regional Development/Transparency International Armenia, the Sakharov Armenian Human Rights Protection Center and the Armenian Botanical Society
Findings date & UN reference number: 31 March 2006 (ECE/MP.PP/C.1/2006/2/Add.1)
Articles considered by the Committee: 4(1)–(2); 6; 7; 8; 9(2)–(4)
Cited at pages: 19, 75, 81, 88, 93

The case concerns access to information and public participation in the government's decision-making on land use designation and zoning as well as on the leasing of certain plots in an agricultural area of Dalma Orchards. In particular, it dealt with the issue of boundaries between article 6 and article 7-like decision. It also raised access to justice issues, including effective remedies and lack of court jurisdiction to consider certain type of decisions. The Committee found non-compliance with various provisions of the articles 4, 6, 7 and 9.

ACCC/C/2005/11 (Belgium)

Party concerned: Belgium
Filed by: CeBond Beter Leefmilieu Vlaanderen VZW
Findings date & UN reference number: 16 June 2006 (ECE/MP.PP/C.1/2006/4/Add.2)
Articles considered by the Committee: 9(2)–(3)
Cited at pages: 93, 105

The case primarily raises the issue of the extent to which environmental organizations in Belgium have access to the Council of State, as third parties, in order to challenge various administrative decisions (various forms of environmental and construction permits). The Committee found no non-compliance due to the fact that all case law presented emerged before the Convention's entry into force. However, the Committee made important general findings on standing criteria under article 9, paragraph 3.

ACCC/C/2005/12 (Albania)

Party concerned: Albania
Filed by: Alliance for the Protection of the Vlora Gulf
Findings date & UN reference number: 15 June 2007 (ECE/MP.PP/C.1/2007/4/Add.1)
Articles considered by the Committee: 3(1); 6(3)–(4), 6(8); 7
Cited at pages: 60, 68

The case concerns a proposal to establish an industrial and energy park north of the port of Vlora on the Adriatic coast. The case also involved the European Bank for Reconstruction and Development and the World Bank as international institutions financing some of the components of the industrial park, such as thermal power stations. Each of these issues and proposed activities has its own decision-making processes, and to a certain extent they relate to different provisions of the Convention. The Committee found non-compliance with article 7 (decision to allocate territory for the Industrial and Energy Park of Vlora), article 6 (siting decision with respect to the proposed thermal electric power station) and article 3 (lack of clarity in national framework).

ACCC/C/2005/15 (Romania)

Party concerned: Romania
Filed by: Alburnus Maior
Findings date & UN reference number: 16 April 2008 (ECE/MP.PP/2008/5/Add.7)
Articles considered by the Committee: 4(1); 4(4); 5(1); 6(6)
Cited at pages: 42, 49

The case concerned the adequate involvement of the public in the early stages of the decision-making on the EIA for the Rosia Montana open-cast gold mine proposal, in particular at the scoping stage of the procedure. The communicant alleged failure by Romania to ensure access to information contained in the EIA documentation. The Committee found that by having introduced a general rule exempting full EIA studies from public disclosure, Romania was 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.

ACCC/C/2006/16 (Lithuania)

Party concerned: Lithuania
Filed by: NGO Kazokiskes Community (Lithuania)
Findings date & UN reference number: 2 April 2008 (ECE/MP.PP/2008/5/Add.6)
Articles considered by the Committee: 6(2)–(7), 6(9); 7; 9(2)
Cited at pages: 59, 62, 65, 67-69, 71, 75, 83

The case concerns permitting procedures with multiple layers regarding a landfill in the village of Kazokiskes in the municipality of Elektrenai Vilnius in Lithuania. In the complex system of the landfill's permitting procedure, with its various planning and permitting decisions that built upon each other, the Committee found that Lithuania had not adequately, promptly or effectively informed the public of their right to participate in decisions concerning the EIA, nor had it given them enough time to inspect the relevant documentation and submit comments.

ACCC/C/2006/17 (European Community)

Party concerned: European Community
Filed by: NGO Kazokiskes Community (Lithuania)
Findings date & UN reference number: 2 May 2008 (ECE/MP.PP/2008/5/Add.6)
Articles considered by the Committee: 3(1); 6(1); 6(2); 6(4); 9(2); 9(4)
Cited at pages: 26, 57, 62, 67, 68, 79, 108

The facts behind the case are the same as for the findings in ACCC/C/2006/16 Lithuania, the case was filed by the same communicant against Lithuania and the EU at the same time. The communication concerned compliance with the requirement of article 6 in connection with the Directive on Integrated Pollution Prevention and Control and the decision of the European Commission to co-finance the landfill in Kazokiskes (Lithuania). The communicant alleged failure to comply with provisions regarding decision-making concerning co-financing of establishment of the landfill, and a general failure to correctly implement provisions of the Convention into the Community law, in particular through the provisions of the Directive on Integrated Pollution Prevention and Control. The Committee did not issue recommendations, as the European Community did not agree that recommendations should be formulated by the Committee.

ACCC/C/2006/18 (Denmark)

Party concerned: Denmark
Filed by: Individual
Findings date & UN reference number: 29 April 2008 (ECE/MP.PP/2008/5/Add.4)
Articles considered by the Committee: 2(2); 9(3)
Cited at pages: 100, 101, 104, 105

The case concerns the lack of access of a Danish individual communicant to administrative or judicial procedures in Denmark to challenge an act of culling of rooks in alleged violation of the European Birds Directive. The communicant challenges 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 in this regard. The Danish municipality of Hillerød, in its capacity of a landowner, had the intention to cull 1,500 juvenile rooks to reduce the problem connected to vocal noise due to the breeding behaviour in the rook colonies. Following, a number of persons related to the municipality were allowed to cull the juvenile rooks.

ACCC/C/2007/21 (European Community)

Party concerned: European Community
Filed by: NGO Civic Alliance for the Protection of the Bay of Vlora (Albania)
Findings date & UN reference number: 3 April 2009 (ECE/MP.PP/C.1/2009/2/Add.1)
Articles considered by the Committee: 2(3); 4(4); 4(7); 6; 9(1)
Cited at pages: 20, 38, 41, 42, 60

The facts behind the case are the same as for the findings in ACCC/C/2005/12 Albania, the case was filed by the same communicant consecutively against Albania and the European Community. The case concerns the co-financing of the Vlora Thermal Power Generation Project by the European Investment Bank (EIB). The Committee found that the EIB was in compliance regarding the request of information by the communicant, as the requested information was provided, albeit with some delay. Also, no non-compliance was found with regard to public participation procedures, as the EIB has no legal authority of its own to undertake its own EIA on the territory of a State.

ACCC/C/2007/22 (France)

Party concerned: France
Filed by: NGOs L'Association de Défense et de Protection du Littoral du Golfe de Fos-sur-Mer, Le Collectif Citoyen Santé Environnement de Port-Saint-Louis-du-Rhône and Fédération d'Action Régionale pour l'Environnement (FARE Sud) (all France)
Findings date & UN reference number: 3 July 2009 (ECE/MP.PP/C.1/2009/4/Add.1)
Articles considered by the Committee: 3(1); 6(1)–(7); 7; 9(2); 9(4)–(5)
Cited at pages: 13, 60, 62, 64, 67, 82, 107

The case concerns the planning and permitting procedure of a domestic waste disposal plant at Fos-sur-Mer by the Communauté Urbaine Marseille Provence Métropole. The decision-making process was constituted of different plans, prior resolutions and a permitting decision. The communicants alleged that public participation did not take place for the prior resolutions that led to the permitting decisions, and that the public participation procedure that took place for the permit did not comply with the requirements of adequate public notice, reasonable time frames and early participation when all options are open. Furthermore, they alleged that access to justice was not adequate as no interim measures were ordered by a court. The Committee considered only the final permitting decision to fall under the scope of article 6 and found no non-compliance with either article 6 or article 9, paragraph 4 concerning this decision and the following court ruling.

ACCC/C/2008/23 (United Kingdom)

Party concerned: United Kingdom
Filed by: individuals
Findings date & UN reference number: 24 September 2010 (ECE/MP.PP/C.1/2010/6/Add.1)
Articles considered by the Committee: 3(8); 9(3)–(4)
Cited at pages: 32, 103, 112, 116

The case concerns a costs order awarded against the communicants upon the discharge of an interim injunction they had earlier been granted in respect of offensive odours emanating from the operator's waste composting site near their homes. Following the discharge (cancellation) of an interim injunction in respect of the offensive odours from waste composting site, 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. The communicants alleged that the United Kingdom failed to ensure the availability of fair, equitable, timely and not prohibitively expensive review procedures as required by article 9, paragraph 4. In addition, the communicants alleged that the demands for their costs to be paid forthwith and not to await the outcome of the trial amounted to non-compliance with article 3, paragraph 8.

ACCC/C/2008/24 (Spain)

Party concerned: Spain
Filed by: NGO Asociación para la Justicia Ambiental, AJA (Spain)
Findings date & UN reference number: December 2009 (ECE/MP.PP/C.1/2009/8/Add.1)
Articles considered by the Committee: 4(1)(b); 4(2); 4(8); 6(1)(a); 6(3); 6(6); 6(8); 9(4)
Cited at pages: 38, 39, 44, 55, 65, 69, 70, 73, 89, 109, 112

The case concerns a residential development project in the city of Murcia, Spain. It raises multiple issues under the Convention, including fees for access to environmental information, public participation opportunities and access to justice requirements. In particular, the communicant alleged that 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. Regarding the access to justice, the issues raised included availability of injunctive relief, length of judicial procedure and related costs.

ACCC/C/2008/27 (United Kingdom)

Party concerned: United Kingdom
Filed by: NGO Cultra Residents' Association (United Kingdom)
Findings date & UN reference number: 24 September 2010 (ECE/MP.PP/C.1/2010/6/Add.2)
Articles considered by the Committee: 9(4); 3(8)
Cited at pages: 32, 110, 111, 115

The case concerns the expansion of Belfast City Airport operations (increase of the permitted seats for sale allocation in a 12-month period) through amendment of a so-called Planning Agreement preceded by an examination in public. The communicant unsuccessfully sought to challenge respective decisions and was to pay the full fees and outlay of the Department of the Environment, totalling £39,454.

