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Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

Compliance Committee

Twenty-ninth meeting
Geneva, 21–24 September 2010

Report of the Compliance Committee on its Twenty-Ninth meeting

Addendum

Findings and recommendations with regard to communication ACCC/C/2008/27 concerning compliance by the United Kingdom of Great Britain and Northern Ireland

Adopted by the Compliance Committee on 24 September 2010

I. Background

1. On 18 August 2008, Cultra Residents' Association (hereinafter, "the communicant") submitted a communication to the Committee, alleging non-compliance by the United Kingdom of Great Britain and Northern Ireland with its obligations under articles 3, 7 and 9 of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (hereinafter, "the Aarhus Convention" or "the Convention").

2. The communicant alleged that the Party concerned failed to comply with article 3 of the Convention by making the decision to expand Belfast City Airport operations through a "private" Planning Agreement, a type of instrument enforceable only between its contracting parties and which allows the public no right of appeal other than judicial review. The communicant also alleged that, in making the Planning Agreement, the Party concerned failed to comply with the public participation requirements under the Convention, in particular by opting for an "examination in public" instead of a public

inquiry. In addition, the communicant alleged that its rights under article 9 of the Convention were violated when it was ordered to pay the full costs (£39,454) of the Department of Environment for Northern Ireland (hereinafter, "the Department of Environment") following the dismissal of its application for judicial review proceedings.

3. The communication was forwarded to the Party concerned on 26 September 2008, together with a number of questions from the Committee, following a preliminary determination by the Committee at its twenty-first meeting (17–19 September 2008) that it was admissible. The communicant was also asked to answer certain questions to clarify its allegations of non-compliance by the United Kingdom with the Convention, inter alia, concerning the prohibitive nature of the costs and the reduced public participation possibilities in the examination in public procedure.

4. The Party concerned provided answers to the Committee's questions in a letter dated 26 February 2009. The communicant replied to the questions posed by the Committee by a letter of 26 March 2009.

5. At its twenty-third meeting (31 March–3 April 2009), the Committee decided to discuss the substance of the communication together with communication ACCC/C/2008/23, which also concerned compliance by the United Kingdom with the provisions of article 9 of the Convention, at its twenty-fourth meeting (30 June–3 July 2009), and informed the Party concerned and the communicant about its decision.

6. By letter dated 12 May 2009, the Party concerned requested to postpone the planned discussion of communications ACCC/C/2008/23 and ACCC/C/2008/27 so that they would be considered at the same time as communication ACCC/C/2008/33. The communicant, by letter dated 20 May 2009, opposed the proposal to postpone the discussion of communication ACCC/C/2008/27. After considering the views of both parties, the Chair of the Committee decided to hold the discussions on communications ACCC/C/2008/23 and ACCC/C/2008/27 at its twenty-fourth meeting.

7. On 22 May 2009, the Committee received written submissions in respect of ACCC/C/2008/23, ACCC/C/2008/27 and ACCC/C/2008/33 from an observer, Coalition for Access to Justice for the Environment (hereinafter, "CAJE"), a coalition of six environmental non-governmental organizations from the United Kingdom.[1]

8. On 17 June 2009, the Party concerned provided additional written submissions for consideration by the Committee clarifying certain aspects of its response to the communication.

9. The Committee discussed the communication at its twenty-fourth meeting, with the participation of representatives of both the Party concerned and the communicant. At the beginning of the discussion, the Committee confirmed the admissibility of the communication.

10. After the open discussion of the communication at the Committee's meeting, both the communicant and the Party concerned provided additional written submissions regarding certain points canvassed at that meeting. These included consideration of whether the activities at issue might fall within the scope of article 6 of the Convention. By letter dated 10 July 2009, the communicant provided further details of its position with respect to the alleged non-compliance by the Party concerned with article 6.

[1] The six members of the coalition are Friends of the Earth, WWF-UK, Greenpeace, the Royal Society for the Protection of Birds, Capacity Global and the Environmental Law Foundation.

11. By letter dated 22 July 2009, the Party concerned set out its view that article 6 was not engaged in this case.

12. In the same letter dated 22 July 2009, the United Kingdom alleged that a member of the Committee had a conflict of interest with respect to communications ACCC/C/2008/23 and ACCC/C/2008/27. The Committee member concerned did not participate in the deliberations on the findings in this case. Further details regarding the United Kingdom's allegation, the Committee's response and the views of the communicant are set out in paragraphs 6–11 of the report of the twenty-fifth meeting of the Committee (22–25 September 2009) (ECE/MP.PP/C.1/2009/6).

