

Communication to the Aarhus Convention Compliance Committee concerning compliance by France (PRE/ACCC/C/2015/135) - Comments on the preliminary admissibility of the communication

The Secretariat of the Convention informed us that the Compliance Committee will consider on 15 December 2015 the preliminary admissibility of a new communication concerning the full respect by France of article 9, paragraph 2 of the Aarhus Convention.

We would like to take this opportunity to inform the Compliance Committee of some relevant points concerning the consideration of the preliminary admissibility of this communication in the forthcoming session of the Committee.

1. M. Janin's communication to the Compliance Committee follows his action for annulment of ministerial decree of 30 June 2015 taken for the application of article R. 427-6 of the environmental code fixing the list, periods and methods of destruction of non indigenous species of pests on the whole metropolitan jurisdiction.

By its decision n° 392550 of 25 October 2015, the Council of State declared inadmissible M. Janin's request for he failed to justify a personal, direct and definite standing to challenge the above mentioned decree.

M. Janin is of the opinion that, due to a restrictive assessment of his legal standing his request was not examined on the merits, therefore depriving him of his right to a review procedure, in violation of article 9, paragraph 2 of the Aarhus Convention.

2. We consider that this communication should not be regarded as admissible.

It is important to emphasize that, in its decision of 25 October 2015 (2nd point), the Council of State specifically considered the applicant's argument relating to article 9, paragraph 2 of the Aarhus Convention, and recalled that *"in any case, dispositions of article 9 of the Aarhus Convention have for subject nor for effect to give to any person the right to a review procedure to challenge any decision having effects on the environment"*.

Indeed, if article 9, paragraph 2 of the Convention requires Parties to ensure access to a review procedure to challenge *"any decision, act or omission subject to the provisions of article 6 and, where so provided for under national law [...], of other relevant provisions of this Convention"*, it is only for the benefit of *"members of the public concerned a) having a sufficient interest or, alternatively, b) maintaining impairment of a right, where the administrative procedural of a Party requires this as a precondition"*, and, it is expressly stated : *"What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention"*.

But, in this specific case, on one hand, the decision challenged by M. Janin doesn't concern matters falling within the scope of article 6 but of article 8, relating to public participation during the preparation of executive regulations and/or generally applicable legally binding normative instruments.

On the other hand, it is proper to remind that, in French national law, legislation organising public participation during the preparation of public decisions having effects on the environment doesn't organise a specific review procedure : therefore, ordinary law rules apply, notably those resulting from administrative case law relating to standing.

According to this case law, standing corresponds to a sufficient personal, direct and definite interest to challenge an administrative decision. The respect of these objective requirements is assessed by the administrative judge with flexibility, in full accordance with the spirit of article 9, paragraph 2, of the Convention, but with the concern not to encourage persons whose legitimate interests are not sufficiently affected to refer to the judge. In this specific case, that implementation is in accordance with this constant case law.

Consequently, we consider that the communication falls out of the scope of article 9, paragraph 2 of the Convention and should not be regarded as admissible.