ACCC/C/2008/30 (Moldova)

Party concerned: Moldova
Filed by: Eco-TIRAS International Environmental Association of River Keepers
Findings date & UN reference number: 25 September 2009 (ECE/MP.PP/C.1/2009/6/Add.3)
Articles considered by the Committee: 2 (2)–(5); 3(1)–(2); 4(1)–(2), 4(4), 4(7); 9(1)
Cited at pages: 95

The case concerns compliance with obligations under the Convention in relation to access to information on contracts for rent of land of the State Forestry Fund in Moldova. The communication alleged that the Republic of Moldova failed to provide information on contracts for rent of land of the State Forestry Fund and adopted Regulation No. 187 that set out a broad rule with regard to the confidentiality of the information received from the rent holder. Non-compliance with regard to access to information and access to justice was found.

ACCC/C/2008/31 (Germany)

Party concerned: Germany
Filed by: NGOs ClientEarth, Nature and Biodiversity Conservation Union (Naturschutzbund Deutschland) (all Germany)
Findings date & UN reference number:
20 December 2013 (ECE/MP.PP/C.1/2014/8)
Articles considered by the Committee:
2(5); 3; 6; 9(2)–(4)
Cited at pages: 13, 93, 96, 98, 106

The case concerns the standing criteria in German procedural law. The communicants allege that German legislation established criteria for standing narrower in scope than those set out in article 9, paragraph 2, and did not ensure that members of the public concerned may challenge the procedural legality of any decision subject to article 6. It was further alleged 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, Germany failed to comply with articles 9, paragraph 3, in conjunction with article 9, paragraph 4.

ACCC/C/2008/32 (European Union) Part I and II

Party concerned: European Union
Filed by: NGO ClientEarth
Findings date & UN reference number:
Part I: 14 April 2011 (ECE/MP.PP/C.1/2011/4/Add.1) / Part II: 17 March 2017 (ECE/MP.PP/C.1/2017/7)
Articles considered by the Committee:
Part I: 2(2); 9(2)–(4) / Part II: 2(2); 3(1); 9(3)–(4)
Cited at pages: 13, 18, 102, 103, 105, 106

The case concerns the standing criteria in EU law and the application of the Plaumann test to individuals and NGOs in environmental cases. The communicant alleged a general failure by EU legislation to comply with access to justice in environmental matters, specifically regarding the standing criterion for private individuals and NGOs to challenge decisions before the Court of Justice of the European Union and the General Court. The findings on this case were delivered in two parts. Part I of the findings focused on the communicant's main allegation with regard to access to justice in environmental matters. The Committee found no non-compliance but several issues with regard to standing in EU law. Part II was delivered nearly 6 years after part I, looking more closely on the implementation of article 9, paragraph 3, through jurisprudence of EU courts and the EU Aarhus Regulation, finally leading to the finding of non-compliance.

ACCC/C/2008/33 (United Kingdom)

Party concerned: United Kingdom
Filed by: NGOs ClientEarth and the Marine Conservation Society (both United Kingdom) and a private individual
Findings date & UN reference number:
24 September 2010 (ECE/MP.PP/C.1/2010/6/Add.3)
Articles considered by the Committee:
3(1); 9(2)–(5)
Cited at pages: 26, 103, 110, 113, 115, 116

The general allegations of non-compliance related 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 that allows for the disposal and protective capping of highly contaminated port dredge materials at the marine disposal site "Souter Point".

The communication concerns four submissions. These are (1) that in practice, courts in England and Wales do not allow judicial review regarding the substantive legality of decisions, acts or omissions within the scope of the Convention; (2) that access to justice is prohibitively expensive, in particular with regard to the costs awarded against losing claimants and the requirement for claimants to undertake to cover defendants' losses to qualify for injunctive relief; (3) the lack of rights of action against private individuals for breaches of environmental laws; and (4) the time limits for bringing an application for judicial review, which the communicants submit are uncertain, unfair and overly restrictive. All submissions are raised in general and submissions (1), (2) and (4) are also raised in relation to the Port of Tyne situation.

ACCC/C/2008/35 (Georgia)

Party concerned: Georgia
Filed by: Caucasus Environmental NGO Network
Findings date & UN reference number: 18 June 2010 (ECE/MP.PP/C.1/2010/4/Add.1)
Articles considered by the Committee: 3(1); 6(1)(a)–(b)
Cited at pages: 124

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. 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. The Committee found that the decision on issuing licences for long-term forest use did not fall under article 6, paragraph 1, and thus the following requirements on informing the public and early public participation under article 6, paragraphs 2 and 4 were not applicable to the case.

ACCC/C/2009/36 (Spain)

Party concerned: Spain
Filed by: NGO Plataforma Contra la Contaminación del Almendralejo (Spain)
Findings date & UN reference number: 18 June 2010 (ECE/MP.PP/C.1/2010/4/Add.2)
Articles considered by the Committee: 3(8); 4(1)–(2); 6(3); 6(6)
Cited at pages: 32, 37, 39, 44, 70, 116, 117

The case focuses on activities of a local environmental group which raised concerns over operation of a local waste disposal facility, a wine distillery and a project of an oil refinery. The communicant alleged general failure by Spain to comply with the Convention, as well with particular provisions on access to information and public participation (such as requiring physical presence to examine documentation located far away from place of residence of communicant). This case also raised the issue of persecution and harassment of local activists by a mayor.

ACCC/C/2009/37 (Belarus)

Party concerned: Belarus
Filed by: confidential communicant
Findings date & UN reference number: 24 September 2010 (ECE/MP.PP//2011/11/Add.2)
Articles considered by the Committee: 4(5); 6; 6(2)–(3); 6(5)–(8)
Cited at pages: 37, 43, 48, 56, 58, 63, 65, 69, 71, 74

The case concerns access to and public participation with regard to the hydro power plant project on the Neman River in Belarus. The communication did not raise the issue of general compliance of the respective national legal framework with the provisions of the Convention. The Committee, however, made important observations concerning features of the relevant national legal framework and the environmental expertiza/OVOS system in general.

ACCC/C/2009/38 (United Kingdom)

Party concerned: United Kingdom
Filed by: NGO Road Sense (Scotland)
Findings date & UN reference number: 25 February 2011 (ECE/MP.PP/C.1/2011/2/Add.10)
Articles considered by the Committee: 4(4)
Cited at pages: 43, 70

The case concerns 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. While the communicant alleged non-compliance with several articles of the Convention, the Committee did not support any allegation.

ACCC/C/2009/41 (Slovakia)

Party concerned: Slovakia
Filed by: (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
Findings date & UN reference number: 17 December 2010 (ECE/MP.PP/2011/11/Add.3)
Articles considered by the Committee: 6(4); 6(10)
Cited at pages: 12, 69, 76, 77, 108, 124

The case concerns the extension (construction of additional reactors) of Mochovce Nuclear Power Plant in Slovakia. The main issues raised relate to the public participation concerning the construction of two units originally authorised in 1986 but the actual construction suspended for 20 years, with an additional permit issued in 2008 without EIA to enable the construction of two units to resume. EIA and public participation were subsequently carried out before the operating permit to be issued but after the construction had been completed. This case is factually related to a subsequent communication (ACCC/C/2013/89).

ACCC/C/2009/43 (Armenia)

Party concerned: Armenia
Filed by: NGO Transparency International Anti-corruption Centre, in collaboration with the associations Ecodar and Helsinki Citizens' Assembly of Vanadzor
Findings date & UN reference number: 17 December 2010 (ECE/MP.PP/2011/11/Add.1)
Articles considered by the Committee: 2(5); 6(2); 6(4); 7; 9(2)
Cited at pages: 22, 61, 62, 82

The case 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 raises several issues related to environmental expertiza procedure, peculiarities of public participation in a tiered decision-making process affecting rural areas and the clarity of national legislation regarding public participation.

ACCC/C/2009/44 (Belarus)

Party concerned: Belarus
Filed by: European ECO Forum
Findings date & UN reference number: 28 June 2011 (ECE/MP.PP/C.1/2011/6/Add.1)
Articles considered by the Committee: 2(3); 3(1); 4(1); 6(1)(a), 6(2), 6(4), 6(6)–(7), 6(9); 9(1)
Cited at pages: 32, 39, 58, 59, 70, 72, 88

The case concerns a project to construct a nuclear power plant in Belarus. Prior to the submission of its communication, 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 hydro power project. The communication alleges that Belarus failed to comply with the Convention by not providing complete and accurate information to citizens and NGOs that had requested information relating to a nuclear power plant as well as by (a) not properly informing the public about the decision authorizing the construction of the nuclear power plant, (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. It was further alleged that Belarus did not take 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 and that it put pressure on activists trying to promote their views on nuclear energy issues in Belarus. The Committee found non-compliance with articles 4 and 6.

The case is connected to ACCC/S/2015/2 (Belarus), which concerned the same decision-making project on the nuclear power plant, but with regards to the opportunities for the Lithuanian public to participate in a transboundary context.

ACCC/C/2010/45 and ACCC/C/2011/60 (United Kingdom)

Party concerned: United Kingdom
Filed by: Kent Environment and Community Network (United Kingdom), private individual
Findings date & UN reference number: 28 June 2013 (ECE/MP.PP/C.1/2011/6/Add.1)
Articles considered by the Committee: 6(1)(b); 6(4); 7; 9(2)
Cited at pages: 84, 95

The Committee joined the findings on the case ACCC/C/2010/45 and ACCC/C/2011/60, as it saw similarities in the allegations presented by the respective communicants. The cases concern the situation where third parties aggrieved about the environmental impacts of a planning proposal have limited third party rights of appeal. Also, general concerns of non-compliance with the public participation requirements are raised. The case ACCC/C/2010/45 concerns a proposed construction of a superstore, submitted to Shepway District Council. The case ACCC/C/2011/60 raises concerns on the discussion of planning applications at Westminster Council and Wandsworth, and Camden, and the right of members of the public to make oral submissions and the time they are granted to comment. The Committee found no non-compliance in this case.

