MINISTER OF THE ENVIRONMENT

Warszawa, 2015 -05- 21

Ms Fiona Marshall
Secretary to the Aarhus Convention
Compliance Committee
UN Economic Commission for Europe
Environment Division
Room 429-2
Palais des Nations
CH-1211 Geneva 10
Switzerland

Dear Ms Marshall,

Further to the correspondence concerning communication PRE/ACCC/C/2015/119 and in answer to the clarifications provided by the Frank Bold Foundation, I would like to present a statement of the Ministry of the Environment of the Republic of Poland concerning the above mentioned issue.

In the communication the Communicant accused Polish authorities of violating the Aarhus Convention by restricting the right of environmental organizations and private persons to the access to justice. At the same time the Communicant informed that the administrative court rejected its right to statutory and judicial review. However the cases presented by the NGO refer to two complaints, one of private person and one of municipality, both formally acknowledged by courts. Given that fact, we have to acknowledge that there was no case presented by the NGO concerning Development Spatial Plan of Lubuskie Voivodship where it proved or even indicated that its own right, coming from the Aarhus Convention have been violated. Such presentation of facts causes confusion since we are not sure which of presented accusations refers to cases that were examined by administrative courts.

Bearing in mind that according to the article 21 of the Decision I/7 the Committee should at all relevant stages take into account any available domestic remedy unless the application of the remedy is unreasonably prolonged or obviously does not provide an effective and sufficient means of redress, the only cases where use of all domestic remedies was proven are two cases presented by the communicant in its clarification. Therefore, in our opinion only these two cases could potentially be taken into account by the Compliance Committee when analyzing the admissibility of the complaint.

We would like to notice, that in one of the cases the complainant is public authority – Gubin municipality. We are convinced that the Aarhus Convention shall be interpreted in a way that the rights envisaged by its provisions should serve members of the society and in this context the article 2 points 4 and 5 should be interpreted very broadly. However, there is serious concern whether the litigation between public authorities in one country could be brought before the Committee. We believe that setting the scope of competences and recognition of disputes between public authorities is an exclusive competence of a state – Party to the Convention.

There are also reasonable doubts concerning the other case. In the communication the Foundation accuses the Party of restricting the rights of private persons to the access to justice. However, in further clarification the NGO informed that the Supreme Administrative Court claimed that both municipality and private persons have legal interest in the case (page 1 of the clarification paper). It means that argument used in the communication which says that *"it is almost impossible for Private Persons (...) to prove legal interest in the cases concerned with the Spatial and Development"* is invalid in this case. The ruling of Supreme Administrative Court indicates that the access to justice was assured and there is no basis for communication, related to lack of recognition of legal interest. Further to that, the Supreme Administrative Court claimed that the complainant did not prove that her legal interest was violated. The Court presented comprehensive reasoning explaining why the above mentioned legal interest was not violated and also explained in which cases such interest could be breached. So the Court did not exclude that in cases concerning Development Plans for voivodships such interest could be breached and there is judicial remedy for that.

Concerning the above mentioned information we are of the opinion that the communication PRE/ACCC/C/2015/119 should not be admissible because:

1. The Communicant did not prove that there was insufficient evaluation of public consultation. No case concerning that fact was also brought before the administrative court, which means that domestic remedies were not used in this case.
2. One of the cases presented by the Communicant refers to the dispute between public authorities of the Party concerned and as such could not be recognized by the Committee since the mentioned above entities are not members of the society in the understanding of article 2 point 4 and 5 of the Aarhus Convention.
3. In the case concerning the private person the Communicant itself acknowledged in the clarification to the communication that the legal interest of private person was recognized by the Supreme Administrative Court and therefore the argument used in the communication that it is impossible for private persons to prove legal interest in the cases concerned with Spatial Development has already been proved to be invalid. Moreover, the Court confirmed that in

some cases related to the development plans the legal interest can be violated and comprehensively explained when such interest could be violated.

4. The Communicant did not present how its own right to the access to justice was breached in the light of the Aarhus Convention, so this issue cannot be brought before the Compliance Committee since the Party concerned could not make any reference to that accusation.

Best regards

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PODSEKRETARZ STANU
Janusz Ostapiuk