Aarhus Convention Compliance Committee (ACCC)

Communication ACCC/C/2015/134

Replies to the questions sent to the Walloon Region on 28 June 2019

M. Delnoy
Avocat at the Liège Bar
Professor at the University of Liège

15 August 2019

Question 3

1. Question

Please provide the text of the relevant legislative provisions that govern:
(a) the right to request access to environmental information from a public authority and, in particular, the provisions governing the situation where a public authority fails to reply to a request for access within the prescribed timeframe;
(b) the right to appeal to the Commission de recours en matière d'accèss à l'information environnementale ("the CRAIE") and, in particular, the legal status of decisions made by the CRAIE;
(c) the procedures that apply before the CRAIE;
(d) the right to bring proceedings before the Justice de la paix where a public authority fails to comply with a decision of the CRAIE.

2. Answer

1.
In the Walloon Region, the following texts enshrine, as a matter of principle, the right to apply to administrative authorities to obtain environmental information:

- Article 32 of the Belgian Constitution (http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1994021730&table_name=loi), which provides:

> 'Article 32.
> Everyone has the right to consult any administrative document and to obtain a copy thereof, except in the cases and conditions stipulated by laws, Federal decrees or rules as referred to in Article 134';

- Article D.10, Book I of the Environmental Code (http://environnement.wallonie.be/legis/Codeenvironnement/codeLIEnvDispcommunesgenerales.htm), which provides:

‘Article D.10.
Any member of the public has a right of access to environmental information held by or for public authorities, without the person concerned having to state an interest.
Public authorities shall make available and disseminate environmental information held by them to the general public.
Without prejudice to the application of provisions on public participation, the objectives of this Title are:
1) to guarantee the right of access to environmental information held by or for public authorities and to set out the basic terms and conditions of and practical arrangements for its exercise;
2) to ensure that, as a matter of course, environmental information is progressively made available and disseminated to the public in order to achieve the widest possible systematic availability and dissemination of environmental information to the public. To this end, the use, in particular, of computer telecommunications or electronic technology shall be promoted where they are available.’

2.
Articles D.13 to D.17, D.20.1 and D.20.2 of Book I of the Environmental Code provide, as follows, detailed rules applicable to a request for access to environmental information and to the treatment of such a request by the public authority in receipt of the request:

‘Article D.13.
Information on the environment may be *inter alia*:
- consulted *in situ*, or;
- supplied in the form of a copy of the document containing or comprising the information requested, or by electronic mail.
Consultation *in situ* of the information requested shall be free of charge.
Any charge for supplying the information may not exceed the actual cost of the medium in which the information is stored and supplied, and the applicant for information must be told of the charge when making the request.

‘Article D.14.
(1) Any written request for environmental information is to give relevant details of its subject matter. Any request for environmental information made in person shall be recorded by the public authority in a register kept specially for the purpose. Where the information is requested *in situ*, the applicant’s name and address are to be entered in the register and the applicant is to countersign these details.
(2) The public authority shall acknowledge receipt of the request for information within 10 working days of receiving it.
The acknowledgement of receipt shall state clearly in what circumstances and how the applicant for information may seek review of the outcome and shall specify the time frame within which the environmental information requested can be provided to the applicant in accordance with Article D.16(1).

Article D.15.
(1) The public authority concerned shall make the environmental information requested available to the applicant:
(a) as soon as possible and, at the latest, within one month after receipt of the applicant’s request, or

(b) within two months after receipt of the request if the volume and the complexity of the information is such that the one-month period referred to in (a) cannot be complied with.
In such cases, the public authority shall inform the applicant as soon as possible, and in any case before the end of that one-month period, of any such extension and of the reasons for it.
(2) If a request is formulated in too general a manner, the public authority shall as soon as possible, and at the latest within the time frame prescribed in paragraph (1)(a), ask the applicant to give more specific details and shall provide adequate assistance to the applicant to do so.
(3) Where a request for environmental information relates to subparagraph 5) (b) of Article D.11, the public authority concerned shall reply by reporting to the applicant the place where details, if available, can be found of the measurement procedures used in compiling the information, including methods of analysis, sampling and pre-treatment of samples, or by referring to a standardized procedure used.