ACCC/C/2010/48 (Austria)

Party concerned: Austria
Filed by: Coordination Office of Austrian Environmental Organizations (Ökobüro)
Findings date & UN reference number:
11 December 2011 (ECE/MP.PP/C.1/2012/4)
Articles considered by the Committee:
1; 3; 4(7); 9(1)–(4)
Cited at pages: 13, 44, 99, 104, 113

The communication alleges several general failures of Austria to implement the Convention, especially with regards to access to information and access to justice. The communication alleges a failure of Austrian law to comply with the time limits in article 4, paragraph 2 and in conjunction with this, non-compliance with article 9, paragraph 1. The communication further alleges non-compliance with article 9, paragraph 2, 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, 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 Committee found non-compliance with article 4, paragraph 7, as well as article 9, paragraphs 3 and 4.

ACCC/C/2010/50 (Czech Republic)

Party concerned: Czech Republic
Filed by: Environmental Law Service (Ekologiský právní servis)
Findings date & UN reference number:
29 June 2012 (ECE/MP.PP/C.1/2012/11)
Articles considered by the Committee:
2(5); 6(1)(b); 6(3); 6(8); 9(2)–(4)
Cited at pages: 21, 22, 59, 66, 73, 99, 104

The communication alleged the restriction of standing for individuals relating to land-use and building permits (impairment of rights doctrine), the limited rights to non-governmental organizations to challenge the substantive and procedural legality of environmental permits falling under article 6 of the Convention; and that lack of review procedures with respect to administrative omissions regarding activities subject to article 6. The communication also alleged that remedies were ineffective in environmental matters and that the Party concerned in general failed to provide for a sufficiently clear, transparent and consistent framework on access to justice. The Committee found non-compliance with article 6, paragraph 3 and 8 as well as with article 2, paragraph 5 in conjunction with article 9, paragraph 2, and with article 9, paragraph 3.

ACCC/C/2010/51 (Romania)

Party concerned: Romania
Filed by: NGOs Greenpeace Central and Eastern Europe (Greenpeace CEE), Romanian NGO Centre for Legal Resources
Findings date & UN reference number:
28 March 2014 (ECE/MP.PP/C.1/2014/12)
Articles considered by the Committee:
2(3); 3(1)–(2); 3(9); 4(1)–(4); 4(6)–(7); 7; 9(4)
Cited at pages: 33, 38–42, 58, 85

The case concerns three decisions: the decision to build a new nuclear power plant; the decision(s) regarding the location, technology, and other matters for the proposed construction of the nuclear power plant; and the adoption of the energy strategy. Non-compliance was found with article 4, paragraphs 1, 2, 4, 7 as well as with article 7, conjunction with article 6, paragraph 3.

ACCC/C/2010/53 (United Kingdom)

Party concerned: United Kingdom
Filed by: the Moray Feu Traffic Subcommittee of Lord Moray's Feuars Committee
Findings date & UN reference number:
11 January 2011 (ECE/MP.PP/C.1/2013/3)
Articles considered by the Committee:
2(3); 4; 8
Cited at pages: 20, 89

The case concerns a new traffic scheme through the residential area of the Moray Feu, Edinburgh. Local residents tried to get access to raw data from air monitoring stations and expressed their concerns as to environmental impacts of the new traffic scheme. The key issues raised related to access to raw data and peculiarities of the public participation procedures during the relevant decision-making by the public, including local authorities in Scotland.

ACCC/C/2010/54 (European Union)

Party concerned: European Union
Filed by: Mr. Pat Swords
Findings date & UN reference number: 29 June 2012 (ECE/MP.PP/C.1/2012/12)
Articles considered by the Committee: 3(1); 7
Cited at pages: 11, 12, 81, 83, 85, 86

The case primarily concerns Renewable Energy Feed-In Tariff I (REFIT I) programme in Ireland — a programme supported by the EU both by means of direct funding and by approving State aid. It also addresses the EU's oversight function over implementation of Ireland's national renewable energy action plan. The main focus of the case is the EU obligations under the Convention and its respective obligations to ensure that its Member States comply with the Convention.

ACCC/C/2011/57 (Denmark)

Party concerned: Denmark
Filed by: (NGO) Dansk Ornitologisk Forening — BirdLife Denmark (DOF) (Danish Ornithological Society)
Findings date & UN reference number: 30 March 2012 (ECE/MP.PP/C.1//2012/7)
Articles considered by the Committee: 9(4)
Cited at pages: 15, 110, 114, 115

The case concerns the size of the fees imposed on NGOs to bring certain complaints to the Danish Nature and Environmental Appeal Board, an independent and impartial tribunal set up to deal with public complaints regarding administrative decisions concerning the environment.

ACCC/C/2011/58 (Bulgaria)

Party concerned: Bulgaria
Filed by: (NGO) Balkani Wildlife Society
Findings date & UN reference number: 28 September 2012 (ECE/MP.PP/C.1/2013/4)
Articles considered by the Committee: 9(2)–(3)
Cited at pages: 58, 97, 104, 107

The case concerns standing of NGOs in the context of national legal framework on strategic environmental assessment and spatial planning. It raised a number of issues related to situations where SEA statement cannot be challenged separately and strict standing criteria applied to spatial planning decisions.

ACCC/C/2011/59 (Kazakhstan)

Party concerned: Kazakhstan
Filed by: The Kazakh public association "National Analysis and Information Resource"
Findings date & UN reference number: 28 March 2013 (ECE/MP.PP/C.1/2013/9)
Articles considered by the Committee: 6(2); 6(6)–(7)
Cited at pages: 61, 62, 69, 71

The case primarily concerns a type of environmental impact assessment procedure used in some countries: OVOS and environmental expertiza. It raises a number of issues related to timely and effective notification, providing access to project information, as well ensuring public participation in these procedures.

ACCC/C/2011/61 (United Kingdom)

Party concerned: United Kingdom
Filed by: private individual
Findings date & UN reference number: 28 June 2013 (ECE/MP.PP/C.1/2011/6/Add.1)
Articles considered by the Committee: 2(2); 6(1)(a), 6(2); 8; 9(2)
Cited at pages: 18, 60

The Crossrail project, a major infrastructure initiative involving the construction of a high-frequency railway line running east to west through metropolitan London and connecting with the underground network, was developed through the hybrid bill process. Concerns were raised in a communication alleging that the Crossrail Act 2008 had misapplied requirements for obtaining consent in relation to conservation areas and listed buildings, potentially limiting opportunities for public participation as would have been normally provided. This was claimed to place the United Kingdom in non-compliance with article 6, paragraph 7. No non-compliance was found.

ACCC/C/2011/62 (Armenia)

Party concerned: Armenia
Filed by: NGO Ecoera
Findings date & UN reference number: 28 June 2013 (ECE/MP.PP/C.1/2013/14)
Articles considered by the Committee: 2(5); 9(2)–(4)
Cited at pages: 95

The communication concerns the issuance and renewal of licenses granted to a developer for the exploitation of copper and molybdenum deposits in the Lori region of Armenia. It raises issues regarding the compliance of the Party concerned with its obligations under the Convention, specifically in relation to developments that followed the Committee's earlier findings on communication ACCC/C/2009/43. The case examines whether the actions taken by the Party align with the requirements established in the Convention and the Committee's previous recommendations.

ACCC/C/2011/63 (Austria)

Party concerned: Austria
Filed by: NGO Vier Pfoten-Stiftung für Tierschutz gemeinnützige Privatstiftung
Findings date & UN reference number: 27 September 2013 (ECE/MP.PP/C.1/2014/3)
Articles considered by the Committee: 2(3); 9(3)–(4)
Cited at pages: 102, 103, 107

A communication was submitted to the Compliance Committee alleging that the Party concerned failed to provide access to justice for members of the public in administrative penal and judicial criminal proceedings related to violations of national environmental law. The communication claimed that this failure constituted non-compliance with article 9, paragraphs 3 and 4. Following its review, the Committee found that the Party concerned was indeed not in compliance with article 9, paragraph 3, in conjunction with paragraph 4.

ACCC/C/2012/66 (Croatia)

Party concerned: Croatia
Filed by: NGO Association for Nature, Environment and Sustainable Development (Sunce)
Findings date & UN reference number: 27 September 2013 (ECE/MP.PP/C.1/2014/4)
Articles considered by the Committee: 3(1); 6(3)–6(4), 6(8); 7
Cited at pages: 83

The case concerned obligations under the Convention concerning public participation with regard to plans and programmes. The communication alleged that the Party concerned failed to comply with article 7 because of the adoption of waste management plans at the county and city level without inspection control and public participation. Specifically, the communication alleges that the Party concerned failed to comply with article 7 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 and further regulated by special laws. Non-compliance with articles 7 and 3, paragraph 1, was found.

ACCC/C/2012/68 (European Union and United Kingdom)

Party concerned: European Union and United Kingdom
Filed by: Ms. Christine Metcalfe on behalf of the Avich and Kilchrenan Community Council
Findings date & UN reference number: 24 September 2013 (ECE/MP.PP/C.1/2014/5)
Articles considered by the Committee: 2(4); 5(1); 6; 6(2); 7
Cited at pages: 21, 49, 56, 63, 81

The case concerns the permitting process for a wind farm and the preceding national renewable energy planning in the United Kingdom, in particular the obligation of parties to possess information when executing its functions. The case is also interesting for its procedural aspect: the communicant was a "community council" in Scotland: a body with statutory duties in terms of licensing and planning, but no regulatory decision-making functions.