13. By letters dated 16 July 2009 and 20 January, 18 March and 20 May 2010, CAJE wrote to the Committee providing additional information for its consideration for the communication at issue.

14. The Committee began its deliberations on draft findings at its twenty-fifth meeting, following a very preliminary discussion at its twenty-fourth meeting, and completed the preparation of draft findings following its twenty-eighth meeting. In accordance with paragraph 34 of the annex to decision 1/7, the draft findings were then forwarded for comments to the Party concerned and to the communicant on 25 August 2010. Both were invited to provide any comments by 22 September 2010.

15. By letter of 14 September 2010, CAJE forwarded an August 2010 update of the May 2008 report "Ensuring Access to Environmental Justice in England and Wales" (the Sullivan Report) together with its comments on the draft findings.

16. The communicant and the Party concerned provided their comments on the draft findings on 19 and 22 September 2010, respectively.

17. At its twenty-ninth meeting (21–24 September 2010), the Committee proceeded to finalize its findings in closed session, taking account of the comments received. The Committee then adopted its findings and agreed that they should be published as an addendum to the report. It requested the secretariat to send the findings to the Party concerned and the communicant.

II. Summary of facts, evidence and issues[2]

18. The communication concerns the alleged failures by the Party concerned to provide for public participation in accordance with article 6 and 7 of the Convention in the decision-making process on a proposed increase of the operations at Belfast City airport. In addition, the communication concerns the alleged failure of the Party concerned to ensure access to administrative or judicial procedures that are not prohibitively expensive in accordance with article 9, paragraph 4, of the Convention in relation to the communicant's attempt to challenge a decision of the Department of the Environment and a recommendation by an examination in public panel. The communicant also alleges that the Party concerned is in breach of its obligations under article 3, paragraph 1, of the Convention to establish and maintain a clear, transparent and consistent framework to implement the provisions of the Convention.

19. The decision-making process in question concerns a proposal to expand the operations at Belfast City Airport. The future growth of the airport was considered in the "Belfast Harbour Local Plan 1990 to 2005", prepared under the auspices of the "Belfast

[2] This section summarizes only the main facts, evidence and issues considered to be relevant to the question of compliance, as presented to and considered by the Committee.

Urban Area Plan 2001". At the time, it was subject to public participation through a public inquiry which was opened on 23 October 1990 and closed on 14 January 1991.

20. In March 2003, the Belfast City Airport management applied to the Department of the Environment under article 41 of the Planning (Northern Ireland) Order 1991 for determination of the question whether an increase in the seats for sale at the airport from 1.5 million to 2.5 million in any 12-month period would require planning permission. At that time, operators using the airport were not permitted to offer for sale more than 1.5 million seats on scheduled flights in any 12-month period according to the Planning Agreement of 22 January 1997. The application referred to a forecast 50 per cent increase in passenger numbers over the next decade and also indicated a forecast of 3 million passengers by 2018.

21. By letter dated 30 June 2003, the Department of the Environment informed Belfast City Airport of its determination issued pursuant to article 41 of the Planning (Northern Ireland) Order 1991 that an application for planning permission was not required on the basis that an increased offer of seats for sale did not constitute development as defined in that act. The determination clarified that the decision-making on the proposed activity would be made through the formal review of relevant revisions of the existing Planning Agreement of 22 January 1997, and that it was not subject to environmental impact assessment procedure according to the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999. The determination was not subject to public participation and the public was not informed of the determination at that time.

22. On 6 July 2004, the Belfast City Airport management made a submission to the Department of the Environment requesting the formal review of the Planning Agreement which governed its operations. The review commenced on 19 November 2004 with a public consultation process to decide on whether a public inquiry should be held. The Department of the Environment launched the consultation by inviting specific comments from relevant Councils as well as other key public representatives, stakeholders, local residents' groups and other interest groups. At the end of the consultation process, in October 2005, the Environment Minister announced that the next step in the process would be an examination in public (EiP) conducted by an independent panel.

