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Ms Ella Behlyarova
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Dear Ms Behlyarova

Draft Decision V/9o

1. We have considered draft decision V/9o for the forthcoming Meeting of the Parties to the Convention and make the following comments.

Communication 53

2. We note and welcome that the draft decision does not include the Committee's recommendations in relation to this case following our letter of 5th March 2014 expressing concerns about the non-exhaustion of domestic remedies.

3. We do continue, however, to have wider concerns about the Committee having made findings at all in circumstances where domestic remedies would have been able to resolve the issue. We also request that some wording is changed in the paragraph dealing with raw data to better reflect our position.

4. As an alternative to the deletion of paragraphs 3 and 10 concerning communication 53, we propose the following small changes:

   Paragraph 3

   a. ~~*Also endorses*~~ *Takes note of* the findings of the Committee with regard to communication ACCC/C/2010/53 that by not providing the requested raw data to the public the Party concerned failed to comply with article 4, paragraph 1, of the Convention for a certain period, but that since the raw data are now provided to the public, the Party concerned is no longer in non-compliance with article 4, paragraph 1, of the Convention;

5. Whilst a finding of non-compliance was made by the Committee, this was only considered to be for "*a certain period*". The final conclusion was that the UK was no longer in non-compliance. We are still concerned about the proposal to endorse the findings of the Committee, given that the finding of non-compliance concerned an incident involving a single local authority that: (i) was remedied by that authority; and

(ii) which could have been remedied using domestic procedures rather than invoking UN compliance procedures.

6. In keeping with the approach of the Meeting of the Parties for cases where the Committee did not make a finding of non-compliance (e.g. decision II/5, para 3; decision III/6, para 3) – which is essentially where this case has ended up – the Meeting of the Parties could instead "*take note*" of the Committee's findings. This would still enable the fact of the finding of temporary non-compliance to be recorded in a decision of the Meeting of the Parties, but would not go as far as to suggest that the UK, as one of the Parties agreeing to the decision, endorses those findings.

Paragraph 10

a. *Notes* the commitment of the Party concerned to ensure, through the continued operation of the domestic systems put in place to enable the decisions of public authorities to be reviewed, that the practice of releasing raw data in appropriate circumstances in ongoing decision-making processes is maintained;

7. The wording proposed in the draft decision does not currently reflect the UK's position expressed in any of the correspondence on communication 53. There is no specific requirement in the Convention for raw data to be routinely disclosed. Like any disclosure of environmental information, the decision on whether or not to release may depend on whether any of the exceptions are available and how the public interest test is applied in the circumstances.

8. The Committee's views on when raw data should be disclosed will undoubtedly become one of the considerations for public authorities in making decisions on releases of data, but this is not the same as giving a blanket commitment to do so in all circumstances, or indeed to circumvent the mechanisms in place for reviewing the decisions of public authorities. We consider that the addition of this text makes the UK's position clearer.

9. As noted above, these suggestions are put forward as a constructive alternative to the deletion of paragraphs 3 and 10.

Decision IV/9i

10. The Committee's findings in its report on decision IV/9i (the previous decision on UK compliance) are endorsed in paragraph 2 of the draft decision. The recommendations are put forward to be adopted by the Meeting of the Parties under paragraph 8.

11. We indicated in our response to the Committee's draft report on decision IV/9i on 21st March 2014 that we did not believe that findings and recommendations concerning article 9(5) were needed.

12. The adoption of revised rules on costs and the associated consultations are evidence that the UK has *considered* the establishment of appropriate assistance mechanisms. Article 9(5) of the Convention requires that Parties *"…shall consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice*".

13. We are concerned that the references to article 9(5) conflate the obligation to *consider* the establishment of appropriate assistance mechanisms with the obligations in article

9(4) regarding prohibitive costs etc., and that accepting this approach therefore expands the scope of the obligations under article 9(5).

14. We propose the deletion of paragraphs 2(b) and 8(b) from the draft decision. As we maintained in our comments on the Committee's draft report, there can be no serious suggestion that the UK has not *considered* the establishment of appropriate assistance mechanisms to remove or reduce financial barriers to access to justice given the consultations and legislative changes that have taken place since 2011, notwithstanding any views that may be held regarding the outcome of those considerations.

15. We submit these comments for consideration by the Working Group of the Parties at its 18th meeting.

Yours sincerely

Ahmed Azam
Aarhus Convention: United Kingdom National Focal Point