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COMMUNICATION to the Aarhus Convention's Compliance Committee.

PARTY CONCERNED: UNITED KINGDOM.

FACTS OF THE COMMUNICATION:

The Communicant is claiming that the UK, as a Party to the 'Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters' (the Aarhus Convention), has breached a number of the Articles of the Aarhus Convention.

The communication concerns Wirral Metropolitan Borough Council's grant of planning permission ('APP/13/00844') for forty eight flats with two car parking areas and a Health Centre with a car park, within the Bridge Court Tree Preservation Area, West Kirby, Wirral, Merseyside, England, in the United Kingdom. The local authority concerned in this case is Wirral Metropolitan Borough Council ('the Council'). The Bridge Court Tree Preservation Area has an area of 0.95 hectares and is 150 metres from West Kirby town centre. The communicant contends that systemic maladministration, including breaches of local authority policies, is to be found in Wirral Metropolitan Borough Council's planning practises.

Domestic remedies were exhausted on 6 August 2014 in the UK's Court of Appeal by virtue of a Court Order made by a decision by the Rt. Hon. Lord Justice Laws (re: C1/2014/0665) in respect of the 13 February 2014 High Court Order of Mrs Justice Lang (re: CO/17205/2013).

An application, concerning this case, is about to be taken to the ECHR for consideration.

The UK High Court (Hon. Mrs Justice Lang - case reference: CO/17205/2013) ruled, on 13 February 2014, that permission for a judicial review be refused; "the application is considered to be totally without merit". The primary reason given was that "the case is hopelessly out of time". The UK Court of Appeal upheld the High Court judgement on 6 August 2014 (Rt. Hon. Lord Justice Laws – case reference: C1/2014/0665), for the reasons given in the High Court case.

Breach of Article 3 – Paragraph 2.

The communicant contends that Wirral Metropolitan Borough Council and the Local Government Ombudsman (LGO) failed to assist the communicant to seek access to justice, early on, when a complaint was made. These failures to provide information about how to seek access to justice, when a complaint was made, constitute breaches of Article 3, paragraph 2, of the Aarhus Convention. The UK, as a Party to the Aarhus Convention is as a consequence, in breach of Article 3, paragraph 2, of the Aarhus Convention.

Breach of Article 3 – Paragraph 3.

The communicant contends that Wirral Metropolitan Borough Council and the Local Government Ombudsman (LGO) failed to promote environmental awareness, through their complaints procedures, among the public, especially on how the communicant could obtain access to justice, when a complaint was made. Wirral Metropolitan Borough Council and the LGO failed to provide the communicant with information about the judicial route to accessing justice, when complaints were presented to them. These failures to promote environmental awareness, through their complaints procedures, among the public, especially on how the communicant could obtain access to justice, when a complaint was made, constitute breaches of Article 3, paragraph 3, of the Aarhus Convention. For a considerable period of time the communicant thought that the exhaustion of domestic remedies included the Council's three stage complaints procedure and the LGO's complaints procedure. The closure of West Kirby's Citizens Advice Bureau in early 2013 (as a consequence of the cuts involved in the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 taking effect) removed one potential source of information concerning the legal definition of the 'exhaustion of remedies'. The UK, as a Party to the Aarhus Convention is in breach of Article 3, paragraph 3, of the Aarhus Convention.

Breach of Article 6 – Paragraph 1.

Wirral Metropolitan Borough Council failed to treat the Bridge Court Tree Preservation Area planning applications 'OUT/12/00331' and 'DLS/13/01456' as major planning applications. The 'APP/13/00844' planning application was not preceded by a Screening Opinion that considered the potentially significant effects of the proposed scheme on the affected population. There are more than 700 dwellings within 200 metres of the boundary of the Bridge Court Tree Preservation Area. An Environmental Impact Assessment should have been conducted.

Breach of Article 6 – Paragraph 4.

The communicant contends that Wirral Metropolitan Borough Council failed to provide for early public participation, when all options were open and effective public participation could take place, in relation to the Wirral Partnership Homes plans for the Bridge Court Tree Preservation, West Kirby, prior to 24 May 2012. These failings constitute breaches of Article 6,

paragraph 4, of the Aarhus Convention. The UK, as a Party to the Aarhus Convention is, as a consequence, in breach of Article 6, paragraph 4, of the Aarhus Convention.

