

Findings and recommendations with regard to communication ACCC/C/2016/142 concerning compliance by the United Kingdom

Adopted by the Compliance Committee on 25 July 2021¹

I. Introduction

1. On 23 August 2016, Mr. John Hemming (the communicant), submitted a communication to the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) alleging noncompliance by the United Kingdom article 9(2)-(5) of the Convention in connection with access to justice relating to a public authorities' alleged failure to clear up litter.
2. On 15 September 2016, the communicant provided additional information.
3. On 20 September 2016, the Party concerned provided comments on the preliminary admissibility of the communication.
4. On 27 September 2016, the communicant withdrew his allegations that the Party concerned breached article 9(2)-(3) the Convention.
5. At its fifty-fifth meeting (Geneva, 6-9 December 2016), the Committee determined on a preliminary basis that the communication was admissible.
6. Pursuant to paragraph 22 of the annex to decision 1/7 of the Meeting of the Parties to the Convention, the communication was forwarded to the Party concerned on 6 February 2017.
7. On 10 July 2017, the Party concerned provided its response to the communication, and on 24 and 25 July 2017, the communicant provided comments thereon.
8. On 28 June 2019, the Committee invited the communicant to provide his views on the extent to which the allegations in his communication concern matters already under the Committee's review in the context of decision VI/8k (United Kingdom).
9. On 29 June 2019, the communicant provided his views on the extent to which the allegation in his communication concern matters already under the Committee's review in the context of decision VI/8k. On 26 July 2019, the Party concerned shared its view on the same matter, and on the same day, the communicant provided comments thereon.
10. On 21 August 2020, the Committee sent questions to the parties for their reply and the communicant replied on the same date. The Party concerned provided its reply on 11 September 2020.
11. On 29 September 2020 the Committee wrote to the Party concerned and the communicant seeking their views on whether, given the substance of the communication, they would consider it appropriate for the Committee to proceed to commence its deliberations on the substance of the communication without holding a hearing. At the same time, the Committee invited the Party concerned and the communicant, should they each be of the view that a hearing is not needed, to provide any final written submissions by 13 October 2020.

¹ This text will be produced as an official United Nations document in due course. Meanwhile editorial or minor substantive changes (that is changes that have no impact on the findings and conclusions) may take place.

12. On 29 September 2020 and 13 October 2020, respectively, the communicant and the Party concerned each submitted comments to the effect that, in the circumstances of this case, they did not consider that a hearing was necessary.

13. On 29 October 2020, the secretariat sent a letter to the parties with questions for the Party concerned and inviting any final written submissions. On 25 November 2020, the Party concerned sent its reply to the Committee's questions and its final submission. On 26 November 2020, the communicant sent his final submission.

14. On 9 and 27 November 2020, observer Mr. George Niblock sent statements to the Committee. On 18 and 27 November 2020, observer Mr. Peter Silverman sent statements to the Committee.

15. The Committee completed its draft findings through its electronic decision-making procedure on 15 June 2021. In accordance with paragraph 34 of the annex to decision I/7, the draft findings were on that date then forwarded for comments to the Party concerned and the communicant. Both were invited to provide comments by 23 July 2021.

16. The communicants and the Party concerned provided comments on the draft findings on 19 June and 23 July 2021 respectively.

17. The Committee proceeded to finalize its findings in closed session, taking account of the comments received. The Committee then adopted its findings through its electronic decision-making procedure on XX July 2021 and agreed that they should be published as a formal pre-session document to its seventy-second meeting.

II. Summary of facts, evidence and issues²

A. Legal framework

Environmental Protection Act 1990

18. Section 89 of the Environmental Protection Act 1990 (the EPA) imposes a statutory duty on litter authorities to keep certain locations clear of litter and refuse.³ More specifically, Section 89(1) EPA provides that: "It shall be the duty of (a) each local authority, as respects any relevant highway [... and ...] (c) each principal litter authority, as respects its relevant land, [...] to ensure that the land is, so far as is practicable, kept clear of litter and refuse".⁴

19. Section 91 EPA provides a procedure whereby members of the public can make an application for a court order to require litter authorities to clear litter and refuse.⁵ More specifically, section 91(1) EPA states that: "a magistrates' court may act under this section on a complaint made by any person on the ground that he is aggrieved by the defacement, by litter or refuse, of ... any relevant highway [... or ...] any relevant land of a principal litter authority".⁶ Furthermore, section 91(4) EPA states that: "proceedings under this section shall be brought against the person who has the duty to keep the land clear under section 89(1) above".⁷

20. According to section 91(5) EPA, a complainant who wants to institute proceedings under section 91 against any person, shall give the person not less than five days written notice of his/her intention to make the complaint and the notice shall specify the matter complained of.⁸

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.

³ Communication, p. 3.

⁴ Communication, pp. 3-4.

⁵ Communication, pp. 4-5.

⁶ Communication, p. 4.

⁷ Communication, p. 5.

⁸ Communication, p. 5.

21. According to section 91(6) EPA, if the magistrates' court is satisfied that the land in question is "defaced" by litter or refuse, it can make a "litter abatement order" requiring the defendant to clear the litter or refuse within a time specified in the order.⁹ Section 91(7) specifies that the magistrates' court shall not make such an order if the defendant proves that he has complied, as respects the land in question, with his duty under section 89(1) EPA.¹⁰

22. With respect to the costs of the procedure, section 91(12) EPA provides that:

"Where a magistrates' court is satisfied on the hearing of a complaint under this section –

(a) that, when the complaint was made to it, the highway or land in question was defaced by litter or refuse ... and

(b) that there were reasonable grounds for bringing the complaint,

the court shall order the defendant to pay such reasonable sum to the complainant as the court may determine in respect of the expenses incurred by the complainant in bringing the complaint and the proceedings before the court."¹¹

Magistrates' Courts Act 1980

23. Section 64 (1) of the Magistrates' Courts Act 1980 provides for the circumstances in which a magistrates' court orders a complainant to pay the defendant's costs. It states inter alia that any such costs must be "just and reasonable".¹²

2014 Green Waste Policy

24. Paragraph 5 (2) of the policy of Birmingham City Council (the Council) on green waste (2014 Green Waste Policy) laid out the Council's approach to the dumping ("fly-tipping") of green waste. The policy states that: "When a complaint about dumped green waste is received (...) it shall be investigated in order to take appropriate action. A sticker(s) will be placed on the dumped waste informing the owner to make other disposal arrangements. A sticker will be placed on (all) bags of the dumped garden waste stating that it is illegal to fly-tip and that offenders will face legal action".¹³

