United Nations ECE/MP.PP/C.1/2021/24

Economic and Social Council

Distr.: General
17 September 2021

Original: English

Economic Commission for Europe

Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

Compliance Committee

Seventy-second meeting
Geneva, 18–21 October 2021
Item 9 of the provisional agenda
Communications from members of the public

Findings and recommendations with regard to communication ACCC/C/2015/134 concerning compliance by Belgium*

Adopted by the Compliance Committee on 26 July 2021

I. Introduction

1. On 9 October 2015, Avala ASBL, a non-governmental organization, and Mr. Francis Doutreloux (together the communicants) submitted a communication to the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) alleging the failure of Belgium to comply with its obligations under the Convention.

2. Specifically, the communicants allege that the Party concerned failed to comply with articles 1, 3, 4 (1) and (2) and 9 (1), (3) and (4) of the Convention in connection with access to environmental information.

3. By letter of 18 November 2015, the Chair and Vice-Chair requested the communicants to provide additional information on their use of domestic remedies. On 20 November 2015, the communicants provided the requested further information.

4. At its fifty-first meeting (Geneva, 15–18 December 2015),[1] the Committee determined on a preliminary basis that the communication was admissible.

5. Pursuant to paragraph 22 of the annex to decision I/7 of the Meeting of the Parties to the Convention (ECE/MP.PP/2/Add.8), the communication was forwarded to the Party concerned on 11 March 2016 for its response by 10 August 2016.

6. On 13 June 2016, the communicants provided additional information.

* This document was submitted late owing to additional time required for its finalization.

[1] ECE/MP.PP/C.1/2015/9, para. 59.

7. On 2 August 2016, the Party concerned provided its response to the communication.

8. On 27 September 2016, the communicants provided additional information.

9. On 28 November 2016, the Party concerned provided a corrected version of its response to the communication.

10. At the Committee's fifty-fifth meeting (Geneva, 6–9 December 2016), the Party concerned made a statement with regard to the communication.

11. On 4 October 2017, the communicants provided additional information.

12. On 1 March 2018, the Party concerned provided additional information. On 6 March 2018, the communicants provided comments on the Party concerned's letter of 1 March 2018. On 23 April 2018, the communicants provided further information.

13. The Committee held a hearing to discuss the substance of the communication at its sixty-second meeting (Geneva, 5–9 November 2018), with the participation of the communicants and the Party concerned.[2]

14. On 28 June 2019, the Committee sent questions to the communicants and the Party concerned. The communicants and the Party concerned provided their replies to the Committee's questions on 14 and 15 August 2019, respectively.

15. On 7 October and 9 November 2020, the communicants provided additional information. On 11 February 2021, the Party concerned commented on the communicants' additional information of 9 November 2020.

16. The Committee completed its draft findings through its electronic decision-making procedure on 17 June 2021. In accordance with paragraph 34 of the annex to decision I/7, the draft findings were then forwarded on that date to the Party concerned and the communicant for their comments. Both were invited to provide comments by 23 July 2021.

17. On 14 and 22 July 2021, respectively, the communicants and the Party concerned provided comments on the draft findings.

18. The Committee proceeded to finalize its findings in closed session, taking account of the comments received, and adopted its findings through its electronic decision-making procedure on 26 July 2021. It agreed that the findings should be published as a formal pre-session document to its seventy-second meeting.

II. Summary of facts, evidence and issues[3]

A. Legal framework

19. Article D.15.1.a and b of Book 1 of the Environmental Code of the Walloon Region requires public authorities to make available environmental information requested as soon as possible and, at the latest, within one month following the receipt of the request or within two months when the volume and complexity of the information means that the 1-month deadline cannot be respected.[4]

20. Article D.20.1 of Book 1 of the Environmental Code provides that:

> 1. Any total or partial refusal to provide information on the basis of articles D.18.1 and D.19.1 must be the subject of a reasoned decision and must be notified in writing to the applicant, within the time limit set in article D.15.1.a, or, where applicable, within the time limit set in article D.15.1.b.

[2] ECE/MP.PP/C.1/2018/6, para. 34.

[3] This section summarizes only the main facts, evidence and issues considered to be relevant to the question of compliance, as presented to and considered by the Committee.

[4] Additional information from the Party concerned, 1 March 2018, p. 4; Party's reply to the Committee's questions, 15 August 2019, pp. 2–3.

2. The notification of refusal must clearly mention the possibilities and methods of appeal available to the applicant in accordance with section III of this chapter.[5]

21. Article D.20.6 of Book 1 of the Environmental Code provides that:

> Any applicant who considers that his request for information has been ignored, illegitimately or unduly rejected, partially or fully, or that it has been insufficiently taken into consideration or has not been dealt with in compliance with the present chapter, may lodge an appeal with the Appeal Commission for the Right of Access to Environmental Information against the acts or omissions of the public authority concerned.
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> The appeal shall be lodged by application to the secretariat of the Appeal Commission for the Right of Access to Environmental Information in a letter sent by registered post or by any other means certifying the date, as determined by the Government. The appeal must be lodged within 15 days of receipt of the notification of the contested decision or, in the absence of such a decision, within 15 days of expiry of the periods prescribed in article D.15.[6]

22. Article D.20.11 of Book 1 of the Environmental Code states that: "The Appeal Commission shall make its decision within the month following receipt of the petition. However, it may extend this period, in a justified decision; the extension(s) may not exceed a total of forty-five days."[7]

23. Article D.20.12.7° of Book 1 of the Environmental Code provides that the decision of the Appeal Commission for the Right of Access to Environmental Information (CRAIE) must specify the date on which the applicant can exercise the right to access the environmental information granted by that decision.[8]

24. Pursuant to Article 590 of the Judicial Code, an application may be made to the Justice of the Peace to enforce the decision of CRAIE.[9]

