



Mr Jeremy Wates  
Secretary to the Aarhus Convention  
United Nations Economic Commission for Europe  
Environment and Human Settlement Division  
Room 332, Palais des Nations  
CH -1211 Geneva 10  
Switzerland

05 October 2009

Dear Mr Wates

**Re: Communication to the Aarhus Convention Compliance Committee concerning compliance by the United Kingdom with provisions of the Convention in connection with the scope of judicial review, costs, timing and other issues related to access to justice (Ref. ACCC/C/2008/33)**

Thank you very much for your email of 29 September inviting us to respond to the UK's letter regarding an alleged conflict of interest in relation to cases ACCC/C/2008/23, 27 and 33. ClientEarth is writing to you on behalf of all the Communicants in Case ACCC/C/2008/33. In the Communicants' view no conflict of interest has in fact arisen:

- The members of the Compliance Committee are all highly eminent and very experienced jurists who serve on the Committee in a personal capacity. In addition, the compliance mechanism itself is extremely open and transparent. Both of these characteristics secure the independence and impartiality of the Committee in the application of the Convention's compliance mechanism.
- The circumstances referred to by Defra in which a case in the UK would be re-heard due to issues of bias apply in entirely different circumstances, and, even in the UK, would not apply in a situation where one only of a panel of eminent lawyers/judges was implicated in a conflict of interest. In such a case, the same action would be taken as has been taken by the Committee: the relevant member of the panel would be removed from the decision-making process.
- A careful distinction should be drawn between panels of highly qualified legal experts who can be relied upon to be fair, unbiased and impartial, and bodies which include unqualified lay persons, which have to be protected in this respect.
- We understand that the marital status of the long-standing and highly experienced Committee member Mrs Kravchenko was known to all the Compliance Committee members (see para 4 of the Committee's draft statement of 24 September 2009). Under the Committee's Modus Operandi we are sure that Mrs Kravchenko would have declared a conflict of interest, had she or

any of the Committee members felt this to be an issue. Indeed, because of the independent and impartial nature of the Committee members themselves, there is not even a presumption of conflict where a Committee member's own country is being complained against.

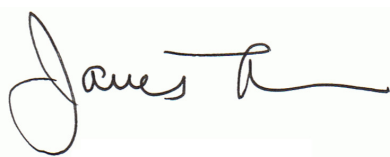
- In contrast to the specific nature of cases 23 and 27, case 33 alleges a general failure of the UK to comply with Article 9(4) as regards 'prohibitive' costs. Professor Bonine's comments were not in fact addressed to arguments set out in case 33 (as evidenced by Defra not including case 33 in its initial complaint), and have in any case been entirely superseded by the general evidence presented since then in relation to case 33. Therefore, any views expressed by Mrs Kravchenko in the discussions in closed session on 1 July are, in our view, completely irrelevant to case 33. Mrs Kravchenko has of course by her own choice not even been party to any discussions in relation to case 33 at all.
- Contrary to the allegations made in Defra's statement of 25 September 2009, the Compliance Committee has not acknowledged that '*the conflict of interest taints Cases 23 and 27*', as well as Case 33. The Compliance Committee merely accepted that Mrs Kravchenko should not participate in the preparation or adoption of findings in relation to cases 23, 27 and 33 as a precaution and wishing '*to avoid a situation where there are doubts about its process*'. In fact, it pointed out that the grounds for the UK's conflict of interest claims were '*at least debatable*' (draft statement of 24 September 2009).

We attach a much more detailed examination of these issues as an annex to this letter, which can be found at

[http://www.unece.org/env/pp/compliance/C2008-33/correspondence/FrCommC33OnConflict\\_Annex.pdf](http://www.unece.org/env/pp/compliance/C2008-33/correspondence/FrCommC33OnConflict_Annex.pdf).

We hope that these comments are of use to help clarify this situation.

Yours sincerely

A handwritten signature in black ink, appearing to read 'James Thornton', on a light yellow rectangular background.

James Thornton  
Chief Executive Officer/General Counsel