ACCC/C/2012/69 (Romania)

Party concerned: Romania
Filed by: (NGOs) Greenpeace CEE Romania, the Center for Legal Resources (Centrul de Resurse Juridice) and the Justice and Environment
Findings date & UN reference number: 26 June 2015 (ECE/MP.PP/C.1/2015/10)
Articles considered by the Committee: 2(3); 4(1); 4(6); 6(3); 6(7); 9(1)–(4)
Cited at pages: 13, 20, 37, 38, 42, 43, 44, 66, 70, 113, 114

The case concerns various aspects of the EIA carried out for the Rosia Montana mining project in Romania, including lack of access to archaeological and other information related to decision-making, lack of public participation in archaeological procedure, as well as long judicial procedures in access to information cases.

ACCC/C/2012/70 (Czech Republic)

Party concerned: Czech Republic
Filed by: (NGO) Environmental Law Service (Ekologiský právní servis)
Findings date & UN reference number: 20 December 2013 (ECE/MP.PP/C.1/2014/9)
Articles considered by the Committee: 6(3)–(4); 6(8); 7
Cited at pages: 82, 83, 85, 86

The case concerns public participation in preparation of the application of Czech Republic to the European Commission for free allocation of allowances, including its national investment plan, under the European Union (EU) Emissions Trading System.

ACCC/C/2012/71 (Czech Republic)

Party concerned: Czech Republic
Filed by: Ms. Brigitte Artmann
Findings date & UN reference number: 13 September 2016 (ECE/MP.PP/C.1/2017/3)
Articles considered by the Committee: 2(5); 3(9); 6; 6(1)–6(4)
Cited at pages: 22, 33, 56, 59, 61, 63, 64-66, 70, 72

The case main issue relates to ensuring public participation in a foreign country due to likely transboundary impacts of a project. The project in question was construction of additional reactors at Temelin nuclear power plant in Czechia while it was the German public who, as alleged by the communicant, did not have an equal and effective opportunity to participate. The project was subject to transboundary EIA as required by relevant EU law and the UNECE Espoo Convention.

ACCC/C/2012/76 (Bulgaria)

Party concerned: Bulgaria
Filed by: (NGO) Balkani Wildlife Society
Findings date & UN reference number: 9 October 2015 (ECE/MP.PP/C.1/2016/3)
Articles considered by the Committee: 6; 9(2); 9(4)
Cited at pages: 15, 57, 99, 109, 110

The case primarily concerns implementation of article 9, paragraph 4, in Bulgaria, particularly the application of Convention's requirements regarding injunctive relief to judicial review of environmental permits issued under three European Union directives: the EIA Directive, the SEA Directive, and the Habitats Directive.

ACCC/C/2012/77 (United Kingdom)

Party concerned: United Kingdom
Filed by: NGO Greenpeace
Findings date & UN reference number: 2 July 2014 (ECE/MP.PP/C.1/2015/3)
Articles considered by the Committee: 9(4)
Cited at pages: 15

Greenpeace Limited submitted a communication alleging that the Party concerned failed to comply with article 9, paragraph 4 and paragraph 5, due to the high costs imposed when applications for judicial review in environmental cases are refused. The case involved Greenpeace's challenge to the designation of the Nuclear National Policy Statement in the United Kingdom, where its application for judicial review was denied and it was ordered to pay substantial costs. Despite a partial reduction, the Committee found that the Party concerned was not in compliance with article 9, paragraph 4.

ACCC/C/2013/81 (Sweden)

Party concerned: Sweden
Filed by: private individual
Findings date & UN reference number: 18 November 2016 (ECE/MP.PP/C.1/2017/4)
Articles considered by the Committee: 4; 5; 6(1)(a); 6(1)(b); 7; 8; 9(2)–(4)
Cited at pages: 106, 107, 110

The communication alleged that the Party concerned failed to comply with articles 4, 5, 6, 7, 8 and 9 both in relation to the permitting process for the issuance of permits for two wind turbines near the town of Strängnäs, Sweden, and in general. The communication alleged that the Convention's provisions are consistently overridden with respect to building permits for wind turbines. No non-compliance was found.

ACCC/C/2013/85 and ACCC/C/2013/86 (United Kingdom)

Party concerned: United Kingdom
Filed by: NGO Environmental Law Foundation; member of the public
Findings date & UN reference number:
17 June 2015 (ECE/MP.PP/C.1/2016/10)
Articles considered by the Committee:
2(3); 9(3)–(4)
Cited at pages: 100-102

The cases concern the section 46 of the Legal Aid, Sentencing and the Punishment of Offenders Act 2012 in the United Kingdom. The communications allege that this provision would result in prohibitively expensive costs in private nuisance proceedings and would increase financial and other barriers to access to justice in breach of article 9, paragraphs 3, 4 and 5. Non-compliance with article 9, paragraph 4 was found. The cases ACCC/C/2013/85 and ACCC/C/2013/86 were considered jointly by the Committee.

ACCC/C/2013/88 (Kazakhstan)

Party concerned: Kazakhstan
Filed by: 12 members of the public, 5 of them members of the Ecological Society "Green Salvation"
Findings date & UN reference number:
19 June 2017 (ECE/MP.PP/C.1/2017/12)
Articles considered by the Committee:
2(3); 6(2)–(4); 6(7)–(8); 7
Cited at pages: 65, 72, 82-84

The communicants alleged that the Party concerned failed to ensure public participation in the decision-making in relation to the construction of a ski resort in the Kok Zhailau area of the Ile-Alatau National Park, and concerning plans, programmes and policies relating to the environment in accordance with article 6 and 7. Non-compliance was found with article 6, paragraphs 2, 3, 4, 8, and with article 7.

ACCC/C/2013/89 (Slovakia)

Party concerned: Slovakia
Filed by: (NGOs) Greenpeace Slovakia, Via Iuris and GLOBAL 2000/Friends of the Earth Austria
Findings date & UN reference number:
19 June 2017 (ECE/MP.PP/C.1/2017/13)
Articles considered by the Committee:
2(3); 4(1); 4(4); 6(2); 6(6); 9(4)
Cited at pages: 20, 38, 42, 43, 64, 110

The case concerns access to information during public participation in the course of decision-making on the extension to reactors 3 and 4 of the Mochovce nuclear power plant, as well as related access to justice issues. This case is factually related to communication

ACCC/C/2013/90 (United Kingdom)

Party concerned: United Kingdom
Filed by: (NGO) River Faughan Anglers Ltd.
Findings date & UN reference number:
26 July 2021 (ECE/MP.PP/C.1/2021/14)
Articles considered by the Committee:
3(2); 6; 6(1)(b); 6(4); 9(2); 9(4)
Cited at pages: 27, 57, 59, 68, 96, 97, 111, 115

The case concerns concrete production plant and associated settlement lagoons at a site adjacent to the River Faughan Special Area of Conservation. The core issues raised relate to a procedure for legalizing activities (a project after it was completed without a permit) without ensuring public participation. It also addresses the review standards under article 9, paragraph 2, particularly in reviewing EIA screening decisions.

ACCC/C/2013/91 (United Kingdom)

Party concerned: United Kingdom
Filed by: Ms. Sylvia Kotting-Uhl (German citizen)
Findings date & UN reference number:
19 June 2017 (ECE/MP.PP/C.1/2017/14)
Articles considered by the Committee:
2(5); 6; 6(2)
Cited at pages: 22, 23, 56, 60, 61, 63

The case concerns opportunities that German public had (or should have been offered) to participate in decision-making procedure concerning the proposed construction of two third-generation nuclear reactors at Hinkley Point, known as Hinkley Point C.

ACCC/C/2013/92 (Germany)

Party concerned: Germany
Filed by: Ms. Brigitte Artmann
Findings date & UN reference number:
18 June 2017 (ECE/MP.PP/C.1/2017/15)
Articles considered by the Committee:
3(2); 6
Cited at pages: 15, 28-30, 56

The case concerns opportunities that German public had to participate in a transboundary EIA procedure concerning the proposed construction of two third generation nuclear reactors at Hinkley Point C. The core issue raised is what obligations an affected country bears to ensure public participation over a project developed in the country of origin (Germany and United Kingdom respectively in this case). See also case C/91.

ACCC/C/2013/93 (Norway)

Party concerned: Norway
Filed by: Mr. Ole Kristian Fauchald
Findings date & UN reference number:
19 June 2017 (ECE/MP.PP/C.1/2017/16)
Articles considered by the Committee:
4; 4(3)(c); 4(7); 9(1); 9(4)
Cited at pages: 37, 40, 44, 94, 113

The case concerns access to a legal analysis, an underlying environmental information used by the government to prepare Nature Diversity Act. It raises a number of important issues related to access to information requests: what is considered an "internal communication", role and length of the procedures under Parliamentary Ombudsman to challenge the denial for access to environmental information.

ACCC/C/2013/98 (Lithuania)

Party concerned: Lithuania
Filed by: Association Rudamina Community
Findings date & UN reference number: 7 June 2021 (ECE/MP.PP/C.1/2021/15)
Articles considered by the Committee: 3(8); 6(1)(a); 6(2)–(9); 9(4)
Cited at pages: 32, 62, 63, 65, 67, 71, 74, 76, 112

The Association Rudamina Community submitted a communication to the Compliance Committee alleging non-compliance by Lithuania with articles 6, 7 and 9 regarding the construction of an overhead power line between Alytus, Lithuania, and Elk, Poland. Non-compliance was found with article 3, paragraph 8, and article 6, paragraphs 2 (d) (ii), 7, 8 and 9.

ACCC/C/2014/99 (Spain)

Party concerned: Spain
Filed by: Fons de Defensa Ambiental (NGO)
Findings date & UN reference number:
19 June 2017 (ECE/MP.PP/C.1/2017/17)
Articles considered by the Committee: 6(1)(a); 6(1)(b); 6(2)–(10); 9(2); 9(4)
Cited at pages: 60, 75, 76

The non-governmental organization (NGO) Fons de Defensa Ambiental submitted a communication alleging the failure of Spain to comply with its obligations under article 6, paragraphs 2, 3, 4, 8 and 9, and article 9, paragraph 2. Specifically, the communication alleges that the public was not given the opportunity for early and effective participation regarding the award of an environmental permit to a private company insofar as the notice for the permitting procedure referred to the authorization of an activity that was different from the one actually authorized. Moreover, some information related to the permit and administrative file was made available to the public only after the environmental permit was issued. In addition, the communication alleges that there was a breach of access to justice.

