

FINDINGS AND RECOMMENDATIONS ISSUED MOP-4 – PRESENT

Compliance Committee findings relating to the issue of costs and remedies¹
MOP-3 (2011) – MOP-4 (2014) intersessional period

FINDINGS ADOPTED BY THE COMMITTEE		
Communication	Issue relating to standing	Findings and recommendations
<p>ACCC/C/2010/48 Austria (ECE/MP.PP/C.1/2012/4)</p> <p>Coordination Office of Austrian Environmental Organizations (Oekobuero)</p> <p>Access to justice in environmental matters in general</p>	<p><i>Article 9(4) timeliness</i></p> <p>The costs in review procedures are high. Especially, review procedures in relation to access to information 9(1) are not timely</p>	<p><i>[The Committee did not consider all allegations on 9(4)]</i></p> <p><i>Timeliness of review procedures 9(4) in relation to 9(1)</i></p> <p>Non-compliance</p> <p>The national legislation of the Party concerned requires that if the authority does not provide any answer to the request for information within two months and it further fails to provide official notification within the next six months, the information requester has to proceed with the devolution request and only after it has received a response to its devolution request, can it seek a review procedure. This means that, if the requester believes that its request was not properly addressed by the authorities, it may have to wait for longer than one year after its initial request for information until it can access a review procedure. Therefore, the Committee finds that the Party concerned fails to ensure access to a timely review procedure with respect to requests for information, as required by article 9, paragraph 4 of the Convention.</p> <p>The Committee recommends [...] that the Party concerned</p> <p>(a) Take the necessary legislative, regulatory, and administrative measures and practical arrangements to ensure that:</p> <p>...</p> <p>(i) The available review procedures for persons who consider that their request for information under article 4 has been ignored, wrongfully refused or inadequately answered, or otherwise not dealt with in accordance with the provisions of that article, are timely and expeditious.</p>

¹ This table has been prepared by the secretariat and includes the main considerations, where available, made by the Committee with respect to the issue of costs and remedies. It also includes recent cases that include allegations with respect to costs and remedies, but are pending consideration before the Committee.

<p>ACCC/C/2010/50 Czech Republic (ECE/MP.PP/C.1/2012/11)</p> <p>Environmental Law Service (Ekologický právní servis)</p> <p>Access to justice in environmental matters in general</p>	<p><i>Article 9(4) injunctions</i></p> <p>The criteria for injunctive relief are too restrictive</p>	<p><i>Remedies 9(4)</i></p> <p>No non-compliance</p> <p>Regarding injunctive relief, the communicant referred to a 2004 ruling of the District Court of Plzen (not a supreme court) relating to land-use plans and injunctions, alleging that some courts continued to apply this argumentation. While the communicant conceded that some courts follow a different line, in its view it is “typical” that injunctive relief is not given. The communicant cited two other decisions to this effect. However, from the oral and written submissions of both parties, it appears that there may be a shift in jurisprudence in granting suspensory effect or injunctive relief in environmental cases. The Committee considers that the communicant has not provided sufficient systematic jurisprudence to substantiate its allegations, that the criteria for injunctive relief are too restrictive. Therefore, the Committee cannot, in this case, conclude that the Party concerned fails to comply with the requirements in article 9, para. 4, for adequate and effective remedies and timely procedures in respect of injunctive relief in environmental cases. (para. 87)</p>
<p>ACCC/C/2011/57 Denmark (ECE/MP.PP/C.1/2012/7)</p> <p>Dansk Ornitologisk Forening — BirdLife Denmark (DOF)</p> <p>Fees for appeals to the Nature and Environment Appeal Board</p>	<p><i>Article 9(4) costs</i></p> <p>the new fees regime before the Nature and Environmental Appeal Board, in effect since 1 January 2001, imposes fees on NGOs for bringing appeals that are much higher than before and different from the fees imposed on private individuals.</p>	<p><i>Prohibitively expensive appeal costs for NGOs 9(4)</i></p> <p>Non-compliance</p> <p>The Committee finds that the fee of DKK 3,000 for NGOs to appeal to NEAB is in breach of the requirement in article 9, paragraph 4, that access to justice procedures not be prohibitively expensive. (para. 52)</p> <p>The Committee [...] recommends that the Party concerned undertake the necessary legislative, regulatory and administrative measures to ensure that the fees for NGOs to appeal environmental decisions before NEAB are not prohibitively expensive (para. 57)</p>
<p>ACCC/C/2011/64 United Kingdom</p> <p>Mr T Ewing</p> <p>Implementation of national planning policy statements and environmental regulations before Parliament</p>	<p><i>Article 9(4) costs</i></p> <p>Judicial review is prohibitively expensive, including in comparison to the no-costs appeals to the Planning Inspector by applicants for planning permission</p>	<p>SUMMARY PROCEEDINGS (MOP dec. IV/9I)</p>

