

In the matter of the Aarhus Convention Compliance Committee

ELIZABETH CONDRON

Communicant

and

UNITED KINGDOM

Party concerned

**COMMUNICANT'S SUMMARY REPLY TO
UK and MINING COMPANY SUBMISSIONS**

Note: Documents referred to are contained in the bundle and marked by page numbers e.g. [1].

1. The Communicant provides a summary reply to certain points raised in the submissions by the UK and the mining company.

Judicial findings

2. The Communicant has appealed the judicial findings that the UK and the mining company regard as authoritative (see §5 below).

Opencast and disposal point

3. The UK seeks to distinguish (as did the Councils and the High Court) between the opencast coal mining and the coal processing operations. The Communicant maintains that this approach is wrong in law; see e.g. the skeleton argument of 30 April 2009 [33].

Dust and noise

4. The UK disputes that there are problems of dust and noise pollution. Merthyr Council's view that there is no pollution is not shared by local residents; see e.g. the summary complaints and noise report [80-93].

Merthyr Council, and the mining company, are aware that the Communicant's solicitors are instructed by residents about noise and dust complaints [94].

Merits of the underlying challenge

5. It is uncertain why the UK has provided detailed analysis of the substantive EIA proceedings. Members of the public are entitled to challenge planning permissions by way of judicial review. It is the only method of legal remedy for an interested party (*cf.* a developer who has rights of appeal under the Town and Country Planning Act 1990). In the EIA proceedings, the Court of Appeal concluded that there was sufficient merit to permit a hearing [95].

Application of Article 3(8) to public bodies

6. The UK and the mining company dispute that Article 3(8) is engaged by the conduct of a public body or private company. The Communicant maintains that it is, providing the private company is carrying out public functions, as in the present case.
7. The UK makes a distinction between 'The Party' and 'Public Bodies'. The Communicant's view is that the Convention should be applied flexibly and that the internal division of obligations is no excuse for not complying with Convention: see *Communication ACCC/C/2005/11 by Bond Beter Leefmilieu Vlaanderen VZW (Belgium)* (para 40). Also, there is no such a distinction in relation to human rights or in EU legislation where public bodies are regarded as an emanation of the state and where proceedings against a Member State will arise where the cause is by domestic national body (e.g. Wales) or local authority. There is not, as far as the Communicant is aware, any judicial determination of the point.

Conduct of parties in legal proceedings

8. The facts relating to the Communication are set out in Communicant's earlier submissions.
9. The question of financial pressure by opposing parties on the public and NGOs to prevent bringing environmental claims (whether express or implied) is not uncommon; see e.g: *Communication of Morgan & Baker*, ACCC/2008/23; *Littlewood v Bassetlaw DC* [2008] EWCA Civ 1611 (threat of costs of £135,000 and more if an injunction is pursued) [96-7] and *Eley v Secretary of State* [2010] EWHC 436 (Admin). See also *Shirley v Secretary of State* (2001) and *R (Friends of the Earth) v Environment Agency* (2003) where the developer rather than the public body has threatened to claim its costs in circumstances, where any such costs award would be excessive and exceptional.

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