AARHUS CONVENTION COMPLIANCE COMMITTEE

United Nations Economic and Social Council

Economic Commission for Europe

Geneva, Switzerland

Comitato per la tutela dell'ambiente e la salute dei cittadini (ex no-Maxistalla)

COMMUNICATION FROM MEMBER OF THE PUBLIC CONCERNING ITALY

Filed pursuant to Chapter VI of the Decision of the Meeting of the Parties n. 1/7 of 21-23 October 2002

May 2, 2023

SACCUCCI & PARTNERS
STUDIO LEGALE INTERNAZIONALE

The present Communication has been drafted in cooperation with the *Strategic litigation and human rights clinic* of the University of Turin

I. INFORMATION ON THE ORGANIZATION SUBMITTING THE COMMUNICATION ("COMMUNICANT") AND ON ITS REPRESENTATIVES

1. Name of the organization: **Comitato per la tutela dell'ambiente e la salute dei cittadini (*ex* No-Maxi stalla)**
2. Address of the organization: Strada Santa Maria Rossa n. 92 – 06132 Perugia (Italy)
3. President and legal representative of the organization: Stefania Minestrini, born in Rome on 1 July 1979
4. Contact of the legal representative: [redacted]

*The Communicant has authorized in writing the following persons to represent it in connection with the present communication (**Annex 1**):*

1. Name and Surname of the representatives: **Andrea Saccucci** and **Cecilia De Marziis**
2. Position of the representatives: lawyers at the Rome Bar
3. Telephone: [redacted]
4. Email: a.saccucci[redacted] – c.demarziis[redacted]

II. PARTY CONCERNED

Italy

III. STATEMENT OF FACTS

1. The "Comitato per la tutela dell'ambiente e la salute dei cittadini (ex No-Maxi stalla)" is an environmental protection committee established in Perugia, 92 Strada Santa Maria Rossa, in August 2010.
2. On 30 June 2010, the foundation "Opere Pie Riunite di Perugia" presented to the Municipality of Perugia a proposal to construct a livestock farm with an adjoining biogas facility for the production of electrical energy in the area of Santa Maria Rossa, near the towns of Santa Maria Rossa and San Martino in Campo.
3. On 23 February 2011 **(Annex 2)**, the Comitato warned the Municipality of Perugia and Opere Pie Riunite of serious environmental risks, including, *inter alia*, odorous emissions and contamination of aquifers, reduction in the quality of life of the local population, loss of cultural, artistic, and artisanal prestige of the area and devaluation of property resulting from the plant's construction.
4. On 12 October 2011, Opere Pie Riunite formally presented an application to the Municipality of Perugia for a simplified authorisation procedure ("PAS") to proceed with the construction and operation of the biogas facility pursuant to article 6 of Legislative Decree no. 28/2011.
5. By administrative decision no. 24/2011, the Municipality of Perugia convened a Conference of Services ("Conferenza di Servizi") in accordance with articles 14 ff. of law no. 241/1990. The favourable opinion of the Regional Agency for the Protection of the Environment ("ARPA Umbria") was acquired only after the conclusion of the Conference. By administrative decision no. 31/2011, the Municipality of Perugia considered the simplified authorisation procedure to be concluded.
6. By private agreement of 28 January 2012 **(Annex 3)**, the "Comitato No-Maxi stalla" constituted itself into the "Comitato per la tutela dell'ambiente e la salute dei cittadini (ex

No-Maxi stalla)", based in Perugia, 92 Strada Santa Maria Rossa.

7. According to Article 1 of the Statute **(Annex 4)** "the Committee is non-profit and (...) has unlimited duration until otherwise decided by the assembly" (*ivi,* p. 1). Pursuant to Article 2, the purpose and objectives of the Committee are "to defend and protect the environment and health of the citizens living on the territory (...) in the area of Santa Maria Rossa, San Martino in Campo, Viale and the neighbouring areas of the Municipalities of Perugia, Deruta and Torgiano" (*ibidem*). Notably, the Committee "has for its objective the careful monitoring for the environmental protection of the territory and the improvement of the quality of life and health of citizens; the solution of problems arising from pollution produced by industrial or agricultural activities or by any activity that may generate an environmental impact on the territory" (*ibidem*).

