

# ACCESS TO JUSTICE

## COSTS & REMEDIES

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# Costs before MOP4

## Landmark cases on Art 9(4) and 9(5) before MOP4:

- **C/23/27/33 (UK)**: Non-compliance
- **C/36 (Spain)**: Non-compliance
- Unfair allocation of costs
- Quantum of costs: “despite the various measures available to address prohibitive costs, **taken together** they do not ensure that the costs remain at a level which meets the requirements under the Convention ”
- Consider **cost system as a whole**
- Absence of clear legally binding directions

# Costs after MOP4 – Cases

Findings adopted:

- C/57 (Denmark)

Summary proceedings:

- C/45/60 (joint) (UK)
- C/64 (UK)
- C/65 (UK)

Pending cases:

- C/77 (UK)
- C/78 (Spain)

# C/57 Denmark – Costs

## **Fee for NGOs to appeal:**

- Fee of DKK 3,000 for NGOs to appeal to NEBA implied prohibitively expensive procedures. *Non-compliance Art 9(4)*

## **What to consider:**

- Amount of the fee as such
- NGO contribution through appeals to improving env'l protection and implementing Danish law
- Expected result of the introduction of the fee on the number of NGO appeals
- Fees for access to justice in env'l matters compared with fees for access to justice in other matters in Denmark

# Summary proceedings and Pending cases – Costs

## Summary proceedings:

- **C/45/60 (joint) (UK)**: Issues covered by C/23, C/27 or C/33
- **C/64 (UK)**: Issues covered by C/23, C/27 or C/33
- **C/65 (UK)**: Issues covered by C/23, C/27 or C/33

## Pending cases:

- **C/77 (UK)**: Costs inflicted in case of refusal to grant judicial review (not covered by MOP Dec IV/9i)
- **C/78 (Spain)**: Legal aid for NGOs

# Remedies before MOP4

- **Timeliness:** not much, if anything
- **Injunctive relief: C/24 (Spain):** “A system where citizens cannot actually obtain injunctive relief early or late; it indicates that while injunctive relief is theoretically available, it is not available in practice.”
- Eight months for the court to issue a decision on whether to grant the suspension sought for the Urbanization Project – “meaningless”: *Non-compliance Art 9(4)*

# Remedies after MOP4 – Cases

## Findings adopted

- C/48 (Austria)
- C/50 (Czech Republic)
- Pending cases:
- C/51 (Romania)
- C/62 (Armenia)
- C/69 (Romania)
- C/76 (Bulgaria)

# C/48 Austria – Remedies

## Timeliness of review procedures

- [Maintaining a system where a specific form (“official notification”) must be requested to be used before courts, and where public authorities may fail to comply with such a request: *Non-compliance Art 4(7)*]
- **Timeliness of review:** Due to this system, the applicant requesting information may have to wait longer than a year after its initial request for information until can have access to review procedure:  
*Non-compliance Art 9(4)*



# C/50 Czech Republic – Remedies

## Injunctive relief

- **“Typical” denial of injunctive relief:** Allegations not substantiated; possible shift in jurisprudence to more frequent granting of suspensory effect or injunctive relief:  
*No non-compliance Art 9(4)*

# Pending Cases – Remedies

- **C/51 (Romania)**: Timeliness and suspensory effect of appeals (*Draft findings*)
- **C/62 (Armenia)**: Timeliness; one year for a supreme court (*Draft findings*)
- **C/69 (Romania)**: Timeliness of judicial procedures
- **C/76 (Bulgaria)**: Injunctive relief for development consents for plans and programmes

# Conclusions

## **Costs**

- So far, cases concerning few Parties; mainly against the UK
- Allocation, quantum, criteria for assessing costs
- Consider cost system as a whole

## **Timeliness**

- Increase in cases on timeliness; some cases still pending
- Only one case so far of non-compliance (C/48 Austria)

## **Injunctive relief**

- Increase in cases on injunctive relief
- Difficult to substantiate? (see C/50 Czech Republic)

**Further information:**

[www.unece.org/env/pp/pubcom.html](http://www.unece.org/env/pp/pubcom.html)

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