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Economic Commission for Europe

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

Seventh session

Geneva, 18–20 October 2021

Item 7 (b) of the provisional agenda

Procedures and mechanisms facilitating the implementation
of the Convention: compliance mechanism

Draft decision VII/8j concerning compliance by Italy with its obligations under the Convention

Prepared by the Bureau

The Meeting of the Parties,

*Acting under paragraph 37 of the annex to its decision I/7 on the review of
compliance,¹*

*Taking note of the findings of the Committee on communication ACCC/C/2015/130
concerning compliance by Italy in connection with the cost of access to justice,²*

*Encouraged by the willingness of Italy to discuss in a constructive manner with the
Committee the compliance issues in question,*

1. *Endorses the findings of the Committee that:*

(a) By charging a filing fee of €650 at first instance and €950 at second instance for review procedures within the scope of article 9 (2) and (3), the Party concerned has failed to comply with the requirement of article 9 (4) of the Convention that such procedures not be prohibitively expensive;

(b) By charging a fee of €650 at first instance and €950 at second instance to amend a claim within the scope of article 9 (2) and (3), the Party concerned has failed to comply with the requirement of article 9 (4) of the Convention that such procedures be fair and not prohibitively expensive;

(c) By failing to ensure that costs orders against unsuccessful claimants in review procedures under article 9 (2) and (3) of the Convention are fair and not prohibitively expensive, the Party concerned has failed to comply with article 9 (4) of the Convention;

¹ ECE/MP.PP/2/Add.8.

² ECE/MP.PP/C.1/2021/22, forthcoming.



(d) By maintaining a legal framework that permits the courts to award punitive costs of up to two times the litigation fee and up to five times the court filing fee, the Party concerned fails to comply with the requirement in article 9 (4) that review procedures under article 9 (2) and (3) of the Convention are fair and not prohibitively expensive;

(e) By failing to consider the establishment of appropriate assistance mechanisms to remove or reduce financial barriers to access to justice, the Party concerned has failed to comply with article 9 (5) of the Convention;

(f) By not having in place a clear and transparent framework for determining costs orders against unsuccessful claimants in review procedures under article 9 (2) and (3) of the Convention, the Party concerned fails to comply with article 3 (1) of the Convention;

(g) By failing to ensure that, in review procedures subject to article 9 (2) and (3) of the Convention, the courts adopt a consistent interpretation of the legislation exempting environmental non-governmental organizations from the payment of court filing fees, the Party concerned fails to comply with the obligation in article 3 (1) of the Convention to establish and maintain a clear, transparent and consistent framework to implement the Convention;

2. *Recommends* that the Party concerned undertake the necessary legislative, regulatory, administrative or other measures, such as establishing appropriate assistance mechanisms, to ensure that:

(a) Court filing fees at first instance and again at second instance for review procedures within the scope of article 9 (2) and (3) of the Convention are not prohibitively expensive;

(b) Any fee to amend a claim at first and/or second instance in a review procedure within the scope of article 9 (2) and (3) of the Convention is not prohibitively expensive;

(c) Any cost orders against unsuccessful claimants in review procedures under article 9 (2) and (3) of the Convention are not prohibitively expensive;

(d) Any costs that may be imposed for “manifestly unfounded”, “frivolous” or “vexatious” claims within the scope of article 9 (2) and (3) of the Convention are not prohibitively expensive;

(e) The legal framework for determining costs orders against unsuccessful claimants in review procedures under article 9 (2) and (3) of the Convention is clear, transparent and consistent;

(f) The legislation exempting environmental non-governmental organizations from the payment of court filing fees in review procedures under article 9 (2) and (3) of the Convention is applied in a clear, transparent and consistent manner;

3. *Requests* the Party concerned to:

(a) Submit a plan of action, including a time schedule, to the Committee by 1 July 2022 regarding the implementation of the above recommendations;

(b) Provide detailed progress reports to the Committee by 1 October 2023 and 1 October 2024 on the measures taken and the results achieved in the implementation of the above recommendations;

(c) Provide such further information as the Committee may request in order to assist it to review the progress by the Party concerned in implementing the above recommendations;

(d) Participate (either in person or by virtual means) in the meetings of the Committee at which the progress of the Party concerned in implementing the above recommendations is to be considered;

4. *Undertakes* to review the situation at its eighth session.