8. On 16 February 2012, the Communicant brought an action for annulment of administrative decision no. 31/2011 before the Regional Administrative Court of Umbria, alleging its unlawfulness on several grounds.

9. By judgment no. 303 of 13 February 2013, filed on 23 May 2013 **(Annex 5)**, the Regional Court rejected the appeal on the merits and found that there were "justifiable reasons, due to the complexity of the case, to compensate the costs of the proceedings between the parties" (*ivi*, p. 17).

10. At the outset, the Court rejected the exception of lack of legal standing of the Comitato raised by the respondents. Notably, the Court observed that "according to the prevailing case law concerning environmental associations that do not have legal standing under law no. 349/1986, legal standing to act can also be recognized to spontaneous committees established for the main purpose of protecting the environment, health and/or quality of life of the population living in a circumscribed territory; consequently, the administrative judge may recognize, on a case-by-case basis, legal standing to challenge administrative acts affecting the environment to local associations (regardless of their legal nature), provided that they pursue statutorily and non-occasionally environmental protection objectives and have an adequate degree of representativeness and stability in the area in which the allegedly harmed interest is located (...). These requirements seem to be fulfilled by the claimant committee in light of the three parameters traditionally referred to in the jurisprudence, namely the statutory purposes of the entity, the stability of its organizational structure and its vicinity to the substantial interest allegedly harmed as a result of the administrative action (…). And indeed, article 2 of the Statute of 28 January 2012 (...) indicates that the purpose of the Comitato is «to defend and protect the environment and health of the citizens living on the territory (…) in the area of Santa Maria Rossa, San Martino in Campo, Viale and in the neighbouring areas of the Municipalities of Perugia, Deruta and Torgiano»; moreover, article 1 provides that "the Comitato has unlimited duration until otherwise decided by the assembly"; as for the requirement of *vicinitas*, it is undisputed that members of the Committee are residents and owners of immovable properties located in the area where the project for the construction of the biogas facility for the production of electrical energy is to be realized" (*ivi*, pp. 8-9).

11. By act of 17 October 2013 **(Annex 6)**, the Committee challenged the above judgment of the Regional Administrative Court of Umbria before the Council of State. At the outset, the Communicant held that it fulfilled all the case-law requirements for legal standing of the committees. Moreover, it pointed out that "environmental justiciability is an integral and important part of the [Aarhus] Convention, so much so that it is dealt with extensively in Article 9" (*ivi*, p. 15). On the merits, the appellant reiterated the complaints already raised at

first instance, asking that the judgment be annulled or reformed and the contested acts annulled accordingly.

12. By counter appeal of 21 November 2021, the Municipality of Perugia challenged the legal standing of the Communicant.

13. By Judgment No. 4952 of 4 May 2021, filed with the registry on 30 June 2021 **(Annex 7)**, the Second Section of the Council of State upheld the counter appeal and declared the first action and the appeal inadmissible due to the Communicant's lack of legal standing. Additionally, the Comitato was ordered to bear the litigation costs of the proceedings of first and second instance, determined in the amount of € 5.000,00 each in favor of the Municipality of Perugia and Opere Pie Riunite, and € 3.000,00 in favor of Arpa Umbria, for a total amount of € 18.968,56, including taxes, in addition to filing fees.

14. In particular, the Council of State assumed that the possibility to recognize "on a case-by-case basis" the legitimacy to act of representative environmental protection bodies "beyond the specific hypotheses provided for in the legislation (...) should not lead to the uncontrolled proliferation of popular actions, which are not allowed by the legal system except in very exceptional cases" (*ivi*, p. 23). On this basis, the Council of State concluded that "the [Communicant] has (...) not demonstrated sufficient representativeness, organizational consistency and stable connection with the territory where the activity for the protection of the interests at stake is carried out. As a consequence, it should be excluded that the Committee has legal standing to challenge in Court the construction of a biogas facility in the area of Santa Maria Rossa in the Municipality of Perugia" (*ivi*, p. 29).

