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Ref: ACCC/C/2014/111

9 December 2016

Mr. Joseph van der Stegen
Department of European Policies and International Agreements
Belgium

Alain Lebrun
on behalf of "Ardennes liégeoises" and "Terre wallonne"
Avocat
Grivegnée
Belgium

Dear Mr. van der Stegen and Mr. Lebrun,

Re: Communication to the Aarhus Convention Compliance Committee concerning compliance by Belgium in connection with costs for access to justice (ACCC/C/2014/111)

During the discussion of the above communication at its fifty-third meeting (Geneva, 21 - 24 June 2016), the Compliance Committee indicated that it would in due course be sending further questions for the response of both the communicant and the Party concerned. Please find enclosed herewith questions as prepared by the Committee for your attention.

The Committee would be very grateful to receive your responses to the enclosed questions on or before **Friday, 13 January 2017**. Please send your response to aarhus.compliance@unece.org, copying the other party. The other party will then have until **Friday, 20 January 2017** to provide the Committee with any comments it wishes to make on your response. The Committee will consider the responses and comments received by the above deadlines when continuing its deliberations upon its draft findings at its fifty-sixth meeting (Geneva, 28 February – 3 March 2017).

Please do not hesitate to contact the secretariat if you require any further information.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Fiona Marshall".

Fiona Marshall
Secretary to the Aarhus Convention Compliance Committee

Cc: Permanent Mission of Belgium to the United Nations Office and other international organizations in Geneva
Enc: Questions from the Compliance Committee to the parties

Questions from the Compliance Committee to the parties

Questions to the communicants

1. You presented to the Committee, in annex 11 of the resubmitted communication, a case in which the court ordered one of the communicants (Ardennes Liegeoises ASBL) and two other NGOs to pay the successful party (the Walloon region), costs of the proceedings in the amount of 1,320 Euros, even though the NGOs asked the court for a cost reduction and allegedly provided the court with their audited accounts. Please summarize the NGOs' submissions to the court in which they argued that the costs exceeding a specific sum would be prohibitively expensive for them, including any evidence they provided in support of this.
2. Can you present other cases within the scope of the Convention in which environmental NGOs asked for a costs reduction and presented their audited accounts to the courts, but were still ordered to pay the opposing parties' costs at a level which made the proceedings prohibitively expensive for them? If yes, please describe briefly:
 - the relevant facts of each such case that demonstrate that it was a case within the scope of article 9 of the Convention;
 - the submissions made by the environmental NGOs to the court as to why the costs exceeding a specific sum would be prohibitively expensive for them; and
 - the court's decision on costs in each case, including the basic amount applicable in that case, the final costs awarded and any reasoning given by the court to explain the factors taken into account in its decision on costs.

How do you support your claim that the Party concerned's legal framework for calculating the costs that an unsuccessful environmental NGO must pay to the successful party in cases within the scope of the Convention amounts to a systemic failure by the Party concerned to comply with article 9, paragraph 4 of the Convention?

3. Please provide an estimate of the average own side costs for an environmental NGO in a typical case within the scope of article 9 of the Convention (including court fees, costs of legal representation, experts costs etc.)?
4. If an environmental NGO applies for legal aid under article 664 of the Judicial Code, as suggested by the Party concerned in its response of 29 October 2015, what specific requirements would it have to meet to be successful? If the NGO is granted legal aid, what effect would that have on the level of costs it would have to pay to the successful party if it loses the case?
5. Please provide the relevant parts of the decision of the court of first instance in which it sets out its reasoning for why the communicants' application was declared inadmissible.

Questions to the Party concerned

1. Please present to the Committee examples of cases under the Convention in which the Belgian courts reduced the costs that environmental NGOs had to pay to the successful party and to what level the costs were reduced (i.e. what was the basic amount in each case and the actual amount awarded). Which of the criteria set out in Article 1022, paragraph 3 of the Judicial Code did the courts apply in those cases? Did the court apply any other criteria not set out in that provision? In that respect, can the Convention (and specifically the requirements of Article 9, paragraph 4) be applied directly or relied on / referred to by the courts in this respect?
2. Are the amounts of the case preparation allowance summarized in the table on page 4 of your response to the communication dated 29 October 2015 still valid? Do you consider that basic amount for cases not evaluable in money, could be prohibitively expensive for a small environmental NGO with minimal financial resources? Please provide reasons for your answer.
3. Is the rule pursuant to which an NGO that seeks a reduction of the costs (case preparation allowance) must provide the court with its audited accounts expressed in any generally binding legislation? Or is it established by case law? Please provide the Committee with the text of the relevant source, together with an English translation.

4. At page 2 of your response to the communication dated 29 October 2015, you state that pursuant to article 664 of the Judicial Code, legal aid will be granted to natural or legal persons “if they are involved in the proceedings, if their claim seems fair and if they can prove that their incomes are insufficient.” If an environmental NGO applies for legal aid under article 664 of the Judicial Code, what would it need to do to show that its claim was fair and its income was insufficient? Would it have to meet any other requirements? Does legal aid for an NGO count as “secondary legal assistance” under Article 1022 of the Judicial Code, and is it the case that therefore if an NGO that has been granted legal aid loses the case, the case preparation allowance will be set at the minimum level?
 5. Please comment on the communicants’ assertion concerning the average annual income in Belgium (see page 4 of the communicants’ response to Committee’s questions dated 12.12.2014). If you disagree with the communicants’ figure, please provide the figure that you consider to be correct, with an explanation as to why your figure should be preferred.
 6. Are members of the judiciary required to undergo any mandatory training on the Aarhus Convention that would include training on the requirements of article 9 of the Convention? If not, are there any optional trainings or training materials on the Convention available for Belgian judges?
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