25. Article 790 of the Belgian Code of Civil Procedure provides that:

> The authenticated copy [of a judgment of a court of law] shall contain a full copy of the judgment, preceded by the heading and followed by a clause conferring authority to enforce the judgment, failing which the authenticated copy is not valid.[10]

B. Facts

Access to information request 1: Municipal swimming pool in Stavelot

26. On 29 August 2014, Avala ASBL requested a copy of the combined planning and environmental consent for the municipal swimming pool in Stavelot.[11]

27. Having received no reply from the Municipality of Stavelot, on 8 October 2014 the communicant brought an appeal to the Walloon Region's CRAIE.[12]

28. On 28 November 2014, CRAIE ordered the Municipality of Stavelot to provide the requested information within eight days of its decision.[13]

29. Having received no reply from the Municipality of Stavelot, on 20 January 2015 Avala brought proceedings before the Justice of the Peace for access to the requested information

[5] Party's reply to the Committee's questions, 15 August 2019, pp. 3–4.
[6] Party's response to the communication, p. 2; Additional information from the Party concerned, 1 March 2018, p. 4.
[7] Party's response to the communication, p. 3.
[8] Ibid.
[9] Party's reply to the Committee's questions, 15 August 2019, pp. 9–10.
[10] Communication, p. 3.
[11] Ibid., p. 1, and annex 1 (in French).
[12] Additional information from the communicants, 20 November 2015, p. 1.
[13] Communication, p. 1, and annex 2 (in French).

and a claim for damages. At an introductory hearing on the application on 4 February 2015, the oral argument was scheduled for 16 September 2015.[14]

30. On 31 March 2015, Avala wrote to the Walloon Region's Minister for Local Government requesting a Special Commissioner to be sent and to commence a disciplinary case against the Municipality of Stavelot. By letter of 17 April 2015, the Minister declined to take the requested measures.[15]

31. On 30 June 2015, Avala wrote again to the Minister for Local Government and, by letter of 16 July 2015, the Minister invited the Stavelot Municipality to implement the CRAIE decision.[16]

32. On 7 September 2015, the requested information was provided.[17]

33. On 16 September 2015, the Justice of the Peace took formal notice that the information had been supplied and reserved judgment on Avala's claim for damages.[18]

34. On 21 November 2018, the Justice of the Peace delivered judgment in the case. The Municipality was ordered to pay €286.31 for the cost of the summons and a case preparation allowance of €150 towards Avala's legal fees. Avala was also awarded non-material damages of €100.[19]

Access to information request 2: L'Eau Rouge campsite

35. On 26 August 2014, Mr. Doutreloux made a request concerning various permits and plans associated with the application for the "L'Eau Rouge" campsite in the Municipality of Stavelot.[20]

36. Having not received the requested information from the Municipality, on 3 October 2014 Mr. Doutreloux brought an appeal to CRAIE.[21]

37. On 28 November 2014, CRAIE ordered the permits and related plans to be provided within eight days of its decision.[22]

38. Having received no reply from the Municipality, on 20 January 2015, Mr. Doutreloux brought proceedings before the Justice of the Peace seeking access to the requested information and making a claim for damages. Mr. Doutreloux wrote twice to the Minister for Local Development, on 31 March and again on 30 June 2015.[23]

39. On 19 August 2015, the Municipality provided copies of the campsite's environmental permit and planning permit but not of the plans contained in the annexes.[24]

40. On 27 August 2015, Mr. Doutreloux wrote to the Minister for Local Government stating that the requested information had only been provided in part.[25]

41. On 16 September 2015, at a hearing before a Justice of the Peace, the Municipality declared that it intended to provide the remaining information within one month and the Justice of the Peace therefore decided to postpone the case until 7 October 2015.[26]

[14] Communication, p. 2, and annex 3 (in French); Additional information from the communicants, 20 November 2015, p. 1.
[15] Additional information from the communicants, 20 November 2015, p. 2.
[16] Ibid.
[17] Ibid.; Communication, p. 1.
[18] Additional information from the communicants, 20 November 2015, p. 2.
[19] Communicants' reply to the Committee's questions, 14 August 2019, p. 2.
[20] Communication, p. 2; Additional information from the communicants, 20 November 2015, p. 2.
[21] Additional information from the communicants, 20 November 2015, p. 2.
[22] Communication, p. 2.
[23] Additional information from the communicants, 20 November 2015, pp. 2–3.
[24] Communication, p. 2; Additional information from the communicants, 20 November 2015, p. 3.
[25] Additional information from the communicants, 20 November 2015, p. 3.
[26] Ibid.

42. On 30 September 2015, the Minister of Local Government invited the Municipality to fully implement its obligation to provide access to the requested information.[27]

43. On 7 October 2015, as the remaining information had not been provided, the Justice of the Peace decided to send the case to the General List for hearing.[28]

44. On 6 April 2016 and 4 May 2016, hearings were held concerning the remainder of the requested information.[29]

45. The remainder of the information was provided between 16 April and 4 May 2016.[30]

46. On 7 September 2016, the Justice of the Peace adopted a final decision ordering the Municipality to pay €286.31 for the cost of the summons, the standard case preparation allowance of €220 and non-material damages of €100.[31]

Access to information request 3: Francorchamps motor-racing circuit

47. On 23 June 2014, Mr. Doutreloux made a request for access to information regarding the Municipality of Stavelot's intentions concerning the access ramps at the Francorchamps motor-racing circuit after the end of the temporary occupation licence dated 5 June 2012.[32]

48. As the information requested was not provided, on 28 July 2014, Mr. Doutreloux brought an appeal to CRAIE.[33]

49. On 2 October 2014, CRAIE ordered the Municipality to provide a copy of its decision under which it had granted temporary occupation of the access ramps at the motor-racing circuit within 8 days of the CRAIE decision.[34]

50. As the information requested had not been provided by the Municipality, on 15 December 2014, Mr. Doutreloux brought proceedings before a Justice of the Peace seeking access to the requested information and making a claim for damages.[35]

51. On 7 January 2015, the Municipality did not appear at the introductory hearing and the case was therefore heard with short pleadings by default.[36]

52. On 31 March 2015, Mr. Doutreloux wrote to the Minister for Local Government to ask him to send a Special Commissioner and to commence a disciplinary case.