IV. PROVISIONS OF THE CONVENTION WITH WHICH NON-COMPLIANCE IS ALLEGED AND NATURE OF ALLEGED NON-COMPLIANCE

A. ITALY DOES NOT COMPLY WITH ARTICLE 9(2) TAKEN IN CONJUNCTION WITH ARTICLE 2(5) AND WITH ARTICLE 9(3) OF THE CONVENTION BECAUSE IT FAILS TO ENSURE ACCESS TO JUSTICE TO UNREGISTERED ENVIRONMENTAL ASSOCIATIONS – ITALY DOES NOT COMPLY WITH ARTICLE 3(1) AND (4) OF THE CONVENTION BECAUSE IT FAILS TO HAVE IN PLACE A CLEAR, TRANSPARENT AND CONSISTENT FRAMEWORK FOR GRANTING LEGAL STANDING TO UNREGISTERED ENVIRONMENTAL ASSOCIATIONS IN REVIEW PROCEDURES UNDER ARTICLE 9(2) AND (3) OF THE CONVENTION

A.1. THE RELEVANT PRINCIPLES ESTABLISHED BY THE COMMITTEE

1. The Committee has repeatedly held that any criteria set out in a Party's law for the purposes of article 2(5) must be "in keeping with the recognition in the Convention's [Preamble] of the important role that NGOs can play in environmental protection" and "consistent with the «objective of giving the public concerned wide access to justice within the scope of th[e] Convention», as stated in Article 9(2)"[1].

[1] Compliance Committee, *Findings and recommendations with regard to communication (ACCC/C/2016/137) concerning compliance by Germany*, adopted by the Compliance Committee on 23 July 2021, ECE/MP.PP/C.1/2021/25, paras. 94-95. In its *Findings on communication ACCC/C/2005/11 concerning compliance by Belgium*, the Committee specified that "although what constitutes a sufficient interest [under Article 2(5)] shall be determined in accordance with national law, it must be decided with the objective of giving the public concerned wide access to justice within the scope of the Convention". Compliance Committee, *Findings and recommendations with regard to compliance by Belgium with its obligations under the Aarhus Convention in relation to the rights of environmental organizations to have access to justice (Communication ACCC/C/2005/11)*, adopted by the Compliance Committee on 16 June 2016, ECE/MP.PP/C.1/2006/4/Add.2,

2. In its *findings on communication ACCC/C/2010/48 concerning compliance by Austria*, the Committee held that State Parties "may not interpret th[e] criteria [for legal standing of environmental organizations] in a way that significantly narrows down standing and runs counter to their general obligations under Articles 1, 3 and 9 of the Convention"[2].

3. When assessing compliance with Article 9 of the Convention, the Committee "pays attention to the **general picture** regarding access to justice in the Party concerned, in the light of the purpose reflected in the preamble of the Convention that «effective judicial mechanisms should be **accessible to the public**, including organizations, so that its legitimate interests are protected and the law is enforced»"[3].

4. The "general picture" includes both the legislative framework of the Party concerned concerning access to justice in environmental matters and its application in practice by the courts[4]. Consequently, "when assessing compliance with Article 9 of the Convention, the Committee (…) considers practice, as shown through relevant case-law. If the practice of the courts does not meet the requirements of the Convention, the Committee may conclude that the Party concerned fails to comply with the Convention"[5].

5. In light of the above, when examining whether the requirements set by a Party in its national law for an association, organization or group to constitute a "non-governmental organization promoting environmental protection" and "to be deemed to have an interest in the environmental decision-making" under Article 2(5) – and thus to have standing under Article 9(2) – comply with the Convention, the Committee pays particular attention to whether those requirements in national law:

   i) are **clearly defined**;

   ii) are **consistent with the objectives of the Convention**, including the objective of giving the public concerned wide access to justice; and thus, that they are not unreasonably exclusionary[6];

   iii) do **not** cause **excessive burden** on environmental NGOs[7].

6. In addition, the Committee has consistently held that access to review procedures under national law for the public concerned must be **the presumption and not the exception**[8].

7. Therefore, States have an obligation to broadly interpret the clause "where [the public concerned] meet[s] the criteria, if any, laid down in its national law" under Article 2(5) of the

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para. 27. See also *Findings and recommendations with regard to communication ACCC/C/2008/31 concerning compliance by Germany*, adopted by the Compliance Committee on 20 December 2013, ECE/MP.PP/C.1/2014/8, para. 71.

[2] Compliance Committee, *Findings and recommendations with regard to communication ACCC/C/2010/48 concerning compliance by Austria*, adopted by the Compliance Committee on 16 December 2011, ECE/MP.PP/C.1/2012/4, par. 61.

