

**United Kingdom submissions on
PRE/ACCC/C/2014/108 (United Kingdom)**

12 March 2015

Summary

1. We consider that communication PRE/ACCC/C/2014/108 is inadmissible for the following reasons:
 - **Not supported by corroborating information:** the communicant's allegations are generally unsupported by sufficient information or evidence to be able to provide any meaningful response.
 - **Not established to be within the scope of the Convention:** both generally, and in relation to specific allegations, the communicant has failed to establish that the issues they raise are within the scope of the Convention.
 - **Manifestly unreasonable:** the general absence of sufficient information and the contradictory nature of at least one of the allegations make it unreasonable for them to have brought this communication.
 - **Abuse of process:** submitting a communication that is generally absent of sufficient information to enable the issues to be properly considered constitutes an abuse of the right to bring communications to the Committee.
2. In addition, matters on costs have already been considered by the Committee and are subject to an ongoing process through decision V/9n; we see no need for the Committee's time to be taken up considering this again here.

Preliminary comments

3. We look forward to participating in the Committee's discussion on the pre-admissibility of communication PRE/ACCC/C/2014/108 on 27th March. We continue to welcome the Committee's efforts in respect of decision V/9 regarding transparency at this stage of the compliance process and appreciate the opportunity to make interventions in this discussion.
4. Based on our previous participation in a pre-admissibility discussion in December 2014, we recognise that there is very limited time for the Committee to consider any arguments that we may make on pre-admissibility. The need, at present, for the Committee to make an on the spot decision in an open session presents particular challenges.

5. In order to assist the Committee's work we have therefore summarised the main points we intend to raise during the discussion on 27th March.
6. As a preliminary comment, we wish to emphasise the need for communications to be in a form that enables Parties to understand the concerns being raised and to be able to address those points in any response. Paragraph 19 of the annex to decision I/7 requires communications to be "supported by corroborating information". This applies, in our view, as much to the pre-admissibility stage as it does to a full communication forwarded to the Party. The communicant's assertions should be supported by reasoned argument and evidence where possible, rather than in the form of unsubstantiated allegations about compliance with the Convention. That has been a general concern in relation to this communication.
7. We note the communicant's request that his address, telephone number and e-mail address are kept confidential. However, some of these details are clearly visible, despite redaction, in Annex 7 to the communication when viewed on screen. The communicant's address is unredacted in Annex 8.
8. A number of the documents annexed to the communication are newspaper extracts. It is a point we have raised before, but we would urge the Committee and secretariat to consider and clarify the position regarding the posting of copyrighted information on the UNECE website.

Comments on the admissibility of the communication

9. Returning to the communication itself, we have the following comments on its admissibility, by reference to each of the allegations made by the communicant:
 - a. Article 3(2): The communicant alleges that they were not provided with assistance to seek access to justice. The allegation is unsubstantiated, as no further information or supporting evidence is provided to enable consideration of it. The communicant cites a High Court ruling in a case that they did bring, in which both the High Court and Court of Appeal found their case to be totally without merit. The communicant suggests that one of the grounds for refusal in the High Court was that the case is "hopelessly out of time". However, this is insufficient information to consider the alleged breach. This allegation should be found to be inadmissible because it is **not supported by corroborating information**.
 - b. Article 3(3): The communicant's allegations about a failure to promote environmental awareness are also unsubstantiated, as insufficient reasoning or evidence is provided to support them. The communicant mentions aspects of the local authority's complaints procedure and ombudsman and the closure of a local Citizens Advice Bureau, but does

not provide sufficient information to consider an alleged breach. This allegation should be found to be inadmissible because it is **not supported by corroborating information**.

