

1. On Communicant's behalf I would like to sustain all presented statements.

In Communicant's opinion art. 7 in conjunction with especially art. 6.8 of the Aarhus Convention is not sufficiently implemented into Polish legal order.

According to art. 7 of the Aarhus Convention each Party shall enable the public to participate during preparation of plans and programs relating to the environment. Additionally, Party shall ensure that the outcome of the public participation will be taken into account.

As it was repeatedly stipulated by the Committee, there is a clear obligation arising from article 7 on public authorities to seriously consider the outcome of public participation in the preparation of plans. The authority should be able to demonstrate how the outcomes were considered and why it did not follow the views expressed by the public.

Similar guidelines are presented in Maastricht Recommendations, mentioned already in last Communicant's letter. According to these Recommendations the statement of reasons accompanying the final decision should include a discussion of how the public participation was organized and how its outcomes have been taken into account. It is recommended that the legal framework should therefore include a clear requirement that the statement of reason includes, as a minimum, inter alia: how the comments received have been incorporated into the decision, identifying clearly which comments have been accepted in the final decision, where and why, and which have not and why not.

Communicant agrees with Committee's statement that a system where, as a routine, comments of the public are disregarded or not accepted on their merits without any explanation, would not comply with the Convention.

In Communicant's opinion provision of Polish law do not comply with Convention and presented guidelines.

The Aarhus convention was implemented into Polish law inter alia in Act on the Provision of Information on the Environment and its Protection, Public Participation in Environmental Protection and Environmental Impact Assessment (called Public Participation Act).

According to art. 46 of mentioned Act, enlisted documents require a strategic environmental impact assessment. During this strategic impact assessment Authority is obligated to ensure public participation.

According to art. 55 (3) of the Public Participation Act, to the adopted document shall be enclosed a written summary containing a justification of the choice of the adopted document in relation to the alternatives considered and inter alia the information which submitted comments and suggestions have been accepted and to what extent.

So, Authority is obligated to explain only which comments were taken into account and to what extent they were accepted. Public Participation Act does not obligate the Authority to explain why some comments were accepted in final decision and, what is more, why some comments were not accepted. In Communicant's opinion it may lead to a rather cursory and superficial analysis of comments, done pro - forma without further assessment. If the Authority is not obligated to present the reasons why it did not accept some comments, the public does not have any evidence that comments were actually considered by the Authority. Furthermore, the

public does not have information why comments were not accepted and what were the reasons behind such decision.

In Communicant's opinion provisions of the Public Participation Act do not ensure compliance with the Aarhus Convention. These faults of Polish regulations are reflected in particular proceedings, as already presented procedure of adopting changes to Lubuskie Voivodeship spatial development plan.

Voivodeship spatial development plan is a document which needs a strategic environmental impact assessment to be conducted. As it was mentioned during this procedure public participation must be ensured.

In this particular procedure a large number of comments was not accepted because they were in contrary to the voivodeship's policy. There were no reasons of their not acceptance at all. In Communicant's opinion information that comment is in contrary to voivodeship's policy is not sufficient and should not be considered as proper justification. Authority did not explain what kind of policy it referred to. In Communicant's opinion it is the effect of lack of general obligation in the Public Participation Act to provide further explanation why comments were not accepted.

Communicant points that Party concerned did not demonstrate that has fulfilled its obligations. Party concerned did not show how the outcome of public participation was duly taken into account.

Therefore, in Communicant's opinion mentioned articles of the Aarhus Convention are not sufficiently implemented into polish legal order.

2. Furthermore, in Communicant's opinion Republic of Poland is not in compliance with the requirement of art. 9.3 of the Aarhus Convention.

According to this article each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.

As it was stipulated by the Committee, the Parties may not take the clause „where they meet criteria, if any laid down in its national law” as a justification for introducing or maintaining so strict criteria that they effectively bar all or almost all environmental organization from challenging acts or omissions that contravene national law relating to the environment. What is more, criteria stipulated by national law should be adequate, should not put excessive limitation on members of the public right to access to administrative or judicial procedure.

In Communicant's opinion criteria stipulated by Polish law are not correct.

A lot of plans and programs concerning environment are passed as municipality, county or voivodeship government's resolution.

For example:

- Air protection program is passed by Vovideship's government – Vovideship's Sejmik as a resolution.

- Voivodeship environment protection program is passed by Voivodeship's Sejmik as a resolution.
- County environment protection program is passed by County's council as a resolution
- Municipality environment protection program is passed by Municipality's Council as a resolution.

Additionally, voivodeship spatial development plan is also passed as a resolution of Voivodeship's Sejmik.

Provisions of Polish law effectively bar all environmental organization from challenging municipality/county/voivodeship government's resolutions that contravene national law relating to the environment.

Polish law requires to challenge voivodeship authority's local law or legal or physical action to prove violation of legal interest. These requirements for complaint are also applied to municipality and county government's resolution.

In common administrative court's opinion legal interest must be concrete, individual, actual and objective. Additionally, the violation must be present, not hypothetical or possible. Because of this reason in administrative court's opinion it is impossible for NGO to appeal against resolution, if resolution does not concern directly NGO's legal interest or legal duties, but concerns only NGO's statutory objectives.

Communicant's present verdicts of administrative court presenting these common point of view.

Additionally, in Communicant's opinion term „legal interest” and „violation of legal interest” is very strictly and rigidly interpreted by administrative courts in Poland, what makes very hard to file a claim by individual person, especially by person who wants to file a claim in public interest. In one of mentioned in the last letter verdicts Court stated that allegations to resolutions, concerning environmental issues, impact of windmills on human settlement, landscape degradation show that appeal was filed in public interest, not in appellant's concert interest, what is illegal and so the appeal was dismissed.

So in Communicant's opinion criteria stipulated by national law to challenge the resolution are not adequate. Requirement to prove violation of legal interest and restricted interpretation of term violation of legal interest causes that significant amount of members of the public do not have access to justice in environmental matters. It is against the objectives of the Convention to ensure wide access to justice.

Communicant points that is is similar to the German doctrine „impairment of right”.

The Communicant is therefore convinced that Republic of Poland is not in compliance with the requirements of Art. 9.3 of the Aarhus Convention.