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Ms Fiona Marshall
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Your ref: **PRE/ACCC/C/2021/188**

14 October 2021

Dear Ms Marshall

PRE/ACCC/C/2021/188 (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 attend the meeting on 19 October 2021 and look forward to this meeting.

Yours sincerely

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United Kingdom comments on the preliminary admissibility of

PRE/ACCC/C/2021/188 (United Kingdom)

October 2021

Summary

1. We consider that the communication PRE/ACCC/C/2021/188 is inadmissible for the following reasons:
 - 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 supporting evidence or corroborating information to support the asserted breaches of the Aarhus Convention. The communicant does not engage with the requirements of the Convention beyond making plain assertions that the provisions of the Convention have been breached.
 - The communicant's arguments are unsubstantiated and appear to be **an abuse of the right to bring a communication** (Decision 1/7 Paragraph 20 (b)).
 - It is **manifestly unreasonable** (Decision 1/7 Paragraph 20 (c)); the absence of sufficient and credible information in respect of the allegations makes it unreasonable for this communication to be submitted and considered admissible.
 - The Communicant has misunderstood the decision reached domestically and has conflated his disagreement with the outcome with breaches of the Convention.
2. We urge the Committee not to give further consideration to this unclear 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 19 October 2021, we have set out the reasoning we will talk the Committee through. We are of course happy to provide any further information that the Committee feels that it needs in order to determine the issue.

Comments on the admissibility of the communication

4. The communicant makes a number of allegations that the UK breached the provisions of the Convention, without explicitly stating which of the provisions of the Convention he believes the UK has not complied with. It is important to note that there is an absence of sufficient information in that the communicant **has not made it clear** in his communication what the exact case is for the UK to answer.
5. The communicant is clearly dissatisfied with the response from the Environment Agency (EA), and his communication to the Compliance Committee is triggered by the EA's response to his request for information. The EA have provided the communicant with the relevant information by way of a final response in accordance with the First Tier Tribunal Decision regarding his request of 15 January 2019. This is evidenced in a letter from the EA to the communicant on 16 December 2020, showing clearly that the communicant's request was dealt with and responded to under the EIRs. The communicant was informed of his right to request an internal review if he was not satisfied and, following that,

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complain to the Information Commissioner's Office (ICO) if he was still not satisfied. It is unclear what the communicant's case against the UK is before the Committee.

6. In paragraph III (2) of this communication, the communicant claims that he has attempted to use the Environmental Information Regulations to obtain information from the EA since 2008 and that on most occasions access has been denied as "they claim exceptions to disclose under the EIR." The communicant has not given any details of his previous requests for information to the EA and has not provided details of the EA's refusals of his requests. **The communicant has made claims which have not been supported by corroborating information.**
7. The communicant further claims that "I have always, until now, failed to obtain the information in this way and this has been used to have a blanket refusal under the term 'manifestly unreasonable' 'supported by the ICO'...". It is clear that the communicant has in fact been successful in obtaining information, although it is unclear what the particular information is that he refers to here. The communicant has also not provided evidence to substantiate his claims of "a blanket refusal".
8. The communicant stated that "I believe the use of the EIR and the follow up procedures of the ICO contravene the rights expressed by the Aarhus Convention in Articles 9(1) and Article 9 (2)." The communicant has not demonstrated through corroborating information that he was denied review procedures relating to information requests that he made. He has not established how article 9(1) of the Convention has been breached. On the contrary, the communicant in paragraph VI (6) listed domestic remedies that he has invoked. This includes a request for information, an internal review, a complaint to the Information Commissioner, an appeal to the First-tier Tribunal. **It is clear that the communicant has not engaged with the requirements of the Convention.**
9. It is apparent from the correspondence that a misunderstanding arose when the communicant attempted to get either the FTT or ICO to enforce the decision of the FTT. The communicant in his communication mentions a third-party's case at the Upper Tribunal to determine the correct procedure on which of these bodies had the responsibility to follow up on the FTT's decision. This made him wait longer before pursuing the appeal which he argues he did not intend to make.
10. The communicant was not denied access to a review procedure by the relevant public bodies. The communicant's allegation that the EIR and follow-up procedures contravene the rights in Article 9 (2) appears to be a misunderstanding of the Convention. It is not quite clear how the communicant understands that this provision is engaged. Article 9 (2) requires access to review procedures relating to decisions, acts or omissions subject to article 6 and other relevant provisions of the Convention. The communicant has not made clear how he has engaged with the Convention and how he was denied the right to review procedures for any act, decisions and omissions relating to public participation or other provisions of the Convention. We therefore submit that the Committee disregard the allegation of non-compliance with article 9 (2) of the Convention.
11. In fact, the communicant has made use of the administrative and judicial review procedures a number of times. He is a regular user of the EIRs: he has requested several internal reviews, made complaints to the Information Commissioner, and has also taken a number of appeals to the First-tier Tribunal. This demonstrates that he has actually understood and used the review processes provided for by the access to justice provisions of the Convention. A recent example of the communicant using the process is in this case: EA/2020/0112 (December 2020) ¹

