Dear Ms Marshall

Re: Decision VI/8k concerning compliance by the United Kingdom with its obligations under the Aarhus Convention

Thank you for your email dated 2 October 2019 providing link to the second progress report of the Party concerned regarding the implementation of decision VI/8K (United Kingdom).

We set out in this letter brief comments on the implementation of paragraph 6 of decision VI/8K on behalf of Communicants C85 and C86 (‘the Communicants’).

The Communicants note that the United Kingdom appears to have done nothing whatsoever to address the comments made by the Compliance Committee at paragraphs 107 – 109 of the first progress review report.

In the second progress report the United Kingdom simply states;

45. The UK continues to consider the recommendation in paragraph 6 of Decision VI/8k. As detailed in its first progress report, the UK government decided not to extend the scope of the Environment Costs Protection Regime (ECPR) so that it would apply to private nuisance cases or other private law claims as part of the changes to the regime made in 2017.

The United Kingdom’s response entirely fails to address the Compliance Committee’s comments (set out at paragraph 107 its first progress review report) as to the absence of any evidence of any practical or legislative measures to ensure that procedures in private nuisance proceedings, where there is no fully adequate alternative procedure, are not prohibitively expensive.

The Compliance Committee would therefore presumably take the view that the United Kingdom has still not met the requirements of paragraph 6 of decision VI/8K.

The Communicants also note that the United Kingdom’s response simply refers to a decision not to extend the scope of the Environmental Cost Protection Regime to private nuisance cases. This response again ignores the specific proposal that has been put forward by the Communicants to bring about compliance through the introduction of qualified one-way cost shifting (‘QOCS’) for environmental claims that fall under the Convention. This omission is particularly disappointing given that this specific proposal is referred to by the Complaint Committee at paragraph 107 of its first progress review report.
The Communicants are therefore extremely dismayed at the United Kingdom's response and maintain the view that there is a real danger, unless significant progress is made, the UK will be in breach when matters come before the next meeting of the parties.

We would be grateful if these comments would be considered by the Compliance Committee.

Yours sincerely

Neil Stockdale
Partner

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