25. Paragraph 5 (3)-(5) of the Policy lay out the course of procedure in case the dumping is attributable to a particular household or not.¹⁴

26. Finally, paragraph 5 (7) of the Policy states that the dumped green waste will usually be removed only if the competent authorities have been able to identify and take action against the offender. Furthermore, it states that the principle is that dumped green waste will not be removed until the fly-tipping behaviour has stopped. The Policy states that, in this way, resident peer-pressure in the locality will eventually discourage further dumping on the assumption that all residents will want to live in a clean environment.¹⁵

B. Facts

Facts leading up to the communicant's application for a litter abatement order

27. In 2014, the communicant was the Member of Parliament for the constituency of Birmingham Yardley. The Council is the waste collection authority for the area in which the communicant's

⁹ Communication, p. 5.

¹⁰ Communication, p. 5.

¹¹ Communication, pp. 5-6.

¹² Party's final submission, 25 November 2020, para. 10.

¹³ Communication, annex 4.

¹⁴ Communication, annex 4.

¹⁵ Communication, annex 4.

constituency lay.¹⁶ In February 2014, the Council introduced an annual charge of £35 per household for the collection of green waste.¹⁷ Previously, the Council had collected both general and green waste without charge.¹⁸

28. Following the introduction of the new annual charge there was a significant accumulation of green waste on the streets of Birmingham because many people who had not paid the charge continued to put out such waste.¹⁹

29. The residents of the communicant's constituency grew increasingly unhappy with the accumulation of rubbish left outside their property and in the streets.²⁰ On 24 April 2014, the communicant thus contacted the Council, requesting that it clear up the rubbish and identifying multiple locations of waste.²¹ Given that waste continued to be dumped, the communicant contacted the Council on several further occasions.²² During this time, the communicant was told by the Council on the phone and by email that they would not leave the rubbish for ever.²³

30. On 4 May 2014, the communicant notified the Council pursuant to section 91(5) EPA that he intended to take legal action to seek a litter abatement order against the Council due to the continued presence of the waste (see para. 20 above).²⁴ He informed the Council that he would not take immediate action, but instead would give the council the opportunity to rectify the situation by 7 May 2014.²⁵

31. On 7 May 2014, in an e-mail exchange between the Council and the communicant, the Council's solicitor stated that its duty to ensure that land is kept clear of litter under section 89 EPA only applies "so far as is practicable" and is therefore not an absolute duty. The Council's e-mail went on to state that: "I am aware that the department has a robust procedure in place for responding to reports of refuse/litter and am assured that these are being adhered to. The department would be willing to meet you to discuss the issue, however, if you feel that this would be beneficial."²⁶

32. On the same day, the communicant responded with an e-mail in which he declined the offer of a meeting saying that "I don't need a meeting. What I need is to be told what is being done about the [...] refuse that I have referred to the Local Authority in its function as litter authority".²⁷

33. On 15 May 2014, Mr. Hemming filed his complaint before the Birmingham Magistrates' Court seeking a litter abatement order under section 91 EPA.²⁸

34. On 17 and 18 May 2014, the Council carried out a so-called "blitz" to clear green waste from the streets of Birmingham, including within the communicant's constituency.²⁹ However, according to the communicant, not all the sites that were defaced by green waste and which he had reported to the Council were cleared at that time.³⁰

Proceedings before Birmingham Magistrates' Court

35. In the proceedings before the Magistrates' Court, the Council argued that the communicant's complaint was too wide in its scope as it covered the whole of his constituency. On 4 July 2014, a directions hearing took place at which the communicant narrowed the scope of his complaint to a smaller number of

¹⁶ Communication, para. 1, and annex 1, para. 11.

¹⁷ Communication, para. 1, annex 1, para. 12.

¹⁸ Communication, annex 1, para. 11.

¹⁹ Communication, para. 3, annex 1, para. 13.

²⁰ Communication, para. 3, annex 1, para. 16.

²¹ Communication, para. 4, annex 1, para. 21.

²² Communication, para. 4.

²³ Communication, para. 10.

²⁴ Communication, annex 1, para. 22, annex 2, p. 19.

²⁵ Communication, annex 2, p. 19.

²⁶ Communication, annex 1, para. 23, and additional information, 15 September 2016, annex, para. 8.

²⁷ Communication, annex 1, para. 24, and additional information, 15 September 2016, annex, para. 9.

²⁸ Communication, para. 5, annex 1, para. 25.

²⁹ Communication, para. 6, and, annex 1, para. 26.

³⁰ Communication, para. 6.

identified sites which had not been cleared up by the “blitz”.³¹ At some point before the directions hearing, the Council offered to make no claim for costs if the proceedings were withdrawn before 4 July 2014.³²

36. On 10 October 2014, the hearing for the communicant’s application took place. At this hearing, the communicant submitted that the identified sites had not been cleared of the litter until after 4 July, but that all identified sites had since been fully cleared of litter.³³ The Council refused to accept that the sites had not been cleared before 4 July, but subsequently accepted that there was still waste on those sites subsequent to 4 July which had been cleared by September.³⁴ Because there was no litter at the identified sites at the time of the hearing, the District Judge did not issue a litter abatement order.³⁵

37. Also during the proceedings before the Magistrates’ Court, the Council submitted a witness statement of Mr. Thomas Wallis, the director of fleet and waste management for Birmingham City Council.³⁶ The witness statement stated that the “blitz” was to be performed without undue publicity, and that, had the communicant taken up the offer of the meeting, the Council would have informed him on a confidential basis of the impending “blitz” to be carried out.³⁷

38. With regards to costs, the Court considered the two conditions set by section 91(12) EPA (see para. 22 above). It held that it was satisfied that the land in question was defaced by litter or refuse at the time the communicant had made his complaint. Therefore, the first condition was met. However, the Court further held that the communicant did not have reasonable grounds to launch the complaint as he had declined the Council’s offer for a meeting to discuss its policy of not removing garden refuse.³⁸ The Court thus held that the communicant did not satisfy the second condition posed by section 91(12) EPA and consequently refused to make an order for costs in his favour and, instead, made a costs order of £13,101.56 in favour of the Council under section 64(1) of the Magistrates’ Courts Act, noting that the Council’s offer to make no claim for costs if proceedings were withdrawn before 4 July 2014 had been ignored and the communicant had proceeded in full knowledge that he was at risk as to costs.³⁹

39. More specifically, paragraphs 6 and 7 of the Magistrates’ Court’s “case stated” records:

It is my understanding that the Appellant then accepted the court’s ruling and withdrew his application for a litter abatement order. I then proceeded to consider cross-applications for costs. The Appellant applied for costs pursuant to s.91(12). I was satisfied that at the time the complaint was made the land in question was defaced by litter or refuse, and accordingly the Appellant met the first test under the subsection. However, I was referred to correspondence between the Appellant and Defendant in which the City Council offered to meet him to discuss its policy of not removing garden refuse. The Appellant chose not to avail himself of that offer and instead issued proceedings. I took the view that that was unreasonable. I therefore refused to make an order for costs in his favour.