¹ [Latimer, R -EA.2020.0112 \(011220\) Dismissed.pdf \(tribunals.gov.uk\)](#)

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12. In paragraph V(4) of the communication, the communicant stated that "the Party failed to provide information through all available systems as detailed above and enclosed". The communicant made this claim, without giving details on how all the systems that he explored failed to provide the information he requested. On 20 April 2020, the EA in its correspondence with the communicant set out its understanding of the FTT's instruction and advised the communicant that, due to the Covid-19 pandemic, it did not have access to its offices and the paper files it needed to check. Again on 14 August 2020, in correspondence with the communicant, the EA made reference to the ongoing delays due to Covid-19 but gave the communicant what it stated was "the best response it could provide under the current restricted circumstances". On 18 November 2020, the EA again corresponded with the communicant and informed him that it had decided that it did not need access to its offices in order to check whether it held further information in scope. Lastly, on 16 December 2020, the EA corresponded with the communicant, providing him with a fresh response in respect of the information that he had requested, clarification of the matter of "consents", and refusing access only to recorded environmental information that the EA did not hold. The communicant has not been able to show what other outstanding information he requested that was not provided by the EA.
13. In paragraph V(5) of the communication, the communicant alleges that there has been a "General failure to implement the EIR particularly the Public Interest Test, using the exceptions incorrectly." The communicant has not demonstrated the evidence to support his allegation that there is a general failure to implement the EIRs properly. The First-tier Tribunal made a decision that the EA produce a fresh response not relying on Regulation 12 (4) (b), which has been done. This communicant makes nothing but bald assertions which have no basis and is **therefore manifestly unreasonable**.
14. In paragraph VI (6) the communicant claims to have made use of domestic remedies. He states that this included "Request for information, internal review, complaint to the Information Commissioner, appeal to the First-tier tribunal (allowed, but no information supplied)." The documents that the communicant provided demonstrates evidence that he received a fresh response from the EA. The Communicant appears dissatisfied with the response and could have challenged this by making a Section 50 complaint² to the Information Commissioner's Office. The Communicant apparently chose not to do this, despite this recourse being available to him. The communicant has not demonstrated how the systems in place did not work. The communicant has not provided any information to demonstrate that he used the redress mechanism made available to him which was explained in the EA's letter to him in December 2020.
15. It is clear that the communicant has misrepresented the facts of his particular case and has misunderstood the legal processes involved. The communicant appears to have misunderstood the direction of the First-tier Tribunal and what the EA were instructed to do. It is evident through various pieces of correspondence with the First-tier Tribunal that the communicant and the First-tier Tribunal were speaking at cross-purposes about the nature of his complaint.
16. We find that the communicant has made bald assertions which do not engage with the requirements of the Convention. We therefore request that the Committee finds the communication to be inadmissible and dismisses it for lack of corroborating information.

² Section 50 Freedom of Information Act 2000. Pursuant to regulation 18 of the EIR, the enforcement provisions of the FOIA apply for the purposes of the EIR

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17. None of the communicant's allegations are supported with relevant information to indicate a potential breach of the requirements of the Convention. It is clear that the communicant disagrees with the outcome of his environmental information request at each stage of the review process which he engaged (except for the FTT appeal, where he was successful on the ground that a particular exception did not apply). The arguments and information provided by the communicant concern his disagreement with the response provided by the EA, rather than corroborating any alleged breach of Convention requirements. Generally, it is important to emphasise that the Committee is not a redress mechanism. The Communicant has not through his communication been able to demonstrate that he has engaged with the requirements under the Convention. We therefore request that this communication be deemed inadmissible.
18. We would like to emphasise that if the Committee fails to conclude that this communication is inadmissible, it will risk misusing its valuable time considering a matter which does not engage with the Convention and which does not even include the provisions complained of, which in itself, is an abuse of the right to bring this communication.
19. None of the communicant's allegations are admissible on the basis that **the communicant has not provided sufficient corroborating information to substantiate any claims made** and has not been able to demonstrate that he has engaged with the requirements of the Convention. The information provided in the body of the communication and also in the annexes does not support the alleged breaches of the Convention.
20. Lastly, given the mounting pressures on the Committee's limited resources, and the lack of clarity on the case that we have to answer, we therefore respectfully request that the Committee finds the communication to be inadmissible and closes the case.

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