

30 January 2018

Alessandro Giadrossi
Lawyer
WWF Italia
Trieste, Italy

Massimo Cozzone
Department for Sustainable Development, Environmental Damage
European Union and International Affairs
Ministry for the Environment, Land and Sea
Rome, Italy

Dear Mr. Giadrossi, dear Mr. Cozzone,

Re: Communication to the Aarhus Convention Compliance Committee concerning compliance by Italy with provisions of the Convention in relation to judicial fees (ACCC/C/2015/130)

Having reviewed the response to the communication received from the Party concerned on 30 September 2016, the Committee considers that that response contains insufficient information for the Committee to proceed in its processing of the communication without additional information being provided. The Committee has accordingly prepared a number of questions for the attention of both the Party concerned and the communicant.

The Committee would be very grateful to receive your replies to the enclosed questions on or before **Friday, 9 March 2018**. Please send your reply to aarhus.compliance@unece.org, copying the other party. The other party will then have until **30 March 2018** to provide the Committee with any comments it wishes to make on your replies. The Committee will consider the replies and comments received by the above deadlines when deciding how to proceed further.

Please do not hesitate to contact the secretariat if you require any further information.

Yours sincerely,



Fiona Marshall
Secretary to the Aarhus Convention Compliance Committee

Cc: Permanent Mission of Italy to the United Nations Office and other international organizations in Geneva

Enc: Questions for the parties and request for additional information

Request to the Party concerned:

The Party concerned is requested to provide the text in Italian of Legislative Decree n° 460 of 1997, Presidential Decree no. 115 of 2002 and Legislative Decree no. 104 of 2010 and any other relevant legislative or administrative act, both as they stood at the time of the various judgments referred to by the communicant and as they stand today. An official English translation of the relevant provisions is also requested.

Questions to the Party concerned:

- 1) Do you find any errors in the description of the requirements as to costs under Italian law presented in the communication, in particular the description of the provisions of Legislative Decree n° 460 of 1997, Presidential Decree no. 115 of 2002 and Legislative Decree no. 104 of 2010?
- 2) Are any other legislative or administrative acts relevant to the communication? If so, please describe the nature, purpose and meaning of the relevant provisions and provide those acts in Italian with an official English translation of the relevant provisions.
- 3) Apart from article 26 of Legislative Decree no. 104 of 2010, which provisions govern the award of the costs to the opposing party? Is it usual for the losing party to be required to pay the costs of the successful party and, if so, is a limit usually placed on such awards of costs? If these provisions are enshrined in acts other than the above-mentioned decrees, please provide those acts as requested in question 2 above.
- 4) What is the underlying purpose of article 26 of Legislative Decree no. 104 of 2010? Why does paragraph 2 of that article provide for a minimum charge? Please illustrate your answer with relevant cases in which a judge decided *ex officio* to order the losing party to pay a higher amount than the costs of the opposing Party, showing in particular what kind of argument is considered “manifestly unfounded”. If you refer to any case law other than the judgments annexed to the communication, please provide them in Italian with an official English translation of the relevant parts.
- 5) What is the rationale of setting the same level of maximum annual income for persons and non-governmental organizations (i.e. 11,369, Euro) under Presidential Decree no. 115/2002?
- 6) Is it the case that the communicant is treated as being ineligible for legal aid under article 119 of Presidential Decree no. 115/2002? If so, why? If it is on the basis set out in paragraphs 13 et seq. of the communication, please justify that position.
- 7) Are there any provisions of Italian law, other than article 119 of Presidential Decree no. 115/2002, that give non-governmental organizations acting in the public interest the possibility to obtain legal aid? If so, please provide details as well as excerpts of the relevant legal basis, including translations into English.
- 8) Please provide the Committee with the provisions of Italian law, in the original and in an official English translation, that regulate:
 - a. The amount of the fee/tax (*contributo unificato*) that applies where a claimant submits further arguments to an original claim.
 - b. The amount of the fee/tax (*contributo unificato*) which applies to proceedings before the court of appeal and higher courts.
 - c. The granting of legal aid.

Questions to both the communicant and the Party concerned:

- 9) Have there been any recent judicial decisions in which the courts did not require non-governmental organizations to pay the fee/tax (*contributo unificato*), as required by article 13, paragraph 6 bis of Presidential Decree no. 115 of 2002? If so, please provide copies of any relevant judgments, as well as an English translation of relevant parts, and an explanation of how the judgments affect the allegations made in the communication in your view.

 - 10) In annex 6 to the communication, reference is made to the fact that the fee/tax (*contributo unificato*) is not applied to cases concerning a refusal to give access to environmental information (under Decree no. 195/2005). Are cases concerning refusals to give access to environmental information accordingly not subject to any such fee/tax? Are there any other exemptions that may be relevant to challenges falling under article 9, paragraph 1, 2 and 3, of the Convention?
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