53. On 12 August 2015, the Justice of the Peace ordered the requested information to be supplied with eight days and applied a per diem penalty of €50 for failure to comply within eight days of service of the judgment.[37]

54. On 19 August 2015, the Municipality provided the text of the temporary occupation licence but not the associated plan.[38]

55. On 13 October 2015, the Municipality provided the remainder of the requested information.[39]

56. On 12 September 2019, Mr. Doutreloux requested that the case be relisted before the Justice of the Peace regarding the outstanding application for damages and costs.[40]

[27] Ibid.
[28] Ibid.
[29] Letter from the communicants, 27 September 2016, p. 4.
[30] Ibid.
[31] Ibid., p. 5.
[32] Communication, p. 2; Additional information from the communicants, 20 November 2015, p. 3.
[33] Additional information from the communicants, 20 November 2015, p. 3.
[34] Ibid.
[35] Ibid., p. 4.
[36] Ibid.
[37] Ibid.; Communication, p. 2.
[38] Additional information from the communicants, 20 November 2015, p. 4.
[39] Ibid.
[40] Additional information from the communicants, 7 October 2020, p. 4.

57. On 9 September 2020, the Justice of the Peace awarded Mr. Doutreloux the following: the minimum case preparation allowance (€90); the cost of the summons excepting secure postal delivery (€278.41); and damages in the sum of €100 "for the inconvenience and loss of time". Due to delay by Mr. Doutreloux in pursuing this part of the case, the interest payable on the €100 damages applied only from 12 September 2019, the date on which he moved to have this part of the case relisted before the Justice of the Peace.[41]

C. Domestic remedies

58. With respect to their specific requests for environmental information, the communicants submit that they brought appeals before CRAIE, requested the Minister for Local Government to intervene and brought proceedings before the Justice of the Peace. Furthermore, on 18 September 2015 they submitted a complaint to the European Commission alleging a breach of European Union law on the right of access to environmental information. On 17 November 2015, the communicants sent a complaint to the Public Prosecutor for Liège requesting a criminal investigation into the conduct of all the members of the Municipality of Stavelot.[42]

59. Regarding the systemic allegations in their communication, the communicants submit that there is no possibility to bring an action for annulment of the Decree of 16 March 2006 amending Book 1 of the Environmental Code with respect to access to environmental information before the Constitutional Court because the 6-month deadline for doing so has expired.[43]

60. The Party concerned explained that only legislative acts are within the jurisdiction of the Constitutional Court and therefore the communicants could not have appealed directly to that Court, but could have suggested that the Justice of the Peace refer a question to the Court for a preliminary ruling. It also clarified that the Council of State would not have been the competent jurisdiction in this case.[44]

61. The Party concerned did not challenge the admissibility of the communication.

D. Substantive issues

Environmental information

62. The communicants submit that their three information requests concerned environmental information because they concerned various planning permits, which are consents to make changes to the environment, as well as combined planning and environmental permits, which serve to manage the impact of a given operation on the environment.[45]

63. The Party concerned does not comment on this point.

Articles 1, 3 and 4

64. The communicants submit that the Party concerned failed to comply with the right of access to environmental information guaranteed in articles 1, 3 and 4 of the Convention with respect to their three access to information requests. The communicants submit that articles 1 and 4 of the Convention require that access to environmental information be granted within one month and that, in the three above-mentioned cases, the communicants had to wait more than a year to obtain only part of the requested information.[46]

[41] Ibid., pp. 4–5.
[42] Communication, pp. 5–6; Additional information from the communicants, 20 November 2015, p. 4; Additional information from the communicants, 13 June 2016.
[43] Communication, p. 5.
[44] Party's reply to the Committee's questions, 15 August 2019, p. 13.
[45] Communication, p. 4.
[46] Ibid., p. 2.

65. The Party concerned submits that the communicants do not indicate how articles 1 and 3 of the Convention were infringed and that it will therefore not address these provisions.[47]

66. In response to the communicants' allegations that the Walloon Region failed to provide environmental information on request within one month, the Party concerned submits that the obligation to provide information within one month is clearly reflected in the Walloon legislation (see paras. 19 and 20 above) and that, in case of non-compliance with this obligation, adequate legal remedies are available.[48]

67. The Party concerned submits that the fact that, in certain cases, the period necessary to obtain environmental information is longer than one month, particularly in the event of a refusal or absence of a response from a public authority or in case of a referral to an appeal body, stems from the system provided for by the Convention. It submits that non-compliance with the 1-month time period triggers the right to lodge an appeal and it is therefore difficult to see how the 1-month time limit could apply to the appeal proceedings themselves. The Party concerned states that the communicant cannot dispute the fact that proceedings may be brought after one month because all three appeals referred to in the communication were brought on that basis.[49]

68. The Party further submits that, in any event, the period of one month referred to in article 4 of the Convention only applies to the decision of the administrative authority dealing with the request and not to the appeal procedures and that this is also demonstrated by the reference in article 9 (4) of the Convention to "timely" review procedures.[50]

Article 9

69. The communicants submit that the Party concerned fails to comply with article 9 of the Convention because the system for access to environmental information of the Party concerned, and in particular of the Walloon Region, is ineffective. They submit that this ineffectiveness primarily relates to the decisions of CRAIE not having any immediate effect, in contrast with judgments of courts of law (as to which, see article 790 of the Party concerned's Code of Civil Procedure, para. 25 above). The communicants submit that, while decisions of CRAIE are theoretically binding upon a public authority, nothing forces a public authority to comply with CRAIE decisions and the bailiff therefore cannot undertake enforcement measures under the Code of Civil Procedure. They claim that no "enforcement order" is attached to CRAIE decisions and that there are no other sanctions, such as coercive payment or a financial penalty, that can be imposed.[51]