[3] Compliance Committee, *Findings and recommendations with regard to communication ACCC/C/2008/31*, cited, par. 64. See also *Finding and recommendations with regard to communication ACCC/C/2014/111 concerning compliance by Belgium*, ECE/MP.PP/C.1/2017/20, para. 65.

[4] Compliance Committee, *Findings and recommendations on communication ACCC/C/2008/31*, cited, par. 64.

[5] *Ivi*, par. 65.

[6] *The Aarhus Convention: An Implementation Guide*, p. 58.

[7] See, for example, Compliance Committee, *Findings on communication ACCC/C/2016/137*, cited, para. 100 and *Findings on communication ACCC/C/2008/31*, cited, para. 71. The burden of proof falls on the Party concerned to demonstrate that any requirements in national law are consistent with such criteria. Compliance Committee, *Findings on communication ACCC/C/2016/137*, cited, para. 101.

[8] see, *ex multis*, Compliance Committee, *Findings and recommendations with regard to compliance by Belgium with its obligations under the Aarhus Convention in relation to the rights of environmental organizations to have access to justice (Communication ACCC/C/2005/11)*, cited, para. 36 and *Findings and recommendations with regard to communication ACCC/C/2008/31*, cited, para. 92.

Convention and should not rely on this provision "as an excuse for introducing or maintaining so strict criteria that they effectively bar all or almost all environmental organizations from challenging acts or omissions that contravene national law relating to the environment"[9].

A.2. THE RIGHT OF ACCESS TO JUSTICE OF UNRECOGNIZED ENVIRONMENTAL ASSOCIATIONS UNDER THE ITALIAN LEGAL SYSTEM

8. The Italian legal order provides for a **"dual-track system"** for the attribution of legal standing to environmental associations to have access to review procedures to challenge acts and omissions by private persons and public authorities in environmental matters.

9. On the one hand, legal standing is granted *ex lege* to entities included in a list approved by decree of the Ministry of the Environment pursuant to Article 13 read together with Article 18(5) of law no. 349/1986. On the other hand, administrative courts can grant legal standing to unrecognized environmental associations on a case-by-case basis, provided that they are **effectively representative**.

10. The criteria that an association must fulfill to qualify as "effectively representative" **are not established by the law**. In the absence of any legal guidance, administrative courts are vested with a **wide margin of discretion** in the identification and application of such criteria in practice. In general terms, the criteria elaborated by the case-law include:

    i) the statutory non-occasional pursuit of environmental protection objectives;

    ii) a certain degree of stability and representativeness; and

    iii) an adequate degree of proximity ("*vicinitas*") to the substantial interests harmed as a result of the administrative action for the protection of which the association purports to take legal action[10].

11. The practice of the Italian administrative courts in defining and applying the above criteria does not fulfill **any of the conditions** laid down by the Committee for compliance with Article 9 of the Convention.

12. First, the criteria for standing **are not "clearly defined"** in the jurisprudence.

13. Indeed, the conditions that unregistered environmental associations must fulfill for each of the case-law requirements to be satisfied are **laid down differently** from one judgment to another. Moreover, the level of scrutiny as well as the parameters applied by administrative courts to ascertain whether the jurisprudential conditions for legal standing are fulfilled in the concrete case are **variable** (see, for example, Council of State, judgment no. 7799 of 7 September 2022, **Annex 8** and Council of State, judgment no. 10441 of 22 September 2022, filed on 28 November 2022, **Annex 9**).

14. In light of the above, the requirements that unlisted associations must satisfy to have access to review procedures to challenge acts and omissions in environmental matters are **ambiguous and unclear**. As a result, environmental associations are exposed to

[9] Compliance Committee, *Findings and recommendations with regard to compliance by Belgium with its obligations under the Aarhus Convention in relation to the rights of environmental organizations to have access to justice (Communication ACCC/C/2005/11*, cited, para. 35 and *Findings and recommendations with regard to communication ACCC/C/2008/31 concerning compliance by Germany*, cited, para. 92.

[10] See, by way of example, Council of State, judgment no. 6 of 11 December 2019, filed on 20 February 2020 and Council of State, judgment no. 7490 of 23 September 2021, filed on 10 November 2021.

