



Warsaw, 16, X, 2018

**MINISTRY OF THE ENVIRONMENT  
UNDERSECRETARY OF STATE**

*Sławomir Mazurek*

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**Ms. Fiona Marshall  
Secretary to the Aarhus Convention  
Compliance Committee  
UN Economic Commission for  
Europe  
Environment Division  
Room 429-2  
Palais des Nations  
CH-1211 Geneva 10  
Switzerland**

Dear Ms. Marshall,

Further to the clarification made by the Communicant in relation to the Communication PRE/ACCC/C/2018/158 I would like to take a position concerning the admissibility of the Communication.

In the first place I would like to thank the Aarhus Convention Compliance Committee for the understanding and the effort made to clarify the case.

In our previous correspondence related to that issue I underlined that in my opinion the Communicant should prove that he used all domestic remedies envisaged by the national legislation. The Communicant in the letter from 17 August 2018 enlisted a number of plans, related to the environment. The list is much more precise than the one presented in original Communication. However, the Communicant did not present any example of use of domestic remedies. Therefore, there are no basis to claim that the Polish law fails to provide an access to the review procedures in case of plans exemplified by the Communicant. The Communicant should at least present some examples of cases where courts refused to consider his complaints. Otherwise, the Communicant's claim is only a presumption and as such should not be taken into consideration.

One of the purpose of Decision I/7 was to prohibit *actio popularis*. It is fully understandable that such approach should not exclude from the cognition of the Aarhus Convention Compliance Committee cases where application of the remedy is unreasonably prolonged or obviously does

not provide an effective and sufficient means of redress. However, the Communicant should prove that he/she at least tried to use domestic remedies and his/her allegations are not based only on theoretical speculations. A potential reasoning, made by the court would be also helpful for further examination of each case.

As I already stated, the Communicant made a reference in his Communication to a number of plans. Some of these plans differ from each other quite significantly. So, we may assume that also a potential approach of the courts could possibly vary depending on the case. Nevertheless, having no insight into such cases we may only guess the potential scenarios.

Therefore, I would like to ask the Compliance Committee to consider whether the allegations made by the Communicant, concerning plans enlisted in the Communication PRE/ACCC/C/2018/158, should not be supported by additional information concerning use of domestic remedies.

I would like to reiterate my opinion expressed in the earlier correspondence concerning admissibility of the Communication PRE/ACCC/C/2018/158. Where the Communicant did not use domestic remedies or did not prove that the national law does not provide the public with such remedies, the communication should be deemed as non-admissible.

*best*  
PODSSEKRETARZ STANU  
*[Signature]*  
Sławomir Mazurek