I then turned to the application by the Defendant for its costs under s.64 Magistrates’ Courts Act. I noted that the City Council had offered, in an open letter to the Appellant, to make no claim for costs if the proceedings were withdrawn before the bearing on 4 July. That offer had been ignored; the Appellant had proceeded in the full knowledge that he was at risk as to costs. The normal principle is that costs should follow the event and that even where a complainant had successfully challenged a decision by a public authority, the court should be slow to penalise a public authority making honest, reasonable and apparently sound decisions in the public interest. Here, of course,

³¹ Communication, para. 6, annex 1, paras. 29-31, and additional information, 15 September 2016, annex, para. 12.

³² Communicant’s reply to the Committee’s questions, 21 August 2020, annex, para. 7.

³³ Communication, para. 7-8, annex 1, para. 31.

³⁴ Communication, annex 1, para. 32, and additional information, 15 September 2016, annex, para. 12.

³⁵ Communicant’s reply to the Committee’s questions, 21 August 2020, annex, paras. 5-6.

³⁶ Communication, annex 1, para. 14.

³⁷ Communication, annex 1, paras. 27-28, 44.

³⁸ Communication, annex 1, paras. 38-44, Communicant’s reply to the Committee’s questions, 21 August 2020, annex, para. 6.

³⁹ Communication, para. 13, annex 1, paras. 41-42; Communicant’s reply to the Committee’s questions, 21 August 2020, annex, para. 7.

there had been no such successful challenge. I therefore awarded the Defendant the costs which it claimed.

Proceedings before the High Court

40. On 2 December 2014, the communicant appealed to the High Court. According to the communicant, the appeal was a two-stage process in which he would first ask for the “case stated”⁴⁰ by the magistrates’ court to be modified and then subsequently appeal against the modified case stated.⁴¹

41. The communicant argued that he had made five submissions to the Magistrates’ Court which were not set out or dealt with in the case stated and so it needed to be modified as it failed to include all the arguments made by the communicant.⁴² The High Court deemed the first three of those submissions to be no more than minor drafting issues relating to specific details about the timing of events.⁴³ The two other submissions claimed that the lower court failed to record that the communicant submitted that:

(a) The proffered meeting between him and the Council was irrelevant to the reasonableness of his complaint, because even if he had been informed about the planned clean up, the “blitz” did not clear up all the sites defaced by litter; and

(b) The specified sites were only cleared of green waste as a result of his complaint being made and pursued.⁴⁴

42. As to the latter point, the High Court considered that the case stated did refer to the fact that the identified sites were not cleared until after the directions hearing.⁴⁵

43. The first point concerned what the Magistrates’ Court could take into account in determining the reasonableness of the communicant’s application for proceedings. In determining what was and was not relevant to this determination, the High Court interpreted section 91(12)(b) of the EPA to refer to the time at which the complaint was made to the Magistrates’ Court.⁴⁶ In the High Court’s view, it would therefore have been wrong for the lower court to have considered matters which occurred after the complaint had been made when considering whether there were reasonable grounds for bringing the complaint, absent exceptional circumstances, such as evidencing a lack of good faith in something which had happened prior to the bringing of the complaint.⁴⁷

44. Accordingly, the High Court affirmed the lower court’s conclusion that the fact that the planned clean up did not clear up all the specified sites was irrelevant to the consideration of whether the communicant had reasonable grounds to bring a complaint since the clean-up took place after the submission of the complaint.⁴⁸

45. The High Court therefore held that the case stated was not deficient and could not be sent back to the Magistrates’ Court for amending.⁴⁹

46. The communicant’s barrister had accepted that if the case stated was not amended, it was inevitable that an appeal against the lower court’s decision would fail.⁵⁰ Accordingly, the High Court dismissed the appeal.⁵¹ The High Court ordered the communicant to pay costs of around £4,687 to the Council.⁵²

⁴⁰ See communicant’s reply to the Committee’s questions, 21 August 2020, annex.

⁴¹ Communication, para. 11.

⁴² Communication, annex 1, para. 42.

⁴³ Communication, annex 1, para. 46.

⁴⁴ Communication, annex 1, para. 47.

⁴⁵ Communication, annex 1, para. 48.

⁴⁶ Communication, annex 1, para. 52.

⁴⁷ Communication, annex 1, paras. 52-56.

⁴⁸ Communication, annex 1, paras. 57-58.

⁴⁹ Communication, annex 1, para. 58.

⁵⁰ Communication, annex 1, paras. 8 and 59.

⁵¹ Communication, annex 1, para. 59.

⁵² Communication, para. 13.

Proceedings before the Court of Appeal

47. The communicant appealed the High Court's decision before the Court of Appeal, which refused permission on 19 July 2016.⁵³

48. The communicant appealed on three grounds:

- (a) Both the Magistrates' Court and the High Court set the threshold for reasonable grounds in the second condition of section 91(12) of the EPA too high and their respective decisions that the communicant did not have reasonable grounds for bringing the complaint was absurd;
- (b) The High Court denied the communicant a real possibility to appeal by not letting him reconsider his position after his application for amending the Magistrates' Court's "case stated" was denied and instead immediately proceeding to make a determination on the appeal itself;
- (c) The communicant did not fully enjoy the procedural protection granted under the Aarhus Convention.⁵⁴

49. As to the first ground, the communicant contended that the assertion that he did not have reasonable grounds to file for a litter abatement order was absurd because the Council had a policy of not collecting the green waste and told him that it would not remove the rubbish. The communicant stated that, when the Council offered a meeting, he took it to be "a standard political ploy" of offering a meeting without intending to do anything about the problem.⁵⁵