<p>ACCC/C/2012/65 United Kingdom</p> <p>Mr T Ewing</p> <p>Imposition of cross-undertakings regarding injunctions in environmental judicial review</p>	<p><i>Article 9(4) costs</i></p> <p>Individual claimants and limited companies in environmental judicial review proceedings are required to give cross-undertakings in damages for the grant of interim injunctions, when the claimant is unable to do so, due to lack of means</p> <p>and requiring to give cross-undertakings as to possible damages for the grant of an interim injunction and to provide security for costs when the Claimant is unable to do so, due to lack of means,</p>	<p>SUMMARY PROCEEDINGS (MOP dec. IV/9I)</p>
<p>PENDING CONSIDERATION: DRAFT FINDINGS FINALIZED (findings to be adopted at CC-41, 25-28 June 2013)</p>		
Communication	Issue relating to standing	DRAFT Findings and recommendations
<p>ACCC/C/2010/45 United Kingdom (joint draft findings with ACCC/C/2011/60)</p> <p>The Kent Environment and Community Network ('KECN')</p> <p>General non-compliance with the Convention in planning procedures, including access to justice</p>	<p><i>Article 9(4) costs</i></p> <p>Judicial review, the only avenue for members of the public to challenge decision in planning processes, involves high costs risk and thus is inadequate.</p>	<p>The Committee notes that the communicants in communication C/45 did not pursue judicial review of the screening decision at stake in the communication for reasons of the expenses probably involved in such a review procedure as well as the likelihood that only the procedural legality of the screening decision could be raised in such review.</p> <p>The Committee has addressed the issue of the costs involved in procedures for judicial review with respect to the Party concerned in ACCC/C/2008/33, and has found the Party concerned not to comply with article 9, paragraph 4, of the Convention. Thus, the Committee maintains its findings regarding costs expressed in paragraph 136 of that communication. As to the possibility to obtain a review of substantive legality in a procedure for judicial review, which was also addressed in findings in ACCC/C/2008/33, no new facts have been brought before the Committee. Therefore, the Committee, while maintaining its concerns regarding substantive review expressed in paragraph 127 of communication ACCC/C/2008/33, does not conclude that the Party concerned fails to comply with article 9, paragraph 2 in this respect. (article 84-85 summary proceedings)</p>
<p>ACCC/C/2011/60 United Kingdom (joint draft findings with ACCC/C/2010/45)</p>	<p><i>Article 9(4) costs</i></p> <p>The costs incurred in judicial review are prohibitively expensive</p>	

Mr T Ewing		
Third party rights regarding planning applications		
<p>ACCC/C/2010/51 Romania</p> <p>Greenpeace Central and Eastern Europe (CEE) Romania and the Centrul de Resurse Juridice (Centre for Legal Resources)</p> <p>Proposed construction of a nuclear power plant and the approval of the Energy Strategy</p>	<p><i>Article 9(4) timeliness</i> Available remedies are not adequate, effective, fair, equitable, timely and publicly available, as required by article 9, paragraph 4</p>	<p><i>Allegations on timeliness and injunctions 9(4)</i> No non-compliance The Committee considers that the timing of the judicial procedures referred to by the communicant, i.e. deciding a case seven or eight months after an application is filed, does not appear to be excessively long. (para. 94)</p> <p>With respect to the allegations that the suspensory effect of an appeal affects the effectiveness of judicial procedures, the Committee notes that this constitutes a rather a common feature of law and practice in most jurisdictions, and the Committee considers that this feature serves well the rule of law. Therefore the Committee finds that the Party concerned did not fail to comply with article 9, paragraph 4, as regards its obligation to provide for effective remedies. (para. 97)</p>
<p>ACCC/C/2012/62 Armenia</p> <p>Ecoera</p> <p>NGO standing in environmental matters</p>	<p><i>Article 9(4)timeliness</i> By taking up to one year for the Court of Cassation to deliver its decision, the Party concerned fails to provide for timely procedures and fails to comply with article 9, paragraph 4, of the Convention</p>	<p><i>Timelines of judicial procedures 9(4)</i> No non-compliance</p> <p>As regards the allegations of non-compliance with article 9, paragraph 4, of the Convention, on the grounds that procedures are not timely, the Committee considers that one year is not particularly long time for a supreme court to deliver a decision in this case, and that the allegations were not sufficiently substantiated. Hence, the Committee does not find the Party concerned to be in non-compliance with article 9, paragraph 4, of the Convention, in this respect. (para. 39)</p>
PENDING CONSIDERATION (draft findings not available for the public)		
Communication	Issue relating to standing	Findings and recommendations
<p>ACCC/C/2012/69 Romania</p>	<p><i>Article 9(4)timeliness</i> the communication alleges non-compliance by</p>	

<p>Greenpeace Central and Eastern Europe (CEE) Romania and the Centrul de Resurse Juridice (Centre for Legal Resources)</p> <p>The permitting process for the Rosia Montana mining project</p>	<p>the Party concerned with art. 9(4) because judicial procedures may take very long to reach an outcome</p>	<p><i>NOT AVAILABLE</i></p>
<p>ACCC/C/2012/76 Bulgaria</p> <p>Balkani Wildlife Association</p> <p>Award of injunctive relief during the review of environmental permits</p>	<p><i>Article 9(4)injunctions</i></p> <p>The injunctive relief provisions applicable under national law in case of appeals against development consents for plans and projects that also fall under the scope of the EU EIA, SEA and Habitats Directives, are not implemented in a manner compliant with the Convention.</p>	
<p>ACCC/C/2012/77 United Kingdom</p> <p>Greenpeace Ltd</p> <p>Costs inflicted in case of refusal to grant judicial review</p>	<p><i>Article 9(4)costs</i></p> <p>The costs awarded when the communicant's application for permission to apply for Judicial Review of the designation by the Secretary of State for Energy and Climate Change of the National Policy Statement for Nuclear Power Generation in the country was refused, very high.</p>	
<p>ACCC/C/2012/78 Spain</p> <p>Asociación Andaluzapara la Defensa de los Animales (ASANDA)</p> <p>Opening and inspection of a zoo</p>	<p><i>Article 9(5)</i> <i>Legal aid system for NGOs (references to IV/9</i></p>	