

# Trends and challenges in implementing the Aarhus Convention

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# Experience

- Development and extension
- Regular reporting
- Guidance documents
- Compliance



# Development & Extension

- PRTR Protocol (2003)
- GMO Amendment (2005)
- 46 parties (32 PRTR)
- Accession of non-UNECE countries (2011)



# Reporting

- Keep under continuous review the implementation of the Convention on the basis of regular reporting by the Parties (Art. 10.4)
- Decision I/8 (2002): main process and format (annex), followed up by:
- Decision II/10 (2005)
- Decision III/5 (2008)



# Reporting (2)

- Three reporting cycles since establishment of reporting mechanism (Decision I/8): 2005 (26), 2008 (35), 2011 (38)
- Synthesis report is prepared for each MOP
  - summarizing the progress made
  - identifying significant trends, challenges and solutions



# Guidance documents

- Implementation Guide (updated)
- Guidelines on Access to Information, Public Participation and Access to Justice with respect to Genetically Modified Organisms (2002)
- Almaty Guidelines on Promoting the Application of the Principles of the Aarhus Convention in International Forums (2005)
- Recommendations on Public Participation in Decision-making in Environmental Matters (2014?)



# Trends

- all Parties demonstrated efforts to implement the Convention, and some countries took substantive steps in transposing and promoting its provisions at the national level;
- Implementation varies across the UNECE region, depending, inter alia, on the Parties' legal traditions, the governing structures and the socio-economic conditions



## Trends (2)

- Significant progress is noted in all reporting Parties in elaborating legislation and developing practice on access to information and public participation
- In general, implementation of the Convention in the EU countries and Norway appears to be quite advanced.





# Trends (3)

- The increasing use of electronic tools in all three subregions is impressive
- Public participation is largely connected to EIA through new legislation
- Implementation of article 7 of the Convention has been especially developed through legislative instruments
- Progress in the implementation of article 8 of the Convention, mainly through practical arrangements rather than legislative initiatives



## Trends (4)

- Implementation of the access to justice provisions of the Convention appears to be the most difficult area for Parties to implement
  - Standing of NGOs
  - Financial barriers
- Article 6bis is also a challenge



# Challenges

- Poor implementation is often due to a lack of awareness among public authorities, financial constraints and a lack of human resources and technical facilities
- Compliance review usually reveals systematic problems



## Challenges (2)

- Complex decision-making (such as nuclear)
- Unclear types of decisions (such as financing)
- New technologies (such as nano and shale gas)



# Interpreting the Convention

- About 40 full decisions (F&R) by the Compliance Committee
- All Findings and Recommendations endorsed by the MOPs (18 decisions)
- Legal and high political importance
- Referred to by courts



# Some major concepts (I)

- the form, ways and timing of provision of information;
- applicability of positive silence concept;
- grounds for refusal to provide information;
- costs and fees



# Some major concepts (PP)

- public participation in tiered (multiple) decision-making;
- reliance on developer in ensuring public participation;
- public participation in environmental impact assessment (EIA) and strategic environmental assessment (SEA);
- land planning decision-making



# Some major concepts (AtoJ)

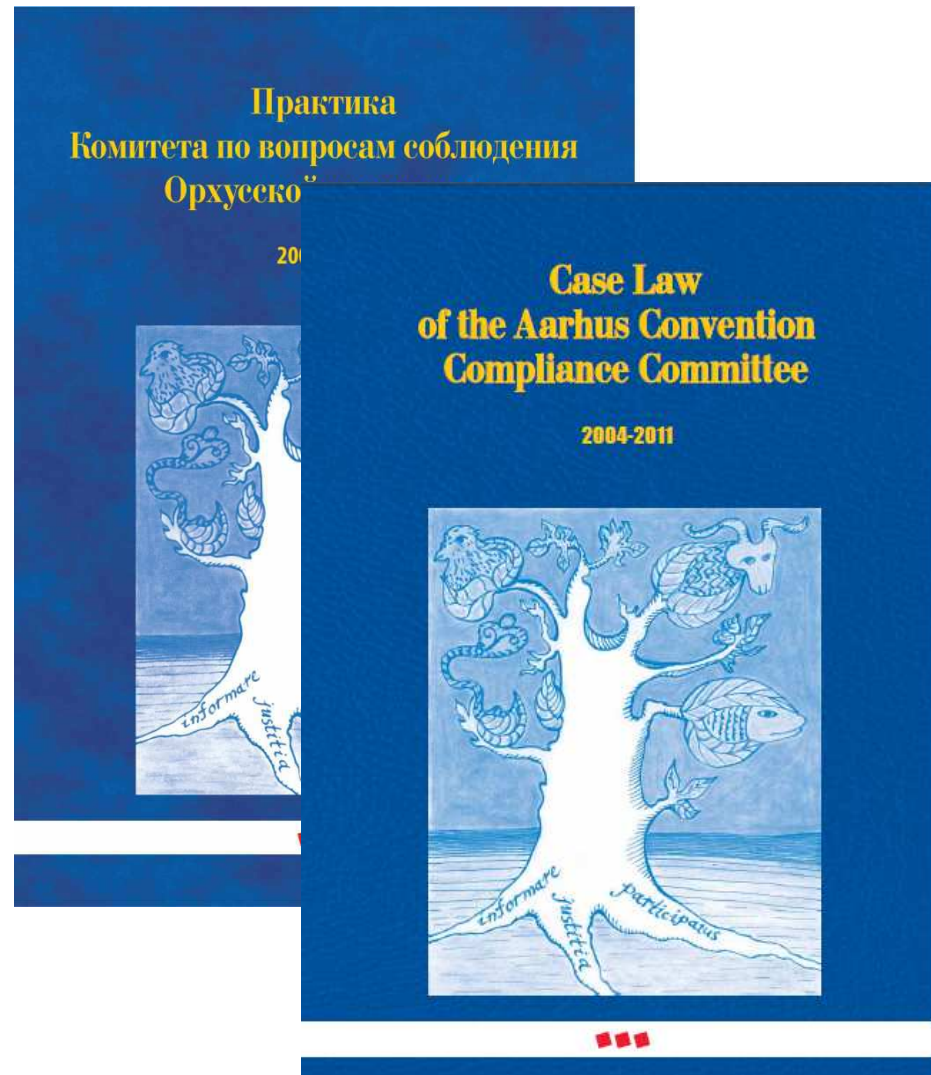
- Courts are part of the overall system
- Presumption of access
- *Actio popularis* versus barring
- Assumption of execution
- Costs & other barriers





# Case Law of the Compliance Committee

- All cases by 2011
- 230 pages
- Available on-line





Thank you for attention!



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