50. The Court of Appeal found that, by denying the offer to meet, the communicant deprived himself of the opportunity to be told more about the Council's policy.⁵⁶ As such, the decision was well within the District Judge's discretion in assessing the reasonableness of the application to institute proceedings.⁵⁷ Moreover, the Court of Appeal stated that there is now a great emphasis on pre-litigation steps to avoid litigation. Therefore, the lower judge's decision that refusing a meeting in those circumstances was not reasonable could not be criticised according to the Court of Appeal.⁵⁸

51. As to the second ground, the Court held that the High Court was right to deny any amendment of the lower court's decision to include evidence concerning the failure to remove any waste that post-dated 15 May 2014.⁵⁹ In this regard, the communicant claimed that his barrister had not understood that the rubbish was left uncollected as a matter of policy and therefore did not object when the High Court refused to amend the lower court's decision, a course of action with which the communicant did not agree.⁶⁰

52. The Court of Appeal found that the communicant was entitled to make a point about the disagreement between him and his barrister but stated that it was unable to see this as a ground that gave rise to an arguable error in the High Court's reasoning.⁶¹

53. As to the third ground, the communicant's argument was that there should have been a protective cost order to give effect to the provisions and principles in the Aarhus Convention. He stated that there is a defect in the system because had he proceeded by judicial review, such protection would have been flagged in the template forms as a result of the Civil Procedure Rules, whereas the forms for his application under section 91 of the EPA did not contain such opportunity.⁶²

54. Citing previous case law, the Court stated that the authorities have proceeded on the basis that the Convention is capable of applying to nuisance claims and statutory applications under the Town and Country Planning Act, even though they are not judicial reviews. On the other hand, there is no obligation

⁵³ Communication, para. 13, and additional information, 15 September 2016, annex, para 42.

⁵⁴ Communication, para. 12, and additional information, 15 September 2016, annex, paras. 20-24.

⁵⁵ Additional information, 15 September 2016, annex, paras. 21-22.

⁵⁶ Additional information, 15 September 2016, annex, para. 28.

⁵⁷ Additional information, 15 September 2016, annex, para. 29.

⁵⁸ Additional information, 15 September 2016, annex, para. 30.

⁵⁹ Additional information, 15 September 2016, annex, para. 33.

⁶⁰ Additional information, 15 September 2016, annex, paras. 23 and 26.

⁶¹ Additional information, 15 September 2016, annex, paras. 26-27.

⁶² Additional information, 15 September 2016, annex, paras. 34-35.

on a first instance judge to consider the Convention of their own motion.⁶³ The Court of Appeal noted that the communicant's third point was not raised before the Magistrates' Court at first instance.⁶⁴ The Court further considered that a court is not obliged to exercise its discretion to grant a protective costs order and that the obligation in article 9(4) of the Convention is no more than a factor to be taken into account in deciding whether to grant a protective costs order.⁶⁵ The Court therefore considered that it did not follow that a protective cost order would necessarily have to have been made.⁶⁶

55. Finally, the Court of Appeal held that in any case it would have been inappropriate for a judge of first instance to "sidestep" the prescribed exclusion of statutory appeals from part 45.41 of the Civil Procedure Rules, since that must be considered as a deliberate expression of the legislator's intent.⁶⁷

56. The total costs that the communicant was ordered to pay to the Council for the proceedings before the Magistrates' Court and on appeal amounted to £17,788.56.⁶⁸

Decision VI/8k

57. At the time that the present communication was submitted, the Committee was reviewing the implementation of decision V/9n on compliance by the United Kingdom with its obligations under the Convention, adopted by the fifth session of the Meeting of the Parties to the Convention (Maastricht, 30-June-1 July 2014).⁶⁹ The sixth session of the Meeting of the Parties to the Convention (Budva, 11–13 September 2017) subsequently adopted decision VI/8k, which superseded decision V/9n.

58. In order to fulfil the requirements of paragraph 2 of decision VI/8k, the Party concerned would need to, "as a matter of urgency, take the necessary legislative, regulatory, and administrative and practical measures to inter alia:

(a) Ensure that allocation of costs in all court procedures subject to article 9 is fair and equitable and not prohibitively expensive;

(b) Further consider the establishment of appropriate assistance mechanisms to reduce financial barriers to access to justice;

[...]

(d) Establish a clear, transparent and consistent framework to implement article 9(4) of the Convention."⁷⁰

59. In order to fulfil the requirements of paragraph 4 of decision VI/k, the Party concerned would need to ensure that its Civil Procedure Rules regarding costs are applied by its courts so as to ensure compliance with the Convention.⁷¹

60. Applications brought by members of the public for a litter abatement order under section 91 EPA do not qualify as an "Aarhus Convention claim" and are thus not eligible for costs protection under rule 45.41 of the Civil Procedure Rules.⁷²

⁶³ Additional information, 15 September 2016, annex, paras. 37, 39.

⁶⁴ Additional information, 15 September 2016, annex, paras. 34 and 38.

⁶⁵ Additional information, 15 September 2016, annex, para. 39.

⁶⁶ Additional information, 15 September 2016, annex, para. 40.

⁶⁷ Additional information, 15 September 2016, annex, para. 41.

⁶⁸ Communicant's reply of 21 August 2020 to the Committee's questions.

⁶⁹ ECE/MP/PP/2014/2/Add.1.

⁷⁰ ECE/MP/PP/2017/2/Add.1.

⁷¹ ECE/MP/PP/2017/2/Add.1.

⁷² Party's reply to the Committee's questions, 11 September 2020.