70. The communicants further submit that application to the courts is not a solution in such cases because court action is costly and takes a long time. They submit that legal proceedings are particularly lengthy because the courts do not always grant a brief hearing and that therefore a timetable needs to be set for exchange of pleadings.[52]

71. The communicants contend that, in any case, the possibility to apply to the Council of State has not been "provided" in the sense of article 9 (1) of the Convention because this possibility follows merely from the general rules on jurisdiction. The communicants submit that it is CRAIE that is the "independent and impartial body established by law" for the purposes of article 9 (1) of the Convention. They further submit that CRAIE decisions need to be binding by virtue of the third subparagraph of article 9 (1) and that this is not ensured by the current system. They also submit that CRAIE does not provide adequate and effective

[47] Additional information from the Party concerned, 1 March 2018, p. 2.
[48] Party's response to the communication, p. 5; Additional information from the Party concerned, 1 March 2018, pp. 2–4.
[49] Party's response to the communication, p. 5; Additional information from the Party concerned, 1 March 2018, p. 4.
[50] Ibid.
[51] Communication, pp. 2–4.
[52] Ibid, p. 5.

remedies, including injunctive relief as appropriate, as required by article 9 (4) of the Convention.[53]

72. The communicants contend that obtaining access to environmental information takes several months and that this does not comply with the requirement of the Convention that environmental information be provided as soon as possible or at the latest within one month after receipt of the request and that only a reasonable charge may be made to obtain such information.[54]

73. In order to support their claim that the current system leads to undue delays, the communicants refer to three further pending cases where decisions of CRAIE were not implemented for some considerable time after the request for access to information was submitted.[55]

74. The Party concerned submits that the decisions of CRAIE are binding on the administrative authority and enforceable. They are not simply opinions. It submits that, under Belgian administrative law, all administrative decisions are enforceable and are binding on the persons to whom they are addressed. It claims that this is confirmed by the fact that, if the administrative authority fails to comply with a decision of CRAIE, the applicant seeking environmental information has a remedy before the ordinary courts.[56]

75. The Party concerned submits that it is not accurate to claim that there are no penalties where administrative authorities fail to comply with CRAIE decisions. It states that CRAIE decisions are published on its website and in specialist periodicals and that administrative authorities that do not comply with the decisions are therefore identified by name and "lay themselves open to public humiliation".[57] It contends that a reluctance on the part of an administrative authority to comply with the applicable law can lead its supervisory authority to intervene. It also submits that, where an administrative authority fails to comply with a CRAIE decision, proceedings may be brought against the authority concerned before the ordinary courts where a range of remedies may be sought, including an order directing the authority to provide the environmental information requested, an order requiring the authority to pay a financial penalty, and an award of compensation to the applicant.[58]

76. The Party concerned submits that this system, with its 2-stage remedy, functions perfectly in most cases and it is extremely rare for an administrative authority not to comply with a CRAIE decision. It also maintains that the legal literature confirms, both expressly and by implication, that the system works well.[59]

77. The Party concerned concedes that, in the context of the communicants' various requests for environmental information, there have been one or two instances where the Justice of the Peace has found that an administrative authority failed to comply with a CRAIE decision. It submits, however, that these are most probably special cases that have arisen in the context of the particular relationship between the Municipality and the communicants. It states that the communicants' lawyer was responsible for 50 per cent of all appeals to CRAIE in the years 2015, 2016 and 2017.[60]

78. The Party concerned submits that the Convention does not require that there should be any penalties for non-compliance with the decisions of a review body such as CRAIE. The second subparagraph of article 9 (1) of the Convention only requires that, in circumstances where a Party provides for review by a court of law, "it shall ensure that such a person also has access to an expeditious procedure established by law that is free of charge or inexpensive for reconsideration by a public authority". It further submits that it follows from the third subparagraph of article 9 (1) of the Convention that the decision taken as a

[53] Additional information from the communicants, 13 June 2016, pp. 2–3.
[54] Communication, p. 5.
[55] Additional information from the communicants, 4 October 2017.
[56] Party's response to the communication, pp. 3–4 and 6; Additional information from the Party concerned, 1 March 2018, pp. 4–5.
[57] Additional information from the Party concerned, 1 March 2018, p. 5.
[58] Ibid., pp. 5–6.
[59] Ibid., p. 6.
[60] Ibid.

result of this procedure is not required to be binding. Only final decisions under the first subparagraph of article 9 (1) must be binding. The Party concerned contends that by providing that CRAIE decisions are binding, it therefore went beyond the requirements of the Convention. It submits that this is not altered by the reference in article 9 (4) of the Convention to "adequate and effective remedies" because applicants may bring proceedings before the ordinary courts and those courts can subject CRAIE orders to measures, such as financial penalties, intended to guarantee that they will be implemented.[61]

79. The Party concerned further submits that, if the communicants allege that proceedings in the courts to enforce CRAIE decisions are too costly, they have not provided any figures of the costs incurred, including their own legal costs, and have therefore failed to establish that the proceedings are costly. It claims that the cost of proceedings before the Justice of the Peace are very low, with the cost of filing a case such as the ones at issue in the present case being €25–€50. It notes that an additional fee is payable for the summons to be served and this varies from €100 to €250.[62] It submits that representation by a lawyer is not compulsory and that, if applicants nonetheless decide to hire a lawyer, they will receive a case preparation allowance at the end of the trial intended to cover all or part of their lawyer's fees. The Party concerned claims that this system is therefore not to be considered as prohibitively expensive under article 9 (4) of the Convention and that consideration should also be given to the fact that an appeal to CRAIE is free of charge.[63]