23. In January 2006, the independent panel was appointed to conduct this EiP and, according to the terms of reference, the EiP panel was requested, inter alia, to have regard to representations made in respect of the public consultation exercise. While exercising this function it identified the following persons as the principal interested parties: the Department for Regional Development (interests include "noise" and the "Forum"), the Department of the Environment (interests include the Planning Agreement and environmental issues), the airport operator, the airlines, residents' groups and bodies representing the public and business at large, including Belfast City Council (BCC), North Down Borough Council (NDBC), the General Consumer Council for Northern Ireland (Consumer Council) and the Confederation of British Industry (CBI).

24. Preliminary meetings were held in March and May 2006 and a substantive hearing was held on 14 and 15 June 2006. The communicant attended and made representations during the various hearings in public. During the EiP, the public learned of the June 2003 determination for the first time.[3] The EiP panel report, including recommendations on the future content of the Planning Agreement, was published on 12 December 2006. One of the recommendations by the panel related to the restriction regarding seats for sale at Belfast City Airport. It recommended that this limit should be increased to 2 million (paras 5.6.37

[3] As noted by the Court of Appeal in its judicial review decision, 7 November 2007, paragraph 12.

and 7.1.11). Its recommendation was made as subject to the following terms: (a) the establishment of a forecasting and scrutiny system; and (b) the airport operator committing to install a noise and track keeping system.

25. Together with four other local residents' associations, the communicant sought to challenge the Department of Environment's determination of 30 June 2003 and the EiP panel report before the High Court, Northern Ireland Queen's Bench Division. In respect of the Department of the Environment's determination of June 2003, they alleged that the Department had erred in law in convening an EiP to consider amendments to the 1997 Planning Agreement. The applicants contended that the proper action would have been a formal planning application and new Environmental Impact Assessment and/or a public inquiry pursuant to Article 31 of the Planning (Northern Ireland) Order 1991. They requested an order from the High Court quashing the Department's June 2003 determination. The applicants also contested the recommendation made in paragraphs 5.6.37 and 7.1.11 of the EiP panel report that seats for sale from Belfast City Airport should be increased from 1.5 million per annum to 2 million per annum.

26. On 29 March 2007, the High Court granted the applicants leave to proceed with the case. The judge also held that the recommendation of the EiP panel was a decision capable of judicial review.

27. Following the hearing, by order dated 7 November 2007, the High Court dismissed the application in respect of both the recommendation of the EiP panel report and the determination of the Department of the Environment of 30 June 2003. Upon the dismissal of their application, the High Court ordered the applicants to pay the full fees and outlay of the Department of the Environment, totalling £39,454.

28. On 14 October 2008, Belfast City Airport and the Department for the Environment signed an amended Planning Agreement. The new agreement increases the permitted seats for sale allocation from 1.5 million to 2 million in any 12-month period.

29. The communicant alleges that the Party concerned is in breach of article 3, paragraphs 1 and 8, article 7 and article 9, paragraph 4, of the Convention. The communicant alleges that the Party concerned has breached its obligation under article 3, paragraph 1, in two main respects. First, it alleges that the use by the Party concerned of a "private" Planning Agreement to control operations at Belfast City Airport is a breach of article 3, paragraph 1, of the Convention to provide a clear and transparent framework to implement the provisions of the Convention because this type of instrument does not require an environmental impact statement, is enforceable only between its contracting parties and allows the public no right of appeal other than judicial review. Second, the communicant claims that the Party concerned acted in a non-transparent manner regarding the development of the airport. For example, the communicant points to the report of the EiP panel, which, in paragraph 6.4.5 (p. 91) states that: "some of the earlier replies [the residents' groups] received from the Departments were, in the Communicant's view, rather vague, evasive and not very helpful. This will have done little to encourage development of the openness and trust on which the success of the whole consultative process of [Belfast City Airport] depends."

30. With respect to article 7, the communicant alleges that the 30 June 2003 determination by the Department of the Environment was in breach of article 6, paragraph 3, in conjunction with article 7, of the Convention as it permitted the 2008 Planning Agreement to increase the number of seats for sale without the possibility for public participation at that stage. It alleges that the determination excluded the proposed activity from an environmental impact assessment and relevant opportunities for the public to participate in the decision-making process. The communicant also alleges that article 6, paragraph 4, in conjunction with article 7, has been violated by the Party concerned through

its choosing the EiP procedure instead of a public inquiry. The EiP procedure prevented all options being presented and effective public participation on the proposed expansion of the operations at Belfast City Airport.