"**unacceptable uncertainty**"[11] "as to whether the conditions for standing [will be deemed to be] met"[12] in practice by the judiciary.

15. Second, there is a strong tendency by the administrative courts towards adopting an **overly narrow interpretation** of the right of access to justice of unlisted associations, which is wholly incompatible with Article 9 of the Convention.

16. Notably, administrative courts often move from the assumption that legal standing of environmental associations not included in the list established under law no. 349/1986 should be the **"exception"**, which runs counter the Committee's well-settled case-law that such legal standing should instead be "presumed" (see, for example, Council of State, judgment no. 2520 of 20 January 2022 filed on 5 April 2022, **Annex 10** and Regional Administrative Court of Campania, judgment no. 3663 of 16 November 2022, filed on 27 December 2022, **Annex 11**).

17. This practice is **clearly inconsistent with the objective of giving the public "wide access to justice** within the scope of the Convention"[13] and qualifies as **unreasonably exclusionary**.

18. Third, the above circumstances put an **excessive burden** on unregistered environmental associations on account of the **impossibility to predict beforehand** whether they will be granted access to justice to challenge an illegitimate act. Moreover, such uncertainty and the overly restrictive practice of the administrative courts may have a **significant deterrent effect** on claimants seeking access to justice under the Convention[14].

A.3. THE VIOLATION OF THE COMMUNICANT'S RIGHT OF ACCESS TO JUSTICE

19. The case of the Communicant is emblematic of the shortcomings outlined above.

20. The first-instance Court found that the Communicant fulfilled all the requirements for legal standing. Strikingly, the Council of State came to a **diametrically opposite conclusion** based on a wholly unforeseeable interpretation of the case-law requirements and of the Communicant's Statute.

21. Moreover, the contested judgment of the Council of State **openly adopted a restrictive interpretation** of the Communicant's right of access to justice.

22. Notably, the supreme administrative Court held that it would be "correct to set **precise limits** to the legal standing of private associations and committees for the protection of the so-called diffused interests". Indeed, according to the Council of State, the recognition of legal standing of environmental associations "on a case-by-case basis beyond the specific hypotheses provided for by law (…) should not lead to the uncontrolled proliferation of popular actions" and **should not be "admitted under the national legal order except in exceptional cases"** (*ivi*, p. 23).

23. In this respect, the Committee has already clarified that if "on the one hand, the Parties are not obliged to establish a system of popular action", on the other hand the adoption of

[11] Compliance Committee, *Finding and recommendations on communication ACCC/C/2008/31*, cited, para. 76.
[12] *Ibidem*.
[13] Compliance Committee, *Findings and recommendations with regard to compliance by Belgium with its obligations under the Aarhus Convention in relation to the rights of environmental organizations to have access to justice (Communication ACCC/C/2005/11)*, cited, par. 27.
[14] See, mutatis mutandis, Compliance Committee, *Findings and recommendations with regard to communication ACCC/C/2015/130 concerning compliance by Italy*, adopted by the Compliance Committee on 6 July 2021, ECE/MP.PP/C.1/2021/22, para. 96.

"some sort of criteria (…) to be met by members of the public on order to be able to challenge a decision (…) **presupposes that such criteria do not bar effective remedies for members of the public**. This interpretation of Article 9, paragraph 3, is clearly supported by the Meeting of the Parties, which in paragraph 16 of decision II/2 (…) invites those Parties which choose to apply criteria in the exercise of their discretion under article 9[3] 'to take fully into account the objectives of the Convention to guarantee **access to justice**'"[15].

24. Moreover, the Council of State took its previous **judgment no. 3303/2016** as a point of reference on the matter of legal standing of unregistered associations. However, the **incompatibility** of the above judgment with the effective protection of collective interests had been clearly affirmed **by the Plenary Session of the Council of State in judgment no. 6 of 20 February 2020**[16].

25. In light of all the above, the Communicant submits that Italy fails to comply with the obligation to ensure access to justice to unlisted environmental associations pursuant to Article 9(2) in conjunction with Article 2(5) and Article 9(3) of the Convention, and that it also fails to comply with the obligation to have in place a clear, transparent and consistent framework for the attribution of legal standing to the above associations in review procedures under Article 9 of the Convention pursuant to Article 3(1) and (4) of the Convention.