ACCC/C/2014/100 (United Kingdom)

Party concerned: United Kingdom
Filed by: High Speed 2 Action Alliance Limited (NGO)
Findings date & UN reference number:
12 March 2019 (ECE/MP.PP/C.1/2019/6)
Articles considered by the Committee:
6(2)–(4); 6(6); 6(8); 7
Cited at pages: 67, 70, 82, 84

High Speed 2 Action Alliance Limited, a non-governmental organization, the London Borough of Hillingdon, and a member of the public (the communicants) submitted a communication alleging a failure by the United Kingdom of Great Britain and Northern Ireland to comply with its obligations under article 7 generally, and article 7 in conjunction with article 6, paragraph 3 and paragraph 4. Specifically, the communicants allege that the Party concerned has failed to comply with article 7 by failing to ensure public participation in relation to the decisions issued by the Secretary of State for Transport in 2012 in the Command

Paper "High Speed Rail: Investing in Britain's Future – Decisions and Next Steps", which sets out the strategy of the Party concerned for the promotion, construction and operation of a new "Y"-shaped high-speed railway from London to the West Midlands, Manchester and Leeds known as High Speed 2.

ACCC/C/2014/101 (European Union)

Party concerned: European Union
Filed by: High Speed 2 Action Alliance Limited (NGO)
Findings date & UN reference number: 18 June 2017 (ECE/MP.PP/C.1/2017/18)
Articles considered by the Committee: 3(1); 7; 17; 19(4); 19(5)
Cited at pages: 26, 81

HS2 Action Alliance Limited, a non-governmental organization, the London Borough of Hillingdon and a member of the public (the communicants) submitted a communication alleging the failure of the European Union to comply with its obligations under article 7. Specifically, the communicants alleged that the Party concerned failed to comply with article 7 and article 3, paragraph 1, by failing to establish a "proper regulatory framework" for public participation in the preparation of plans or programmes relating to the environment. The communication relates to events which are also before the Committee in the context of communication ACCC/C/2014/100 concerning compliance by the United Kingdom of Great Britain and Northern Ireland with the Convention.

ACCC/C/2014/102 (Belarus)

Party concerned: Belarus
Filed by: NGO Ecohome
Findings date & UN reference number: 18 June 2017 (ECE/MP.PP/C.1/2017/19)
Articles considered by the Committee: 3(8)
Cited at pages: 30-33

This is a landmark case in Compliance Committee case law on article 3, paragraph 8 (harassment, penalization and persecution of activists). The case concerns activists, which were opposing the planned Ostrovets nuclear power plant in Belarus and were subject to harassment and persecution by the Government, including unlawful detentions, arrests, bans on entering the country, searches and seizures of information materials. The findings in this case established a four criteria test for harassment cases (see relevant citations under article 3, paragraph 8, in this publication.

ACCC/C/2014/104 (Netherlands)

Party concerned: Netherlands
Filed by: NGO Stichting Greenpeace Netherlands
Findings date & UN reference number: 4 October 2018 (ECE/MP.PP/C.1/2019/3)
Articles considered by the Committee: 6(4); 6(10); Annex I
Cited at pages: 67, 77, 78

This case concerns alleged failure by the Netherlands to comply with its obligations under article 6 in relation to the design lifetime extension of Borssele Nuclear Power Plant. The substance matter of the case was also subject to consideration by Implementation Committee under the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention). After the findings were adopted, the party concerned agreed to direct recommendations to be issued by Compliance Committee.

ACCC/C/2014/105 (Hungary)

Party concerned: Hungary
Filed by: NGOs Hungarian Greenpeace Association, Energiaklub Climate Policy Institute and Applied Communications (Energiaklub)
Findings date & UN reference number: 26 July 2021 (ECE/MP.PP/C.1/2021/16)
Articles considered by the Committee: 2(2); (2(3); 4(3); 5(7); 7; 9(4)
Cited at pages: 18, 20, 40, 51, 82, 83, 86, 108

This case concerns access to information and public participation in developing energy policy in Hungary, which included plans for construction of additional units (reactors) at Paks nuclear power plant.

ACCC/C/2013/106 (Czech Republic)

Party concerned: Czech Republic
Filed by: NGO "V havarijní zón jaderné elektrárny Temelín"
Findings date & UN reference number: 1 November 2019 (ECE/MP.PP/C.1/2020/3)
Articles considered by the Committee: 6(8); 9(2); 9(4)

Cited at pages: 73, 98, 110, 114

This case concerns public participation in decision-making related to construction of a spent nuclear fuel storage facility and subsequent attempts to challenge the decision (planning permit) in domestic courts. The cases raised a number of issues concerning standing criteria, length of court procedures, injunctive relief in administrative cases. An Austrian NGO Oekobuero participated in this case as observer.

ACCC/C/2013/107 (Ireland)

Party concerned: Ireland
Filed by: Mr. Kieran Cummins
Findings date & UN reference number:
19 August 2019 (ECE/MP.PP/C.1/2019/9)
Articles considered by the Committee:
6(10); Annex I
Cited at pages: 77, 78, 124

This case concerns public participation in a decision-making procedure to extend the duration of a quarry, involving several decisions over a long period of time. NGO the Environmental Pillar participated as observer in the case. The case is also interesting with regard to admissibility considerations (not covered in this publication).

ACCC/C/2014/111 (Belgium)

Party concerned: Belgium
Filed by: Ardennes liégeoises ASBL, Terre wallonne ASBL (NGOs)
Findings date & UN reference number:
18 June 2017 (ECE/MP.PP/C.1/2017/20)
Articles considered by the Committee:
9(2)–(4)
Cited at pages: 115, 116

Two non-profit associations, Ardennes liégeoises ASBL and Terre wallonne ASBL (the communicants), submitted a communication alleging that the Party concerned failed to ensure that access to judicial procedures to challenge an act or omission by a private person that contravened provisions of national law relating to the environment under article 9, paragraph 3, was not prohibitively expensive as required by article 9, paragraph 4.

ACCC/C/2014/112 (Ireland)

Party concerned: Ireland
Filed by: 7 NGOs
Findings date & UN reference number:
25 July 2021 (ECE/MP.PP/C.1/2021/17)
Articles considered by the Committee:
2(3)(b); 4; 5(2), 5(7); 6(8)–(9); 7; 9(1), 9 (3)–(5)
Cited at pages: 12, 19, 50, 73, 74, 94, 114

The communicants alleged systemic breaches of the above provisions by the Party concerned in its implementation of the European Union renewable energy programme in the Party concerned through the Irish national renewable energy action plan such as refusing to provide access to information in the environmental benefits of the national renewable energy action plan.

ACCC/C/2014/118 (Ukraine)

Party concerned: Ukraine
Filed by: Environment-People-Law (NGO)
Findings date & UN reference number:
24 July 2021 (ECE/MP.PP/C.1/2021/18)
Articles considered by the Committee:
2(3); 2(5); 4(1); 4(3)–(4); 6(1)(a); 6(4); 6(10); 9(2); 9(4)
Cited at pages: 21, 39, 44, 68, 108, 111

The case concerns the production-sharing agreements (PSAs) and mineral extraction permits for the Yuzivska and Oleska oil fields in Ukraine. The communicant, the NGO Environment-People-Law, alleges non-compliance with the Convention with regards to access to information, public participation and access to justice.

ACCC/C/2014/119 (Poland)

Party concerned: Poland
Filed by: Fundacja Frank Bold (Frank Bold Foundation)
Findings date & UN reference number:
15 June 2022 (ECE/MP.PP/C.1/2022/10)
Articles considered by the Committee:
6(3)–(4); 6(8); 7; 9(3)
Cited at pages: 74, 83

The communicant alleges the failure of Poland to implement article 7 in conjunction with article 6, paragraphs 3, 4 and 8, regarding the decision-making on an amendment to the spatial development plan for the Lubuskie Voivodeship (Province), as well as article 9, paragraph 3, with regard to the possibility for members of the public to access administrative or judicial review procedures to challenge acts by public authorities.

ACCC/C/2014/120 (Slovakia)

Party concerned: Slovakia
Filed by: NGO VIA IURIS
Findings date & UN reference number:
24 July 2021 (ECE/MP.PP/C.1/2021/19)
Articles considered by the Committee:
2(2); 3(1); 8; 9(3)
Cited at pages: 19, 27, 88, 89, 100

The communicant alleged a failure by Slovakia to comply with its obligations under articles 8 and 9, paragraph 3, in relation to legislation concerning forestry. More specifically, the communicant alleges that the Party concerned failed to provide public participation to the extent required by article 8 in the preparation of an amendment to forestry legislation in 2013 and access to justice to enforce rules governing public participation in the preparation of such legislation.

ACCC/C/2014/121 (European Union)

Party concerned: European Union
Filed by: NGO "International Institute for Law and the Environment"
Findings date & UN reference number:
30 March 2020 (ECE/MP.PP/C.1/2020/8)
Articles considered by the Committee: 6(10)
Cited at pages: 58, 77–79

This case concerns European Union's Industrial Emissions Directive and its requirements for public participation in decision-making in light of article 6, paragraph 1 (a) and paragraph 10, in some cases where an integrated permit issued under the Directive is reconsidered or updated (e.g., due to the publication of new BAT conclusions). It also addressed the issue of EU's scope of obligations under the Convention in the context of updating the permits under Industrial Emissions Directive.

