Further to the Communication from Mr Patrick Janin (France) to the Aarhus Convention Compliance Committee (ACCC/C/2015/135), in response to the observations of the French authorities

1. The observations addressed to the Compliance Committee on 9 August 2016 by the French authorities, first, tend to distort the wording and meaning of my Communication of 4 August 2015 (Ref. France ACCC/C/2015/135) and, secondly, present the current state of French law concerning the standing of individuals before the administrative courts in a way that is open to dispute – and, in my view, erroneous. That is why I consider it necessary:

• First, to point out that, contrary to what the French authorities claim* (p. 1, Point 2, first paragraph), I do not maintain that article 9, paragraph 2, of the Convention gives "everyone" a right to judicial remedy against any decision likely to affect the environment. I maintain that the French Conseil d'Etat's decision to apply its case-law on standing to my petition against a Ministerial Order relating to the environment leads to non-compliance with the requirements of article 9, paragraph 2 of the Convention taking into account my personal situation.

My submissions before the Conseil d'Etat and in my Communication of 4 November 2015 to the Compliance Committee relate to my personal situation with regard to the environmental matter concerned, namely the destruction of wildlife species. I have irrefutably established my commitment to nature protection and my constant activity in that field over many decades, through my membership of and active participation in national and local environmental associations, in which I continue to pursue my activities and hold responsible positions.

• Secondly, to observe that the French authorities expound interpretations of the meaning and scope of articles 6 and 8 of the Convention and on the standing of associations in French law, whereas my Communication is based exclusively on compliance with article 9, paragraph 2 of the Convention (Communication, p. 2: "In addition to the matter of access to justice, the content of the case which Mr JANIN is bringing before the Committee also concerns public participation in decision-making in environmental matters, which is also covered by the Convention in articles 6 to 8. However, in this Communication, Mr JANIN intends to call into question only the conditions for access to justice which have been invoked against him by the French administrative court."), and on my personal standing.

And as I have never either disputed that article 9, paragraph 2 of the Convention allows only national law to determine what constitutes "sufficient interest" (although, naturally, in compliance with the Convention) or, in principle, challenged the concept of sufficiently definite, direct personal interest, these considerations on the part of the French authorities are irrelevant.

Conversely, in their observations, the French authorities draw attention to several factors which I raised in support of my Communication.

Thus, the French authorities:

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* The argument that the French legislation and regulations are intended "to frame a regulatory mechanism to control" animal species classified as pests, which the French authorities put forward in their observations (page 2, Point 2.2), is equally open to dispute. The true position is that the entirety of this mechanism is designed to do as much as possible to encourage the destruction of these species and amounts to direct, major interference with the conservation of biodiversity.

- confirm that, so far as concerns standing in environmental matters, it is ordinary law which applies, while the Conseil d'Etat refuses to adapt its decisions to take account of this subject matter and of enactments, including international provisions, which govern it;
- and that assessment of whether the petitioner has a sufficiently definite, direct personal interest to bring proceedings is to be made by the Conseil d'Etat and is not open to appeal.

On the other hand, it is not correct to maintain that the administrative court's approach to assessing standing is "flexible", and even less so that it is "in accordance with the Convention's objective of granting the public concerned wide access to justice" (p. 3). On the contrary, the current case-law of the Conseil d'Etat is characterized by two features: first, the Conseil d'Etat does not consider itself bound by the Convention; secondly, its case-law over the past decade or more has been marked by a distinct movement – noted in the legal literature on French administrative law, particularly in environmental matters – towards tightening the conditions for access to the administrative courts. On this point, see, for example:

• MELLERAY, F. (University of Paris-I Sorbonne), 2014 'A propos de l'intérêt donnant qualité à agir en contentieux administratif. Le « moment 1900 » et ses suites [On standing in administrative proceedings. The "1900 moment" and its consequences]', *Actualité juridique de Droit administratif* , p. 1,530;
• LANGELIER, E. (University of Limoges), 2015 'Particularisation, généralisation... Et particularisation du contentieux administratif : propos dubitatifs à la lumière de l'intérêt à agir [Individual, general… and individual situations in administrative proceedings: some sceptical remarks with reference to standing]', *La Semaine Juridique Administrations et Collectivités territoriales*, No. 47, 23 November, No. 2345: "Far from the conventional assertion of the 'liberality' of the Conseil d'Etat in considering standing in actions on grounds of *ultra vires*, recent developments reveal a tighter approach – one that is increasingly creating a distinction between individual actions on grounds of *ultra vires* and generic actions. Added to this, there is a tighter approach to examining personal admissibility in full remedy proceedings, such that we are seeing a subtle yet marked, even strong, shift towards increasing the powers of the administrative courts, and this raises new questions about the very idea of the rule of law in such proceedings." (Abstract).

2. I urge the Committee not to allow itself to be deflected from the subject of my Communication by the legalistic arguments presented by the French authorities, and to consider carefully the view that the Conseil d'Etat's dismissal of my petition on grounds of lack of standing has the manifest aim and effect of rendering article 9, paragraph 2, of the Convention – so far as concerns the right of access to justice in environmental matters for natural persons acting individually – ineffective. Yet such individuals, just as much as legal persons, are "the public concerned" within the meaning of the Convention. In the circumstances of the present case, this dismissal has the practical effect of restricting access to justice in environmental matters by allowing it only to legal entities, notably environmental associations.