31. In addition, the communicant alleges that the Party concerned has failed to ensure access to administrative or judicial procedures that are not prohibitively expensive in accordance with article 9, paragraph 4, of the Convention in relation to the communicant's application for judicial review of the June 2003 determination and one of the recommendations of the EiP panel. The communicant also alleges that the Party concerned, by pursuing its full costs of defending the judicial review proceedings, has penalized the communicant in breach of article 3, paragraph 8 of the Convention.

32. In response to the communicant's allegations, the Party concerned takes the view that article 7 of the Convention is not engaged with respect to the expansion of operations of the Belfast City Airport, since there is no relevant plan, programme or policy relating to the environment. Moreover, even if either article 6 or 7 were applicable to the decision to expand the operations of the Belfast City Airport, there has been no breach of the public participation requirements under the Convention. In respect of the costs order of £39,454 against the communicant, the Party concerned considers that this was neither deterrent nor prohibitive, taking into account the involvement of five residents' associations and the number of their members. The Party concerned does not consider that there are any grounds for a complaint under article 3.

III. Consideration and evaluation by the Committee

General considerations

33. The United Kingdom deposited its instrument of ratification of the Convention on 23 February 2005. The Convention entered into force for the United Kingdom on 24 May 2005.

Adoption of amended "Planning Agreement" — article 6 and/or article 7

34. The communication refers to a number of consecutive actions by the Department of the Environment that affected the decision-making on the proposed expansion of the operations at Belfast City Airport. Noting that some of the activities described in the communication took place prior to the Convention's entry into force for the United Kingdom, the Committee is focusing on the activities that took place after 24 May 2005. However, as pointed out by the Committee in its previous findings, in determining whether or not to consider certain domestic procedures initiated before the entry into force of the Convention for the Party concerned, it will consider whether significant events of those processes had taken place since the Convention's entry into force (cf. ECE/MP.PP/C.1/2005/2/Add.2, para. 4, findings and recommendations with regard to communication ACCC/C/2004/02).

35. After reviewing the written submissions of the parties and having the benefit of hearing from both parties at the Committee's twenty-fourth meeting, the Committee considers that there are two decisions that are particularly significant to the obligations of the Party concerned under the Convention to provide for public participation in this case.

36. The first significant decision is the determination by the Department of the Environment in June 2003 that the proposal to expand the operations at the Belfast City

Airport did not require planning permission and was not subject to an environmental impact assessment procedure. The June 2003 determination was taken almost two years before the Convention entered into force for the United Kingdom. Other relevant decisions relating to the proposed activity on the level of plans, programmes or policies — e.g., Belfast Harbour Local Plan 1990 to 2005, the Belfast Urban Area Plan 2001 — took place even earlier. Because the June 2003 determination took place before the Convention entered into force, the Committee does not consider further whether this determination was in line the Convention's requirements on public participation.

37. The second significant decision is the adoption of the amended Planning Agreement on 14 October 2008. The adoption of the amended Planning Agreement raised the permitted seats for sale allocation from 1.5 million to 2 million in any 12-month period. This decision was taken after the Convention had entered into force for the Party concerned. The Committee has considered whether the adoption of the amended Planning Agreement is a decision within either article 6 or article 7 of the Convention.

38. Because the amended Planning Agreement does not fit within any of the activities listed in annex I to the Convention, the Committee finds that the adoption of the amended Planning Agreement is not a decision within the scope of article 6, paragraph 1 (a) of the Convention. Paragraph 8 (a) of annex I is the only paragraph of the annex relating to airports, but it concerns the construction of airports with a basic runway length of 2,100 metres or more. At the time of the events in question, the Belfast City Airport's runway was 1,829 metres, which is below the threshold set out in annex I. The amended Planning Agreement of 14 October 2008 concerned an increase in the number of permitted seats for sale. As noted in paragraph 22 above, the amended Planning Agreement did not change the existing runway length of the airport.