B. ITALY DOES NOT COMPLY WITH ARTICLE 9(4) OF THE CONVENTION BECAUSE IT FAILS TO ENSURE THAT LITIGATION COSTS ORDERS AGAINST UNSUCCESSFUL CLAIMANTS IN REVIEW PROCEDURES UNDER ARTICLE 9 OF THE CONVENTION ARE FAIR AND NOT PROHIBITIVELY EXPENSIVE – ITALY DOES NOT COMPLY WITH ARTICLE 3(1) OF THE CONVENTION ITALY BECAUSE IT FAILS TO HAVE 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

26. In its ***Findings and recommendations with regard to communication ACCC/C/2015/130 concerning compliance by Italy***[17], the Committee already found that litigations costs awarded in environmental cases under Article 91(1) of the Italian Code of civil procedure do not comply with the requirements laid down in Article 9(4) of the Convention to the effect that review procedures under Article 9 are not be prohibitively expensive[18]. Furthermore, the Committee held that, by not having in place a clear and transparent framework for determining costs orders against unsuccessful claimants in review

[15] Compliance Committee, *Findings and recommendations with regard to compliance by Belgium with its obligations under the Aarhus Convention in relation to the rights of environmental organizations to have access to justice (Communication ACCC/C/2005/11)*, cited, paras. 35-36.

[16] By judgment no. 6/2020, the Plenary Section of the Council of State established the principle of law according to which representative associations – including environmental associations that do not have legal standing under law no. 349/1986 – fulfilling the requirements established by the case law "have legal standing to bring actions for the protection of collective legitimate interests (…) and notably the general action for annulment before the administrative jurisdictions, irrespective of the existence of an express legal provision to that effect". The Plenary Section thus definitively overcame the jurisprudential orientation, which had its cornerstone in judgment of the Council of State no. 3303/2016, pursuant to which only the associations recognized by the law would have legal standing to act under the current legal order.

[17] Compliance Committee, *Findings and recommendations with regard to communication ACCC/C/2015/130 concerning compliance by Italy*, cited.

[18] Ivi, paras. 81-98.

procedures under Article 9(2) and (3) of the Convention, Italy fails to comply with Article 3(1) of the Convention[19].

27. Regarding the first aspect, the Committee pointed out, among other things, that:

i) when ruling on costs, administrative courts are expected to apply the tariff tables in Ministerial Decree no. 55/2014;

ii) if applied in cases within the scope of Article 9 of the Convention, "the tariffs set out in Ministerial Decree no. 55/2014 would clearly be prohibitively expensive, even those towards the lower end of each range"[20];

iii) even though the litigation fees awarded by administrative courts in environmental cases are in practice lower than those in the aforementioned Ministerial Decree, ranging from € 2.000,00 to € 5.000,00 per respondent (whether "*parte resistente*" or "*controinteresato*"), "the case law before the Committee demonstrates that, even when the lowest level of litigation fees (€ 2.000,00) is awarded to each respondent, the total litigation fees payable may be **prohibitively expensive**"[21].

28. As to the second aspect, the Committee highlighted that "the wide discretion conferred on the courts when deciding litigation costs leads to a **lack of certainty and clarity** regarding the costs that claimants will face when exercising their right to access to justice in environmental matters"[22], with the result that " NGOs are not able to predict the costs that will be ordered by the judge at the end of the proceedings"[23].

29. In view of the serious deficiencies found, the Committee recommended that Italy "undertake the necessary legislative, regulatory, administrative or other measures, such as establishing appropriate assistance mechanism, to ensure that any cost orders against unsuccessful claimants in review procedures under article 9(2) and (3) of the Convention are not prohibitively expensive" and that "the legal framework for determining costs orders against unsuccessful claimants in [such] procedures (…) is clear, transparent and consistent"[24].

30. By Decision VII/8j of 18-20 October 2021 "*concerning compliance by Italy with its obligations under the Convention*", the Meeting of the Parties, acting under paragraph 37 of the annex to its decision I/7 on the review of compliance, requested Italy, among other things, to "submit a **plan of action** [for the implementation of the above recommendations], including a time schedule, to the Committee by 1 July 2022"[25].

