

13 May 2022

Mr. Jaroslaw Mielnik
Ministry of Climate
Poland

Ms. Magdalena Bar
Jendroska Jerzmanski Bar & Partners
Wrocław, Poland

Dear Mr. Mielnik,
Dear Ms. Bar,

Re: Communication to the Aarhus Convention Compliance Committee concerning compliance by Poland with respect to public participation during the preparation of hunting plans and access to justice regarding various plans relating to the environment (ACCC/C/2018/158)

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/2018/158 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/2018/158 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 **Friday, 10 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/2016/151 and ACCC/C/2017/154

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

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Questions to the Party concerned:

1. In its response to the communication dated 18 June 2019, the Party concerned states that *annual* farm and hunting plans are not subject to public participation. Please clarify whether Polish law requires public participation to be carried out during the preparation of *multiannual* farm and hunting plans. If so, please provide the text in Polish, together with an English translation thereof, of the relevant legislative provision(s) imposing this requirement.
2. To the extent that such judgments exist, for each of the plans listed in subparagraphs (a) – (s) below, please provide:
 - (i) An example of a judgment in which an environmental non-governmental organization (NGO) was able to successfully challenge that type of plan; and
 - (ii) An example of a judgment in which one or more private individuals was able to successfully challenge that type of plan.

Please provide the text of each judgment in Polish. (Following the hearing, the Committee may request an English translation of the relevant parts of the judgments.)

- (a) Local spatial development plan;
- (b) Voivodship spatial development plan;
- (c) Forest management plan;
- (d) Air quality action plan;
- (e) Short-term air quality action plan
- (f) Noise management action plan;
- (g) Waste management plan adopted at the Voivod level;
- (h) Waste management plan adopted at the national level;
- (i) Multiannual hunting plan;
- (j) Annual hunting plan
- (k) Water maintenance plan;
- (l) River basin management plan;
- (m) Flood risk management plan;
- (n) Drought management plan;
- (o) Plan of protection measures of Natura 2000 area, adopted under article 28 of the Nature Protection Act;
- (p) Natura 2000 area protection plan, adopted under article 29 of the Nature Protection Act;
- (q) National park protection plan;
- (r) Nature reserves protection plan;
- (s) Landscape parks protection plan.

3. Please specify the legal provisions, if any, under which private individuals and environmental NGOs may have access to justice to challenge each of the following plans before an administrative or judicial procedure:
- (a) Annual hunting plan;
 - (b) Multiannual hunting plan;
 - (c) Forest management plan;
 - (d) River basin management plan;
 - (e) Flood risk management plan;
 - (f) Drought management plan;
 - (g) Waste management plan adopted at national level;
 - (h) Natura 2000 area protection plan, adopted under article 29 of the Nature Protection Act;
 - (i) National park protection plan.
4. Please specify which, if any, of the plans listed in subparagraphs (a) – (s) of question 2 above you consider to be outside the scope of article 9 (3) of the Convention and thus with regard to which Poland, in your view, has no obligation under article 9 (3) to provide access to justice. For each of the plans listed in subparagraphs (a) – (s) above that you consider to be outside the scope of article 9 (3) of the Convention, please briefly explain why, in your view, they are not covered by article 9 (3).

Questions to the communicant:

5. When were the multiannual farm and hunting plans for the period 2017–2027 adopted?
6. At page 9 of the communication, you state that the lack of a legal basis for access to justice for plans and programmes makes it impossible to challenge hunting plans adopted without public participation. Could you clarify whether you consider that, if public participation were to be required for such plans, under Polish law access to justice meeting the requirements of article 9 (3) of the Convention would also be ensured? If so, please:
- (a) Indicate which provisions on access to justice would apply in this case;
 - (b) Provide the text of these provisions in Polish, along with an English translation thereof.
7. Please provide the text of the following provisions in Polish, along with an English translation thereof:
- (a) Articles 14 of the Act of 27 March 2003 on spatial planning and development, as referred to at page 4 of the communication;
 - (b) Articles 91, 92, 117 and 119 of Environmental Protection Law Act of 27 April 2001, as referred to at page 4 of the communication;
 - (c) Article 34 of the Waste Act of 14 December 2012 as referred to at page 4 of the communication;
 - (d) Article 172–173, 185, 315–324 of the Water Act of 20 July 2017 (Water Act), as referred to at page 1 of the communicant’s reply to the Committee’s request dated 19 August 2018;
 - (e) Articles 18–20 and 28–29 of the Nature Protection Act, as referred to at pages 2–3 of the communicant’s reply to the Committee’s request dated 19 August 2018.

8. To assist the Committee to better understand the precise nature of the plans listed below, please specify pursuant to which provision, if any, of European Union law these plans are prepared. (Please note that the Committee will not examine compliance with the stated provisions of European Union law – this question is intended only to clarify the particular character of each plan.)
- (a) Local spatial plan;
 - (b) Voivodeship spatial plan;
 - (c) Forest management plan;
 - (d) Multiannual farm and hunting plan;
 - (e) Annual farm and hunting plan;
 - (f) Water maintenance plan;
 - (g) Drought management plan;
 - (h) National parks protection plan;
 - (i) Nature reserves protection plan;
 - (j) Landscape parks protection plan.
9. Please specify which of the judgments listed on pages 6 and 7 of the communication concern a plan listed in subparagraphs (a) – (s) of question 2 above and for each such judgment:
- (a) Specify the type of plan challenged;
 - (b) Clarify whether the claimant was a private person or an NGO;
 - (c) Specify the level of government adopting the plan or programme and the law under which it was adopted;
 - (d) Provide the text in Polish, together with an English translation of the court’s reasoning for refusing the claim and any other relevant parts.
10. At page 5 of the communication you state that for plans and programmes adopted by “self-governmental authorities” at the Voivodeship level, standing is provided by article 90 (1) of the Act on Province Self-Government and that for plans and programmes adopted by “governmental authorities” at the Voivodeship level, standing is provided under article 63 (1) of the Act on the Voivod and the Governmental Administration in the Voivodeship.
- Please explain the difference under the Polish system between “governmental authorities” and “self-governmental authorities” at the Voivod level.
11. Please provide a table specifying, with respect to each type of plan listed in subparagraphs (a) – (s) of question 2 above:
- (a) A judgment in which an environmental NGO was denied access to justice to challenge that type of plan.
 - (b) A judgment in which one or more private individuals was denied access to justice to challenge that type of plan.

For any of the judgments in your table for which the Polish text, and an English translation of its relevant parts, are already before the Committee, please indicate where that judgment can be found on the Committee’s website. For all other judgments in your table, please provide the text in Polish, together with an English translation of the main facts of the case and the court’s reasoning for rejecting the claim.