'Article D.16.
(1) Where an applicant requests a public authority to make environmental information available in a specific form or format, the public authority shall make it so available unless:
(a) it is publicly available in another form or format which is easily accessible to applicants; or
(b) it is reasonable for the public authority to make the information available in another form or format, in which case reasons shall be given for making it available in that form or format.
The reasons for a refusal to make information available, in full or in part, in the form or format requested shall be provided within the time limit referred to in Article D.15(1)(a).
(2) For the purposes of implementing this Article, a public authority shall maintain environmental information held by the authority or on its behalf in forms or formats that are readily reproducible and accessible by computer telecommunications or other electronic means.

'Article D.17.
(1) A public authority shall ensure that registers or lists of the environmental information held by the authority or on its behalf is established, maintained and publicly accessible and *inter alia* reports clearly where such information can be found. Access to these registers or lists shall be free of charge.
(2) In general terms, a public authority shall ensure that any applicant seeking environmental information receives assistance, advice and guidance, *inter alia* by establishing and maintaining facilities for the information requested to be consulted. The public authority shall also adequately inform applicants of the rights they enjoy as a result of this Title according to the conditions and detailed rules established herein.
The public authority may also designate contact points or information officers.
The Government may further decide upon rules for implementing the obligations covered by this Article.

'Article D.20.1.
(1) Any refusal to supply all or part of the information on the basis of Articles D.18(1) and D.19(1) is to be the subject of a reasoned decision and shall be notified to the

applicant within the time limits referred to in Article D.15(1)(a) or, as the case may be, Article D.15(1)(b).
(2) The notification shall clearly state in what circumstances and how the applicant for information may seek review of the outcome under Section III of this Chapter.

'Article D.20.2.
The Government shall establish templates for the documents to be used, in order to allow public authorities to meet the requirements of Articles D.14(2), D.16(1), D.18(1), D.19(1), D.20(1) and D.20.1.'

Pursuant to Article D.20.2, Article R.17 of Book I of the Environmental Code requires public authorities to use pre-established templates for replying to requests for access to environmental information:

'Article R.17.
The documents to be used by public authorities for acknowledging receipt of requests to supply information, delete errors or correct information, for extending deadlines for access to information or for notifying an applicant of refusal to supply all or part of the data requested shall be established according to the templates provided respectively in Annexes I to IV.'

3.
Articles D.18 to D.20 of Book I of the Environmental Code set out exceptions to the right of access to environmental information, as follows:

'Article D.18.
(1) Any authority, whether it is a public authority within the meaning of this Title or an institution at a level of government other than the Walloon Region, may refuse a request for environmental information if:
(a) the information requested is not held by or for the public authority to which the request is addressed. In such a case, where the public authority is aware that the information is held by or for another public authority, it shall as soon as possible transfer the request to that other authority and inform the applicant accordingly or inform the applicant to which public authority he or she could apply for the information requested; if the authority to which the request is transferred is subject to this Title, it shall be deemed to have received the request pursuant to this Title from the moment it receives the request forwarded to it;
(b) the request is manifestly unreasonable.
(c) the request is formulated in too general a manner, even after Article D.15(2) is applied;
(d) the request concerns material in the course of completion or unfinished documents or data. In such a case, the public authority shall state the name of the authority preparing the documents or data and the estimated time needed for completion.
(e) the request concerns internal communications.
(2) The reasons for refusal mentioned in paragraph (1) shall be interpreted in a restrictive way, taking into account the public interest served by disclosure. In each particular case, the public authority shall weigh the public interest served by disclosure against the interest served by the refusal.