C. Admissibility

61. The communicant submits that, following the Court of Appeal's refusal on 19 July 2016 of his request for permission to appeal the March 2015 judgment of the High Court, the available domestic procedures have been exhausted.⁷³

62. The Party concerned claims that the communication should be inadmissible for failing to include corroborating information. It also argues that any corroborating information that is provided relates to the communicant's disagreement with the outcome of the litigation, which is not within scope of the Convention and so the communication is incompatible with the provisions of the Convention.⁷⁴

63. The Party concerned contends that the issue of prohibitively expensive costs is already under consideration by the Committee through the ongoing dialogue between the United Kingdom and the Committee on decisions IV/9i, V/9n and VI/8k, and that there is therefore no need to progress this communication.⁷⁵ However, the Party concerned also states that decision VI/8k "does not address the operation of the specific legal regime relating to litter abatement orders in the UK or the facts surround this communication" and that it would "object to any suggestion that a specific determination or recommendations on this communication could be made on the basis of Decision VI/8k".⁷⁶

64. Finally, the Party concerned also alleges that the communicant has failed to exhaust domestic remedies since he is asking the Compliance Committee to criticize the domestic courts for failing to limit the amount of his liability where the communicant has not asked the courts to do so.⁷⁷

D. Substantive issues

Article 9(4)

65. The communicant claims that the proceedings he went through following his application for a litter abatement order did not comply with the criteria set out in article 9(4) of the Convention and therefore the Party concerned failed to comply with this provision.⁷⁸

66. The communicant submits that his complaint rests on two main grounds: (a) the amount of costs and difficulty of challenging the amount of costs and (b) that there is a fundamental flaw with the legal process in the Party concerned since he considers he won the case for the litter abatement order but was nevertheless ordered to pay the costs and could not appeal against this decision.⁷⁹

67. The Party concerned alleges that the communicant's claims on a possible breach of article 9(4) of the Convention concern his disagreement with the Magistrates' Court, the High Court and the Court of Appeal, rather than corroborating any alleged breach of the Convention's requirements.⁸⁰

68. The Party concerned further states that the communicant could have made his challenge via judicial review.⁸¹ Indeed, it submits that he should have done so, as this would have been the appropriate means to challenge the Council's waste collection policy as opposed to seeking to remedy particular instances of

⁷³ Communication, p. 8.

⁷⁴ Party concerned's comments on pre-admissibility, 20 September 2016, paras. 1, 9-19.

⁷⁵ Comments on pre-admissibility by the Party concerned, 20 September 2016, paras. 1, 20-22.

⁷⁶ Party concerned's comments on the communicant's comments of 29 June 2019, 26 July 2019, para. 3.

⁷⁷ Response to the communication by the Party concerned, para. 5(c).

⁷⁸ Communication, pp. 3, 6.

⁷⁹ Comments on extent to which communicant's allegations are within scope of decision VI/8k by the Communicant, 29 June 2019.

⁸⁰ Comments on pre-admissibility by the Party concerned, 20 September 2016, para. 11; Party's response to communication, para. 5a.

⁸¹ Party's final submission, 25 November 2020, para. 41(1).

waste dumping.⁸² As such, the Party concerned claims that the communicant did have access to a review mechanism that was both fair and not prohibitively expensive (i.e. judicial review).⁸³

Prohibitive costs

69. With regards to the costs of the proceedings, the communicant states that the procedure for a litter abatement order is prohibitively expensive, making such an application too financially risky for citizens of ordinary means.⁸⁴

70. The Party concerned submits that the communicant did not at any point during the proceedings request any quantitative limit to his liability to pay the Council's costs on the basis that the proceedings would otherwise be prohibitively expensive.⁸⁵ This Party concerned considers that this indicates that the costs were not prohibitively expensive on a subjective basis.⁸⁶ Moreover, the Party concerned alleges that the communicant's legal representative did not object to a court order that required the communicant to pay the Council's costs for the proceedings before the High Court.⁸⁷ The Party concerned also states that the communicant did not make any suggestions to the High Court that the amount of the costs liability should be limited in order to avoid that the proceedings would become prohibitively expensive.⁸⁸

71. The Party concerned therefore states that it is untenable for the communicant to complain that the amount of the costs was prohibitively expensive since he never sought a limit to the amount of his liability.⁸⁹

72. The Party concerned also states that in any case the costs of the proceedings were not prohibitively expensive.⁹⁰ The District Court Judge considered that the costs award was "just and reasonable" as required by the Magistrates' Courts Act 1980 and the communicant has not contended that he did not have the means to pay.⁹¹

Fairness

73. The communicant submits that the procedure is unfair and that the system is biased in favour of the local authority. He considers that even though he effectively won the case since the rubbish was cleared up, he was deemed to have lost and therefore had to pay the costs of the procedure.⁹²

74. The communicant submits that, had he not made the application for the litter abatement order, the Council would have continued to leave the refuse on the streets.⁹³ He submits that the application was necessary to get the Council to clear up the rubbish and it would have been left outside had he not taken action.⁹⁴ Consequently, he claims that he won the case as the filing of the application led to the desired outcome. Therefore, he considers it unfair that he is being ordered to pay costs.⁹⁵

75. The communicant also alleges that the proceedings were unfair on various grounds.⁹⁶ With respect to the decision to award costs against him, he submits that the following matters were procedurally unfair:

(a) The Court did not take into account the fact that the local authority had decided not to follow the law as a matter of policy;

⁸² Party's final submission, 25 November 2020, paras. 45-46.

⁸³ Party's final submission, 25 November 2020, para. 59.

⁸⁴ Communication, p. 6.

⁸⁵ Response to the communication by the Party concerned, paras. 4(c), 5(c).

⁸⁶ Party's final submission, 25 November 2020, para. 49(1).

⁸⁷ Response to the communication by the Party concerned, para. 4(e).

⁸⁸ Response to the communication by the Party concerned, para. 4(e).

⁸⁹ Response to the communication by the Party concerned, para. 5(c).

⁹⁰ Party's final submission, 25 November 2020, para. 49.

⁹¹ Party's final submission, 25 November 2020, para. 51.

⁹² Comments on the response by the communicant, 24 and 25 July 2017 p. 1.

⁹³ Communication, para. 13.

⁹⁴ Communication, para. 13.

⁹⁵ Communication, para. 13.

⁹⁶ Communication, pp. 6-8.