Breach of Article 7.

The communicant contends that Wirral Metropolitan Borough Council failed to provide for early public participation, when all options were open and effective public participation could take place, in relation to the 13 October 2005 plan for the 'Greater Concourse Project', West Kirby. No effective public participation was facilitated by Wirral Metropolitan Borough Council prior to this plan.

The Bridge Court Tree Preservation Area proposals are a part of a cumulative development scheme, linked to the much larger 'Greater Concourse Project' scheme. The UK, as a Party to the Aarhus Convention is, as a consequence, in breach of Article 7 of the Aarhus Convention.

Breach of Article 9 – Paragraph 2.

The communicant contends that the introduction of 'The Civil Procedure (Amendment No. 4) Rules 2013', 1 July 2013, when the Statutory Instrument, 2013, No. 1412 (L.14) Senior Courts (England and Wales), County Courts (England and Wales) entered into UK law, is a breach of Article 9, paragraph 2, of the Aarhus Convention. Members of the public must have access to a review procedure before a court of law. The communicant has been denied access to a review procedure before a court of law, as a result of the introduction of this Civil Procedure Rule change. The UK, as a Party to the Aarhus Convention is, as a consequence, in breach of Article 9, paragraph 2, of the Aarhus Convention.

Breach of Article 9 – Paragraph 4.

The communicant is concerned that, in relation to Protective Costs Orders, the UK courts appear not to have considered the communicant's request for a Protective Costs Order. It is of concern that both the High Court and the Court of Appeal had printed evidence relating to the communicant's income, since, in both courts he had supplied copies of his income in order to claim a fee remission. The communicant has, at present, four environmental cases in the judicial process (three in the Court of Appeal and this one about to be considered by the European Court of Human Rights). Wirral Metropolitan Borough Council is demanding £2,190 in each case, which equates to considerably more than the communicant's annual income. Hundreds of thousands of people in the UK are in receipt of Job Seekers Allowance, which is set at £72 per week. Effectively, the Protective Costs Order regime, within the UK, is set at a punitive and prohibitive level for many UK citizens. The communicant contests that the UK has failed to ensure that costs are not prohibitively expensive. The UK is failing to uphold the standards required by the Aarhus Convention by virtue of failing to provide adequate and effective remedies, to act in a manner that is fair, equitable and in a manner that is not prohibitively expensive. The UK, as a Party to the Aarhus Convention is, as a consequence, in breach of Article 9, paragraph 4, of the Aarhus Convention.

Breach of Article 9 – Paragraph 5.

The introduction of 'The Civil Procedure (Amendment No. 4) Rules 2013', 1 July 2013, when the Statutory Instrument, 2013, No. 1412 (L.14) Senior Courts (England and Wales), County Courts (England and Wales) entered into UK law, involves a diminution of the fundamental right of access to justice, within the UK, following the reduction in the time limit available for applications for judicial review (from twelve weeks to six weeks). The communicant contests that the reduction in the time limit has effectively denied him of the fundamental right of access to justice. Two weeks of the six week period involves the Pre-Action Protocol procedure. Article 9 paragraph 5 of the Aarhus Convention requires Parties to:

“...consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice”.

The UK, as a Party to the Aarhus Convention is, as a consequence, in breach of Article 9, paragraph 5, of the Aarhus Convention.

Breach of Article 9 – Paragraph 5.

The UK government's 'sanctioning' of hundreds of thousands of UK citizens, dependent on state benefits, denies people any income and, as a consequence, any effective opportunity to participate, in any meaningful way, in protecting and improving the environment. The 'sanctioning' of citizens, in receipt of state benefits, from having any income, effectively places a barrier in the way of them participating in decision-making and accessing justice in environmental matters.

Article 9 paragraph 5 of the Aarhus Convention requires Parties to:

“...consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice”.

The UK, as a Party to the Aarhus Convention is, as a consequence, in breach of Article 9, paragraph 5, of the Aarhus Convention.