80. The Party concerned also submits that, if the communicants allege that the judicial procedures following an appeal to CRAIE are too slow, this claim is not established by the information provided in the communication and in particular there is a failure to demonstrate the average length of proceedings before a Justice of the Peace. It submits that a Justice of the Peace generally rules very quickly and that there is little backlog of cases. It submits that it is also possible for a Justice of the Peace to consider a case to enforce a CRAIE decision in short pleadings, summary proceedings or on a fast-track timetable.[64]

81. Lastly, the Party concerned submits that the Committee, in its findings on communication ACCC/C/2011/62 (Armenia)[65] considered that a 1-year period for a judicial procedure was reasonable and that the European Court of Human Rights also only found that cases were unreasonably prolonged where they took between 5 to 13 years. The Party concerned contends that the length of judicial proceedings cannot be assessed by reference to the 1-month time period in article 4 (1) and (7) of the Convention.[66]

III. Consideration and evaluation by the Committee

82. Belgium ratified the Convention on 21 January 2003, meaning that the Convention entered into force for Belgium on 21 April 2003, i.e. 90 days after the date of deposit of the instrument of ratification.

Admissibility

83. The communicants sought recourse through several domestic remedies with respect to their access to environmental information requests. The Party concerned does not challenge the admissibility of the communication. The Committee determines the communication to be admissible.

Scope of consideration by the Committee

84. The communicants have not demonstrated how articles 3 or 9 (3) are relevant to their communication. The Committee will therefore not consider these aspects further.

[61] Ibid., p. 7.
[62] Ibid., pp. 7–8; Party's reply to the Committee's questions, 15 August 2019, p. 12.
[63] Additional information from the Party concerned, 1 March 2018, p. 8.
[64] Ibid., pp. 8–9.
[65] ECE/MP.PP/C.1/2013/14.
[66] Additional information from the Party concerned, 1 March 2018, pp. 9–10.

85. The Committee notes that the communication alleges failures by the Party concerned to comply with both articles 1 and 4 with respect to the communicants' right of access to environmental information.[67] While article 1 is certainly important for the interpretation of the Convention, the Committee will examine the communicants' allegations against the more specific obligations set down in article 4.

86. The Committee will not examine compliance by the Party concerned with the Convention with respect to the three additional cases referred to by the communicants during the Committee's procedure (see para. 73 above), as these examples were not presented in the communication itself.

Article 4 – applicability

87. It is clear to the Committee that the requirements of article 4 of the Convention apply to the communicants' three information requests outlined in paragraphs 26, 35 and 47 above. The Committee notes that the Party concerned does not dispute that the communicants' requests for information concerned environmental information within the meaning of article 2 (3) of the Convention, or that the Municipality of Stavelot is a public authority under article 2 (2) of the Convention. The Committee examines the extent to which those requirements were met below.

Article 4 (1) and (2)

88. Article 4 (1) guarantees the right to request access to environmental information held by public authorities. Article 4 (2) specifies the time-frames within which the information requested must be made available to the applicant.

89. Article D.15.1 of Book 1 of the Environmental Code of the Walloon Region requires public authorities to make available the requested environmental information as soon as possible and, at the latest, within one month following the receipt of the request (see para. 19 above). It also makes provision for an extension for up to two months after the request where this is justified by the volume and complexity of the information at issue.

90. It is not disputed by the Party concerned that, despite the time-frames set out in article D.15.1 of Book 1 of the Environmental Code, the Municipality of Stavelot failed to reply to the three requests submitted by the communicants within one month. Moreover, there is no evidence before the Committee that the communicants were informed of an extension to the 1-month period for any of the three requests at issue in this communication.

91. In the light of the foregoing, the Committee finds that, by failing to provide any response to the communicants' three requests for access to environmental information within the 1-month period, the Party concerned failed to comply with article 4 (2) of the Convention.

92. However, taking into consideration that no evidence has been presented to substantiate that the non-compliance with article 4 (2) identified above is of a wide or systemic nature, the Committee refrains from making any recommendation on this point.

Article 4 (7)

93. Article 4 (7) requires that a refusal of a request for environmental information be made as soon as possible and, at the latest, within one month, unless the complexity of the information justifies an extension for a period of up to two months after the request. A refusal of a request shall be in writing if the request was in writing or if the applicant so requests. Furthermore, a refusal must state the reasons behind it and provide information on the review procedure provided for in accordance with article 9 of the Convention.

94. In its findings on communication ACCC/C/2013/93 (Norway), the Committee stressed the "great importance" of the obligation in article 4 (7) to state reasons for a refusal, not least in order to enable the applicant to be in a position to engage the review procedures stipulated in article 9 (1).[68]

[67] Communication, pp. 2 and 4.

[68] ECE/MP.PP/C.1/2017/16, para. 82.

95. Article D.20.1 of Book 1 of the Walloon Region's Environmental Code provides that, in the case of a refusal, or a partial refusal, to provide the information requested, that refusal must be made as soon as possible and, at the latest, within one month (see para. 20 above). A reasoned decision for the refusal must be provided and the applicant must be notified of the review procedures available.

96. Article D.20.6 of Book 1 of the Environmental Code also provides that, where a public authority fails to reply to a request for access to information within the period prescribed, the applicant may bring an appeal to CRAIE (see para. 21 above). In other words, a failure by the public authority to make a decision on an information request within one month is considered as a "deemed refusal", which may then be the subject of an appeal to CRAIE. In fact, this is what occurred for each of the three requests at issue in this communication; the communicants brought an appeal to CRAIE because they had not received a decision from the Municipality of Stavelot on their information requests within one month.

97. The communicants made their requests for access to environmental information in writing. As the Municipality of Stavelot failed to reply to their requests for information, the communicants were never provided with a written refusal setting out the reasons for refusal. Nor were they provided with information about the applicable review procedure available to them. The Municipality's failures to provide any reply thus failed to meet the requirements of article 4 (7) in both these respects.

