Compliance Committee
United Nations Economic Commission for Europe
Environment and Human Settlement Division
c/o Fiona MARSHALL
aarhus.compliance@un.org

13 July 2021

Dear Ms Marshall

Our Ref.: DOUTRELOUX / S.A. SCIERIE CLOSE 00000012 AL/LR/2381
Your Ref.: ACCC/C/2015/134 (Belgium)

Thank you for your email of 17 June and the draft findings of the Aarhus Convention Compliance Committee. My comments are as follows:

With regard to paragraphs 34, 46 and 57, some clarification is required: the case preparation allowance does not apply to 'the legal costs' but is a fixed-rate lump sum intended in compensation for counsel's fees. Thus, the amount of €506.13 mentioned in paragraph 46 covers the costs of having a writ issued, which could be referred to as 'court fees', and an amount, which I have already specified in writing, that corresponds to an allowance for counsel's fees. The same applies to paragraph 57. As I am currently abroad and it is difficult for me to access my own case file, I refer you to my earlier written pleadings. In all instances where I have mentioned a 'case preparation allowance', I am referring to the fixed amount intended to cover some of the lawyer's fees incurred by the applicant for access to information.

In paragraph 38, unless I am mistaken, 'Minister for Regional Development' would refer to the Minister for Spatial Planning and Development. The reference in paragraph 58 should be to the Public Prosecutor for Liège: there are five public prosecutors in Belgium.

In paragraph 117, I think it should be stressed that the maximum time limit for the CRAIE to issue its decision is, as a general rule, one month. This emphasis is all the more important because the time limit mentioned in paragraph 107 of the draft findings requires applicants for access to information to lodge any appeal to the CRAIE within a mere 15 days. This two-week time limit clearly demonstrates that the whole procedure should be quick.

I now turn to paragraphs 143 et seq. of your draft findings. It is indeed the case that, in such a matter, applicants for access to information may be represented before the court by a lawyer or may present their own case.

It is equally true that some (though not most) applicants before the Justice of the Peace try to conduct their own cases (mainly in disputes between landlords and tenants who appear in person). But the majority of litigants engage counsel. The reason for this is simple: contrary to what the Committee may think, the procedure is not a straightforward one. The rules at issue here are totally unknown to the Justice of the Peace, who never deals with such matters: they include not only a European directive, an international convention and the Environmental Code of the Walloon Region but also the general rules of liability – with the result that they are not

very easy to understand, even for an environmental protection association. What is more, given the number of different appeal avenues in this case, the association has become acquainted with some of the legislation but not necessarily fully conversant with it. Another fundamental reason that makes people decide not to act on their own behalf is that if represented litigants win their case, they can generally obtain a case preparation allowance which – for cases that cannot be assessed in monetary terms, as is the situation here – was (at that time) normally €1,440. In practice, we have seen that the Justice of the Peace has paid little attention to this standard case preparation allowance, reducing it to a negligible sum. In addition, it should be understood that private individuals are not always in a position to make themselves available to come to court: in the present case, Mr Doutreloux, who is a farmer by profession and knows nothing about the relevant law, cannot readily attend a hearing during the growing season. I have previously drawn attention to the number of hearings that were necessary and the resulting number of court attendances that would have led to his loss of working time. Of course, the lawyer must be paid, but anyone who is not retired and has a job will, in order to attend several successive hearings, have to take time off, losing income thereby.

As far as environmental protection associations are concerned, the situation is a little different, in that, when they decide to bring a legal action, they can designate someone to represent them before the court. However, if this person is not retired, the same problem arises: in order to be available to attend court, they will need to take time off work. Therefore, in my opinion, it is obvious that using a lawyer is the most practical and, in the end, the least costly solution, except where an association has a member available – a retired person, for example – with plenty of time to study the legal provisions and attend several hearings to plead the association's case.

Therefore I maintain that a civil court's failure to award the standard case preparation allowance claimed – €1,440 – is detrimental and that the communicants had good reason to engage counsel, even before the Justice of the Peace.

To be perfectly honest, and with all due respect to the Compliance Committee, I do not really see how my clients could have drafted an application to initiate proceedings that was valid for service, pleaded before the Justice of the Peace or known what to say in those pleadings. Which case preparation allowance should they claim? How should they go about seeking an order for costs? And these cases, which involve important principles, had already required the use of a lawyer to make a disciplinary complaint to the Minister for Local Government on the basis of relevant provisions of the Local Democracy and Decentralization Code, to prepare a detailed criminal complaint for the Public Prosecutor and to submit a complaint to the European Commission. Since all this formed a single case, it is hard to see a better or more effective course of action than for the lawyer already retained to present the case in court.

It should also be emphasized that, although it is not absolutely necessary to engage a lawyer for private litigation – where a hedge is too high or water is pouring from a gutter onto a neighbour's wall – and the parties can try to come to an arrangement before the Justice of the Peace, it would be reckless not to retain counsel when one's action is against a public authority, which is itself represented in court: this would infringe the principle of equality of arms. Since the Municipality of Stavelot found it necessary to be represented by a lawyer, and inasmuch as the Municipality is part of the Belgian State, Party to the Aarhus Convention and therefore 'the Party concerned' under the Convention, I do not believe it is possible to declare that the applicants could have dispensed with the representation and advice of counsel.

The Party concerned states that this chambers introduced half of all appeals that came before the CRAIE in 2015. This shows only too well that here we are dealing with a very particular

subject area – one which is not only little known among lawyers (and *a fortiori* among the public concerned) but also one into which ordinary lawyers do not venture.

It must be borne in mind that the members of the Committee are 'hyper specialists' in the Aarhus Convention and in the right of access to information in particular: as such, they are unable to extrapolate from something that has become simple for them to the situation of the ordinary person seeking a legal remedy.

With my respectful regards to the Chair and all members of the Committee,

I remain yours sincerely,

Alain LEBRUN
Lawyer.