Recent Case-Law of the Aarhus Convention
Compliance Committee

Compliance by the European Union with the Aarhus Convention: Findings and Recommendations of the Aarhus Compliance Committee in Case ACCC/C/2008/32 (Part I) with explanatory remarks

Jerzy Jendrośka*

Headnotes

With regard to access to justice by members of the public, the Committee is convinced that if the jurisprudence of the EU Courts, as evidenced by the cases examined, were to continue, unless fully compensated for by adequate administrative review procedures, the Party concerned would fail to comply with article 9, paragraphs 3 and 4, of the Convention …

Given the timing of the cases referred to above and the decision of the Committee to examine the jurisprudence on access to justice in general …., the Committee considers that the Party concerned is not in non-compliance with the Convention.

Committee considers with regret that the EU Courts, despite the entry into force of the Convention, did not account for the fact that the Convention had entered into force and whether that should make a difference in its interpretation and application of TEC article 234.

*) The author is a member of the Compliance Committee. The selection of paragraphs from the Findings and Recommendations as well as explanatory remarks expressed in this article represent personal views of the author and should not be seen as an official position of the Compliance Committee.

1) The findings and recommendations, the communication and corroborating information, as well as other documents related to the case, including all the documents quoted below, are publicly available and may be found at http://live.unece.org/env/pp/compliance/Compliancecommittee/32TableEC.html
While the Committee is not convinced that the Party concerned fails to comply with the Convention, given the evidence before it, it considers that a new direction of the jurisprudence of the EU Courts should be established in order to ensure compliance with the Convention…

I. Background

The Communication and Scope of Allegations

1. On 1 December 2008, the non-governmental organization (NGO) ClientEarth (hereinafter the communicant), supported by a number entities and a private individual, submitted a communication to the Committee alleging a failure by the European Union (EU) to comply with its obligations under article 3, paragraph 1, and article 9, paragraphs 2, 3, 4 and 5, of the Convention.

2. The communication alleges that by applying the “individual concern” standing criterion for private individuals and NGOs that challenge decisions of the EU institutions before the Court of Justice of the European Union (the European Court of Justice (hereinafter the ECJ) and General Court or Court of First Instance (CFI)) (hereinafter, collectively the EU Courts), the EU fails to comply with article 9, paragraphs 2-5, of the Convention. The communication further alleges that the law adopted by the EU in the form of a regulation in order to comply with the provisions of the Convention (hereinafter the Aarhus Regulation), fails to grant to individuals or entities, other than NGOs, such as regional and municipal authorities, access to internal review; and that the scope of this internal review procedure is limited to appeals against

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3) From its inception on 1 January 1989 to 30 November 2009, the General Court was known as the Court of First Instance (CFI). In the present findings, the term CFI will nevertheless be used where the earlier case-law of the General Court is being discussed or cited.