- c. Article 6(1): The communicant alleges breaches by the local authority on the grounds that the planning application was not proceeded by a “Screening Opinion” and that an environmental impact assessment should have been conducted. Article 6(1) is concerned with opportunities for public participation on matters within its scope. The Convention does not require environmental impact assessments to be carried out. An allegation that a public authority failed to screen a development, issued a flawed screening opinion or failed to designate this as a ‘major development’ for domestic law purposes is outside the scope of article 6(1). Again the communicant provides no reasoning or supporting evidence for their allegation, and it does not appear, based on what little information the communicant has provided that article 6(1) is even engaged. This allegation should be found to be inadmissible because it **concerns matters outside the scope of the Convention** and is **not supported by corroborating information**.
- d. Article 6(4): The communicant makes an allegation that Wirral Metropolitan Borough Council failed to provide for early public participation. Again, this assertion is made without any reasoning or evidence to back it up. This allegation should be found to be inadmissible because it is **not supported by corroborating information**.
- e. Article 7: The communicant also alleges that there was a failure to provide early public participation on the Greater Concourse Project, a document included as Annex 1 to the communication, which appears to be a report by the local authority dating from October 2005. The communicant has not pointed to anything that would indicate that the document in question is a plan or programme relating to the environment and within the scope of article 7. Once again, the communicant provides no supporting argument or evidence in relation to their assertion. This allegation should be found to be inadmissible because it **concerns matters outside the scope of the Convention** and is **not supported by corroborating information**.
- f. Article 9(2): The communicant asserts that the amendments made to the Civil Procedure Rules in England and Wales by the Civil Procedure (Amendment No. 4) Rules 2013 (“the 2013 Rules”), included as Annex 5, cause a breach of article 9(2) because they denied them access to a review procedure. The communicant provides no explanation as to why they consider these rules changes are alleged to have caused a breach of article 9(2). It is also clear from the communication that the communicant

has in fact been able to bring a challenge in the High Court and to appeal the High Court's order in the Court of Appeal. This is clearly at odds with the assertion that the communicant has been denied access to a review procedure. This allegation should be found to be inadmissible because it is **not supported by corroborating information** and is **manifestly unreasonable**.

- g. Article 9(4): The communicant makes allegations about prohibitive costs, but again provides only very limited information and no supporting evidence. The absence of any reasoned argument or evidence would make it impossible for the United Kingdom to provide a response to this allegation. In any event, the issue of costs has already been considered by the Committee and the Meeting of the Parties, most recently in decision V/9n and the progress report provided to the Committee in December 2014. This allegation should be found to be inadmissible because it is **not supported by corroborating information**. In addition the allegation appears, based on the limited information provided, to concern **a matter that has already been considered by the Committee**.
- h. Article 9(5): The communicant's first allegation relating to article 9(5) is that the change made by the 2013 Rules, aligning the time limit for judicial reviews for planning challenges with that already in place for statutory reviews, is a failure to consider the establishment of appropriate assistance mechanisms to remove or reduce barriers to access to justice. In addition to the questionable relevance of article 9(5) to this assertion, the communicant fails to provide any evidence to support their suggestion that the time limit is insufficient. This allegation should be found to be inadmissible because it is **not supported by corroborating information**.
- i. Article 9(5): The communicant's second allegation relating to article 9(5) appears to concern benefit sanctions, a matter clearly outside the scope of the Convention. There is again, no evidence to support the communicant's allegations that policies on benefits payments constitute a breach of the Convention. This allegation should be found to be inadmissible because it **concerns matters outside the scope of the Convention** and is **not supported by corroborating information**.
- j. Article 9(5): The communicant's final allegations relating to article 9(5) refers to reductions in legal aid funding. It is unclear how the communicant's account of their experience provides any evidence to support their allegation. The communicant also appears to make general, unsubstantiated allegations regarding the substance of how Wirral Metropolitan Borough Council makes planning decisions, which are not relevant to article 9(5) or the Convention more generally. These

allegations should be found to be inadmissible because they **concern matters outside the scope of the Convention** and are **not supported by corroborating information**.

10. Given the absence of reasoning and supporting evidence throughout the communication we also request that the communication is, in addition to the matters raised above, found inadmissible on the grounds that it is **an abuse of the right to make such communications** and is **manifestly unreasonable**.
11. In addition, the communicant has not provided any argument or evidence to support the implied proposition that their concerns about the planning permission in question are even within the scope of the Convention. Not all planning matters are within its scope and it is unclear from the communication whether the focus of the communicant's allegations could properly be considered as an environmental matter and therefore potentially be within the scope of the Convention. We also request that the communication is found inadmissible because it **fails to establish that it concerns matters that are within the scope of the Convention**.
12. We therefore request that the Committee find both the individual allegations and the communication as a whole to be inadmissible.