

Warsaw, Poland

25 January 2018

**Ms Fiona Marshall**  
**Secretary to the Aarhus**  
**Convention Compliance Committee**  
**Palais des Nations**  
**CH 1211 Geneva 10**  
**Switzerland**

**Re: Fundacja ClientEarth Prawnicy dla Ziemi's communication to the Aarhus Convention Compliance Committee concerning compliance by Poland with the provisions of the Convention in connection with standing to challenge local laws that contravene national law relating to the environment.**

Dear Ms Marshall,

In reply to your letter of 15 November 2017, I would like to state the following:

- 1) ClientEarth maintains its assertions contained in the communication submitted on 30 October 2016 (hereinafter: the "**Communication**").
- 2) The court judgments annexed to the Communication - although not all of them pertain specifically to an environmental NGO seeking to challenge a local law for contravening national law relating to the environment - uniformly demonstrate that NGOs cannot effectively challenge local laws due to lack of standing – this includes the possibility of challenging local laws pertaining to the environment.
- 3) The most recent case-law concerning standing in environmental local law cases pertains to air quality protection programs. ClientEarth can provide the Committee with one final and binding judgment pertaining to lack of standing of individuals and NGOs in cases dealing with such a program, as such cases have only recently been instituted and only one case has reached the stage where a final and binding judgment has been rendered (judgment no. II OSK 2671/16) – this judgment was

rendered, moreover, in November 2016, i.e. only after ClientEarth had submitted the Communication.

- 4) One additional judgment concerning lack of standing in a case dealing with an air quality protection program has been appealed against and is currently awaiting review by the Supreme Administrative Court (judgment no. II SA/GI 639/17).
- 5) In both of the cases mentioned in pts 3 and 4 above, the challenges against the air quality protection programs (i.e. local laws dealing with said programs) have been rejected for lack of standing. It is important to note that the courts denied standing to an individual who challenged the local law, citing that said individual had not demonstrated that the air quality protection program (the local law) violated the legal interest of the individual. It follows then, that such laws cannot violate the legal interest of NGOs, a view that is confirmed by the judgments relating to challenges brought by NGOs against local laws (certain examples of these judgments have been attached to the Communication and to this letter);
- 6) It must be noted in connection to pt. 5 above that, according to the Polish courts, the merits of a local law and any challenge thereto can only be examined by a court once the standing of the complaining party has been established. If standing is not established, the mere violation of legal norms by the local law cannot justify its examination by a court.
- 7) The judgments attached to the Communication and to this letter which do not pertain directly to the environment nonetheless serve to demonstrate that Polish law and jurisprudence make it practically impossible for NGOs to challenge local laws in general, therefore also those local laws which concern the environment.
- 8) ClientEarth has attached to its Communication and, additionally, to this letter, the following judgments on which it wishes to rely (the underlined judgments are final and binding, i.e. no additional remedy is available, and translations of the same have been provided):
  - a. II OSK 1539/09 – the challenge was dismissed for lack of standing;
  - b. II OSK 510/14 – the challenge was dismissed for lack of standing. This judgment upheld judgment no. II SA/Bk 507/13, which was originally attached to ClientEarth's Communication and which is listed in pt. f below – therefore, no translation of II SA/Bk 507/13 is provided, as it would be superfluous;
  - c. II SA/Wr 383/17 – the challenge was dismissed for lack of standing and the judgment was not appealed against, therefore it is final and binding. ClientEarth does not know why no appeal was submitted; a translation has been provided;
  - d. II OSK/1282/15 – the challenge was dismissed for lack of standing;
  - e. II OSK 2671/16 – the challenge was dismissed for lack of standing;
  - f. II SA/Bk 507/13 – the challenge was dismissed for lack of standing. This judgment was appealed against unsuccessfully – see judgment II OSK 510/14 (attached, pt. b above); no translation has been provided;

- g. II SA/GI 639/17 – the challenge was dismissed for lack of standing. This judgment has been appealed against – a hearing before the Supreme Administrative Court is currently awaited; a translation has been provided.
- 9) I hope that this additional information is sufficient to demonstrate the claims and assertions made by ClientEarth in its Communication. Should additional information be required, I would be grateful if you would not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read 'Marcin Stoczkiewicz', written in a cursive style.

Marcin Stoczkiewicz  
Chairman of the Management Board  
ClientEarth Prawnicy dla Ziemi