

**COMMUNICATION TO THE AARHUS CONVENTION'S
COMPLIANCE COMMITTEE – (ACCC/C/2010/60)**

COMMENTS ON THE COMMITTEE'S DRAFT FINDINGS IN (ACCC/C/2010/60)

**PUBLIC PARTICIPATION IN SPECIFIC ACTIVITIES REGARDING
SPEAKING AT PLANNING COMMITTEE MEETINGS OF LOCAL
AUTHORITIES**

1. The Communicant doesn't accept the Committee's view that denying public speaking at planning applications isn't in breach of article 6.7 of the Convention.
2. However, the Communicant accepts the decision of the Committee in respect of this issue and makes no further submissions in addition to the ones already made.

ACCESS TO ENVIRONMENTAL JUSTICE UNDER ARTICLE 9.2, 9.3 AND 9.4

1. The Communicant is naturally disappointed that the Committee hasn't made any findings one way or another regarding the compliance with articles 9.2, 9.3 and 9.4 of the Convention.
2. The Communicant has already made detailed written submissions and also oral submissions at the hearing held on 27 June 2012 and it is unnecessary to repeat them.
3. The Communicant however notes that the Committee hasn't upheld any of the submissions in relation to the adequacy of remedies submitted by the party to the effect that article 9 didn't apply to Judicial Review at all, either in respect of article 9.2, 9.3 and 9.4 of the Convention.
4. The Communicant also notes however that the Committee retains its previous concerns in relation to "substantive legality" regarding Judicial Review in ACCC/C/2008/33 at paragraph 127, and that it is continuing to work with the parties in that application to ensure compliance with the Convention by the United Kingdom.
5. The Communicant further notes that the Committee again maintains its findings in ACCC/C/2008/27 and ACCC/C/2008/33 and its decision in IV/9i (United Kingdom) adopted by the parties at its fourth session and that it again points the UK in the direction of its findings.
6. However, the Communicant is of the view that there is a considerable way to go before compliance with the convention has been fully achieved and notes that its provisions haven't even been introduced into domestic law, unlike the European Convention of Human Rights in the Human Rights Act 1998, apart from the Environmental Information Regulations 2004 regarding article 4 of the Convention.
7. The Communicant however notes that the Committee again maintains its previous findings in ACCC/C/2008/27 and ACCC/C/2008/33 and its decision in IV/9i (United Kingdom) adopted by the parties at its fourth session and that it again points the UK in the direction of its findings.
8. The Communicant also notes that the Committee expressed the view that no new material was placed before the Committee, or indeed specific instances that would support any possible breaches of article 9.2, 9.3 and 9.4 of the Convention concerning Judicial Review as a judicial remedy in respect of environmental decisions generally and planning determinations.

9. In so finding, the Communicant is interpreting this to mean that the Committee would prefer to have concrete instances of alleged breaches, and that Communicants should seek to exhaust all domestic remedies first and test them via review remedies in the courts.
10. The Communicant is therefore interpreting these findings as not pre-judging or precluding any further Communications to the Committee regarding any specific alleged breaches of article 9.2. 9.3 and 9.4 of the Convention concerning Judicial Review as a judicial remedy in respect of environmental decisions generally and planning determinations.
11. The Communicant also understands that the UK's compliance with the Convention and in particular article 9.2. 9.3 and 9.4 is also currently the subject of a referral to the Court of Justice of the European Union by the European Commission on behalf of the European Union, and the outcome of that referral is awaited with great interest and will clearly have important implications for the Committee generally and the implementation of the Convention in the UK.
12. Finally, the Communicant notes that the Committee again further maintains its previous findings regarding costs of Judicial Review proceedings being "prohibitively expensive" in ACCC/C/2008/33.
13. The Committee will be aware that Court of Justice of the European Union has subsequent to the hearing on 27 June 2012, delivered its judgment in R. (Edwards) v. Environment Agency and ors. Case C 260/11.
14. As can be seen, the judgment of the Court of Justice of the European Union has further found for Mr. Edwards on all counts relating to costs being "prohibitively expensive" under article 9.4. and in particular, held that the circumstances of the Claimants was a factor that had to be taken into account in the making of any costs orders at paragraph 46.
15. In addition, the court found at paragraph 47 that the fact that the Claimant hadn't been deterred from bringing proceedings was not "of itself sufficient to establish that the proceedings are not prohibitively expensive".
16. In short, the judgment in R. (Edwards) v. Environment Agency and ors. Case C 260/11 was a disaster for the party whatever stance the party may now seek to put on it in ACCC/C/2012/77.
17. On 1 April 2013, the new costs rules regarding "Aarhus Convention" cases relating to environmental challenges by Judicial Review were introduced into the CPR.
18. These new rules provide amongst other things for a costs capping in respect of claimants of £5,000.
19. It remains to be seen whether this will survive further legal challenges in the light of the judgment in R. (Edwards) v. Environment Agency and ors. Case C 260/11, either domestically or before the Committee in further Communications.
20. The Committee will be aware that Greenpeace Ltd. have submitted Communication ACCC/C/2012/77 regarding an assessment of costs by Mr. Justice Ouseley regarding the submission of "Grounds of Summary Resistance" by the Secretary of State for Energy and Climate Change, although this was prior to the introduction of the new CPR costs rules and the Committee will hear oral argument at its next session on 26 June 2013.

Signed

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