‘Article D.19.
(1) Without prejudice to the provisions of national law applicable in the Walloon Region, the right of access to information guaranteed by this Title may be limited in so far as exercise of the right would adversely affect any of the following areas under the powers of the Walloon Region:
(a) the confidentiality of the proceedings of public authorities;
(b) international relations and public security;
(c) the course of justice, the ability of any person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature;
(d) the confidentiality of commercial or industrial information where such confidentiality is provided for by law to protect a legitimate economic interest, including the public interest in maintaining statistical confidentiality and tax secrecy;
(e) intellectual property rights;
(f) the confidentiality of personal data or files relating to a natural person where that person has not consented to the disclosure of the information;
(g) the interests or protection of any person who supplied the information requested on a voluntary basis without being under or capable of being put under a legal obligation to do so, unless that person has consented to the release of the information concerned;
(h) the protection of the environment to which the information relates.
Any authority, whether it is a public authority within the meaning of this Title or an institution at a level of government other than the Walloon Region, may cite these reasons for limiting access to information.
(2) The reasons for limiting access to information mentioned in paragraph (1) shall be interpreted in a restrictive way, taking into account the public interest served by disclosure. In each particular case, the public authority shall weigh the public interest served by disclosure against the interest served by the refusal.
The public authority may not refuse a request where:
1) it concerns documents subject to public enquiry under Articles D.29.14 and D.29.15 or documents subject to public enquiry or notification of proposed development under Articles D.VIII.15 and D.VIII.16 and the fifth paragraph of Article D.VIII.6 of the Walloon Regional Development Code;
2) it relates to information on emissions into the environment, on one of the grounds provided for by paragraph (1)(a), (d), (f), (g) and (h).

‘Article D.20.
(1) Where dissemination of certain information could adversely affect the interests covered by Article D.19 or by Article D.18(1)(d) and (e) and it is possible to remove such information, documents shall be supplied in part.
(2) Where the documents concern facts relating to the person requesting them, they cannot be refused for reasons of confidentiality of personal data and/or files or of confidentiality of commercial or industrial information.’

4.
Articles D.20.6 and D.20.7 of Book I of the Environmental Code provide for a remedy against a public authority’s failure to reply to a request for access to environmental information or its refusal to allow access. Under these provisions:

‘Article D.20.6.
Any applicant who considers that his or her request for information has been ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not

dealt with in accordance with the provisions of this Chapter may seek a review of the acts or omissions of the public authority concerned before the Appeal Commission for the Right of Access to Environmental Information ["the CRAIE"].
The appeal shall be lodged by application to the Secretariat of the CRAIE 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.

'Article D.20.7.
The application shall:
1) identify and provide the permanent address of the applicant;
2) identify the public authority to which the request for information was made, and provide its official address;
3) state the purpose of the request for information or of the request to delete errors or correct information;
4) state the grounds of appeal.
In addition, the applicant shall produce, annexed to the application, any supporting documents that he or she considers relevant and a detailed list of any information received in part.'

A standard application form for use by the general public has been made available online by the Walloon Region: http://environnement.wallonie.be/droit_information/Formulaire.doc

Thus, this remedy falls within the remit of the CRAIE, which is an independent administrative body. Under Article D.20.3 of Book I of the Environmental Code, the CRIAE shall include a Chair 'with at least five years' experience as a magistrate or lawyer' and two members nominated by the *Pôle environnement* (Environmental Hub), the main advisory body on environmental matters in the Walloon Region.

5.
The relevant procedure before the CRAIE is governed by Articles D.20.8 to D.20.14 of Book I of the Environmental Code:

'Article D.20.8.
Within 10 days of receipt of the application, the Secretary of the CRAIE shall send the applicant an acknowledgement of receipt, send a copy of the appeal to the public authority concerned and require the latter to supply the documents in the case and any information and other documents that the Secretariat considers relevant.
The public authority concerned shall send the Secretary a copy of the documents in the case and any other information, documents or data requested, within 15 days of such a request, appending its observations where appropriate.
In any event, the information requested by the applicant and to which access was not granted must be supplied to the Secretary of the CRAIE.

'Article D.20.9.
The CRAIE sits *in camera*.
It may invite the applicant, the authority concerned and any other person concerned by the original request to appear and be heard before it. Such persons invited to appear may represent themselves or be assisted by anyone they choose.

The CRAIE may hear any expert it sees fit to consult. It may also require the applicant or the public authority concerned to supply additional documents in the case and other information, documents and data that it considers relevant.

‘Article D.20.10.
The CRAIE may properly deliberate and reach a valid decision only if the Chair and at least three other members are present.
If the Chair or a member of the CRAIE cannot offer proper guarantees of impartiality with regard to a particular case, they must recuse themselves before the case is considered.
CRAIE decisions shall be taken by majority vote of those members present; no abstention is permitted. Where voting is tied, the Chair shall have the casting vote.
Members of the CRAIE are bound by secrecy in their deliberations and with regard to the confidentiality of information protected under Article D.19 which comes to their attention in the course of their duties.