ACCC/C/2014/122 (Spain)

Party concerned: Spain
Filed by: NGO "International Institute for Law and the Environment"
Findings date & UN reference number:
17 December 2020 (ECE/MP.PP/C.1/2021/7)
Articles considered by the Committee: 6(10)
Cited at pages: 77, 79

This case concerns Spain's lack of implementation of requirements for public participation in decision-making in light of article 6, paragraphs 2 and 10, in cases where an integrated permit issued under the Industrial Emissions Directive was reconsidered or updated under transitional provisions of national legislation. It is related to cases C/104 (Netherlands) and C/121 (European Union).

ACCC/C/2014/123 (European Union)

Party concerned: European Union
Filed by: NGO "Justice and Environment"
Findings date & UN reference number:
24 May 2017 (ECE/MP.PP/C.1/2017/21)
Articles considered by the Committee: 9
Cited at pages: 12, 93

This case concerns the alleged failure of the European Union to fully transpose article 9 into European Union law. One of the core issues addressed was the extent of obligations of the EU under the Convention and whether EU is under obligation to adopt an access to justice directive. The United Kingdom participated in the case as observer.

ACCC/C/2014/124 (Netherlands)

Party concerned: Netherlands
Filed by: NGO "Stichting Greenpeace Netherlands"
Findings date & UN reference number:
26 July 2021 (ECE/MP.PP/C.1/2021/201)
Articles considered by the Committee:
2(3); 4(1); 4(3)
Cited at pages: 19, 21, 39-41

This case concerns access to various documents, claimed to be internal communications and/or in the course of completion as reason for refusal to provide them. The subject matter of information requests related to authorizing two power plants with impact on NATURA 2000 site on the basis of overriding public interest.

ACCC/C/2015/128 (European Union)

Party concerned: European Union
Filed by: NGOs GLOBAL 2000 and OEKOBUERO – Alliance of the Austrian Environmental Movement
Findings date & UN reference number: 17 March 2021 (ECE/MP.PP/C.1/2021/21)
Articles considered by the Committee: 2(2); 9(3)–(4)
Cited at pages: 12, 18, 100, 105, 107

This case concerns failure of the European Union to comply with article 9, paragraphs 3 and 4, concerning access to justice regarding the European Commission decision to approve state aid for the nuclear power plant project, Hinkley Point C. This is a landmark case regarding applicability of the Convention's provisions to the EU state aid decisions, particularly challenging such decisions under EU law. The United Kingdom, as well as NGO ClientEarth participated as observers in the case.

ACCC/C/2015/130 (Italy)

Party concerned: Italy
Filed by: WWF Italia
Findings date & UN reference number: 6 July 2021 (ECE/MP.PP/C.1/2021/22)
Articles considered by the Committee: 3(1); 9(2)–(5)
Cited at pages: 27, 112, 115-117

The communicant alleged a failure of Italy to comply with its obligations under article 3, paragraph 1, and article 9, paragraphs 4 and 5 with respect to the cost of access to justice. The communicant claims that the costs of access to justice in environmental matters in the Party concerned are prohibitively expensive within the meaning of article 9, paragraph 4, by reason of: (a) the court filing fee; and (b) the costs awarded against unsuccessful claimants.

ACCC/C/2015/131 (United Kingdom)

Party concerned: United Kingdom
Filed by: a private individual
Findings date & UN reference number: 26 July 2021 (ECE/MP.PP/C.1/2021/23)
Articles considered by the Committee: 3(2); 3(8); 5(1); 5(3); 6(1)(b); 9(2); 9(4)
Cited at pages: 13, 28-30, 49, 50, 59, 108, 111, 112, 114

The communicant alleges non-compliance by the United Kingdom with the considered articles of the Convention in connection with the redevelopment of a former hospital site. The case concerns the obligation to make relevant planning documentation available under article 5, public participation for EIA screening decisions, as well as access to justice.

ACCC/C/2015/134 (Belgium)

Party concerned: Belgium
Filed by: NGO Avala ASBL and private individual
Findings date & UN reference number: 26 July 2021 (ECE/MP.PP/C.1/2021/24)
Articles considered by the Committee: 2(2); 2(3); 4(1)–(2); 4(7); 9(1); 9(4)
Cited at pages: 94, 95, 114, 117

The case concerns three requests for environmental information. The following information was requested: copy of the combined planning and environmental consent for the municipal swimming pool in Stavelot; various permits and plans associated with the application for the "L'Eau Rouge" campsite in the Municipality of Stavelot; the Municipality of Stavelot's intentions concerning the access ramps at the Francorchamps motor-racing circuit after the end of the temporary occupation licence. The requests were not answered by the administration and brought to the established review mechanism "CRAIE" (Appeal Commission for the Right of Access to Environmental Information) which decided on the different requests after 51, 56 and 66 days respectively. The communicants alleged a failure of Belgium to comply with articles 1, 3, 4, paragraphs 1 and 2, and article 9, paragraphs 1, 3 and 4, in connection with access to environmental information.

ACCC/C/2015/135 (France)

Party concerned: France
Filed by: a private individual
Findings date & UN reference number: 10 March 2020 (ECE/MP.PP/C.1/2020/9)
Articles considered by the Committee: 6(1)(a)–(b); 9(2)–(3)
Cited at pages: 106, 124

The communicant alleges a failure by France to comply with its obligations under article 9, paragraph 2. More specifically, the communicant alleges that a decision by the Conseil d'État to dismiss, for lack of standing, his petition against a ministerial order authorizing the destruction of animal pests violated article 9, paragraph 2.

ACCC/C/2016/138 (Armenia)

Party concerned: Armenia
Filed by: NGO "Ecological Right"
Findings date & UN reference number:
24 July 2021 (ECE/MP.PP/C.1/2021/26)
Articles considered by the Committee: 9(2)
Cited at pages: 97

This case concerns alleged failure by Armenia to ensure access to justice for environmental NGOs with respect to the environmental impact assessments for the Amulsar open-pit mine, primarily denial of standing to the communicant and others to challenge the licences and expertiza conclusions related to extensions of the Amulsar open-pit mine.

ACCC/C/2016/137 (Germany)

Party concerned: Germany
Filed by: WWF Germany
Findings date & UN reference number:
23 July 2021 (ECE/MP.PP/C.1/2021/25)
Articles considered by the Committee:
2(5); 3; 9(2)–(3)
Cited at pages: 98

The case addresses the criteria for standing of environmental non-governmental organizations to have access to justice in environmental matters. The Committee found that the criteria for recognition established in the German Environmental Appeals Act are unreasonably exclusionary, not consistent with the objective of giving the public concerned wide access to justice and overly burdensome. Specifically, the Committee determined that a criterion that precludes all organisations lacking open membership with full voting rights for members from accessing review procedures fails to comply with articles 9, paragraph 2, and article 2, paragraph 5.

ACCC/C/2016/141 (Ireland)

Party concerned: Ireland
Filed by: NGO "Right to Know"
Findings date & UN reference number:
9 November 2020 (ECE/MP.PP/C.1/2021/8)
Articles considered by the Committee:
4(1); 9(1); 9(4)
Cited at pages: 38, 94, 108, 114

This case concerns alleged systemic failure by Ireland to ensure timely access to environmental information and denials on the basis of so called ""threshold jurisdictional Issues", as well as to ensure access to expeditious and timely review procedures. It is substantiated by statistical information on requests for information, use of review procedures and their outcomes. NGO Environmental Pillar participated as an observer in the case.

ACCC/C/2016/142 (United Kingdom)

Party concerned: United Kingdom
Filed by: Mr. John Hemming
Findings date & UN reference number:
25 July 2021 (ECE/MP.PP/C.1/2021/27)
Articles considered by the Committee:
9(4)–(5)
Cited at pages: 113, 117

This case concerns barriers in access to justice in the United Kingdom of Great Britain and Northern Ireland relating to a public authority's alleged failure to clear up litter, mostly addressing the fairness and costs of review procedures. The case is closely related to communications C/77, C/85 and C/86.

ACCC/C/2016/143 (Czechia)

Party concerned: Czech Republic
Filed by: NGOs OEKOBUERO – Alliance of the Austrian Environmental Movement, GLOBAL 2000 (Friends of the Earth Austria), Czech civic associations Jihočeské matky, z. s. and Calla, and the Aarhus Konvention Initiative, a German civil society movement
Findings date & UN reference number:
26 July 2021 (ECE/MP.PP/C.1/2021/28)
Articles considered by the Committee:
6(10); 9(2)
Cited at pages: 78, 96, 99

This case concerns lack of public participation and access to justice in relation to the extension of the lifetime of nuclear reactors of Dukovany nuclear power plant for an indefinite period of time. It also addressed the issue of period safety reviews of nuclear reactors in the context of article 6, paragraph 10.

ACCC/C/2016/144 (Bulgaria)

Party concerned: Bulgaria
Filed by: NGO Civil Control – Animal Protection
Findings date & UN reference number:
26 July 2021 (ECE/MP.PP/C.1/2021/29)
Articles considered by the Committee:
7; 9(3)–(4)
Cited at pages: 84-86, 108

This case concerns failure to comply with article 7 in conjunction with articles 6, paragraphs 3 and 8, and article 9, paragraphs 2–4, by failing to provide adequate public participation in the decision-making on a proposed amendment to the General Spatial Plan of Plovdiv and by failing to provide access to justice to challenge either the amendment of the GSP or an authority's omission to overrule the amendment.

ACCC/C/2017/147 (Republic of Moldova)

Party concerned: Republic of Moldova
Filed by: Eco-TIRAS (NGO)
Findings date & UN reference number:
25 July 2021 (ECE/MP.PP/C.1/2021/30)
Articles considered by the Committee:
3(1)–(2); 4(8); 5(2)(b)(ii)
Cited at pages: 26, 44, 45

The environmental non-governmental organization "Eco-TIRAS" International Association of River Keepers submitted a communication alleging the failure of the Republic of Moldova to comply with its obligations under the Convention with respect to access to information regarding hydrometeorological information. Specifically, the communicant alleges that the Party concerned has failed to comply with articles 3, paragraphs 1 and 2, article 4, paragraph 8 and article 5, paragraph 2 (b) (ii), with respect to the regulatory framework for the costs charged for providing certain hydrometeorological information and because of a failure to provide access to information held by the State Hydrometeorological Service in a manner that would accord with the requirements of the Convention.

