



**REPONSE / SPEAKING NOTE**

**Re: Communication PRE/ACCC/C/2023/198**

Dear Ms Marshall,

With reference to your correspondence of 21 February 2023 informing Ireland that the Compliance Committee will consider the preliminary admissibility of Communication PRE/ACCC/C/2023/198 (“**the Communication**”) at its 78<sup>th</sup> meeting (Geneva, 21-24 March 2023), the position of Ireland on the question of admissibility is set out below.

First, Ireland wishes to thank the Committee for the opportunity to provide its views on the preliminary admissibility of the Communication and requests that the Committee consider the following matters in determining admissibility.

The Communication alleges non-compliance by Ireland with Articles 3(9), 5(2), 5(3), 6(3) and 9(4) of the Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (all of which allegations are denied).

Ireland has carefully considered the Communication and submits that a question arises regarding its admissibility, having regard to Decision I/7 of the Committee, and in particular paragraph 21 thereof, as to whether there has been a failure to engage and/or exhaust domestic remedies.

The Communication makes no reference to case law of the national courts concerning the proper construction and application of the provisions on which the Communicants rely, or of any proceedings before the national courts in connection with any of the alleged breaches.

This necessarily raises questions as to whether domestic remedies have been adequately engaged and/or exhausted in this matter.



The onus is on the Communicants to establish that domestic remedies are either unreasonably prolonged or do not provide an effective and sufficient means of redress. The Communicants assert that as the Communication concerns an “*alleged general and systemic failure by Ireland to comply with Article 5, 6 and 9 of the Convention ... there is no appropriate remedy available*” (the Communication, paragraph 72). This is not admitted. A general and systemic failure of the kind alleged by the Communicants ought to have consequences in particular instances, meaning that the alleged failure could readily be challenged in domestic proceedings.

Regarding time limits for taking judicial review proceedings, the Communication alleges that “*the Irish courts adopt a strict approach and have consistently upheld time limits and refused to extend them unless the delay was due to matters outside the applicant’s control*” (the Communication, paragraph 73). The Communication does not, however, engage with decisions of the Irish Courts relating to the Courts’ discretion, under the relevant provisions, to grant an extension of time. It is surprising that the Communication does not refer to any case law in which national courts have considered whether the failure alleged by the Communication is capable of satisfying the test for an extension of time.

It is equally surprising that the Communicants have not sought to advance that argument in proceedings before national courts. The Communication continues: “*[t]here is no meaningful way of challenging this situation without creating a deliberate default in which case the Irish Courts will simply rule against the applicant.*” Two observations are made in response to this statement. First, the suggestion of a necessity to create a “*deliberate*” default suggests that default does not arise in practice as a result of the rules or provisions complained of. Second, the assertion that the “*Irish Courts will simply rule against the applicant*” is, again, baldly made without any reference to decisions of the Irish Courts to support it.

Finally, it is also noted that, to the best of our knowledge, the Communicants have not contacted the State, through the relevant Government Department or otherwise, to make the complaints advanced in the Communication and to invite the State to consider and take steps to address same.



Accordingly, there is a real question as to whether available domestic remedies have been engaged by the Communicants, let alone exhausted, and Ireland requests that the Committee take this into consideration in its deliberations on the admissibility of the Communication.

Yours sincerely,

Brendan Keenan  
Aarhus Unit