(b) The Court did not take into account the fact that some of the litter was only cleared because the application was made to court and that the application was therefore necessary;

(c) The Court in effect decided that if a meeting is offered it is a mandatory requirement to attend that meeting failing which costs may be awarded against the communicant. The use of the telephone or email was legally insufficient. The communicant submits that it is procedurally unfair to have a mandatory part of the process – meeting with the local authority – that is not documented in any of the documentation.⁹⁷

76. According to the Party concerned, the concept of fairness under article 9(4) of the Convention is concerned with whether a process is “impartial and free from prejudice, favouritism or self-interest”.⁹⁸ The Party concerned states that the communicant failed to express his allegations of non-compliance in these terms and additionally also failed to support them with corroborating information.⁹⁹ The Party concerned relies on the Committee’s findings on communications ACCC/C/2011/57 (Denmark) and ACCC/C/2013/81 (Sweden) and the Aarhus Convention Implementation Guide to argue that it is the procedure that must be fair and that this means that the procedure must be impartial and free from bias.¹⁰⁰

77. The Party concerned alleges that the communicant’s assessment of the fairness of the proceedings comes down to his disagreement with the court’s findings rather than corroborating any alleged breach of the Convention requirements.¹⁰¹

78. The Party concerned submits that the communicant’s application before the courts did not fail because the procedures were inadequate, ineffective or unfair, but because the judges rejected his arguments in the light of their application of the law to the facts of his case.¹⁰² The Party concerned submits that there can be no objection to the communicant having been required in principle to pay the Council’s reasonable costs of the proceedings where the Magistrates’ Court’s finding on the facts of the case was that he did not have reasonable grounds to bring his complaint, nor that there can be an objection to him being required in principle to pay the Council’s reasonable costs of the High Court appeal where the appeal was found to be without merit.¹⁰³

79. The Party concerned also states that the order that the communicant pay the Council’s costs made under section 64 of the Magistrates’ Courts Act was on the basis that the communicant had ignored the Council’s offer to settle the proceedings with the Council not seeking its costs.¹⁰⁴

Article 9(5)

80. The communicant submits that article 9(5) of the Convention has been breached since the rules and forms for judicial review in the United Kingdom have been modified for the Convention to include a costs limit, whereas the rules for litter abatement orders have not.¹⁰⁵

81. The Party concerned claims that, in its Litter Strategy for England (April 2017), the government had committed itself to review the mechanism by which councils and other land-managers can be held to account for maintaining their land to the standards set out in the Code of Practice.¹⁰⁶ It states that while it had been envisaged that this would have been completed by the end of 2020, an intervening general election had altered the timeframes.¹⁰⁷ It claims that, as of November 2020, work “remains ongoing in relation to

⁹⁷ Communicant’s final written submission, p. 2.

⁹⁸ Comments on pre-admissibility by the Party concerned, 20 September 2016, para. 12.

⁹⁹ Comments on pre-admissibility by the Party concerned, 20 September 2016, para. 12.

¹⁰⁰ Party’s final submission, paras. 36-40, 59-60.

¹⁰¹ Comments on pre-admissibility by the Party concerned, 20 September 2016, para. 11.

¹⁰² Response to the communication by the Party concerned, para. 5(a).

¹⁰³ Response to the communication by the Party concerned, para. 5(b).

¹⁰⁴ Party’s final submission, 25 November 2020, para. 107.

¹⁰⁵ Communication, p. 8, and email from communicant enclosing statement regarding scope of communication, 27 September 2016, p. 2.

¹⁰⁶ Party’s response to communication, para. 7.

¹⁰⁷ Party’s response to communication, para. 8.

reviewing the mechanism by which litter duty bodies can be held to account in England¹⁰⁸ and that Brexit and the COVID-19 pandemic had also resulted in an adjustment of priorities.¹⁰⁹

82. The Party concerned submits that the communicant had enough information about the judicial review procedures available to him as is required by article 9(5) since he availed himself of those procedures.¹¹⁰

Extent to which the communicant's allegations are within the scope of decision VI/8k

83. The communicant submits that his communication has two summary prongs as explained above in paragraph 76, namely (a) the amount of the costs and the difficulty of challenging the amount of costs and (b) the unfair decision-making by the courts.¹¹¹ The communicant further accepts that the issue of costs is being looked at by the Committee in the matters relating to decision VI/8k.¹¹² He added that he has commenced proceedings before the European Court of Human Rights. Therefore, the communicant asks the Committee to consider the unfair decision-making by the Party concerned's courts separately to the costs issue.¹¹³

84. The Party concerned states that it was unclear whether the communicant is in agreement with the suggestion that the matters covered in his communication are also covered by decision VI/8k.¹¹⁴ Furthermore, the Party concerned reiterates that, in its view, the communication is related to the communicant's dissatisfaction with the outcome of the appeals process, rather than the process itself.¹¹⁵

85. Furthermore, the Party concerned states that decision VI/8k addresses the issue of costs in environmental proceedings broadly, so that there is no need to progress this communication any further.¹¹⁶ On the other hand, the Party concerned stated that the decision does not address the operation of the specific legal regime relating to litter abatement orders in the UK or the facts surrounding the present communication.¹¹⁷ Therefore, the Party concerned would object to any suggestion that a specific determination or recommendations on this communication could be made on the basis of decision VI/8k.¹¹⁸

III. Consideration and evaluation by the Committee

86. 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, ninety days after the deposit of its instrument of ratification.

Admissibility

87. The Party concerned submits that the communicant has failed to exhaust domestic remedies since he is asking the Committee to criticize the domestic courts for failing to limit the amount of his liability where he did not himself ask the courts to do so. The Committee notes however that the Party concerned has also stated that there is no mechanism by which a complainant can apply for an order for its costs to be capped in civil proceedings before the Magistrates' Court. The Committee thus does not find the communication inadmissible on this ground.

¹⁰⁸ Party's final submission, 25 November 2020, para. 101.

¹⁰⁹ Party's comments on Committee's draft findings, 23 July, p. 3.

¹¹⁰ Response to the communication by the Party concerned, para. 6.

¹¹¹ Comments on extent to which communicant's allegations are within scope of decision VI/8k by the Communicant, 29 June 2019.

¹¹² Comments on extent to which communicant's allegations are within scope of decision VI/8k by the Communicant, 29 June 2019.

¹¹³ Comments on extent to which communicant's allegations are within scope of decision VI/8k by the Communicant, 29 June 2019.

¹¹⁴ Comments by the Party concerned on the communicant's comment of 29 June 2019, 26 July 2019, para. 1.

¹¹⁵ Comments by the Party concerned on the communicant's comment of 29 June 2019, 26 July 2019, para. 1.

¹¹⁶ Comments by the Party concerned on the communicant's comment of 29 June 2019, 26 July 2019, para. 2.

¹¹⁷ Comments by the Party concerned on the communicant's comment of 29 June 2019, 26 July 2019, para. 3.

¹¹⁸ Comments by the Party concerned on the communicant's comment of 29 June 2019, 26 July 2019, para. 3.

88. The communicant claims that, following the Court of Appeal's refusal of his application for refusal to appeal the judgment of the High Court, he had exhausted domestic remedies. This has not been disputed by the Party concerned.