98. The Committee makes clear that these failures are not remedied by the provision in the domestic legal framework for a "deemed refusal". While, in cases where a public authority fails to respond to a request for environmental information, a system of "deemed refusal" enables applicants to engage the review procedures provided for in article 9 (1), a deemed refusal clearly cannot meet the requirements in article 4 (7) to provide the refusal in writing where the information request was in writing, to state the reasons for the refusal, or to provide information on access to review procedures.

99. In the light of the above, the Committee finds that, by failing to respond at all to the communicants' three written requests for environmental information, the Party concerned failed to comply with the requirements in article 4 (7) to state the reasons for the refusals, to provide refusals in writing where the information requests were in writing, and to provide information on access to the relevant review procedures.

100. Since no evidence has been presented to the Committee to demonstrate that the non-compliance with article 4 (7) identified above is of a wide or systemic nature, the Committee refrains from making recommendations on this issue.

Article 9 (1)

101. Article 9 (1) of the Convention requires each Party to ensure that any person who considers that his or her request for information under article 4 of the Convention has not been dealt with in accordance with that article has access to a review procedure before a court of law or another independent and impartial body established by law. Furthermore, where a Party provides for such a review by a court of law, it shall also ensure that there exists an expeditious procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law. Final decisions under article 9 (1) must be binding on the public authority holding the information.

102. Article 9 (1) of the Convention provides Parties with a measure of discretion as to the overall structure and nature of the review procedures that must be provided in the domestic legal system. However, it is implicit in article 9 (1) that the domestic legal system must always make provision for the public to have access to a review procedure established by law that is expeditious and either free of charge or inexpensive. In other words, regardless of how a Party decides to structure its review procedures for the purpose of article 9 (1), there must always be at least one review procedure that is expeditious and either free of charge or inexpensive.

103. The legal framework in the Party concerned provides for an appeal to CRAIE, an independent and impartial body established by law, where a public authority fails to reply to

a request for access to environmental information. CRAIE is thus a review procedure for the purposes of article 9 (1) of the Convention.

104. The role of the Justice of the Peace in this instance is to provide an enforcement procedure before a court – that is to say, a remedy to ensure that the public authority complies with the decision of CRAIE by providing an order of execution, where necessary, in order to ensure the release of information in accordance with the CRAIE decision. Since the Justice of the Peace is thus a form of remedy, the Committee examines the proceedings before the Justice of the Peace under article 9 (4) below.

105. In line with article 9 (1), second subparagraph, the CRAIE review procedure must be expeditious and either free of charge or inexpensive. To fulfil article 9 (1), third paragraph, the decision of CRAIE must be binding. The Committee examines each of these requirements below.

Free of charge or inexpensive

106. There is no charge to bring an appeal before CRAIE. Thus, it meets the requirement of the second subparagraph of article 9 (1) to be "free of charge or inexpensive".

Expeditious

107. Article D.20.6 of Book 1 of the Walloon Region's Environmental Code provides for an appeal to CRAIE where an applicant considers that his or her request for environmental information has been ignored, wrongfully refused in part or in full, inadequately answered or otherwise not dealt with in accordance with the applicable provisions of the Environmental Code. Any such appeal must be lodged with CRAIE within 15 days of receipt of the notification of the contested decision or, in the absence of any decision by the public authority (as was the case with the three information requests at issue in this communication), within 15 days of the expiry of the periods prescribed in article D.15 of Book 1 of the Environmental Code (see paras. 19–21 above).

108. Under Article 20.11 of Book 1 of the Environmental Code, CRAIE is required to make its decision within one month of receipt of the appeal. It may, however, extend this time-frame up to a period of 45 days by way of a reasoned decision to that effect.

109. In examining whether this time-frame meets the requirement to provide an expeditious review procedure, the Committee considers it instructive to consider the time-frames set down in article 4 (2) and (7) of the Convention. It will be recalled that article 4 (2) requires a public authority to make the requested information available as soon as possible and, at the latest, within one month of the request, with the possibility of an extension for a period of up to two months in cases where the volume and complexity of a request justifies such an extension. Similar time-frames apply in the context of article 4 (7) concerning refusal of a request. These time-frames provide a benchmark when considering what time-frame for determining appeals would qualify as being expeditious under article 9 (1).

110. Based on the above, the Committee concludes that the legal framework of the Party concerned is consistent with article 9 (1) of the Convention in so far as it makes provision for what can be considered to be an expeditious review procedure.

111. The next issue to be considered is whether CRAIE in practice met the requirement to be an expeditious review procedure in the three appeals under consideration in this communication. As explained above, the time-frames set down in article 4 (2) and (7) of the Convention provide a benchmark for this assessment. Applying these time-frames, an expeditious procedure would thus determine an appeal within time frames of, approximately, one month or up to two months in cases where the volume and the complexity of the information at issue justifies such an extension.

112. No information has been provided to the Committee either by the communicants or the Party concerned as to whether CRAIE informed the communicants that it had extended the time-frame for decision-making for any of the three appeals at issue here (i.e. from the usual 1-month period up to a period of 45 days, as provided for under the domestic legislative framework). In the absence of any such evidence, the Committee concludes that CRAIE did

not inform the communicants that it had extended the time period to determine these three appeals beyond the standard 1-month period provided for in its domestic legislation.

113. As regards the request for access to environmental information concerning the municipal swimming pool in Stavelot, the communicants applied to CRAIE on 8 October 2014. CRAIE made its decision on 28 November 2014, that is 51 days later.

114. In the case of the L'Eau Rouge campsite, the communicants applied to CRAIE on 3 October 2014. CRAIE made its decision on 28 November 2014, that is 56 days later.

