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OUR REF.
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RE **case ACCC/C/2014/111 Belgium in the framework of a communication to the Compliance Committee of the Aarhus Convention**

A hearing was held on the 23rd June 2016 concerning the case ACCC/C/2014/111.All the documents and the arguments were exchanged and presented before and at the meeting. The Committee said that a questionnaire would be sent in order to have some clarification on some points discussed and to identify any questions that the Committee may have. As far as we know, we have not received any formal request for this and we would appreciate from the Committee to know whether it still intends to send such questionnaire.

The communicant, who was unable to reply to some of our arguments at the time of the hearing, has decided, after the hearing has taken place, to send another communication repeating some arguments that he had already mentioned in his first communication and replying to the other arguments we had set against him because he could not properly reply to them at that time. He has also given some other court's decisions that are not related whatsoever to the decision of the 29th of October 2013 (the court's decision denounced by the communicant). If by any chance the Committee would take into account those new documents, Belgium thinks important to have the opportunity to reply to them because some of the statements mentioned are not correct or accurate and should therefore be rectified.

As we said in June, the Belgian recovery system is not inconsistent with article 9.4. of the Aarhus Convention as it provides for a flat-rate system, the amounts of which have been determined by the Bar Associations, with a maximum and a minimum limit. Moreover, the judge can decrease or increase the amount of the case preparation allowance within these limits, taking account of 4 criteria, in particular the financial capacity of the unsuccessful party, with a view to reducing the amount of the allowance. As we have said before, if the communicant had been more diligent, he would most certainly have been able to prove the financial incapacity of his clients and would probably have been able to obtain a reduction of the amount. In addition to the fact that the communicant admitted that he had not submitted supporting documents, the attention of the Committee should be drawn to the fact that the judge decides on the basis of documentary evidence and that the parties have to put forward the facts that support their claims. Judges cannot investigate themselves with the commercial courts in order to see the accounts of non-profit associations. If the communicant had taken the pain to add the official account to the file's inventory, the judges would then have had to take into account this element and to put it in balance with the others of article 1022 of the Judicial Code (complexity of the case …). Contrary to what the communicant seems to think, our current legal system doesn't provide for NGO's procedures free of charge (this, in accordance with what the national and international regulations lay down).

Furthermore, at the hearing of the 23rd June, the Committee asked if Belgium had statistics proving that courts or tribunal's decisions condemning the party to pay the minimum amount as the case preparation allowance is concerned in order to be sure that the legislation is properly enforced by the judges.
As mentioned in June, Belgium does not have for the moment a global computerised system allowing to make that type of research for judicial decisions (targeting the amount of the case preparation allowance in a judgment).However, this work could be done when there is an official demand of the Committee but it would require a visit to all the Belgian relevant jurisdictions and an in-depth review of each case[1].

Research based on the criteria of the name of the parties (non-profit organisation were targeted) has been done at the Court of Appeal in Liège. A few judgement were found but no judgement with a minimum case preparation allowance was discovered, which is not surprising considering the fact that those we found were the ones with the communicant's name and the communicant refuses to give his official accounts.

As for the administrative Court, there is a website. However one has to keep in mind that the system of case preparation allowance in administrative cases has been introduced in the course of the year 2014. Therefore we do not have enough decisions in environmental law to draw any kind of conclusions in one sense or the other (even if we have spotted a few cases – tough not in environmental law – where the case preparation allowance was reduced to the minimum). The communicant has given a number of references to some administrative court decisions that are, in that respect, totally irrelevant because they were taken prior to the introduction of the 2014 law.

Yasmine LAOKRI,
Conseiller

[1] In order to read the decision and to check the official accounts of the non-profit organizations or charities acting in environmental law.