ACCC/C/2017/149 (Greece)

Party concerned: Greece
Filed by: ClientEarth, WWF Greece
Findings date & UN reference number:
19 August 2025 (ECE/MP.PP/C.1/2025/10)
Articles considered by the Committee: 7
Cited at pages: 81-84

The case concerned the preparation of a transitional national plan under the European Union's Industrial Emissions Directive in Greece with regards to emission limit values for large combustion plants. The plan was set up and later amended without giving the public the opportunity to participate. For each of the large combustion plants covered by the plan, the transitional national plan shall set out the emission levels of one or more of the following pollutants: nitrogen oxides, sulphur dioxide or dust. The transitional national plan provided the legal basis for allowing the large combustion plants listed in the plan to emit pollutants in higher concentrations than would otherwise be permitted under the Industrial Emissions Directive for a specified period of time.

The case is considered to have wider relevance by the communicants, as the findings could contribute to understand the obligations of EU Member States for the preparation of national plans relating to the environment in general, that are subject to European Commission approval such as national energy and climate plans or national strategic plans under the European Union Common Agricultural Policy.

ACCC/C/2016/151 (Poland)

Party concerned: Poland
Filed by: Fundacja ClientEarth Prawnicy dla Ziemi
Findings date & UN reference number:
25 August 2025 (ECE/MP.PP/C.1/2025/12)
Articles considered by the Committee:
2(2); 9(3)–(4)
Cited at pages: 19, 101, 104

The case concerned access to justice for environmental NGOs to challenge local laws that contravened national law relating to the environment, in particular air quality plans. The Committee found that in Poland environmental NGOs do not have sufficient access to administrative or judicial procedures to challenge air quality protection programmes and short-term action plans which contravene national law relating to the environment and therefore found Poland in non-compliance with article 9, paragraph 3.

ACCC/C/2017/154 (Poland)

Party concerned: Poland
Filed by: Fundacja ClientEarth Prawnicy dla

Ziemi, Dzika Polska, Fundacja Greenmind, Fundacja Greenpeace Polska, Ogólnopolskie Towarzystwo Ochrony Ptaków, Pracownia Na Rzecz Wszystkich Istot and Fundacja WWF Polska
Findings date & UN reference number: 25 August 2025 (ECE/MP.PP/C.1/2025/13)
Articles considered by the Committee: 9(3)
Cited at pages: 101, 103

The case was brought by seven non-governmental organizations and was concerned with access to justice regarding forest management plans. The Committee found that forest management plans must be open to challenge under article 9, paragraph 3, even if they constitute internal acts without a general nature. It is also not enough to be able to challenge subsequent permitting decisions based on the forest management plan, nor to bring a civil claim for environmental damage.

ACCC/C/2017/159 (Spain)

Party concerned: Spain
Filed by: ClientEarth, International Institute for Law and the Environment (IIDMA)
Findings date & UN reference number: 19 August 2025 (ECE/MP.PP/C.1/2025/14)
Articles considered by the Committee: 6(2)–(4); 6(8); 7
Cited at pages: 85

The case concerns public participation in the preparation of the transitional national plan of Spain under the European Union Directive on industrial emissions (integrated pollution prevention and control). The preparation and subsequent amendment of the transitional national plan resulted in a total of four different versions of the transitional national plan. The first version was prepared involving an Environmental Advisory Council, which consists of representatives of environmental NGOs, trade unions, business, consumer and other organizations. Only the third version of the plan was subjected to public participation during 17 calendar days (12 working days), announced on the official website of the Ministry of Agriculture, Food and the Environment. Only the fourth transitional national plan proposal was approved under Spanish law.

ACCC/C/2017/161 (Bulgaria)

Party concerned: Bulgaria
Filed by: Za Zemiata (Bulgarian NGO)
Findings date & UN reference number: 12 September 2025 (ECE/MP.PP/C.1/2025/15)
Articles considered by the Committee: 3(8); 8; 9(1)–(4)
Cited at pages: 30-32, 88, 104, 111, 112

The case concerns certain legislative amendments in Bulgaria, with regards to court practice denying standing for environmental NGOs to challenge air quality plans as well as the fivefold increase of fees payable by NGOs for cassation appeals. Furthermore, it concerns statements by Members of Parliament and senior officials accusing environmental defenders to "sabotage" the local economy and engage in "blackmail" and "procedural racketeering", calling them "green Jihadists" and a call for the deportation of an individual "in a box van" from the Party concerned. The Committee found that Bulgaria should revise its rules for standing for environmental NGOs to challenge air quality plans, to adapt the fees for cassation appeals and that Bulgaria failed to comply with article 3, paragraph 8, by not taking the necessary measures to ensure that Members of Parliament and senior officials do not engage in making highly derogatory and inflammatory statements that have the effect of penalizing, persecuting or harassing persons exercising their rights in conformity with the provisions of the Convention.

ACCC/C/2019/162 (Denmark)

Party concerned: Denmark
Filed by: Mr. John Damm Sørensen
Findings date & UN reference number: 19 August 2025 (ECE/MP.PP/C.1/2025/16)
Articles considered by the Committee: 9(2)
Cited at pages: 98, 99

The communication alleged non-compliance with article 9 in connection with a denied standing by a physical person to challenge a decision regarding a proposed extension to a local rowing stadium. The communicant filed an appeal with the Nature and Environment Board of Appeal contesting the Municipality's decision approving the environmental impact assessment report for the proposed extension of the rowing stadium. The Nature and Environment Board of Appeal denied standing based on the argument that "an idealistic interest in nature and the environment, including the impact of a facility on its surroundings, is not sufficient" to constitute a legal interest in the outcome of the case (EIA decision).

ACCC/C/2019/173 (Sweden)

Party concerned: Sweden
Filed by: Mr. Staffan Dahllöf
Findings date & UN reference number:
22 August 2025 (ECE/MP.PP/C.1/2025/17)
Articles considered by the Committee:
4(4) final paragraph
Cited at pages: 43

The communication alleged non-compliance by Sweden with article 4 by failing to provide access to an unredacted version of a draft report on the arguments for and against the renewed approval of the pesticide chlorpyrifos submitted to the European Food Safety Authority (EFSA) by Spain.

ACCC/C/2020/181 (Netherlands)

Party concerned: Kingdom of the Netherlands
Filed by: Mr. R. G. J. Dercksen and eight other members of the public
Findings date & UN reference number:
25 August 2025 (ECE/MP.PP/C.1/2025/18)
Articles considered by the Committee:
6(4), 6(8); 7
Cited at pages: 67, 74, 81

The communication alleged non-compliance by the Kingdom of the Netherlands with articles 6, paragraphs 3, 4, 8 and article 7 in connection with public participation in decision-making on wind parks in Utrecht Province. This case raises a number of issues related to local planning and how public participation was ensured at various stages of policy and spatial planning decision-making, including siting of a wind park.

ACCC/C/2020/183 (Spain)

Party concerned: Spain
Filed by: Pessoas–Animais–Natureza, a Portuguese political party
Findings date & UN reference number:
12 March 2025 (ECE/MP.PP/C.1/2025/7)
Articles considered by the Committee:
2(5); 6(10)
Cited at pages: 22, 77, 78

The communication alleged that Spain had failed to comply with its obligations under article 6 thereof since by failing to provide opportunities for the public in Portugal to participate in the decision-making on life-time extension of the operation of Almaraz nuclear power plant in 2020 (located less than 100 km in a straight line from the Spanish-Portuguese border). No public participation was carried out on the extension in either Spain or Portugal.

ACCC/C/2021/186 (Portugal)

Party concerned: Portugal
Filed by: NGO Fundação Montescola
Findings date & UN reference number:
22 August 2025 (ECE/MP.PP/C.1/2025/19)
Articles considered by the Committee:
4; 4(3); 6(3), 6(6)
Cited at pages: 38, 40, 64-66, 70, 71

The communication alleged non-compliance by Portugal with articles 4 and 6 in the context of EIA procedure for the Barroso lithium mining project located in Boticas Municipality. The communicant alleged that there is a systemic problem in the Party concerned due to the consistent refusal of timely access to environmental information. Several observers participated in this case, including Boticas Municipal Council.

ACCC/S/2004/1 (Ukraine)

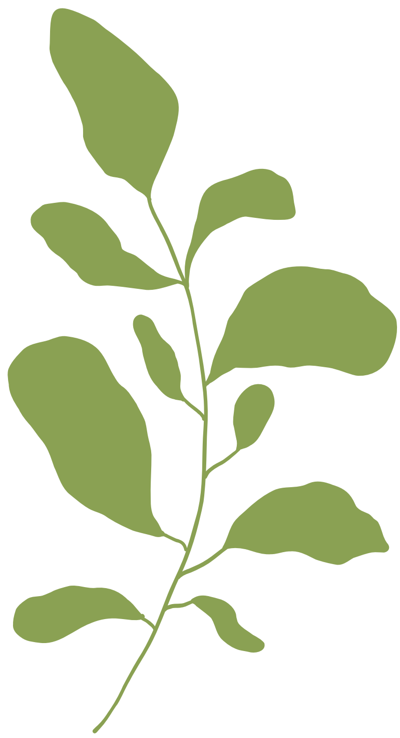
Party concerned: Ukraine
Filed by: Romania
Findings date & UN reference number:
18 February 2005 (ECE/MP.PP/C.1/2005/2/Add.3)
Articles considered by the Committee:
1; 3(1); 4(1); 6(1)(a); 6(2); 6(6); 6(8)–(9)
Cited at pages: 14, 26, 37, 60, 62, 70, 74

The submission concerned a proposal to construct a navigation canal in the Danube Delta passing through an internationally recognized wetland in Ukraine near (on) the border with Romania. The findings in this case were combined with the findings in case ACCC/C/2004/3 (Ukraine).

