

Thomas Algae's Article in Recht der Umwelt (Law of the Environment)

Article on Aarhus Convention Compliance mechanisms to be found in German at link below

- http://doku.cac.at/rdu-2011-04_136_thomas_alge.pdf

Relevant section below translated by Pat Swords:

D: Legal Effect and Conclusions

The Compliance Mechanism of the Aarhus Convention is **an effective instrument**. So far all States have, with the exception of the Ukraine and Turkmenistan (which have to battle with internal political problems), followed the decisions of the Compliance Committee. Indeed while these process and the decisions are not formally legally comparable with those of the European Court of Human Rights, they come however to considerable legal significance. The justified determinations of non-compliance and the recommendations are of binding International Law by means of the Treaty State conference (*Meeting of the Parties*). Through the censure of this decision by the findings and recommendations of the Aarhus Convention Compliance Committee (ACCC) this then comes to **considerable legal significance**. As the EU is also a Treaty Party to the Convention, breaches of the Convention, which has been transposed through Community law, are regularly also breaches of Community law (the so called '**Mixed Agreement**'¹). As a result the Jurisprudence of the European Court of Justice comes to fore, whereby the decisions of the organs of Treaty application have the same legal quality as the treaties to which they implement and these have immediate effect². *If it under consideration of its wording and in consideration of the object of the nature of the Treaty there is a clear and precise obligation contained, whose fulfilment or its effect is not dependent on enactment of a further Act*. Convincing in this regard was a previous decision of the Aarhus Convention Compliance Committee (ACCC) against the EU. The situation was the same subject matter, as in the process against Lithuania. The plaintiff brought forward that the Integrated Pollution Prevention and Control (IPPC) Directive did not correctly transpose all the requirements of the Aarhus Convention. The ACCC followed in the decision the argument of the EU, whereby Lithuania is obligated to supplement or correctly apply the requirements of the Convention that were missing in the IPPC Directive by means of interpretations compliant with International Law and that these would also be possible in a concrete case³.

In the meantime a considerable legal practice of the ACCC has been developed. Thereby it is becoming clearer and clearer how the provisions of the Convention are

¹ In the original article there are German footnotes, one of which references C-13/00 Commission v Ireland, which states "Mixed agreements concluded by the Community, its Member States and non-member countries have the same status in the Community legal order as purely Community agreements, as these are provisions coming within the scope of Community competence". : <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62000CJ0013:EN:HTML>

² Reference is made to the following textbook on European Law from the University of Innsbruck: http://www.uibk.ac.at/ipoint/buch_der_woche/519251.htm

³ Reference is made in the findings to ACCC/C/2006/17: http://www.unece.org/fileadmin/DAM/env/documents/2008/pp/mop3/ece_mp_pp_2008_5_add_10_e.pdf

interpreted. This is of importance for the National Courts and the authorities. The decisions of the ACCC and the (unanimous) adoption by the Meeting of the Parties (MoP) are central manifest forms of practice of International Law, which for the legal continual forming of Treaty design are of importance and in an individual case can even alter formal Treaties. In a legal complaint process in relation to the A5 North Autobahn, the plaintiff had complained of a breach against Article 9(4) of the Convention (suspensive effects) and this was related to decisions of the ACCC. The Austrian High Court (VwGH) did not indeed in its judgement expressly go into these, however it investigated if the Austrian legal acts corresponded to the requirements of the Convention. From this I conclude, that not only in Austria there will in the future be a multitude of legal cases, in which the interpretations of the ACCC will play a role.