



## Stowarzyszenie Pracownia na rzecz Wszystkich Istot

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**Ms. Fiona Marshall**  
**Secretary to the Aarhus Convention Compliance**  
**Committee**

**Re: Case ACCC/C/2018/158 (Poland)**

In response to the Reply by the Party Concerned to our Communication (hereinafter referred to as **the Reply**), the Communicant hereby presents their position on the arguments put forward in the Reply.

1. Description of the “general rules of public participation” presented on page 1 of the Reply is irrelevant for the case and the scope of the Communication, as:

a) problem described in Charge A consists in **lack** of the application of public participation procedure in preparation of the hunting plans (and not in incorrect general rules of public participation);

b) Charge B does not concerns public participation at all.

### **Charge A**

2. The Party Concerned indicates that “drawing up of hunting plans is an internal activity in connection with the carrying out of owner-occupied tasks” (pp. 3 and 6 of the Reply), as if that would justify lack of public participation in their preparation.

Such an assumption is obviously incorrect. The fact that the State Treasury is formally the owner of forests and wild animals **does not prevent the hunting plans from being “relating to the environment”** nor from being prepared by a public authority obliged to apply the requirements of Art. 7 of the Convention.

Moreover, the suggestion that the State, as an owner of certain resources of the environment, may manage it as it considers appropriate, without any public participation or control is clearly against the aim and spirit of the Convention.

3. The Party concerned claims that including the public participation procedure into preparation of the annual hunting plans will delay their adoption so that they would be “largely outdated” when adopted (p. 6 of the Reply).

This argument is unjustified. The need to adopt a plan by a specific deadline cannot be a reason to bypass the Convention’s requirements. The obligation to organize the procedure of public participation

in an appropriate and timely manner lies with the public authority responsible with the adoption of the plan. Moreover, it should be stressed that the period for submitting comments by the public set by Polish law is 21 days<sup>1</sup> only which should not cause any significant delays.

4. Also the fact that the objectives of hunting are - as claimed by the Party concerned on p. 6 of the Reply - "protection, preservation of biodiversity and management of wild game population as well as protection and shaping the natural environment for the improvement of wild game living conditions" would not exempt the plan from the obligation provided for by Article 7 of the Convention. The aim of the public participation procedure is exactly to ensure that the public is able to influence and control whether and how these objectives are achieved.

5. The Party concerned stresses that "stopping the use of renewable forest resources will not contribute to their conservation" (p. 7). This statement is irrelevant for the scope of Communication as it clearly misses its core issue (Charge A is about the requirement of public participation and not about how the forest resource shall be used).

#### **Charge B**

6. Replying to Charge B, the Party concerned focuses on the detailed presentation of all plans and programmes encompassed by the Communication, describing their legal basis, their content and the procedure of their adoption.

**Such a description as well as examination of the content and detailed way of adoption of the plans at stake is irrelevant for the consideration of non-compliance imputed in the Communication, as these circumstances do not affect the (lack of) possibility to challenge the plans.**

7. The plans listed in the Communication are adopted:

1. either by one of the three levels of self-governmental authorities:
  - a. local (community, gmina) level,
  - b. district (powiat, powiat) level,
  - c. regional (voivodship, województwo) level, or
2. by governmental authorities at regional level, or
3. in case of certain plans relating to water management and to protected natural areas management - in by Regulation of a competent minister.

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<sup>1</sup> Art. 39.1.4 of the Act of 3 October 2008 on provision of information on the environment and its protection, public participation in environmental protection and environmental impact assessment

8. As explained in the original Communication (pp.5-6), **the rules of challenging these plans are provided exclusively by the following Acts:**

1. for plans and programs to be adopted by various levels of self-governmental authorities:
  - a. Act of 8 March 1990 on Communal Self-Government – Art. 101(1),
  - b. Act of 5 June 1998 on Poviast Self-Government – Art. 87(1),
  - c. Act of 5 June 1998 on Regional Self-Government – Art. 90(1).
2. for plans and programs to be adopted by governmental regional authorities - Act of 23 January 2009 on the Voivod and the Governmental Administration in the Voivodship - Art. 63(1).

There are no rules of (nor possibilities to) challenge Regulations issued by the Minister.

9. **The specific Acts described in the Reply (Water Law, Waste Act etc.), specifying the content and the way of adoption of the plans at stake do not provide for any rules on access to justice regarding these plans, which means that their detailed examination is irrelevant for the case.**

10. It has to be stressed that the Party concerned does not deny that the plans listed in the Communication are “relating to the environment”. On the contrary, the description of the plans’ content confirm that all these plan relate to the environment.

11. Regarding other issues raised in the Reply, the Communicant would like present the following comments:

- a. The Party concerned describes the process of public participation in adoption of various plans relating to water management (p. 9 and 10), indicating that “these rules shall fully ensure the implementation of the Aarhus Convention). This may be true for public participation requirements, but the Communication concerns access to justice and not public participation.
- b. The Party concerned indicates that individual decisions authorising particular activities encompassed by the water management plans may be challenged before the court (p. 10). Again, the Communication concerns the possibility to challenge the plan itself and not any further individual decisions.
- c. The Party concerned in several places of the Reply quotes the legal Acts listed in point 8 above (p. 11 of the Reply - re waste management plans, p. 12 - re plans for protected areas and action plans on noise management, p. 13 - re air quality plans), saying that these Acts grant the NGOs with the right to challenge plans subject to the Communication. **This statement is obviously false. The quoted Acts grant the access to justice only these persons (or entities) whose legal interest was infringed by the adoption of a plan. As explained in the Communication, the NGOs do not have their own “legal interest” in the case; they act in the public interest.**

12. In conclusion, the Communicant stresses that the Reply failed to present any arguments calling into question the complaints put forward in the Communication.

Yours sincerely,  
Radosław Ślusarczyk

PREZES PNRWI  
*Radosław Ślusarczyk*  
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