

4 May 2022

Mr. Jaroslaw Mielnik
Ministry of Climate
Poland

Dr. Marcin Stoczkiewicz
ClientEarth
Poland

Dear Mr. Mielnik,
Dear Dr. Stoczkiewicz,

Re: Communication to the Aarhus Convention Compliance Committee concerning compliance by Poland regarding access to justice in connection with air quality plans (ACCC/C/2016/151)

I refer to my letter of 5 April 2022 inviting the Party concerned and the communicant to participate in the joint hearing to discuss the substance of communications ACCC/C/2016/151, ACCC/C/2017/154 and ACCC/C/2017/158 to be held at the Palais des Nations, Geneva, on Thursday, 16 June 2022.

In preparation for the hearing, the Committee has identified a number of questions upon which it seeks clarification from the Party concerned and the communicant of communication ACCC/C/2016/151 in writing prior to the hearing. To this end, please find **enclosed** the questions prepared by the Committee for your attention.

In accordance with the Committee's usual timeframe, the Party concerned and the communicant will have four weeks to prepare their written replies to the Committee's questions. The Committee would accordingly be grateful to receive your replies to the enclosed questions by **Wednesday, 1 June 2022**. Please send your replies to aarhus.compliance@un.org, copying the other party.

Please do not hesitate to contact the secretariat if you have any questions.

Yours sincerely,



Fiona Marshall
Secretary to the Aarhus Convention Compliance Committee

Cc: Permanent Mission of the Republic of Poland to the United Nations
Communicants of communications ACCC/C/2017/154 and ACCC/C/2017/158

Enc: Questions from the Committee to the Party concerned and communicant

Questions to the Party concerned:

1. Please provide the text in Polish of the following provisions, together with an English translation thereof:
 - (a) Article 91 (9) of the Environmental Protection Law of 27 April 2001;
 - (b) Article 50 (1) of the Act of 30 August 2002 on Administrative Court Proceedings;
 - (c) Articles 3 (1) and 44 (3) of the Act on access to information on the environment and its protection, public participation in environmental protection and environmental impact assessments;
 - (d) Articles 3 and 24 (1) of the Act of 13 April 2007 on Preventing Environmental Damage and the Remediation of Environmental Damage;
 - (e) Article 63 of the Constitution.
2. Please provide examples of judgments where an environmental organization was granted access to justice before an administrative court to challenge a local air quality plan which it alleged contravened national law relating to the environment. In addition to the full text in Polish of each of judgment, please provide an English translation of its relevant parts.
3. Please clarify whether a local air quality plan or programme constitutes a “decision requiring public participation” under article 44 (3) of the Act of 3 October 2008 on access to information on environment and its protection, public participation in environmental protection and on environmental impact assessment.
4. Please provide the text of the relevant legislative provisions, if any, imposing a requirement that local air quality plans and programmes undergo mandatory strategic environmental assessment in accordance with the Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment.
5. Please comment on the communicant’s claim (page 5 of its update of 21 February 2022) that the requirement to have participated in the prior administrative proceedings in order to have access to justice under article 50 (1) of the Code of Administrative Proceedings is impossible to fulfil with respect to local air quality plans and programmes because there is no prior administrative proceeding which would result in an administrative decision.
6. Please comment on the communicant’s claim (page 5 of its update of 21 February 2022) that a local air quality plan or programme is not an activity within the scope of article 3 of the Act of 13 April 2007 on Preventing Environmental Damage and the Remediation of Environmental Damage, and thus cannot be subject to challenge under that Act.

Question to the communicant:

1. Please provide the text in Polish of the following judgments, along with an English translation of the relevant parts:
 - (a) Judgment no. SK 23/17 of the Constitutional Court;
 - (b) Judgment of the Regional Administrative Court dated 28 January 2022 (page 4 of the communicant’s update of 21 February 2022).

2. Please provide an English translation of the relevant parts of judgment no. I OSK 2236/12 of the Supreme Administrative Court (annex 8 to the communication).
3. At page 3 of your update of 21 February 2022, you state that “air quality plans are adopted by local self-government authorities at the Voivodeship level”.
 - (a) Please provide the text of the legislative provision(s), together with an English translation thereof, pursuant to which air quality plans are adopted by the local self-government authorities at the Voivodeship level. Please explain what are the legal effects of these plans, once adopted.
 - (b) Are local air quality plans and programmes in Poland adopted only at the Voivodeship level? If not:
 - (i) Please specify at which governmental levels local air quality plans or programmes may be adopted.
 - (ii) Please provide the text of the legislative provisions, together with an English translation thereof, under which local air quality plans and programmes are adopted at each of these governmental levels.
 - (iii) For each governmental level besides the Voivodeship level at which local air quality plans and programmes are adopted, please provide a recent judgment demonstrating that there is no access to justice for environmental NGOs under article 9 (3) of the Convention to challenge such plans and programmes.