‘Article [D.]20.11.
The CRAIE shall come to its decision within a month of receiving the application. However, it may extend this time limit on the basis of a reasoned decision; one or more such extensions may not exceed a total of 45 days.

‘Article [D.]20.12.
In addition to its statement of reasons, a CRAIE decision shall:
1) identify and provide the permanent address of the applicant;
2) identify the public authority to which the request for information was made, with its official address;
3) if relevant, give the names, permanent addresses and status of anyone who has represented or assisted the applicant or the public authority;
4) if relevant, give details of anyone invited to appear before the CRAIE, with details of the appearance and a record of the hearing;
5) if relevant, give details of any written submissions filed;
6) give details of the CRAIE’s decision, including date and place of delivery;
7) state the deadline set by the CRAIE taking into account the various interests involved, on expiry of which the applicant may exercise the right of access to information acknowledged as a result of the review procedure.
The decision shall be signed by the Chair and the Secretary.

‘Article D.20.13.
The applicant, the public authority against which the appeal has been brought and any person concerned who has been heard under the second paragraph of Article D.20.9 shall be notified of the decision.

‘Article D.20.14.
(1) The deadlines prescribed in this Chapter shall take effect on the day after receipt of the document that triggers the deadline.
A document sent by registered post shall be deemed to have been received on the first working day after posting.
The date of posting is the relevant date on which any procedural document is deemed to have been sent.

(2) The day on which the time limit ends shall be counted as falling within the period in question.
However, when the final date prescribed for carrying out a step in the procedure is a Saturday, Sunday or official holiday, the day on which the time limit ends shall be postponed to the next working day.'

The CRAIE's internal rules of procedure are available at: http://environnement.wallonie.be/legis/general/inf004.htm.

6.
No legislation expressly defines the legal nature of the CRAIE's decision on an appeal.

However, Article D.20.11 of Book I of the Environmental Code (reproduced above) provides that 'the CRAIE shall come to [a] decision'. Therefore a CRAIE decision is not merely an opinion given by way of guidance but a binding administrative decision.

On this basis, and in the light of the drafting history of the Walloon Environmental Code and the Decree enacting it, the legal literature unanimously accepts that the CRAIE has the power to reverse, amend or vary a decision taken by a public authority (Debroux P., J.-B. Levaux and V. Michiels, 'Les voies de recours [Remedies]'. In V. Michiels (ed.), *La publicité de l'administration - Vingt ans après, bilan et perspectives [Twenty Years of Administrative Publicity: evaluating the past and future of the 1994 Law]*, Brussels, Bruylant, 2015, pp. 227 et seq.; Jadot B., 'Information et participation du public en matière d'environnement: la convention d'Aarhus et le droit communautaire passés au crible par le Conseil d'Etat [Public access to information and public participation in environmental matters: the Aarhus Convention and European Community law under the scrutiny of the Council of State]', *Administration publique trimestriel (APT)*, 2007-2008-1, p. 14; Delnoy M. and R. Smal, 'La publicité de l'administration en matière environnementale [Public access to administrative documents in environmental matters]', in V. Michiels (ed.), *La publicité de l'administration - Vingt ans après, bilan et perspectives [Twenty years of administrative publicity: evaluating the past and future of the 1994 Law]*, Brussels, Bruylant, 2014, p. 324; Council of State case C.E., no. 167.937, 16 February 2017, *Municipality of Fraipont*), which means in practice that:
- the CRAIE makes its own assessment of the request for access to environmental information; and
- the CRAIE's decision replaces a public authority's decision not to supply the environmental information requested.

Moreover, in Belgian administrative law, all administrative decisions are 'enforceable', which means in particular that they are 'binding on the persons to whom they are addressed, who are obliged to obey the requirements of the decision, even if they later seek to remedy the situation' (see Renders D., *Droit administratif général [General Administrative Law]*, Bruylant, Brussels, 2015, p. 361, citing Council of State case C.E., no. 179.913, 20 February 2008, *Municipality of Schaerbeek*). And 'the decisions (both statutory and individual) of administrative authorities are enforceable of themselves. An administrative authority is considered to be in the right, notwithstanding any dispute or administrative review, unless and until a court upholds a complaint brought by a person subject to the administrative measure concerned' (Batselé D., T. Mortier and M. Scarcez, *Manuel de droit administratif [Handbook of Administrative Law]*, Bruylant, 2010, p. 498). Maurice-André Flamme confirms that any administrative decision is 'enforceable *ex officio*' (Flamme M.-A., *Droit administratif, Tome premier [Administrative Law, Volume One]*, Bruylant, Brussels, 1989, pp. 8 to 10). A public

authority whose refusal to supply environmental information has been reversed by the CRAIE is completely bound by the latter's decision. It no longer has any discretion to refuse to supply the environmental information requested: it must implement the CRAIE's decision.