89. Based on the foregoing, the Committee determines the communication to be admissible.

Applicability of decision VI/8k

90. Through paragraph 2(a) of decision VI/8k, the Meeting of the Parties has requested the Party concerned to, as a matter of urgency, take the necessary legislative, regulatory, administrative and practical measures to ensure that the allocation of costs in "all court procedures subject to article 9" is fair and equitable and not prohibitively expensive.

91. In its joint findings on communications ACCC/C/2013/85 and ACCC/C/2013/86 (United Kingdom), the Committee made clear that, in its view, "the findings endorsed and recommendations welcomed by decisions IV/9i and V/9n of the Meeting of the Parties apply to all court procedures subject to article 9 of the Convention, not only judicial review procedures".¹¹⁹

92. Since decision VI/8k supersedes decisions IV/9i and V/9n, paragraph 2(a) of decision VI/8k also applies to "all court procedures subject to article 9" including the allocation of costs in court procedures under the EPA and applications for litter abatement orders under section 91 of that Act.¹²⁰

93. However, the Party concerned submits that it considers that decision VI/8k "does not address the operation of the specific legal regime relating to litter abatement orders in the UK or the facts surrounding this communication".¹²¹ The Committee underlines that it does not agree with the position of the Party concerned, but that, in the light of the Party's position, the Committee will consider the present communication under its ordinary, and not its summary, proceedings procedure.¹²²

Scope of consideration

94. The Committee notes that, while the communication includes allegations under article 9(2) and (3) of the Convention,¹²³ those allegations were subsequently withdrawn by the communicant and will thus not be examined by the Committee.

Article 9(4)

Applicability

95. Section 91 EPA permits any person, "who is aggrieved by the defacement, by litter or refuse, of any relevant land of a principal litter authority" to apply to the magistrates' court for a court order to require litter authorities to clear litter and refuse.

96. The Party concerned accepts that section 91 EPA is a procedure within the scope of article 9(3) of the Convention.

97. The Committee confirms that proceedings under section 91 EPA are indeed within the scope of article 9(3) of the Convention and thus subject to the requirements of article 9(4) of the Convention.

¹¹⁹ ECE/MP.PP/C.1/2016/10, para. 66.

¹²⁰ Party's reply to the Committee's question, 11 September 2020.

¹²¹ Letter from the Party concerned, 26 July 2019, p. 1.

¹²² See the Committee's findings on communications ACCC/C/2013/85 and ACCC/C/2013/86 (United Kingdom), ECE/MP.PP/C.1/2016/10, para. 6.

¹²³ Communication, p. 3.

98. The Committee examines whether the procedure provided by section 91 EPA to compel a public authority to clear litter and refuse meets the requirements of article 9(4) to provide a fair, equitable and not prohibitively expensive review procedure.

Prohibitive expense

99. With regard to the costs of the proceedings, the communicant was ordered to pay costs to the Council of more than £13,000 with respect to the proceeding before the Magistrates' Court. Following the dismissal of his appeals to the High Court and the Court of Appeal, he was ordered to pay the costs of those proceedings also, making a total costs order of £17,788.56.

100. In its findings on communication ACCC/C/2013/77 (United Kingdom), the Committee held that a costs order of £8,000 for an acknowledgement of service in a judicial review claim was prohibitively expensive.¹²⁴ In its report to the Meeting of the Parties on decision V/9n, the Committee held that, in the context of judicial and statutory review procedures, a costs cap of £5,000 for an individual may be prohibitively expensive.¹²⁵

101. The Committee considers that an application for a litter abatement order is a significantly less complex matter than a judicial review procedure in the vast majority of cases. It should be an efficient and accessible mechanism through which members of the public can hold public authorities to account regarding their statutory obligations to keep their territories clear of waste and litter. As to the cost order, having found that costs of £8,000 was prohibitively expensive for the initial stage of a judicial review procedure, the Committee considers it goes without saying that a costs order of over £13,000 against an applicant seeking a litter abatement order under section 91 EPA at the first instance before the Magistrates' Court renders the procedure prohibitively expensive too.

102. On this point, the Committee notes that the communicant was ordered by the Magistrates' Court to pay costs of over £13,000 notwithstanding the requirement in section 64(1) of the Magistrates' Courts Act 1980 for any costs order by the court to be "just and reasonable".

103. The Committee further notes the statement by observer Mr. Silverman of the costs orders of £2,000 and £4,600 he has likewise been ordered to pay by the Magistrates' Courts for bringing unsuccessful applications under section 91 EPA.¹²⁶ These sums have not been disputed by the Party concerned. The Committee considers that these examples demonstrate that the prohibitively expensive costs borne by the communicant in this case was not a one-off event, but rather an illustration of a wider problem regarding litter abatement applications to the courts in the Party concerned.

104. Based on the foregoing, the Committee finds that, by failing to ensure that applications for litter abatement orders under section 91 EPA are not prohibitively expensive, the Party concerned fails to comply with article 9(4) of the Convention.

Fair and equitable procedure

105. The communicant claims that the court procedures regarding his application for a litter abatement order were unfair in a variety of ways. Of these, the Committee focuses its examination on whether it was fair and equitable, in the circumstances of this case, for the Magistrates' Court to award the Council's costs of over £13,000 against the communicant.

106. At the outset, the Committee notes that the Magistrates' Court, after declining the communicant's application for a litter abatement order, had three options available to it regarding the costs of the procedure. It could have awarded the communicant his costs, in accordance with section 91(12) EPA. It could have

¹²⁴ ECE/MP.PP/C.1/2015/3, paras. 75 and 77.

¹²⁵ ECE/MP.PP/2017/46, para. 34.

¹²⁶ Observer statement by Mr. Silverman, 18 November 2020.

awarded costs under section 64(1) of the Magistrates' Courts Act against the communicant, as it ultimately did. Or it could have left costs to fall where they lay, meaning that each party would pay its own costs.

107. The Committee examines below first, the Magistrates' Court decision not to award the communicant his costs under section 91(12) EPA, and second, the Court's decision to award costs against him under section 64(1) of the Magistrates' Courts Act.

