

Jonas Ebbesson
**Chair of the Compliance Committee under the UNECE Convention on Access to Information, Public
Participation in Decision-making and Access to Justice in Environmental Matters**
(Aarhus Convention)

13 July 2018

Dear Mr. Mielnik,

Re: Pre-admissibility communication PRE/ACCC/C/2018 (Poland)

I refer to your email of 6 July 2018 in which you expressed concern that the fact that the communicant of the above case is represented by a law firm partner of Committee member, Jerzy Jendroska, might affect the transparency and fairness of the Committee's examination of the communication.

Upon receipt, your email was promptly brought to the attention of the Committee during the final day of its 61st meeting (Geneva, 2-6 July 2018).

At the outset, I wish to stress that the Committee has always taken a strict position with respect to conflicts of interest in order to ensure its integrity and trustworthiness. In my capacity as the Chair of the Committee, I see it as a key issue to explain both to new Committee members and externally why the Committee maintains this strict position. In practice, it is rather common that Committee members declare a conflict of interest. There are different reasons, but the common notion is to avoid any risk that the Committee is criticized for lack of integrity, impartiality or fairness in its examinations. As set out in the Guide to the Compliance Committee, "If in doubt as to whether or not a situation might give rise to an actual conflict or be perceived by a reasonable Party or member of the public as a conflict, Committee members should err on the side of caution."

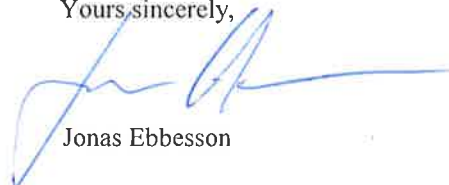
As to your email of 6 July, it is the first time in my seven years as the Chair that a Party has challenged the fairness of the Committee's dealings with a communication.

As you correctly state, Mr. Jendroska has already declared a conflict of interest in this case in the light of his professional relationship with the communicant's legal representative. He did so at the very first session when the Committee considered the communication, i.e. in the open session when the new communication was first presented and the statement was made by Poland as regards the preliminary admissibility of the communication. In accordance with the Committee's procedure, Mr. Jendroska did not take part in the closed session when the Committee considered the questions of admissibility, and he will not take in part in any closed session or deliberations by the Committee concerning communication ACCC/C/2018/158.

With respect to the other members of the Committee, I want to make clear that the fact that one member has a professional relationship with the legal representative of a party to a case and thus declares a conflict of interest and withdraws from the case has *no flow-on implications* for the other members of the Committee. The independence of each member must be assessed in that member's own right. We have had previous cases where a Committee member has had some kind of working relationship either with the Party concerned or the communicant (or representative of the communicant), e.g. with respect to communications ACCC/C/2010/50 (Czechia), ACCC/C/2012/70 (Czechia) and ACCC/C/2014/119 (Poland). In these situations, the Committee member in question declared a conflict of interest and thereafter did not participate at all in the examination of the case. This procedure has never been put in question before.

I hope the above clarifies the situation. Please do not hesitate to let me know if you have any questions regarding the above. In order to ensure transparency, a short summary of your email of 6 July and the Committee's reply as set out above will be included in the report of the 61st meeting.

Yours sincerely,


Jonas Ebbesson

Jaroslav Mielnik
Chief specialist
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