

AARHUS CONVENTION COMPLIANCE COMMITTEE
United Nations Economic and Social Council Economic
Commission for Europe
Geneva, Switzerland

CASE PRE/ACCC/C/2023/202

STATEMENT BY ITALY

FILED PURSUANT TO CHAPTER VI OF THE DECISION OF THE MEETING OF THE PARTIES N. 1/7
Of 21-23 OCTOBER 2002

PRE/ACCC/C/2024/209 Italy
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At the 11/06/2024 Open session Discussion of preliminary admissibility of new communications, Italy wishes to thank the Compliance Committee for the opportunity to participate in this open session to consider preliminary admissibility.

Regarding case 209, we would like to raise the following relevant points.

It is the view of Italy that the request is manifestly unreasonable and should therefore not be admissible in accordance with Decision I/7, for the following reasons:

1. In general, the Communication does not present the facts in a clear and precise manner. The presentation of the facts, the chronology of events and the responsibilities of the relevant authorities and actors appear to be inaccurate.
2. Particularly, at page 3 of the communication, the Communicant states that: “the public concerned should have been involved through a participatory process at an early stage of the project, process that was non-existent”.
This statement is not correct and not appropriate. The Ministry of Environment, which is the competent authority, carried out and guaranteed the public participation phase as part of the EIA procedures performed for the lots 2 and 3. The Ministry guarantees the maximum possible participation of the public.
With reference to the environmental impact assessment procedures for Lot 2 and Lot 3 of the E78 Grosseto-Fano international road Selci Lama (E45) - S. Stefano di Gaifa, it should be noted that these were carried out by the Ministry of the Environment in accordance with the regulations in force. Evidence of the environmental impact assessment procedures and decisions resulting from the EIA evaluation process for these projects is available on the Ministry’s Environmental Assessment portal relating to procedures under the State competences (<https://va.mite.gov.it/it-IT>).
The procedures were concluded by decision no. 356 of 30.11.2022 for Lot 2 and no. 4649 of 21/03/2000 for Lot 3, both with positive results, subject to compliance with the environmental conditions (so called Verifica di Ottemperanza).
3. The Environmental Assessment portal promotes the transparency and the participation of the public to the environmental decision-making processes, providing real-time information about the progress of ongoing environmental assessments, administrative information and technical documents concerning projects, plans and programs under assessment, acts and judgment issued from 1989 to date. It also provides statistics, synthesis data of concluded assessments, as well as guidelines, technical indications and forms, and useful data and information to carry out environmental studies.
4. In accordance with the practice of the Ministry of the Environment, all public comments are duly taken into account in the preparation of the environmental decision, even those submitted after the deadlines to guarantee that all relevant observations have been included during the process of evaluation.
5. With regard to access to justice and in particular to the expropriation procedure referred to in the communication, Italian law provides effective protection for citizens in the event of expropriation. The entire expropriation procedure is detailed in the Consolidated Text, which brings together all the

legislative and regulatory provisions on expropriation for public utility. In the case of expropriation, the courts have jurisdiction over applications for review of the illegality of the expropriation, compensation for damage and the release of the fund.

6. Administrative justice, as is known, is made up of two levels of judgement, admitting recourse to the Supreme Court only for reasons relating to jurisdiction: the first is enforced before the Regional Administrative Courts and the second, relating to any control activity on the decisions of the judge of first instance, is constitutionally guaranteed by the Council of State which, in its three jurisdictional sections, performs the functions of appellate judge.

The art. 111 paragraph 8 of the Constitution, enunciating the legal principle according to which the appeal to the Court of Cassation is allowed against the decisions of the Council of State and the Court of Auditors only for reasons concerning the jurisdiction.

7. Administrative justice, as is well known, is an effective tool in the Italian legal system and is not onerous as there is provision for legal aid for those who do not have the necessary resources. The Communicant on its own initiative did not resort to administrative justice. Therefore, he did not experiment with the internal remedies provided by the Italian legal system. The administrative judge is expected to protect the fundamental rights restricted by the public powers. On the basis of articles 24 and 111 of the Italian Constitution, 6 ECHR, 19 TEU the jurisdictional guarantee offered by the administrative courts must be, in any case, full and effective. The Communicant should therefore have exhausted the internal remedies envisaged by the Italian legal system in order to protect his own interests.

In other words, the Communicant has not explored the possibility of resolving the issue through national administrative or judicial review procedures.

8. It is believed that there has been no violation of the Convention by Italy.
It should be underlined that the compliance procedure is intended to improve compliance with the Convention. The compliance mechanism aims to facilitate compliance by the Parties with their obligations under the Convention.

The purpose of the procedures under the Aarhus Convention is to ensure access to justice, and Italy implements the provisions of the Convention that guarantee these rights.

9. However, as the Communicant himself admitted, he never had access to Italian justice of his own free will. There were no obstacles or barriers preventing him from accessing Italian justice.
10. Italian justice provides a specific protection which has never been invoked by the Communicant.
11. It is our view that the Italian law guarantees effective protection in this case through administrative jurisdiction in the event that citizens' rights are actually violated.

Once again, we thank the Committee for taking these arguments into account when assessing the admissibility of the case. We will be happy to provide further comments in writing, should they be required.