Subparagraph 7) of Article D.20.12, in Book I of the Environmental Code, confirms that this is the legal situation, specifying that the CRAIE's decision must:

> '7) state the deadline set by the CRAIE taking into account the various interests involved, on expiry of which the applicant may exercise the right of access to information acknowledged as a result of the review procedure.'

(see also Part IV of the Memo of 23 February 2018 on behalf of the Walloon Region).

7.
Through the CRAIE, anyone faced with a public authority's refusal to supply environmental information has access to a review procedure before an independent and impartial body established by law, whose decision is binding on the public authority holding the information.

8.
The principle of rule of law means that, when a public authority contravenes provisions of Belgian national law, a claimant may obtain:
- either the annulment of the administrative measure adopted, through an appeal to the Council of State;
- or, should the public authority's conduct impair a personal right for an individual, compensation for the harm caused by this administrative measure and/or an injunction ordering the public authority not to proceed with the conduct concerned – or to desist from it – including, where appropriate, a financial penalty for failure to comply. These claims are brought before the ordinary courts (see Note to Court of Cassation case Cass., 24 January 2014, C.10.0450.F).

In circumstances such as those of this case, a public authority's refusal to supply environmental information in accordance with a binding CRAIE decision is manifestly in breach of the law.

Furthermore, as soon as a CRAIE decision has been given, the claimant has an individual right to obtain the requested information from the public authority (see Cass., 24 January 2014, C.10.0450.F).

Therefore it is the ordinary courts that have jurisdiction over cases where a public authority persists in failing to comply with a CRAIE decision requiring it to supply the environmental information requested (Renders D., B. Gors and C. Thiebaut, 'La procédure d'accès aux documents administratifs [Procedures for access to administrative documents]'. In D. Renders (ed.), *L'accès aux documents administratifs [Access to Administrative Documents]*, Brussels, Bruylant, 2008, p.574; Andersen R., 'Les procédures de recours en matière d'accès à l'information environnementale en Belgique [Review procedures for access to administrative documents in Belgium]'. In *Dix ans d'accès à l'information en matière d'environnement en droit international, européen et interne: Bilan et perspectives [Ten Years of Access to Environmental Information in International, European and Domestic Law: Evaluating the Past and the Future*], Brussels, Bruylant, 2003, p.216; (Debroux P., J.-B. Levaux and V. Michiels, 'Les voies de recours [Remedies]'. In V. Michiels (ed.), *op. cit.*, p.260).

In order to determine which court has jurisdiction, Articles 590 and 592 of the Code of Civil Procedure (available at http://www.ejustice.just.fgov.be/cgi_loi/loi_a1.pl?DETAIL=1967101003%2FF&caller=list&row_id=1&numero=5&rech=13&cn=1967101003&table_name=LOI&nm=1967101054&la=F&dt=CODE+JUDICIAIRE&language=fr&fr=f&choix1=ET&choix2=ET&fromtab=loi_all&trier=promulgation&chercher=t&sql=dt+contains++%27CODE%27%26+%27JUDICIAIRE%27and+actif+%3D+%27Y%27&tri=dd+AS+RANK+&imgcn.x=44&imgcn.y=11#LNK0010) provide:

> 'Article 590.
> A Justice of the Peace shall hear and determine all claims where the amount concerned does not exceed 5,000 euros, apart from those which are excluded by law from this court's jurisdiction, *inter alia* claims provided for by Articles 569 to 571, 2572a, 1573, 1574 and 578 to 583.
> […].
>
> 'Article 592.
> Where the value of the claim is undefined and the claim does not fall within the exclusive competence of a Court of First Instance or a Commercial Court, it can, according to the claimant's choice, be brought before a Court of First Instance or a Commercial Court, as appropriate, or before a Justice of the Peace.
> A court may send the case to a Justice of the Peace, if the defendant requests this, where the value of the claim could manifestly be held as equivalent to an amount that does not exceed the jurisdiction of the Justice of the Peace.
> A Justice of the Peace may send the case to a Court of First Instance or a Commercial Court, as appropriate, if the defendant requests this, where the value of the claim manifestly exceeds an amount that falls within the jurisdiction of the Justice of the Peace.'