39. Paragraph 20 of annex I covers any activity not covered by the other paragraphs of the annex where public participation is provided for under an environmental impact assessment (EIA) procedure in accordance with national legislation. The Committee understands that the relevant legislation specifying which activities in Northern Ireland are subject to an EIA procedure is the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999. For the purposes of those regulations, an "EIA development" means either development which is listed in schedule 1 of those regulations, or development, which is listed in schedule 2 and which is likely to have significant effects on the environment by virtue of factors such as its nature, size or location. Schedule 1, paragraph 7 (a), of the Regulations refers to the construction of airports with a basic runway length of 2,100 metres or more. Schedule 2, paragraph 10 (e), of the Regulations refers to the construction of airfields (unless included in schedule 1) where the development involves an extension to a runway or the area of works exceeds 1 hectare. The increased seat allocation is not an activity subject to an EIA procedure under national legislation and, as noted above, the amended Planning Agreement did not alter the runway length. Thus, paragraph 20 of annex I does not apply.

40. The Committee similarly finds that the amended Planning Agreement of 14 October 2008 is not within the scope of article 6, paragraph 1 (b), of the Convention. There has been no determination by the Party concerned that the proposed activity in question is subject to the provisions of article 6. Thus, the amended Planning Agreement of 14 October 2008, which increased the permitted seats for sale from 1.5 million to 2 million, is not subject to either article 6, paragraph 1 (a), or paragraph 1 (b), of the Convention.

41. The Committee also considers whether the amended Planning Agreement of 14 October 2008 is a plan relating to the environment within the scope of article 7 of the Convention. What constitutes a "plan" is not defined in the Convention. The fact that the document is entitled "Planning Agreement" does not necessarily mean that it is a plan; rather, it is necessary to consider the substance of the document. Having considered the

substance of the document, the Committee finds that the "Planning Agreement" in this case is in fact is a decision on a specific activity that would properly be the type of activity under article 6. However, as held above, the activity does not meet the threshold of article 6.[4] The Committee therefore finds that the "Planning Agreement" in this case is not covered by article 7.

Prohibitively expensive — article 9, paragraph 4

42. The review procedure in question concerns the judicial proceedings against the Department of the Environment regarding (a) a recommendation of the EiP panel in respect of issues relating to the Belfast City Airport Planning Agreement 1997; and (b) a decision by the Department of the Environment Planning Service on 30 June 2003 pursuant to article 41 of the Planning (Northern Ireland) Order 1991. In the communicant's view, the full costs in the amount of £39,454 sought by the Department of the Environment at the conclusion of the judicial review proceedings relating to the Belfast City Airport are a major deterrent against residents' groups seeking to protect their environment by legal action. Therefore it is contrary to the provisions of article 9, paragraph 4, of the Convention that access to justice procedures covered by the Convention not be prohibitively expensive.

43. The Committee notes that the decision challenged was made in 2003, whereas the judicial review proceedings were filed in December 2006, after the Convention come into force. The fact that the decision challenged was made before the entry into force of the Convention for the United Kingdom does not prevent the Committee from reviewing compliance by the Party concerned with article 9 with respect to the decision in question. Before considering whether the Party concerned complied with the requirements of article 9, paragraph 4, of the Convention, it is necessary to establish if the case in question is dealing with an access to justice procedure covered by either paragraph 2 or paragraph 3 of article 9. Because, as established above, neither the 2008 Planning Agreement nor the 30 June 2003 determination are covered by article 6, article 9, paragraph 2 cannot be invoked in the present case. In considering whether the judicial proceedings in question are a procedure referred to by article 9, paragraph 3, of the Convention, the Committee has considered the subject of the claims brought by the communicant in the High Court. In its application for judicial review, the communicant contended that the Department of the Environment had erred in law in making its June 2003 determination under article 41 of the Planning (Northern Ireland) Order 1991. Having reviewed the documentation, including the order of the High Court dated 7 November 2007, the Committee finds that these proceedings were intended to challenge acts and omissions by a public authority which the communicant alleged to contravene provisions of the law of the Party concerned relating to the environment. The Committee thus finds that the communicant's judicial review proceedings were within the scope of article 9, paragraph 3, of the Convention.

