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NOTRE REF.
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OBJET **Affaire ACCC/C/2014/111 Belgium dans le cadre d'une communication au Compliance
Committee de la Convention d'Aarhus.**

In answer to your letter dated 9 December 2016, the Party concerned can reply what follows :

I. First question

At the hearing of the 23rd June, replying to a question from the Committee, the Party concerned mentioned that at present, a global computerized system allowing global research for all Belgian judicial decisions (targeting the amount of the case preparation allowance in a judgment) does not exist.

However, this does not mean that this work can't be done, but it requires time in order to write to all the Belgian relevant jurisdictions and ask them to give you examples of cases references. We will write to all the relevant jurisdictions about the 1st question of the Compliance Committee. As soon as we gather all the information we shall let you know.

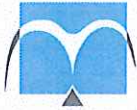
For the record, research based on the criteria of the name of the parties (non-profit organisation were targeted) has been done at the Court of Appeal in Liège. A few judgements were found but no judgement with a minimum case preparation allowance was discovered, which is not surprising considering the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

For the last question, we can already answer that article 1022 of the Judicial Code is respectful of article 9, paragraph 4. Therefore, there is no need for the judge to apply the Convention directly.

The Belgian recovery system is not inconsistent with Article 9.4. of the Aarhus Convention as it provides for a flat-rate system, and the amounts have been determined by the bar associations, with a minimum and a maximum limit. Moreover, the judge can reduce or increase the amount of the case preparation allowance within these limits, taking into account 4 criteria, in particular the financial capacity of the unsuccessful party, with a view of reducing the amount of the allowance.

II. Second question

The amounts of the case preparation allowance summarized in the table of our response to the communicant on the 29 October 2015 are no longer valid.



Since 1 June 2016, the amounts of the case preparation allowance have been indexed by 10 % pursuant to Article 8 of the royal decree of 26 October 2007:

"Basic, minimum and maximum amounts are linked to the consumer price index, which corresponds to 105.78 points (basis 2004); any increase or decrease by 10 points will result in a 10 percent increase or decrease in the amounts referred to in Articles 2 to 4 of this decree."

The consumer price index exceeded the mark of 115.78 points in February 2011 (116.33 points), and of 125.78 in May 2016 (126.17 in basis 2004, i.e. 103.08 in basis 2013).

This second indexation applies directly to the litigations in progress.

You will find in the following tables the new applicable amounts.

Cases valuable in money	Basic amount	Minimum amount	Maximum amount
Up to 250,00 €	180,00 €	90,00 €	360,00 €
From 250,01 € to 750,00 €	240,00 €	150,00 €	600,00 €
From 750,01 € to 2500,00 €	480,00 €	240,00 €	1200,00 €
From 2500,01 € to 5000,00 €	780,00 €	450,00 €	1800,00 €
From 5000,01 € to 10.000,00 €	1080,00 €	600,00 €	2400,00 €
From 10.000,01 € to 20.000,00 €	1320,00 €	750,00 €	3000,00 €
From 20.000,01 € to 40.000,00 €	2400,00 €	1200,00 €	4800,00 €
From 40.000,01 € to 60.000,00 €	3000,00 €	1200,00 €	6000,00 €
From 60.000,01 € to 100.000,00 €	3600,00 €	1200,00 €	7200,00 €
From 100.000,01 € to 250.000,00 €	6000,00 €	1200,00 €	12.000,00 €
From 250.000,01 € to 500.000,00 €	8400,00 €	1200,00 €	16.800,00 €
From 500.000,01 € to 1.000.000,00 €	12.000,00 €	1200,00 €	24.000,00 €
More than 1.000.000,01 €	18.000,00 €	1200,00 €	36.000,00 €

	Basic amount	Minimum amount	Maximum amount
Cases not evaluable in money	1440,00 €	90,00 €	12.000,00 €

In answer to your second subquestion, it seems difficult to consider out of hand the sum of € 1,440 as prohibitive for a non-profit association possessing minimum resources. It all depends on the specific case and on the means of the non-profit association. The sum of € 1,440 is not an amount applied automatically. The judge can apply the criteria referred to in Article 1022 in order to reduce the case preparation allowance (by establishing the lack of means) or to increase it (for example in the case of abusive behaviour by one of the parties).

III. Third question

All parties must prove the allegations they make (Article 870 of the Judicial Code).



The Court of Cassation requires some clear evidence¹. Article 1022 of the Judicial Code provides that the judge can take into account the unsuccessful party's financial capacity in order to reduce the case preparation allowance. The judge cannot "guess" the financial capacity of the parties.