It follows that a person who has requested access to environmental information may, in order to obtain a legal ruling to enforce a CRAIE decision – and, where appropriate, a financial penalty for failure to comply –
- apply to the Justice of the Peace,
- apply to the Court of First Instance, or, if the public authority is a business, to the Commercial Court.
In reality, the fact that the Justice of the Peace is the court with the closest local connection means that the applicant will most often seek a remedy there.

In addition, before the ordinary courts, the claimant may seek an order for damages against the public authority. If the amount claimed exceeds 5,000 euros, the claim must be made to the Court of First Instance. However, as far as can be ascertained, no amount in excess of 5,000 euros has ever been claimed before the courts in the Walloon Region.

9.
It follows that, if a public authority is reluctant to supply environmental information, the law applying in the Walloon Region:
- gives the person requesting this information access to a review procedure before the CRAIE, an independent and impartial body established by law, whose decision is binding on the

public authority holding the information, in accordance with the first subparagraph of article 9, paragraph 1, of the Aarhus Convention;
- means that CRAIE decisions are final, and therefore binding on the public authority, in accordance with the third subparagraph of article 9, paragraph 1, of the Aarhus Convention;
- ensures that CRAIE decisions are enforceable and that penalties can be imposed on the illegal conduct of a public authority which, in breach of the law, refuses to implement a CRAIE decision.

Question 4

1. Question

Please confirm that it is free of charge to bring an appeal before the CRAIE.

2. Answer

Making an application to the CRAIE is indeed completely free of charge.

Question 5

1. Question

Please provide any official data, statistics or evidence held by the CRAIE or other relevant authority, even if in unpublished form, that demonstrates that, in the majority of cases, public authorities implement decisions of the CRAIE requiring them to release environmental information in a timely manner.

2. Answer

In answer to our questions on this point, the Chair of the CRAIE informed us on 11 July 2019 (see letter, Annex 1) that no statistics are available on the effective implementation of CRAIE decisions by public authorities. Similarly, the Walloon Region Civil Service has no statistics on this subject.

However, the CRAIE Chair's letter demonstrates that, during the statistically relevant four years to 30 June 2019, at least 80 out of a total of 238 appeal proceedings brought before the CRAIE (more than a third, in other words) were held to be devoid of purpose since, when the public authorities concerned found out that appeals were being lodged, they immediately replied to the requests for environmental information. This is a significant indicator of the weight afforded to the CRAIE by most public authorities and of the latter's desire to avoid an unfavourable decision.

This may be readily understood, in light not only of the Belgian public authorities' traditional respect for the rule of law, but also of the penalties that may be incurred if they are found in breach of CRAIE decisions (see the answer to Question 3 above; see also point 2, Part IV of the Memo of 23 February 2018 on behalf of the Walloon Region). The legal literature also

confirms that this system works properly (see point 3, Part IV of the Memo of 23 February 2018 on behalf of the Walloon Region).

Of course, cases may arise where public authorities fail to comply with CRAIE decisions ordering them to release environmental information. However, this is extremely rare (see the final subparagraph of point 3, Part IV of the Memo of 23 February 2018 on behalf of the Walloon Region) – and anyway, as with any other proceedings brought for illegal conduct, a penalty for this failure is available before the ordinary courts.

What is more, the fact that the Walloon system generally works well was confirmed by the communicants' counsel during the session of the Aarhus Convention Compliance Committee held on 9 November 2018.

Question 6

1. Question

Please provide any official data demonstrating the proportion of decisions taken by public authorities that are the subject of appeals to the CRAIE.

2. Answer

There are no statistics relating to the proportion of public authority decisions on requests for access to environmental information that are – or are not – the subject of appeals to the CRAIE, since there is no requirement for the person requesting the information to register the request in a centralized information system.

Within the time allowed to reply to the Committee's questions, it has not been possible to carry out significant consultations with a satisfactory number of public authorities about any statistics they might keep on the requests for access to environmental information that they have received and how they have dealt with these.

