



Government Legal Department

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

Defra Legal Adviser
Area 6D
Nobel House
17 Smith Square
London SW1P 3JR

T +44 (0)20 87203717

www.gov.uk/gld

Your ref: **PRE/ACCC/C/2020/180**

29 June 2020

Dear Ms Marshall

PRE/ACCC/C/2020/180 (United Kingdom)

Ahead of the Committee's meeting to discuss the preliminary admissibility of the above communication, we attach the United Kingdom's observations.

We intend to dial in to the meeting on 6 July 2020 and look forward to receiving details in due course.

Yours sincerely

Grace Adisa-Solanke
Lawyer
Defra Legal Advisers, Government Legal Department

T +44 (0)20 87203717

E grace.adisasolanke@defra.gov.uk

**United Kingdom comments on the preliminary admissibility of
PRE/ACCC/C/2020/180 (United Kingdom)**

29 June 2020

Summary

1. We consider that communication PRE/ACCC/C/2020/180 is inadmissible for the following reasons:
 - **It is manifestly unreasonable (Decision 1/7 Article 20 (c))**; the absence of sufficient information in respect of at least one of the allegations, makes it unreasonable for this communication to be submitted and considered admissible. The communication is manifestly unreasonable in substance due to its lack of sufficient and credible information.
 - The communication does **not include corroborating information**, as is required under paragraph 19 of the annex to decision 1/7, to substantiate the allegations. There is no argument or corroborating information to support the asserted breaches of article 9 (2), (4) and (5) of the Aarhus Convention.
 - Additionally, the communicant has **failed to utilise or exhaust domestic remedies** before approaching the ACCC. The Communication should be a question of process and not an appeal against the substantive decision of the domestic courts as the Compliance Committee is not a remedial mechanism.
2. We urge the Committee not to give further consideration to this lengthy and unfocused communication. We therefore request that the Committee finds the communication to be inadmissible and closes the case.
3. In order to assist the Committee ahead of the meeting to discuss the preliminary admissibility of this communication on 6 July, we have set out, in advance of that meeting, the reasoning we will talk the Committee through. We are of course happy to provide any further information the Committee feels that it needs in order to determine the issue.

Submissions on admissibility

4. This communication concerns the allegation that the UK contravened Articles 9 (2), (4) and (5) of the Aarhus Convention. The communicant in his case before the domestic courts established various companies for the purpose of conducting environmental litigation. The communicant has a cohort of cases challenging environmental decisions. The communicant alleges in this particular case that the High Court and Court of Appeal's dismissal of the communicant's application for judicial review is unjust, imposes a financial barrier and contrary to Article 9 of the Aarhus Convention.

5. It is evidently clear that this communication is **manifestly unreasonable**. The communicant is dissatisfied with the court's decision to dismiss the application and therefore contends that the court's ruling on the mode of beginning civil proceedings is unjust. The communicant is challenging the court's decision that the application has not been pursued by anyone entitled to do so on behalf of the company according to the Rules¹. However, the communicant has failed to highlight to the ACCC in his communication that the Rules² make it clear that the communicant can carry out litigation on his own behalf without the need to instruct a solicitor. The communicant was in fact encouraged to bring the matter as an individual and conduct the environmental litigation in this way but failed to take this as an option. The communicant alleges that it is not an equitable solution to bring the case as an individual, however, he has not provided any reasons why this is not an equitable solution. There is an absence of sufficient information and therefore the communication appears to be **manifestly unreasonable and vexatious**.
6. Article 9 (2) requires that "Each Party shall, within the framework of its national law, ensure that members of the public concerned (a) Having sufficient interest or, alternatively, (b) Maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition, have access to a review procedure before a court of law..."
7. The Communicant was not denied access to a review procedure before the court, as he has the right to either begin proceedings in person or engage a solicitor to represent his company. We therefore submit that the Committee disregard the allegation of non-compliance with article 9(2) of the Convention.
8. Furthermore, the Aarhus Cost Protection Rules are in place to limit the financial burden on members of the public who as individuals, legal persons or individuals applying in the name of a legal entity or unincorporated association apply to the courts and so preserve their access to a judicial process. Had the communicant pursued this litigation on his own behalf, he would not only have been afforded the opportunity to take advantage of the Aarhus Convention Cost Protection Rules in Northern Ireland³, he may possibly have had the opportunity to ensure that his liability for cost is £5000 or under and not prohibitively expensive. The communicant appears to understand that the Cost Protection Regulations are in place to reduce financial barriers. However, he has not explained the reasons he chose not to benefit from this opportunity.
9. The communicant alleges that using a solicitor to represent the company presents a financial barrier and therefore makes the proceedings prohibitively expensive. However, the communicant has not provided detailed information such as details on the formation of the company, share capital and a statement of means to support this assertion. He has **not provided any facts necessary to corroborate** that the cost of engaging a solicitor on behalf of the company is prohibitively expensive in these circumstances. The communicant **has therefore not substantiated this claim under the Convention**.

