

Kraków, 28. 04. 2015 r.

**Ms Fiona Marshall**  
**Secretary to the Aarhus Convention**  
**Compliance Committee**  
**UN Economic Commission for Europe**  
**Environment Division**  
**Room 492-2**  
**Palais des Nations**  
**CH-1211 Geneva 10**  
**Switzerland**

Dear Ms Marshall,

Further to Your information concerning Communication PRE/ACCC/C/2015/119 and Committee request from the 9th of April 2015, to clarify specific aspects of the communication I would like to present the following.

In the submitted Communication, among other issues, we have claimed non-compliance with Article 9 paragraph 3 of the Aarhus Convention with respect to the Development Plan for the Lubuskie Voivodship. We have argued that beyond the adoption of the Development Plan, members of the public were limited the right to challenge the Plan thus were effectively prevented from access to review procedures of administrative act related to the environment.

Provincial Administrative Court rejected the right to judicial remedy of both member of the public and municipality claiming the lack of legal interest in the case. In both judicial proceedings cassation complaints to the Supreme Administrative Court were submitted. To the date of issuing the Communication the judgments of the Polish Supreme Court on the challenging the Development Plan by the private person indicating the violation of individual property rights were pending.

On the 25<sup>th</sup> of February 2015 Supreme Administrative Court passed the judgements on the municipality rights to challenge the substantive and procedural legality of decision concerning Spatial and Development Plan for the province of Lubuskie (II OSK 1598/13), and on the rights of the members of the public in challenging the Plan that might violate the individual property rights (II OSK 647/14).

Both judgements confirmed the statement of the communicant presented in the submitted Communication, that members of the public are effectively prevented from access to review procedures of administrative acts related to the environment.

According to the Supreme Administrative Court, in order to evaluate the cassation complaint, it is required to prove infringement of the claimant's legal interest resulted from the specific provisions of substantive law. Even though the Supreme Administrative Court rejected the previous judgement of the Provincial Administrative Court and claimed that both municipality and private persons have legal interest in the case, it also argued that recognition of legal interest is not enough and the violation of the legal interest must be demonstrated. The Court claimed that, the Development Plan by imposing specific limitations to individual property rights, is not an evidence of the infringement of legal interest.

In one of the evaluated cases (II OSK 647/14) member of the public whose property is located on the area included in the Development Plan, has challenged document claiming that specific assumptions concerning the protection of coal deposits which were introduced by the Plan could directly contravene the property rights of individual.

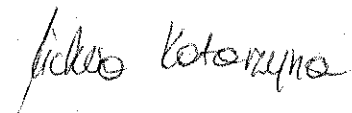
The Court stated that the challenged Development Plan for the province of Lubuskie does not introduce coal mine as a public interest investment and thus neither municipality nor member of the public can claim the violation of their legal interest by the introduction of deposit protection into the document. The Development Plan introduces the protection of coal deposits, which imposes particular warrants and legal obligation on the individuals who inhabit the territory included in the Plan.

Based on the art.125 of the Environmental Law (Dz.U. Nr 62, poz. 627), after publishing the content of Development Plan for the Voivodship, authorities of municipalities located in the areas of recognized coal deposits must introduce the deposits in the local spatial and development plans. Introduction of deposits protection in local management plans imposes certain duties and obstacles in the land use, including important restrictions in site specific proposal development plans.. In the protected areas, services-related or residential development or any other forms of development that includes investment in commercial or private buildings are prohibited. From the perspective of local development, legal obligations concerned with the protection of coal deposits impose significant obstacles and limitation for the management of the region and influence the rights of individuals who are successfully constrained from business and social development on the protected area. Therefore, the Supreme Administrative Court by claiming that, there was no violation of legal interest in the evaluated case, effectively prevented member of the public from the access to review procedures.

Currently all available domestic remedies have been used.

Concerning the above mentioned fact, we kindly ask the Compliance Committee to evaluate the preliminary admissibility of the communication concerned with Article 7 in conjunction with article 6 paragraphs 3, 4, 8; Article 9 paragraph 3 of the Convention with regard to the presented above and with the evidence of Supreme Administrative Court judgments (II OSK 1598/13) and (II OSK 647/14).

Yours sincerely,



Lichwa Katarzyna  
Frank Bold Foundation

**Attachments:**

- Annex 1. Supreme Administrative Court judgment (II OSK 1598/13)
- Annex 2. Supreme Administrative Court judgment (II OSK 647/14)