Question 7

1. Question

What fees or charges apply in order to bring proceedings before the Justice de la paix where a public authority fails to comply with a decision of the CRAIE.

2. Answer

Proceedings before the Justice of the Peace are initiated by writ of summons. This summons must be served by a bailiff who is an officer of the court, and this entails fees of approximately 100 euros – however, these will be paid by the party against whom costs are awarded at the end of the proceedings.

Under Article 269(1) of the Federal Code on Registration, Mortgage and Court Fees (as amended by the Law of 14 October 2018 amending the Code on Registration, Mortgage and Court Fees to reform court fees), a filing fee of 50 euros is due for each case entered on the general case list of the Justice of the Peace: this will also be covered by the losing party.

Finally, the Committee's attention should be drawn to the fact that the above-mentioned fees are waived through legal aid for low-income groups (see https://justice.belgium.be/fr/ordre_judiciaire/cours_et_tribunaux/cour_de_cassation/informations_au_sujet_de_la_cour/assistance_judiciaire). Thus, a person living alone with a net monthly income of less than €1,011 would, as a rule, have all court fees waived.

Question 8

1. Question

Please confirm that there is no requirement to be represented by a lawyer before the Justice de la paix.

2. Answer

There is no requirement for representation by a lawyer before any of the ordinary courts of Belgium. Thus, Article 728(1) of the Civil Procedure Code provides that 'when proceedings are initiated and at the subsequent stages of the case, the parties are required to appear in person or be represented by counsel' (available in full at http://www.ejustice.just.fgov.be/cgi_loi/loi_a1.pl?DETAIL=1967101004%2FF&caller=list&row_id=1&numero=6&rech=13&cn=1967101004&table_name=LOI&nm=1967101055&la=F&dt=CODE+JUDICIAIRE&language=fr&fr=f&choix1=ET&choix2=ET&fromtab=loi_all&trier=promulgation&chercher=t&sql=dt+contains++%27CODE%27%26+%27JUDICIAIRE%27and+actif+%3D+%27Y%27&tri=dd+AS+RANK+&imgcn.x=44&imgcn.y=14#LNK0021).

In practice, many people bring proceedings before the Justice of the Peace without the assistance of a lawyer, since this is their local or 'community' court. It handles cases with the lowest financial value (see above), certain types of personal or family cases (appointment of guardians, decisions relating to mental capacity, etc.) and 'neighbour disputes' (tenancies, co-ownership of property, easements, damage to crops, etc.) (see https://www.tribunaux-rechtbanken.be/sites/default/files/def-brochure_vrederechter_fr-2019.pdf). Across Belgium, there are 187 Justices of the Peace, ensuring that citizens have access to justice as close to home as possible. Some Justices of the Peace even hold regular legal advice sessions for local residents (see, for example http://www.grace-hollogne.be/ma-commune/subfolder1/subfocus/lastfocus/c/consultation%20juridique; https://www.herstal.be/ma-ville/services-communaux/securite-publiques/liens-utiles).

Even though legal representation in Belgium is in theory the monopoly of lawyers, a claimant before the Justice of the Peace may also be represented by their spouse, their lawfully cohabiting partner or a relation by blood or marriage who has written power of attorney and is specially recognized by the court (Article 728(2) of the Civil Procedure Code).

Finally, and in any event:

- legal aid allows low-income groups free access to legal counsel (see http://www.barreaudeliege.be/FR/AideJuridique.aspx);
- the court awards a case preparation allowance against the losing party in favour of the party that wins the case.

Question 9

1. Question

Could the communicant have had recourse to the Constitutional Court and / or the Council of State with respect to the particular issues arising in this communication? If yes, please specify.

2. Answer

Since the Municipality of Stavelot was bound by the CRAIE's decisions and therefore was obliged to supply the environmental information requested and since, consequently, the communicant had an individual right to obtain the information requested, the Council of State would not have been the competent jurisdiction to rule on these claims: therefore these cases could not have been brought before it (see above).

The Constitutional Court can hear and determine only cases relating to legislative measures: therefore the communicant could not have appealed directly to that jurisdiction – although obviously the communicant might have wished to suggest that the Justice of the Peace refer a question to the Constitutional Court for a preliminary ruling.

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