115. As regards the Francorchamps motor-racing circuit, the communicants applied to CRAIE on 28 July 2014. CRAIE made its decision on 2 October 2014, that is 66 days later.

116. It is clear, therefore, that in each of the three appeals under consideration in this communication, CRAIE made its decision considerably more than one month after the appeal was lodged. It is notable that the time taken to determine each of these appeals exceeded even the extended time limit set down in the domestic legal framework (see para. 108 above).

117. As explained in paragraph 111 above, in order to deliver an expeditious review procedure as required by article 9 (1) of the Convention, CRAIE should have determined each of the three appeals at issue in this communication within one month of the appeal being lodged. Based on the foregoing, the Committee finds that, by failing to provide for an expeditious procedure for the review of the communicants' three information requests, the Party concerned failed to comply with article 9 (1) of the Convention.

118. However, taking into consideration the fact that no evidence has been presented to substantiate that the non-compliance with article 9 (1) identified above is of a wide or systemic nature, the Committee refrains from making any recommendation on this point.

Binding final decision

119. The communicants allege that CRAIE does not meet the requirement of the third subparagraph of article 9 (1) that final decisions under article 9 (1) must be binding because its decisions, while theoretically binding, are not directly enforceable.

120. The Committee considers that it is clear from the wording of article D.20.11 of Book 1 of the Environmental Code that CRAIE takes a "decision" and does not simply issue an opinion that has no legal consequences. That this decision is binding is evidenced by the fact that it is possible to bring proceedings before the Justice of the Peace to enforce a CRAIE decision. Indeed, this was the course of action adopted by the communicants for each of the three information requests at issue in this communication.

121. The Committee thus considers that CRAIE meets the requirement in the third subparagraph of article 9 (1) that final decisions under paragraph 1 are to be binding.

Article 9 (4)

122. Article 9 (4) requires that the review procedures referred to in article 9 (1) provide adequate and effective remedies and be, inter alia, timely and not prohibitively expensive.

123. The communicants allege that the procedures before the courts to remedy a public authority's failure to comply with a CRAIE decision are costly and take a long time. The Committee examines these requirements below.

Timely review procedure and adequate and effective remedies

124. In the case of the three appeals at issue in this communication, the Municipality of Stavelot failed to comply with the decisions issued by CRAIE. The Party concerned accepts that the Municipality should have complied with these decisions.

125. The communicants brought proceedings before the Justice of the Peace to enforce the CRAIE decisions. The Party concerned explains that the proceedings before the Justice of the Peace are to obtain a ruling to ensure the execution of CRAIE decisions.

126. The Committee has already found (see para. 117 above) that the Party concerned failed to provide an expeditious review procedure under article 9 (1) with regard to the three

information requests at issue in this case. When assessing whether the Party concerned meets the requirements of article 9 (4) to provide a timely procedure and adequate and effective remedies for the review of information requests under article 9 (1), the Committee examines the review procedure as a whole. In the present case, this means from the date on which the communicants applied to CRAIE until the time that they received the requested environmental information in accordance with the CRAIE decision.

127. However, before examining the time frame from the date on which the communicants applied to CRAIE until the time they received the requested environmental information, the Committee first considers the time-frame of the proceedings before the Justice of the Peace specifically.

128. Since the role of the Justice of the Peace is to enforce the decisions of CRAIE to release the requested information, including through the application of penalties, the Committee considers that the Justice of the Peace constitutes a remedy within the meaning of article 9 (4) regarding the review procedure for information requests under article 9 (1). The proceedings before the Justice of the Peace must therefore themselves meet the requirement in article 9 (4) to be "adequate and effective".

129. To determine whether, in the circumstances of the three information requests at issue in this case, the Justice of the Peace provided an adequate and effective remedy, the Committee looks at the time taken from the date on which the communicants commenced their proceedings before the Justice of the Peace until the date on which they received the requested environmental information in accordance with the CRAIE decision.

130. As regards its request for access to environmental information concerning the municipal swimming pool in Stavelot, Avala commenced proceedings before the Justice of the Peace on 20 January 2015 and received the requested environmental information on 7 September 2015 – a total period of 7.5 months.

131. In the case of the L'Eau Rouge campsite, Mr. Doutreloux commenced proceedings before the Justice of the Peace on 20 January 2015. He received part of the requested environmental information on 19 August 2015 and the remainder between 16 April and 4 May 2016 – a total period of 15.5 months.

132. Concerning the Francorchamps motor-racing circuit, Mr. Doutreloux applied to the Justice of the Peace on 15 December 2014 and received part of the information requested on 19 August 2015 and the remainder on 13 October 2015 – a total period of 10 months.

133. Given that the proceedings before the Justice of the Peace were simply to enforce the decision already taken by CRAIE, the Committee considers that this process should have been relatively straightforward and should not have involved any significant additional period of delay. Still, it is clear from the evidence presented to the Committee that the duration of the procedure before the Justice of the Peace to enforce the three decisions of CRAIE at issue in this communication involved a very significant period of time.

134. On this point, the Committee recalls its findings in communication ACCC/C/2013/93 (Norway) where it noted that "time is an essential factor in many access to information requests, for instance because the information may have been requested to facilitate public participation in an ongoing decision-making procedure."[69]

135. It is not clear to the Committee why a procedure to secure an order of enforcement should involve such long delays. The Party concerned accepts that it should not have been necessary for the communicants to bring enforcement proceedings to ensure that the public authority complied with the CRAIE decisions. The Committee however queries why it is left to the information requester, rather than CRAIE itself, to enforce CRAIE decisions at all.

136. The Committee now turns to consider the time frame from the date on which the communicants applied to CRAIE, up to the date on which they received the information requested. This is the basis upon which the Committee will determine whether the review

[69] ECE/MP.PP/C.1/2017/16, para. 88.

procedure provided by the Party concerned for the purposes of article 9 (1) was timely and ensured adequate and effective remedies as required by article 9 (4).