31. However, according to the information available on the Committee's website, the Committee has still **not yet received Italy's plan of action**[26].

32. More generally, as of today, **Italy has not yet undertaken any legislative, regulatory, administrative, or other measures to ensure the implementation of the Committee's recommendations**. Almost two years after the Committee issued its findings and

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[19] *Ivi*, para. 121.
[20] *Ivi*, paras. 88 and 97.
[21] *Ivi*, para. 97.
[22] *Ivi*, par. 118.
[23] *Ivi*, par. 114.
[24] *Ivi*, par. 128.
[25] *Decision VII/8j concerning compliance by Italy with its obligations under the Convention* adopted by the Meeting of Parties to the *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* at its seventh session, p. 2.
[26] E-mail from the Aarhus convention Secretariat of 3 December 2022, available at: https://unece.org/sites/default/files/2022-12/toPartyVII.8j_03.12.2022_Redacted.pdf.

recommendations regarding communication ACCC/C/2015/130, **the legal framework and the practice of the administrative courts to award "prohibitively expensive" litigation fees remain unchanged** (see, for example, Council of State, Section IV, judgment no. 3885 of 17 May 2022, **Annex 12** and Regional Administrative Court of Toscana, judgment no. 1303 of 19 October 2022, filed on 14 November 2022, **Annex 13**).

33. This is confirmed by the decisions adopted by the Council of State in the Communicant's case.

34. By judgment No. 4952/2021, the Communicant was ordered to bear the litigation costs of the proceedings of first and second instance, determined in the amount of **€ 5.000,00** each in favor of the Municipality of Perugia and the Opere Pie Riunite, and **€ 3.000,00** in favor of Arpa Umbria, for an overall amount of **€ 18.968,56**, including taxes, in addition to filing fees.

35. The Council of State "did not specify the way in which [it] had evaluated the costs"[27]. The judgment does not contain any indication as to the criteria applied for this purpose. In other words, the Supreme administrative Court **exercised an unfettered discretion** in awarding the legal costs due by the Communicant, thus perpetuating the **arbitrary practice** already sanctioned by this Committee.

36. Moreover, the Council of State ordered the Communicant to pay the costs of **both levels** of the administrative proceedings, despite the Regional Administrative Court of Umbria having found that there were "**justifiable reasons, in view of the complexity of the case, to compensate (...) the costs**" between the parties (Annex 5, p. 17). The Council of State failed to provide any specific reasons in support of its decision to exclude compensation on justifiable reasons[28].

37. In addition, the Council of State awarded the sum of **€ 5.000,00** in favour of each of the respondent administrations, in contrast with the Committee's findings that "the practice of awarding each respondent (whether *parte resistente* or *controinteressato*) the full sum of litigation fees creates an **incentive** for additional parties to join the proceeding"[29] and that such practice "is **unfair** and may have a **significant deterrent effect on claimants seeking access to justice** under the Convention"[30].

38. Finally, the Council of State did not attach any importance to the criterion according to which, on the one hand, "the **public interest** nature of the environmental claims should be given **sufficient consideration by the courts with respect to the apportioning of costs**" and, on the other hand, "the expected costs of the proceedings (…) **should not effectively bar all or almost all environmental organizations from challenging acts or omissions** that contravene national law relating to the environment"[31].

39. The imposition on the Committee of the obligation to pay the costs of both levels of the proceedings in the amount of **€ 18.968,56** is **grossly unfair** and **substantially "punitive"**. Moreover, it may have (as in fact it purports to have) a significant **deterrent effect** on environmental associations seeking access to justice under the Convention.

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[27] European court of human rights, *National Movement Ekoglasnot v. Bulgaria*, 15.12.2020, para. 81.

[28] See, *mutatis mutandis*, European court of human rights, *Černius and Rinkevičius v. Lithuania*, 18.6.2020, para. 68.

[29] Compliance Committee, *Findings and recommendations with regard to communication ACCC/C/2015/130 concerning compliance by Italy*, cited, par. 96.

[30] *Ibidem*.

[31] Compliance Committee, *Findings and recommendations with regard to communication ACCC/C/2014/111 concerning compliance by Belgium*, cited, paras. 75-76.