¹ Order 5 Rule 6.2 of the Rules of the Court of the Judicature

² Order 5 Rule 6.1 of the Rules of the Court of the Judicature

³ The Cost Protection (Aarhus Convention) (Amendment) Regulations (Northern Ireland) 2017

10. The communicant provides **no corroborating evidence** or information to support an argument that the requirement for procedures to be fair has, in Convention terms been breached. The communicant makes assertions of judicial prejudice and bias in judgment, he claims that the court's decision conflicts with the requirements of the Aarhus Convention on access to justice. The communicant goes no further to explain this assertion, and therefore the claim is unsubstantiated due to **lack of corroborating information**.
11. The communicant alleges that the court refused a reasonable request for adjournment to clarify the key issues raised in his communication. The communicant however **does not provide corroborating evidence to support this claim**.
12. The communicant makes allegations that the procedure in his case is in breach of the requirement of article 9 (4) that "procedures referred to in paragraphs 1,2 and 3 above shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive".
13. We find that the communicant has made bald assertions which do not engage with the requirements under article 9 (4), we therefore request that the Committee finds the communication to be inadmissible and dismiss it for **lack of corroborating information**.
14. The communicant has **failed to utilise or exhaust domestic remedies** before approaching the ACCC. The communicant alleges that the cost award of £10,000 made against him is unjust. It is important to note that there was no attempt by the communicant to appeal the Security for Costs Order made by the court which it could have done within a specified period. The communicant has not explained the reason he failed to attempt to challenge the decision.
15. Utilising available domestic remedies is the appropriate procedure for such matters, instead of choosing, as a first step, to obtain findings from an international committee such as the Committee on the speculative basis advanced by the communicant. It is not appropriate for an international compliance mechanism to be used as an alternative to available domestic procedures. Providing domestic courts the opportunity to deal with such issues forms an integral part of any Party's means of complying with the Convention. The communicant sought to omit this step and therefore **failed to utilise domestic remedies** that are available to him.
16. The communicant alleges that article 9(5) of the Convention, which requires Parties to "consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice" has been breached.
17. The communicant decided to neglect this step and therefore **failed to utilise domestic remedies** that are available to him in relation to this allegation and merely relies on an allegation which does not engage with the requirement under article 9 (5). We request that the Committee find this allegation to be inadmissible.
18. In general, none of the communicant's allegations are supported with information to indicate a potential breach with the requirements of the Convention. It is clear that the communicant disagrees with the outcome of each stage of the litigation in which he has been engaged. The arguments and information provided by the communicant concern his disagreement with the

decision of the High Court and the Court of Appeal, rather than corroborating any alleged breached of Convention requirements. All things considered, it is important to accentuate that the Committee is not a redress mechanism. The Communicant has not been able to demonstrate that he has engaged with the requirements under the Convention. We therefore request that this communication be deemed inadmissible.

19. We would be happy to provide further clarification on any points to assist the Committee in its deliberations.