REPLIES TO THE COMMITTEE'S QUESTIONS (II)

1. Were there any further domestic remedies available through which the communicants could potentially have challenged the order of the Cour d'appel to pay the €3,700 costs awards? If any further remedies were indeed available, please explain why the communicants did not make use of them.

There was one further domestic legal remedy available to the communicants. In effect, it was possible to appeal against the judgment of the Twelfth Chamber of the Cour d'appel (Court of Appeal) of 29 October 2013.

Nevertheless, it must be made clear that an appeal before the Cour de cassation (Supreme Court) is an appeal on a point of law and precludes application to this Court on a point of fact. (The question of whether or not proceedings are prohibitively expensive is a fact within the jurisdiction of the ordinary courts, from which no appeal lies on the facts).[1]

Moreover, given the expense associated with such proceedings, the communicants chose not to risk increasing the burden of their bills for lawyers' fees (which they did not know how they would pay), when there was no certainty that the award of costs against them (the €3,700) would be revised by the court to which the case was referred.

Under the first paragraph of Article 478 of the Judicial Code:

> "In civil cases before the Supreme Court, the right to practice and submit pleadings is reserved for lawyers who have the title of lawyer at the Supreme Court. The foregoing provision does not apply to parties claiming damages in criminal cases."

This means that the communicants would be obliged to consult a 'lawyer at the Supreme Court', whose fees would be relatively substantial (at least €2,000).

2. Have the communicants already paid the €3,700 costs awards? If so, what consequences has this had for their further activities as environmental NGOs?

The costs of €3,700 were paid by the communicants' lawyer, who advanced these expenses on their behalf.

The communicants would not, in any case, have been able to pay such high costs and still continue in their role as environmental 'watchdogs'.

Indeed, that is the main argument of this communication.

[1] For an example of the case-law of the Supreme Court accepting a plea of inadmissibility because a plea in law submitted before the Court consisted of a mixture of fact and law, while the Supreme Court does not hear and determine the facts, see Cass. (1st Chamber), 13 February 2004, *Pas.* 2004, Book 2, p. 270 (Annex 1).

3. Please provide the Committee with the text of the relevant provisions of the Belgian legislation regulating the costs of court proceedings that were applied in this case. If possible, please also provide the Committee with examples of recent case law illustrating how these provisions are applied in practice.

The Belgian legislation that applies to costs before the ordinary [i.e. non-administrative] courts is to be found in Articles 1017 to 1024 of the Judicial Code (Annex 2 to these Replies) and, more specifically, in the first paragraph of Article 1017, which states that:

> "Every final judgment is to award – even of its own motion – costs against the unsuccessful party, unless specific laws state otherwise and subject always to any different agreement entered into by the parties, which may be ratified by the judgment" (our emphasis),

in the first paragraph of Article 1022, according to which:

> "The case preparation allowance is a fixed lump sum compensating the expenses and fees of the successful party's lawyer" (our emphasis),

and in the third paragraph of Article 1022, which adds:

> "At the request of one of the parties, possibly after questioning by the judge, the court may, by a decision based on specific reasoning, reduce or increase the allowance, without however exceeding the minimum and maximum amounts laid down by the King. In making its assessment, the court is to take into account:
> - the unsuccessful party's financial capacity, in order to reduce the amount of the allowance;
> - the complexity of the case;
> - any contractually agreed sums compensating the successful party;
> - the manifestly unreasonable nature of the situation" (our emphasis).

The Belgian Supreme Court and the Belgian Cour constitutuonelle (Constitutional Court) have delivered numerous judgments regarding these provisions (Annex 3 to these Replies).

The communicants would like to draw the Committee's attention to the judgment of the Belgian Supreme Court of 21 January 2010, which is particularly relevant to the question at issue and according to which:

> "Where a party pleads that the case preparation allowance should be reduced to the minimum amount, on the one hand because of the party's particularly poor financial position and, on the other hand because of the manifestly unreasonable situation arising from the significant difference between the parties' economic situations, the court cannot refuse to accept this request solely on the ground that the documents produced by the party in order to prove that its financial position justifies its request do not establish that its financial position has at this point become so precarious that the standard amount of the case preparation allowance should be reduced"[2] (our emphasis).

4. What is the average personal annual income in Belgium?

[2] Cass. (1st Chamber), 21 January 2010, *Pas.* 2010, Book 1, p. 219 (Annex 3).

The most recent official figures produced by the Federal Public Service for the Economy ('FPS Economy') are dated 1 December 2014 and relate to the year 2012 (see Annex 4 to these Replies).

In 2012, Belgian average annual income was €16,651 – equivalent to €1,387.58 per month.

Annexes

1. Cass. (1st Chamber), 13 February 2004 (summary);
2. Article 1017 et seq. of the Judicial Code regarding expenses and costs;
3. Summary of various judicial decisions regarding expenses and costs;
4. FPS Economy press release of 1 December 2014 on Belgian average income in 2012.