137. As regards its request for access to environmental information concerning the Municipal swimming pool in Stavelot, Avala appealed to CRAIE on 8 October 2014. It received the information requested on 7 September 2015, 11 months after its appeal.

138. In the case of the L'Eau Rouge campsite, Mr. Doutreloux appealed to CRAIE on 3 October 2014. It was not until 4 May 2016 that he received all of the information requested, 19 months after bringing his appeal.

139. As regards the Francorchamps motor-racing circuit, Mr. Doutreloux appealed to CRAIE on 28 July 2014. He received part of the information on 19 August 2015, but it was not until 13 October 2015 that he received all of the information requested. This was 14.5 months after making the request for access.

140. Plainly, in each of the three cases at issue here, the length of time that elapsed between the application to CRAIE and the date on which the communicants received the information was excessive. Given the long delays here, the review procedure provided by the Party concerned was not timely and manifestly did not deliver an adequate and effective remedy.

141. Based on the foregoing, the Committee finds that, by failing to ensure a timely procedure and adequate and effective remedies for the review under article 9 (1) of the communicants' three information requests, the Party concerned failed to comply with article 9 (4) of the Convention.

142. In the course of the Committee's procedure, the communicants subsequently referred to three other examples that they claim point to a wider problem of delays by public authorities complying with CRAIE decisions.[70] However, in none of those three cases had the communicants yet commenced proceedings before the Justice of the Peace to enforce the CRAIE decisions. Accordingly, since the Committee has no evidence before it to demonstrate that the non-compliance found in the preceding paragraph is of a wide or systemic nature, the Committee refrains from making a recommendation on this issue.

Not prohibitively expensive review procedure

143. It is important to note at the outset that there is no fee payable to bring an appeal to CRAIE. Neither is there any requirement to be represented by a lawyer.

144. It is also the case that there is no requirement under domestic law to be represented by a lawyer in order to bring proceedings before a Justice of the Peace to enforce a CRAIE decision.[71]

145. The Party concerned submits that, in practice, most people will bring proceedings before a Justice of the Peace without legal representation. The Party concerned also explains that legal aid allows low-income groups free access to legal counsel. Furthermore, the court fee and the cost of the court summons will be paid by the losing party.[72] These statements have not been disputed by the communicants.

146. The communicants opted to engage legal representation for their appeals before CRAIE and for the subsequent proceedings before the Justice of the Peace to enforce the CRAIE decisions. Their lawyer charged an hourly rate plus value added tax for professional services, in addition to charges to cover secretarial costs and travel expenses.[73]

147. As regards the fees or charges to bring proceedings before the Justice of the Peace where a public authority fails to comply with a decision of CRAIE, the Party concerned states that the fees/charges involved would not exceed €300 (see para. 79 above). The Party concerned points out that, if the applicant is successful in his or her proceedings, these fees will be covered by the losing party.

[70] Communicant's additional information, 4 October 2017.

[71] Party's reply to the Committee's questions, 15 August 2019, pp. 12–13.

[72] Ibid.

[73] Communicants' reply to the Committee's questions, 14 August 2019, pp. 2–4.

148. The Committee has previously determined that, in assessing costs in the light of the standard set in article 9 (4), it must consider the costs system in the Party concerned as a whole, and in a systemic manner.[74]

149. No fee is payable to lodge an appeal to CRAIE. While it was the case that the communicants had to bring proceedings before a Justice of the Peace to enforce the CRAIE decisions, there was no requirement under domestic law to engage legal representation.

150. The communicants have not disputed the Party concerned's statement that, in most cases, members of the public do not engage legal representation for proceedings before the Justice of the Peace, nor that, if applicants' proceedings are successful, they will recover the court fee and the cost of the court summons from the losing party. The communicants did indeed recover part of the costs incurred in their proceedings before the Justice of the Peace (see paras. 34, 46 and 57 above).

151. There may be certain cases within the scope of article 9 of the Convention where it would not be reasonable to expect an applicant to proceed with court proceedings in the absence of professional legal representation due to a legal requirement to be represented by a lawyer before the court, or due to the complexity of the legal or other matters under consideration. The Committee is satisfied, however, that this communication does not involve such a situation.

152. Considering the situation as a whole, and in particular the fact that there is no requirement to be represented by a lawyer in proceedings before the Justice of the Peace and that, in most such proceedings, members of the public are not legally represented, the Committee concludes that the costs involved in enforcing CRAIE decisions cannot be considered to be prohibitively expensive.

153. Based on the foregoing, the Committee finds that the Party concerned does not fail to comply with the requirement in article 9 (4) to ensure that the procedure under article 9 (1) for the review of requests for access to environmental information is not prohibitively expensive.

IV. Conclusions

154. The Committee finds that:

(a) By failing to provide any response to the communicants' three requests for access to environmental information within the 1-month period, the Party concerned failed to comply with article 4 (2) of the Convention;

(b) By failing to respond at all to the communicants' three written requests for environmental information, the Party concerned failed to comply with the requirements in article 4 (7) to state the reasons for the refusals, to provide refusals in writing where the information requests were in writing, and to provide information on access to the relevant review procedures;

(c) By failing to provide for an expeditious procedure for the review of the communicants' three information requests, the Party concerned failed to comply with article 9 (1) of the Convention;

(d) By failing to ensure a timely procedure and adequate and effective remedies for the review under article 9 (1) of the communicants' three information requests, the Party concerned failed to comply with article 9 (4) of the Convention.

155. Since no evidence has been put before the Committee to demonstrate that the non-compliance found in the preceding paragraph is of a wide or systemic nature in the Party concerned, the Committee refrains from making any recommendations in this case.

[74] ECE/MP.PP/C.1/2010/6/Add.3, para. 128; ECE/MP.PP/C.1/2017/20, para. 65.