40. In this regard, it should be noted that the Committee has already considered "excessively burdensome" and such as to make the proceedings "**prohibitively expensive**" the awarding of litigation costs of a **much lower** amount than that awarded in the present case[32].

41. Considering the above, 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, Italy is still failing to comply with Article 9(4) of the Convention[33]. Furthermore, 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, Italy fails to comply with Article 3(1) of the Convention[34].

V. USE OF DOMESTIC REMEDIES

42. By act of 16 February 2012, the Communicant brought an action for annulment of the administrative decision no. 31/2011 of the Municipality of Perugia before the Regional Administrative Court of Umbria. By judgment no. 303/2013, served on 23 May 2013, the Court rejected the appeal on the merits as being unfounded while recognizing the legal standing of the Communicant to lodge the appeal.

43. By act of 17 October 2013, the Communicant appealed the above judgment before the Council of State.

44. Italy's failure to comply with the Convention **stems directly from the final judgment** issued by the Council of State, against which no effective remedy was available to the Communicant at domestic level.

VI. USE OF OTHER INTERNATIONAL PROCEDURES

45. On 30 December 2021, the Communicant filed an application before the European Court of Human Rights alleging the violation of the right of access to justice and to a fair trial under Article 6(1) ECHR, of the right to an effective remedy under Article 13 ECHR read together with Article 8 ECHR, and of the right to property under Article 1 of Protocol No. 1 to the ECHR.

46. The application was registered on 14 February 2022 under No. 3301/22 and is currently awaiting a first decision.

VII. CONFIDENTIALITY

Confidentiality is not requested.

VIII. SUPPORTING DOCUMENTATION

1. Authority
2. Formal notice of 23 February 2011
3. Private agreement of 28 January 2012
4. Statute of the Communicant Committee

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[32] *Ivi*, par 77, where the legal costs amounted to €3,700.00, plus costs, and *Findings and recommendations with regard to communication ACCC/C/2012/77 concerning compliance by the United Kingdom of Great Britain and Northern* Ireland, adopted by the Compliance Committee on 2 July 2014, ECE/MP.PP/C.1/2015/3, paras. 74 and 81, where the legal costs amounted to £ 8,000.00.

[33] *Ivi*, paras. 81-98.

[34] *Ivi*, para. 121.

5. Regional Administrative Court of Umbria, judgment no. 303 of 13 February 2013, filed on 23 May 2013
6. Appeal before the Council of State of 17 October 2013
7. Council of State, judgment no. 4952 of 4 May 2021, filed on 30 June 2021
8. Council of State, judgment no. 7799 of 22 June 2022, filed on 7 September 2022
9. Council of State, judgment no. 10441 of 22 September 2022, filed on 28 November 2022
10. Council of State, judgment no. 2520 of 20 January 2022 filed on 5 April 2022
11. Regional Administrative Court of Campania, judgment no. 3663 of 16 November 2022, filed on 27 December 2022
12. Council of State, judgment no. 3885 of 21 April 2022, filed on 17 May 2022
13. Regional Administrative Court of Toscana, judgment no. 1303 of 19 October 2022, filed on 14 November 2022

IX. CONCLUSIONS

In light of the above, we respectfully ask the Committee:

A) to declare the Communication admissible with regard to the complaints under Articles 2(5), 3(1) and (4), 9(2), (3) and (4) of the Convention;

B) to find that Italy fails to comply with the requirements of Articles 2(5), 3(1) and (4), 9(2), (3) and (4) of the Convention;

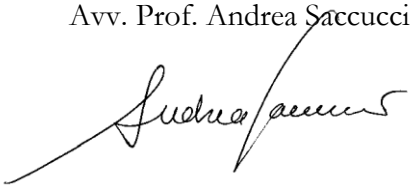
C) to recommend that Italy undertakes the necessary measures to ensure that:

- **i.** unregistered associations have access to review procedures under Article 9 of the Convention;
- **ii.** the legal framework for granting legal standing to unregistered associations in review procedures under Article 9 of the Convention is clear, transparent and consistent;
- **iii.** any cost orders against unsuccessful claimants in review procedures under Article 9(2) and (3) of the Convention are not prohibitively expensive;
- **iv.** 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.

X. DATE AND SIGNATURES

Rome, 2 May 2023

Avv. Prof. Andrea Saccucci



Avv. Cecilia De Marziis