For this purpose, it is important to produce documents that prove in the most objective way the financial capacity of the party that puts forward this possibility.

When reading the inventory annexed to the summary of arguments of the communicant (Conclusions d'appel de synthèse après calendrier de procédure complémentaire), it appears that no document establishing the financial capacity of non-profit associations has been produced, not even a copy of these accounts.

In any case, the production in court of the copy of a current account does not have the same probative force as the official annual accounts submitted to the commercial court. The judge cannot trust a mere copy of a current account. Indeed, nothing proves that a non-profit association has only one current account and nothing proves that this current account belongs to the actual non-profit association. Other accounts can be opened (savings account or others) in its name and only the annual accounts can determine the real revenues. Moreover, nothing prevents the party that puts forward the weakness of their revenues from producing annual accounts unless these have not been submitted to the clerk's office of the court of commerce.

For the record, as we said already in our text in June, the judge decides on the basis of documentary evidence and the parties have to put forward the facts that support their claims. This is a result of the principle of party disposition ("le procès civil est la chose des parties", i.e. the civil action belongs to the parties) that settles the litigation on the merits and of the adversarial principle that settles the introduction and the process of the civil proceedings.

IV. Fourth question

Prior to answering the question, the concepts of second-line legal assistance and judicial assistance must be explained.

Judicial assistance (Article 664) relates to the costs of proceedings (administrative costs associated with the proceedings, for instance the fees to be paid to submit a document, the enforcement costs of the judgement, the expert fees...). It should be distinguished from the assistance of or representation by a lawyer which can be the subject of a request for second-line legal assistance (fully or partly free - Articles 508/7 to 508/25 of the Judicial Code).

Unlike Article 1022, Article 664 does not focus on lawyers' costs and fees.

Pursuant to Article 667 of the Judicial Code, if a (natural or legal) person wishes to be granted judicial assistance, that person must have the Belgian nationality (or be assimilated - Article 668 of the Judicial Code) and prove that its financial resources are not sufficient. Additionally, in article 667, modified by the law of 6 July 2016, the word "just" has been replaced by the words "obviously inadmissible" or "obviously ill-founded". So, when examining a request for judicial assistance, the judge estimates whether the request is not obviously ill-founded or obviously inadmissible. Judicial assistance is granted for given proceedings.

The royal decree of 18 December 2003 (see annex) determines the financial criteria to be taken into account in order to be granted judicial assistance. So, all means of existence can be considered (movable property, real property, capital, advantages...).

Regarding your last question beginning with "Does legal aid for an NGO...", it must be reminded that at present legal persons cannot be granted legal assistance. They can be granted judicial assistance (administrative costs of proceedings). Taking this principle into account, if a natural person is granted legal

¹ Cass., 19 décembre 1963, Pas., 1964, I, p. 416; Cass., 3 mars 1978, Pas., 1978, I, p. 759; Cass., 22 décembre 1986, Pas., 1987, I, p. 501; Cass., 16 juin 2003, J.L.M.B., 2005, p. 202, Pas., 2003, I, p. 1189.



assistance and loses the trial, the case preparation allowance is set at the minimum amount and the judge can even decide to go below this minimum if reasons are given.

V. Fifth question

Concerning the annual average income in Belgium, Belgium agrees with the figures provided by the communicant. The latest figures concern 2014 and are slightly higher than for 2012

(17.684€, i.e. 1474€ of net monthly salary -

[http://statbel.fgov.be/fr/modules/pressrelease/statistiques/marche du travail et conditions de vie/le revenu moyen des belges s elevait a 17 684 euros en 2014.jsp](http://statbel.fgov.be/fr/modules/pressrelease/statistiques/marche_du_travail_et_conditions_de_vie/le_revenu_moyen_des_belges_s_elevait_a_17_684_euros_en_2014.jsp)).

Nevertheless Belgium stresses that those figures are not the most appropriate when talking about NGOs and not about natural persons. It is also worth recalling that the Court of Appeal (29 October 2013) said that the NGO did not prove its lack of financial means.

VI. Sixth question

Members of the judiciary are not required to undergo mandatory training on the Aarhus Convention. However, optional trainings (organized by the Institut de formation judiciaire-Instituut voor gerechtelijke opleiding) are available for Belgian judges regarding environmental law and the Aarhus Convention is explained in that respect. A training was organized in 2015 (see attached program) and another one will be organized in 2017. Documentation about those trainings is also available for the judges.

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