

PRE/ACCC/C/2017/150: Friends of the Earth's statement on admissibility.

**Delivered in open session - Compliance Committee hearing 11 December 2017,
Geneva**

1. Introduction

- 1.1 "DECISION I/7 - REVIEW OF COMPLIANCE" sets out the admissibility requirements for communications at #20:

"20. The Committee shall consider any such communication unless it determines that the communication is:

- (a) Anonymous;*
- (b) An abuse of the right to make such communications;*
- (c) Manifestly unreasonable;*
- (d) Incompatible with the provisions of this decision or with the Convention."*

Accordingly, the Committee is obliged to consider this communication unless it meets 20 (a) – (d).

- 1.2 The Party Concerned states in its letter dated 7 December 2017 that the communication is not admissible because:
- a) The complaint is not within the competency or scope of the Convention
 - b) That it is an abuse of the right to bring a communication because it is unsubstantiated and without evidence (Decision I/7 - #20 (b))
 - c) That it is manifestly unreasonable due to the lack of evidence, for at least one aspect of the communication. (Decision I/7 - #20 (c))

- 1.3 These are all hopeless arguments for the reasons set out below.

2. Scope of the Convention

- 2.1 The submission is that: *"The UK is acting in a legislative capacity in relation to the Bill and its current passage through Parliament."*, and so the complaint is not against a defined *"Public Authority"*.
- 2.2 However, this is misconceived because the complaint is about the A8 failures in the *preparation* of the Bill, *before it reached the legislature*. It is also about the legal framework the Bill already sets out, which does not comply with A8 going forwards.
- 2.3 A UK public authority was involved in the preparation of this new law – the white paper confirms this as the 'Department of Exiting the European Union'.
- 2.4 Furthermore, the continuing failure to implement A8 stands, notwithstanding the Bill's current passage through Parliament.
- 2.5 Whilst the Party Concerned may dispute the substance of the complaint, those are not issues that can be raised in relation to admissibility. We merely refer the Committee to numerous points made in this regard in our communication and that there are clearly issues for it to determine.

2.6 For example, that the draft Bill itself was never presented to the Public as an option with questions for response; or, that the public has never had the options for how to deal with environmental law set out for it to consider.

3. Abuse of process

3.1 Their submission on this point is:

*“Under Decision 1/7 Article 20 (b), the communicant is abusing their right to bring a communication as it appears it is being used as an opportunity for the Committee to analyse clauses within a draft Bill. This is **clearly outside the scope of the Convention and is also clearly outside the Committee’s jurisdiction.**”*

3.2 The obligation on the Party Concerned is to ensure that A8 is complied with, and the Communicant is entitled to raise an existing A8 public participation breach as an example of continuing systemic failings. The draft Bill demonstrates the breach. It also sets out a framework for future breaches.

3.3 It is within the scope of the Convention, and the Committee’s jurisdiction, to consider this problem and decide on the underlying legal issues of the alleged breaches.

3.4 The Committee is not being invited or asked to intrude on the legislative competence of the UK Parliament, but rule on a breach of the Convention. There is nothing in Decision 1/7 that prevents the committee from doing so. In particular, where it exemplifies a systemic problem.

4. Manifestly unreasonable

4.1 On this point, the Party Concerned says:

*“The communicant simply states that the UK has failed to comply with the above Article and this stands whether or not the Bill is enacted. Under Article 20(c) of Decision 1/7, **the absence of sufficient information is manifestly unreasonable.** This is therefore **not something that the Committee cannot consider further and must therefore find inadmissible.**”*

4.2 The Communication identifies an absence of a legal framework that complies with A3 and A8, read together. This precludes large amounts of specific documentary evidence, to demonstrate that something is not in existence.

4.3 Two further points:

- a) The documents we have presented, including the Bill itself, contain no mention of A8 compliant public participation, and there is no legal commitment to conduct A8 participation going forwards – that is sufficient evidence.
- b) The breach in respect of A3 exists both as part of the complaint regarding A8 in the current circumstances, and as a continuing breach on its own.

5. The “further consideration”

5.1 The Party Concerned states that there will be a consultation on something that is related to but is not the subject of the complaint. It does not change any pre-existing failures to comply with A8; or the lack of a binding legal provision in the Bill (or otherwise) to comply with A8 during the exercise of Ministerial power to make new law going forwards.

- 5.2 It does not address the lack of any clear and consistent legal framework in this regard.
- 5.3 The further consideration mentioned by the Party concerned does not help it, and is not a relevant factor for admissibility.

6. Conclusion

- 6.1 We respectfully submit that the communication should be admitted in its entirety. It is within the scope of the Convention, there is sufficient information presented, and there are relevant issues to be decided.
- 6.2 We have taken care not to burden the Committee with unnecessary paperwork. It may be that additional, but not strictly necessary, documentation could assist further. But that does not stop the communication being admitted.
- 6.3 The issues identified are important and systemic in the UK. Due to the implementation failure identified there is no Article 9 'access to justice' route for UK citizens to address this problem directly. This is an additional and compelling reason for the Committee to admit this complaint.

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