



**Government
Legal Department**

Ms Fiona Marshall
Secretary to the Aarhus Convention Compliance Committee
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Your ref: PRE/ACCC/C/2020/176

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Dear Ms Marshall

PRE/ACCC/C/2020/176 (United Kingdom)

Ahead of the Committee's meeting to discuss the preliminary admissibility of the above communication, we attach the United Kingdom's observations.

We intend to dial in to the meeting on 9 March 2020 and look forward to speaking with you then.

Yours sincerely

**Grace Adisa-Solanke
Lawyer
Defra Legal Advisers, Government Legal Department**

United Kingdom comments on the preliminary admissibility of

PRE/ACCC/C/2020/176 (United Kingdom)

March 2020

Summary

1. We consider that the communication PRE/ACCC/C/2020/176 is inadmissible for the following reasons:
 - The communication does **not include corroborating information**, as is required under paragraph 19 of the annex to decision 1/7, to substantiate the allegations. There is no supporting evidence or corroborating information to support the asserted breaches of article 9(4) of the Aarhus Convention. The communicant does not engage with the requirements of the Convention beyond making plain assertions that this provision has been breached.
 - The allegations are centred on the communicant's dissatisfaction with the outcome of his litigation before the courts. This constitutes **an abuse of the right to make such a communication**. The communicant has muddled his disagreement with those outcomes with breaches of the Convention. Therefore some of the allegations relate to matters that do not fall within the scope of the Convention and thereby **not compatible with the provisions of the Convention** as required under paragraph 20 (d) of the annex to decision 1/7.
2. We therefore request that the Committee finds the communication be inadmissible and closes the case.
3. In order to assist the Committee ahead of the meeting to discuss the preliminary admissibility of this communication on 9 March 2020, we have set out in advance of that meeting, the reasoning we will talk the Committee through. We are of course happy to provide any further information that the Committee feels that it needs in order to determine the issue.

Comments on the admissibility of the communication

4. The communicant makes a number of allegations that the procedures in his case breached the requirement of article 9(4) which states that "procedures under paragraphs 1,2 and 3 are "fair, equitable, timely and not prohibitively expensive".
5. The alleged breaches of article 9(4) which are set out in various parts of the communication do not include sufficient corroborating information to indicate a potential breach. It is clear from the communication that the communicant disagrees with the outcome of each stage of the litigation in which he has been engaged. The arguments and information provided by the communicant centres on his disagreement with the High Court and the Court of Appeal, rather than corroborating any alleged breach of Convention requirements.
6. The communicant refers in the communication to the unfairness of the proceedings of the courts and in particular to the conclusions reached by both courts. The concept of **fairness** under article 9 (4) of

the Convention centres on whether the process and final decision is “impartial and free from prejudice, favouritism or self-interest”¹. Fairness requires that the public duly be informed about the review procedure, as well as informed about the outcome of the review. There is no suggestion let alone supporting evidence, that the courts imposed that the communicant limit his appeal to two out of the five grounds, the communicant claims that he felt “it was prudent to limit my appeal to 2 of the 5 grounds only”. The communicant provides **no corroborating evidence** or information to support an argument that the requirement for procedures to be fair has, in Convention terms been breached.

7. The communicant raises allegations on **equity** in the communication. Quoting the *implementation guide*, “equitable procedures are those which avoid the application of the law in an unnecessarily harsh and technical manner”. The communicant has not been able to demonstrate how his assertions amount to a breach of the Convention requirements. The complaint of the communicant on the representation choices of each party and the use of resources available to them is irrelevant and does not fall within the scope article 9 (4) of the Convention. The allegation is **irrelevant to the requirements of the Convention and incompatible with the provisions of the Convention**.
8. The communicant makes the assertion that proceedings were not **timely** in accordance with Convention requirements. The communicant makes the allegation that the proceedings were “protracted affairs with lengthy adjournments”. This assertion is made without any argument or evidence to demonstrate what factors caused the alleged delays and in effect how the Convention was breached. The communicant does **not provide any corroborating information** to substantiate this allegation of non-compliance.
9. The communicant alleges in the communication that the proceedings were **prohibitively expensive**, however the communicant has not provided detailed information to support this assertion. He has not provided any facts necessary to corroborate that the costs he is asked to pay is prohibitively expensive in these circumstances. In fact the communicant simply implies that he should not have to pay cost at all which is not the position under the Convention. The communicant has not gone further to explain why the costs were prohibitively expensive in this instance. It is also worthy of note that since 2017, the cost protection rules in Northern Ireland² have been amended³ and since the communicants application which was made in 2013, there is now flexibility to the cap under the rules. The communicant has not provided sufficient evidence of the “financial injustice” that he alleges and **has not substantiated the claim under the Convention**.
10. None of the communicant’s allegations are admissible on the basis that the communicant has not provided corroborating information and has not been able to demonstrate that he has engaged with the requirements under the Convention. The information provided in the body of the communication and also in the annexes is relevant to the substance of the communicant’s litigation in the domestic courts rather than in support of the alleged breaches of the Convention.
11. We find that the communicant has made bald assertions which do not engage with the requirements under article 9(4), we therefore request that the Committee find this communication inadmissible and dismiss it for **lack of corroborating information**.
12. Given the mounting pressures on the Committee’s limited resources, and the lack of corroborating information in this communication we request that the Committee finds the communication to be inadmissible and closes the case.

¹ *The Aarhus Convention: An Implementation Guide* (2nd edition), page 201

² The Costs Protection (Aarhus Convention) Regulations (Northern Ireland) 2013 (attachment 1)

³ The Costs Protection (Aarhus Convention) (Amendment) Regulations (Northern Ireland) 2017 (attachment 2)