ACCC/S/2015/2 (Belarus)

Party concerned: Belarus
Filed by: Lithuania
Findings date & UN reference number:
23 July 2021 (ECE/MP.PP/C.1/2021/13)
Articles considered by the Committee:
3(2); 3(9); 6(2)–(4); 6(6)–(9)
Cited at pages: 28, 33, 64

In 2015, Lithuania sent a submission to the Committee alleging the failure of Belarus to comply with articles 3, paragraph 9, and article 6, paragraphs 2–4, 6 and 8, regarding the decision-making on a nuclear power plant in Ostrovets, Belarus, approximately 50 km from Vilnius. Lithuania alleged problems concerning the public participation of the Lithuanian public in the permitting process e.g. with regards to the public notice of the hearing or the translation of relevant information into Lithuanian. The case is connected to ACCC/C/2009/44 (Belarus), which concerned the same decision-making project on the nuclear power plant, but with regards to the opportunities for the Belarusian public to participate.



Appendices

Reference table by article and country

Country	Article 1	Article 2	Article 3	Article 4	Article 5	Article 6	Article 7	Article 8	Article 9
Albania			C/12			C/12	C/12		
Armenia		C/43		C/8		C/8, C/43	C/8, C/43	C/8	C/9, C/43, C/62, C/138
Austria				C/48					C/48, C/63
Belarus			C/44, C/102, S/2	C/37, C/44		C/37, C/44, S/2		C/44	
Belgium									C/11, C/111, C/134
Bulgaria			C/161			C/76	C/144	C/161	C/57, C/76, C/144, C/161
Croatia							C/66		
Czech Republic		C/50, C/71	C/71			C/50, C/70, C/71, C/106, C/143	C/70		C/50, C/106, C/143
Denmark									C/18, C/57, C/162
European Union		C/21, C/32, C/128	C/17, C/21, C/54, C/101	C/21		C/17, C/54, C/121	C/54, C/101		C/17, C/32, C/123, C/128
France						C/22, C/135	C/22		C/22, C/135
Georgia						C/35			
Germany		C/137	C/137, C/92			C/92			C/137, C/31
Greece							C/149		
Hungary	C/4	C/4, C/105	C/4		C/105	C/4	C/105		C/4
Ireland		C/112		C/141	C/112	C/107, C/112			C/141, C/112
Italy			C/130						C/130
Kazakhstan		C/1, C/2	C/1, C/2	C/1		C/2, C/59, C/88	C/88		C/1, C/2, C/6
Lithuania			C/98			C/16, C/98	C/16		C/98
Moldova			C/147	C/147					C/30
Netherlands		C/124		C/124		C/104, C/181	C/181		
Norway				C/93					C/93

Country	Article 1	Article 2	Article 3	Article 4	Article 5	Article 6	Article 7	Article 8	Article 9
Poland		C/151					C/119		C/151, C/154
Portugal				C/186		C/186			
Romania		C/69	C/51	C/15, C/51, C/69	C/15	C/51, C/69	C/51		C/69
Slovakia		C/89, C/120	C/120	C/89		C/41, C/89		C/120	C/89, C/120
Spain		C/183	C/36	C/24, C/36		C/24, C/36, C/99, C/122, C/183	C/159		C/24
Sweden				C/173					C/81
Turkmenistan			C/5						C/5
United Kingdom		C/53, C/61, C/68, C/91	C/23, C/27, C/33, C/90, C/131	C/38, C/53	C/68, C/131	C/61, C/68, C/90, C/91, C/100, C/131	C/45, C/68, C/100	C/53	C/23, C/27, C/33, C/45, C/77, C/85, C/86, C/90, C/131, C/142
Ukraine	C/3	C/118	C/3	C/3, C/118		C/3, C/118			C/118

Text of the Convention

Convention on access to information, public participation in decision-making and access to justice in environmental matters

done at Aarhus, Denmark, on 25 June 1998

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,

Recognising 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,

Recognising 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,

Recognising 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,

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

Recognising 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,

Recognising further the importance of the respective roles that individual citizens, non-governmental organisations 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,

Recognising 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 organisations, so that its legitimate interests are protected and the law is enforced,

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

Article 2
Definitions

For the purposes of this Convention,

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

2. "Public authority" means:

(a) government at national, regional and other level;

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

(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;

(d) the institutions of any regional economic integration organisation referred to in Article 17 which is a Party to this Convention.

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

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

(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;

(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;

(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;

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

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 organisations

promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.

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.

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.

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, organisations or groups promoting environmental protection and ensure that its national legal system is consistent with this obligation.

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.

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 organisations 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 penalised, 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.

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.

Article 4
Access to environmental information

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:

(a) without an interest having to be stated;

(b) in the form requested unless:

(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.

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.

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

(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.

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

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

(b) international relations, national defence or public security;

(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;

(e) intellectual property rights;

(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.

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.

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.

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.

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.

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.

Article 5
Collection and dissemination of environmental information

1. Each Party shall ensure that:

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

(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.

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

(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 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, computerised and publicly accessible database compiled through standardised 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(3) and (4).

Article 6
Public participation in decisions on specific activities

1. Each Party:

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

(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

(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:

(a) the proposed activity and the application on which a decision will be taken;

(b) the nature of possible decisions or the draft decision;

(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;

(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

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

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

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.

4. Each Party shall provide for early public participation, when all options are open and effective public participation can take place.

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.

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(3) and (4). The relevant information shall include at least, and without prejudice to the provisions of Article 4:

(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;

(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

(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 inquiry with the applicant, any comments, information, analyses or opinions that it considers relevant to the proposed activity.

8. Each Party shall ensure that in the decision due account is taken of the outcome of the public participation.

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.

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.

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(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.

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.

Article 9
Access to justice

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.

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.

2. Each Party shall, within the framework of its national legislation, ensure that members of the public concerned:

(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.

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 organisation meeting the requirements referred to in Article 2(5), shall be deemed sufficient for the purpose of subparagraph (a) above. Such organisations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above.

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.

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.

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.

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.

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 specialised agencies and the International Atomic Energy Agency, as well as any State or regional economic integration organisation entitled under Article 17 to sign this Convention but which is not a Party to this Convention, and any intergovernmental organisation 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 organisation, 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 organisations, 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 organisations 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 90 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-quarter 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 90th 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 90th day after that Party deposits its instrument of ratification, approval or acceptance of the amendments.

5. Party that is unable to approve an amendment to an annex to this Convention shall so notify the Depositary in writing within 12 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 accept-

ance with the Depositary, the amendments to such an annex shall become effective for that Party.

6. On the expiry of 12 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 organisations 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 organisations.

2. This Convention shall be open for accession as from 22 December 1998 by the States and regional economic integration organisations 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 organisation 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 organisation's Member States is a Party to this Convention, the organisation and its Member States shall decide on their respective responsibilities for the performance of their obligations under this Convention. In such cases, the organisation 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 organisations referred to in

Article 17 shall declare the extent of their competence with respect to the matters governed by this Convention. These organisations 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 90th day after the date of deposit of the 16th instrument of ratification, acceptance, approval or accession.

2. For the purposes of paragraph 1 above, any instrument deposited by a regional economic integration organisation shall not be counted as additional to those deposited by States members of such an organisation.

3. For each State or organisation 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 90th day after the date of deposit by such State or organisation 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 90th 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 authorised 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(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 [1] 1/(except research installations for the production and conversion of fissionable and fertile materials whose maximum power does not exceed 1 kW continuous thermal load),

· 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 tonnes per hour,

· installations for the processing of ferrous metals:

(i) hot-rolling mills with a capacity exceeding 20 tonnes 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 tonnes of crude steel per hour;

· ferrous metal foundries with a production capacity exceeding 20 tonnes 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 tonnes per day for lead and cadmium or 20 tonnes 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 m3.

3. Mineral industry:

· installations for the production of cement clinker in rotary kilns with a production capacity exceeding 500 tonnes per day or lime in rotary kilns with a production capacity exceeding 50 tonnes per day or in other furnaces with a production capacity exceeding 50 tonnes 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 tonnes per day,

· installations for melting mineral substances including the production of mineral fibres with a melting capacity exceeding 20 tonnes 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 tonnes per day, and/or with a kiln capacity exceeding 4 m3 and with a setting density per kiln exceeding 300 kg/m3.

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 fertilisers (simple or compound fertilisers);

(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 tonnes per hour,

· installations for the disposal of non-hazardous waste with a capacity exceeding 50 tonnes per day,

· landfills receiving more than 10 tonnes per day or with a total capacity exceeding 25000 tonnes, excluding landfills of inert waste.

6. Waste-water treatment plants with a capacity exceeding 150000 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 tonnes per day.

8. (a) Construction of lines for long-distance railway traffic and of airports 2/with a basic runway length of 2100 m or more [2].

(b) Construction of motorways and express roads [3].

(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.

9. (a) Inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1350 tonnes.

(b) Trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1350 tonnes.

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 2000 million cubic metres/year and where the amount of water transferred exceeds 5 % 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 tonnes/day in the case of petroleum and 500000 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) 40000 places for poultry;

(b) 2000 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 200000 tonnes 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 tonnes per day,

· plants for the tanning of hides and skins where the treatment capacity exceeds 12 tonnes of finished products per day,

(a) Slaughterhouses with a carcase production capacity greater than 50 tonnes 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 tonnes per day.

(ii) vegetable raw materials with a finished product production capacity greater than 300 tonnes per day (average value on a quarterly basis).

(c) Treatment and processing of milk, the quantity of milk received being greater than 200 tonnes 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 tonnes 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 tonnes per year,

– installations for the production of carbon (hard-burnt coal) or electrographite by means of incineration or graphitisation.

20. Any activity not covered by paragraphs 1 to 19 above where public participation is provided for under an environmental impact assessment procedure in accordance with national legislation.

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(1)(a) of this Convention. Any other change or extension of activities shall be subject to Article 6(1)(b) of this Convention.

[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 Organisation (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(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.

Index

ISBN 978-80-11-08942-9