44. Since the communicant's judicial review proceedings were judicial procedures under article 9, paragraph 3, of the Convention, these proceedings were also subject to the

[4] In reaching this conclusion, the Committee refers to footnote 6 in its findings and recommendations with regard to compliance by Albania (ECE/MP.PP/C.1/2007/4/Add.1) and the definition of "plans" in the European Commission Guide for Implementation of Directive 2001/42 on the Assessment of the Effects of Certain Plans and Programmes on the Environment. This states that "a plan is one which sets out how it is proposed to carry out or implement a scheme or a policy. This could include, for example, land use plans setting out how land is to be developed, or laying down rules or guidance as to the kind of development which might be appropriate or permissible in particular areas." The definition of "program" is "the plan covering a set of projects in a given area … comprising a number of separate construction projects....".

requirements of article 9, paragraph 4, of the Convention. The Committee finds that the quantum of costs awarded in this case, £39,454, was prohibitively expensive within the meaning of article 9, paragraph 4, and thus, amounted to non-compliance.

45. The Committee in this respect also stresses that "fairness" in article 9, paragraph 4, refers to what is fair for the claimant, not the defendant, a public body. The Committee, moreover, finds that fairness in cases of judicial review where a member of the public is pursuing environmental concerns that involve the public interest and loses the case, the fact that the public interest is at stake should be accounted for in allocating costs. The Committee accordingly finds that the manner in which the costs were allocated in this case was unfair within the meaning of article 9, paragraph 4, of the Convention and thus, amounted to non-compliance.

Use of "Planning Agreement" to control airport operations — article 3, paragraph 1

46. The communicant raised a number of issues in relation to article 3, paragraph 1. Regarding the EiP panel's observation that some of the Department's earlier replies were rather vague and evasive, the Committee finds that it has no evidence before it to establish that the correspondence complained of occurred after the Convention's entry into force for the Party concerned. Nor does the Committee have sufficient evidence to consider the communicant's allegation that the use of a "private" Planning Agreement by the Party concerned to control operations at Belfast City Airport is a breach of article 3, paragraph 1. The Committee therefore finds no breach of article 3, paragraph 1 in this case.

Pursuit of full costs — article 3, paragraph 8

47. The communicant alleges that the Party concerned, by pursuing the full costs of defending the judicial review proceedings, has penalized the communicant in breach of article 3, paragraph 8, of the Convention. The Committee notes that article 3, paragraph 8, does not affect the powers of national courts to award reasonable costs in judicial proceedings. The Committee takes the view that, based on the evidence before it, neither the pursuit of costs by the Party concerned or the Court's order for such costs amounted to a penalization under article 3, paragraph 8. The Committee does not exclude that pursuing costs in certain contexts may amount to penalization or harassment within article 3, paragraph 8.

IV. Conclusions

48. Having considered the above, the Committee adopts the findings and recommendations set out in the following paragraphs.

A. Main findings with regard to non-compliance

49. The Committee finds that, in the circumstances of this case, the adoption of the amended Planning Agreement was not a decision within the scope of article 6, paragraph 1 (a) or (b), of the Convention, nor was the Planning Agreement a plan under article 7 of the Convention. The Committee accordingly finds that article 9, paragraph 2, cannot be invoked in this case.

50. The Committee finds that the communicant's judicial review proceedings were within the scope of article 9, paragraph 3, of the Convention and thus were also subject to the requirements of article 9, paragraph 4, of the Convention. The Committee finds that the quantum of costs awarded in this case, £39,454, rendered the proceedings prohibitively expensive and that the manner of allocating the costs was unfair, within the meaning of article 9, paragraph 4, and thus, amounted to non-compliance.

51. The Committee finds that it had insufficient evidence before it to establish a breach of article 3, paragraph 1, in this case.

52. The Committee finds that, based on the evidence before it, neither the pursuit of costs by the Party concerned or the Court's order for such costs amounted to a penalization under article 3, paragraph 8. The Committee does not exclude that pursuing costs in certain contexts may amount to penalization or harassment within article 3, paragraph 8.

B. Recommendations

53. The Committee, pursuant to paragraph 36 (b) of the annex to decision I/7, and noting the agreement of the Party concerned that the Committee take the measures requested in paragraph 37 (b) of the annex to decision I/7, recommends that the Party concerned review its system for allocating costs in applications for judicial review within the scope of the Convention, and undertake practical and legislative measures to ensure that the allocations of costs in such cases is fair and not prohibitively expensive.