Breach of Article 9 – Paragraph 5.

The communicant contends that the introduction of the 'Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act', 1 April 2013, involves a diminution of the fundamental right of access to justice, within the UK following the reduction in legal aid funding relating to application for judicial review. On 1 April 2013 the Legal Services Commission was replaced by the Legal Aid Agency and large cuts in funding were made by the UK government (amounting to hundreds of millions of pounds) to the legal aid budget. This had a direct effect on the complainant. On 1 May 2013 the complainant became a client of Richard Buxton (Environmental lawyer). The complainant was challenging the legality of Planning permissions 'OUT/12/00331' (28 June 2012) and 'DLS/12/01456' (21 March 2013), granted by Wirral Metropolitan Borough Council, in relation to plans by Wirral Partnership Homes for the Bridge Court Tree Preservation Area, West Kirby. The claimant completed legal aid forms and posted them to Richard Buxton. Richard Buxton also requested that hundreds of pounds be forwarded to him in order to show "community support" for the legal action. Hundreds of pounds were forwarded to Richard Buxton, from a number of West Kirby residents. On 16 May 2013, Richard

Buxton sent the Council a Pre-Action Protocol Letter asking the Council to submit to the quashing of planning permission 'DLS/12/01456'. On 5 June 2013 the Council confirmed that it would submit to the quashing of planning permission 'DLS/12/01456'.

Cuts to UK legal aid funding, resulting from the introduction of the 'Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act', 1 April 2013, have been estimated to total £350 million per annum.

In September 2013 Richard Buxton apologised to the communicant about a lengthy delay in communicating with him. It was at this time that the communicant wanted to challenge to challenge the Council's grant of full planning permission 'APP/13/00844' of 30 August 2013. Richard Buxton informed the communicant that he would need legal aid together with thousands of pounds, forwarded to him in order to show "community support", prior to a challenge of the 'APP/13/00844' planning permission, and finally totalling £15,000. The communicant found this request for finances unacceptable. Within ten days the communicant had severed links with Richard Buxton.

West Kirby residents are so cynical about the Council's lack of transparency, openness and fairness that they generally feel that if one planning permission is quashed by the courts the Council will straight away approve an almost identical application. This is, the communicant contends, what happened with planning application 'APP/13/00844'. After a few days of reflection the communicant, prompted by local residents, decided to proceed with a challenge to planning permission 'APP/13/00844' without the assistance of a solicitor, as the legal aid available clearly wasn't enough to cover a solicitor's requirements. The communicant sent a Pre-Action Protocol letter to Wirral Metropolitan Borough Council, concerning planning permission 'APP/13/00844' on 2 October 2013.

On 7 November 2013, a High Court Consent Order was granted to Richard Buxton, quashing planning permission 'OUT/12/00331' and 'DLS/12/01456'. On 11 December 2013, the communicant was provided with a copy of the Consent Order, by Richard Buxton.

The reduction in UK legal aid funding is in breach of Article 9, paragraph 5, of the Aarhus Convention, which requires Parties to:

"...consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice".

The UK, as a Party to the Aarhus Convention is as a consequence, in breach of Article 9, paragraph 5, of the Aarhus Convention.

CONFIDENTIALITY: The communicant requests confidentiality, on the Aarhus Convention website, on UK government websites, on Wirral Metropolitan Borough Council websites and in the media, in relation to his address, telephone number and email address.

ACCOMPANYING DOCUMENTS:

1. 13 October 2005. 'The Greater Concourse Project', Report.
2. 1 August 2012. It's 'back to school' for scandal-hit council's politicians and officers.
3. 22 November 2012. 'Wirral tells developers: We're open for business.'
4. 20 February 2013. 'Officers given warning over personal free gifts.'
5. 1 July 2013. Civil Procedure Amendment Rules.

6. 2 September 2014. Letter confirming that Domestic Remedies have been exhausted.
7. 22 September 2014. Wirral Metropolitan Borough Council Invoice for £2,190.
8. 1 August 2014. PM meets top Wirral businesses. Magenta Living (WPH) included.