Costs under section 91(12) EPA

108. The Committee understands from paragraph 6 of the Magistrates' Court's "case stated" that the Court decided to refuse the communicant's application for his costs primarily because he did not take up the Council's suggestion in its email of 7 May 2014 to meet with the department of the Council, and therefore that it was not reasonable for him to have brought the complaint.¹²⁷ That email stated:

"...as you are aware, the duty on the Local Authority to ensure that land is kept clear of litter and refuse stems from section 89 of the Environmental Protection Act 1990. The duty, however, is only 'so far as is practicable' and is not therefore an absolute duty. I am aware that the department has a robust procedure in place for responding to reports of refuse/litter and am assured that these are being adhered to. The department would be willing to meet you to discuss the issue, however, if you feel that this would be beneficial."¹²⁸

109. The Committee considers that there is nothing in the wording of that email to suggest that the meeting proposed by the Council to the communicant was intended to present him with a timetable for action. Rather, the Council had at that point already stated several times its intention not to take immediate action and there is nothing in the Council's invitation to the communicant to meet if "[he felt] that this would be beneficial" to indicate that the Council's position had changed.

110. While it appears remarkable that the court decided not to award the communicant his own costs under section 91(2) EPA just because the communicant did not take up the Council's invitation to meet if he felt "it would be beneficial", the Committee does not go so far as to find the Party concerned to be noncompliance with article 9(4) of the Convention on this point. The Committee considers the court's decision to then award over £13,000 costs against the communicant under section 64(1) of the Magistrates' Court below.

Costs order under section 64(1) Magistrates' Courts Act

111. Paragraph 7 of the Magistrates' Court's "case stated" makes clear that the Court made the costs order under section 64(1) of the Magistrates' Court because he had refused an offer to settle the litigation along with no claim for costs being made.¹²⁹

112. On this point, the Committee point out that section 91(12) EPA provides that costs order in favour of the applicant shall be made when the court is satisfied "(a) that, when the complaint was made to it, the highway or land in question was defaced by litter or refuse" and (b) that there were reasonable grounds for bringing the complaint. Mr. Hemming submitted his application for a litter abatement order on 15 May 2014. The Council carried out its "blitz" to clean up the litter on 17 and 18 May 2014. The litter was still thus on the ground when Mr. Hemming made his application and he was thus well within his rights not to accept the Council's offer to settle but rather to seek his costs in accordance with section 91(2) EPA.

113. The Committee emphasizes that the Court's approach as set in paragraph 7 of the "case stated" creates a strong incentive for public authorities not to take action to clear litter until members of the public finally resort to court proceedings to require a public authority to perform its statutory duty under section 89 EPA, comfortable in the knowledge that if the public did not later withdraw its court proceedings it would be required to cover the public authority's costs under section 64(1) of the Magistrates' Courts Act.

¹²⁷ Communicant's reply to Committee's questions, 21 August 2018, annex, p. 1.

¹²⁸ Court of Appeal judgment, p. 3.

¹²⁹ Communicant's reply to Committee's questions, 21 August 2018, annex, p. 1.

114. Moreover, as shown by the costs order of over £13,000 against the communicant, the resulting costs orders can be sizeable. This is despite the requirement in section 64(1) that any costs order under that provision be “just and reasonable”.

115. The Committee considers this situation is clearly neither fair nor equitable. Rather, the significant costs order against the communicant under section 64(1) can be seen as a kind of sanction against the communicant in this case. It is clear to the Committee that such cost orders will deter persons contemplating referring contraventions of section 89 EPA to a judge in order to enforce the obligation imposed by the law on the competent public authority.

116. Based on the foregoing, the Committee finds that, by awarding significant costs against the communicant under section 64(1) of the Magistrates’ Courts Act because he refused the Council’s offer to settle, in circumstances where the communicant was entitled by section 91(12) of the Environmental Protection Act to apply for the recovery of his costs, the Party concerned failed to provide for a fair and equitable review procedure under article 9(3) as required by article 9(4) of the Convention.

Article 9(5)

117. Article 9(5) requires Parties to consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice. To comply with this provision, it does not suffice for Parties merely to declare that they are considering or intend to consider introducing such mechanisms. Concrete and visible steps to consider such mechanisms must be taken.

118. The Committee points out that this is a continuing obligation: even if a Party has reviewed its system in the past, that does not relieve it from the requirement to revisit the matter as needed.

119. The Committee welcomes the indication from the Party concerned that it had, in its 2017 Litter Strategy England, committed itself to review the mechanisms through which council and other land-managers can be held to account. The Party concerned has not however provided any concrete evidence to demonstrate that, as part of this review, it has reviewed the costs system applicable to litter abatement orders. Nor has it shown that it has, in the context of that review, considered the establishment of appropriate assistance mechanisms to remove or reduce financial barriers for members of the public to bring applications for litter abatement orders.

120. Accordingly, despite its 2017 Litter Strategy, the Party concerned has not demonstrated to the Committee that it has taken any concrete or visible steps of the kind mentioned in paragraph 117 above to remove or reduce financial barriers for members of the public to bring applications for litter abatement orders.

121. In light of the foregoing, the Committee finds that, by failing to consider the establishment of appropriate assistance mechanisms to remove or reduce financial barriers for members of the public to enforce contraventions of its law on litter, the Party concerned has not complied with article 9(5) of the Convention.

IV. Conclusions

122. 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

123. The Committee finds that:

(a) By failing to ensure that applications for litter abatement orders under section 91 of the EPA are not prohibitively expensive, the Party concerned fails to comply with article 9(4) of the Convention.

(b) By awarding significant costs against the communicant under section 64(1) of the Magistrates' Courts Act because he refused the Council's offer to settle, in circumstances where the communicant was entitled by section 91(12) of the Environmental Protection Act to apply for the recovery of his costs, the Party concerned failed to provide for a fair and equitable review procedure under article 9(3) as required by article 9(4) of the Convention.

(c) By failing to consider the establishment of appropriate assistance mechanisms to remove or reduce financial barriers for members of the public to enforce contraventions of its law on litter, the Party concerned has failed to comply with article 9(5) of the Convention.

B. Recommendations

124. The Committee, pursuant to paragraph 35 of the annex to decision I/7 of the Meeting of the Parties and noting the agreement of the Party concerned that the Committee take the measures requested in paragraph 36 (b) of the annex to decision I/7 and recalling paragraphs 2(a), (b) and (d) of decision VI/8k, recommends that the Party concerned promptly take the necessary legislative, regulatory, administrative or other measures, such as establishing appropriate assistance mechanisms, to ensure that procedures to challenge acts and omissions by public authorities which contravene provisions of its law on litter are fair, equitable and not prohibitively expensive.