Given that I can provide proof of my individual and collective nature protection activities and commitments, notably in wildlife protection, over several decades, it is clear that dismissal would mean that, on the basis of the arguments put forward against me by the Conseil d'Etat, no natural person can be granted leave to bring an action for annulment against an administrative measure ordering or permitting the destruction of numerous species of wild animals, which form an important element of biodiversity.

A published academic criticism of the Conseil d'Etat's decision notes that it is both restrictive and open to dispute, *inter alia* in respect of its failure to take account of article 9 of the Convention.

In her critical commentary (annexed), Meryem Deffairi writes *inter alia*:

- that "the Conseil d'Etat refuses to see [...] in article 9 of the Aarhus Convention any reasons [.] to amend the conditions for consideration of standing";
- that "the [French] administrative courts refuse to make it too widely possible to bring actions for *ultra vires* by considering the definite, direct or personal nature of petitioners' standing, and environmental matters are no exception in this regard. In addition, these courts constantly circumscribe and/or restrict the scope of [...] the Aarhus Convention";
- that "the decision [of 23 October 2015] is all the more questionable because it means that the Conseil d'Etat has missed an opportunity to recognize the specific features of individual legal interests in bringing environmental proceedings and, consequently, has embroiled itself in an approach that is increasingly foreign to trends in the rules of law relating to environmental justice";
- that "[t]his – on the whole, conventional – assessment [by the Conseil d'Etat] of standing brings to environmental law a certain imbalance in access to the courts as between natural persons and legal persons – notably where the latter are environmental protection associations, for which the legislature has ensured easy access to the courts, with even a presumption of standing (Environmental Code, Article L. 142-1)";
- that "the [French] courts refuse to forge the missing link between participation, information and access to justice in national law, even though this is essential if environmental justice is to be attained. The right of access to justice is one of the three pillars – the indivisible elements, alongside public participation and access to information – of environmental justice as enshrined in the Aarhus Convention of 25 June 1998, signed and ratified by France".

The decision handed down on 23 October 2015 by the Conseil d'Etat, which gave rise to my Communication to the Compliance Committee, is therefore directly – manifestly – contrary to the letter of the Convention, specifically to the objective of "giving the public concerned [including natural persons within the meaning of article 2, paragraph 5] wide access to justice".

In their observations, the French authorities argue on an abstract level, through generalities, without considering the facts that characterize my personal situation, and they maintain an interpretation of the Convention which, by implication, would lead the Committee to limit itself in carrying out its tasks and exercising its functions. This formal legalism should be countered by a constructive, dynamic reading of the Convention, making it effective and ensuring its binding nature, since – which is equally certain – the Aarhus Convention is clearly an international legal instrument that is binding in the field of nature conservation. The binding nature of the Convention calls for constructive, dynamic readings and approaches to interpretation.

If I – a long-standing amateur naturalist and activist in nature protection associations – have no standing to bring proceedings against an administrative decision which will lead to the destruction of hundreds of thousands of birds and wild mammals (or even several million), then there is no one who can gain access to the Conseil d'Etat, which alone has jurisdiction to rule on the lawfulness of that decision, and article 9, paragraph 2, of the Convention is reduced to a mere declaration of principle with no legal effect.

To sum up:

Considering my past and current activities and responsibilities in nature protection associations, it is not possible to reasonably maintain, as the French authorities do in their observations, that I am not a member of "the public concerned" within the meaning of the Convention; that, in the case in question, I do not have a sufficient interest within the meaning of article 9, paragraph 2, of the Convention; and, in consequence, that "there has been no failure to comply with [article 9,]

paragraphs 2 and 3, of the Convention". There is a flagrant contradiction between the Convention and the Conseil d'Etat's decision; this results not only from the legal standard applied by the Conseil d'Etat – a definite, direct personal interest – but also from the way it applies this through its policy of regulating access to the administrative courts and from the fact that it is intent on not regarding the environment as a special field from the point of view of the right of access to justice and the standing of petitioners.

Unlike the French authorities, I consider that I have standing to oppose a decision-making process concerning a very important environmental issue, which relates to conserving biodiversity. This interest, established and protected by the Convention, has been denied by the Conseil d'Etat, which has thus, through an assessment intended to be definitive, failed to comply with one of the pillars of the Convention: access to justice.

These are the reasons for and grounds on which I have brought the matter before the Aarhus Convention Compliance Committee and, accordingly, my Communication of 4 November 2015 is entirely justified and admissible.

Lyon, 19 September 2016

Patrick JANIN

Annex: DEFFAIRI, M. 2016, 'La reconnaissance de la spécificité de l'intérêt à agir dans le contentieux administratif environnemental : l'occasion (encore) manquée? [Recognizing the specific nature of legal interest in bringing administrative proceedings in environmental cases: (another) missed opportunity?]', *Énergie- Environnement-Infrastructures*, No. 2, February, Commentary 12.