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Case Summary posted by the Task Force on Access to Justice

d'Arripe c.s. v. Walloon Region, Nr. 135/2006

1. Key issue	Public Participation concerning Plans, Programmes and Policies Relating to the Environment – The simplification of planning legislation concerning highways in the Walloon Region of Belgium is not violating Art. 10, 11 and 23 of the Belgian Constitution in combination with Art. 10 of the EC Treaty, the EU Directive 2001/42/EC and Art. 7 of the Aarhus Convention. Although it is henceforth possible to obtain planning permission for the construction of a motorway in some zones without a prior revision of the regional land use plan, this does not mean that the parties concerned are deprived of any form of preventive and curative legal protection.
	Belgium (Walloon Region)
3. Court/body	Constitutional Court
4. Date of judgment /decision	14 September 2006
5. Internal reference	Grondwettelijk Hof/Cour constitutionelle/Verfassungsgerichtshof Nr. 135/2006, 14 September 2006, d'Arripe c.s. v. Walloon Region
6. Articles of the Aarhus Convention	Art. 7
7. Key words	Access to Justice - Public Participation - Plans, Programmes and Policies – Land Use Planning – SEA – EIS - Natura 2000

8. Case summary

This case involves a highway junction in the region of Liège. In the regional land use plan, two alternatives were provided for realizing a junction between two highways in the form of two relatively broad "reservation and easements zones". Before realizing one of the two alternatives, the initial legislation required a review of the regional land use plan in view to transform one of the two reservation zones into a more precise projected path for the highway junction. A revision of the regional land use plan is subject to an environmental impact assessment and public participation. The challenged Amendment of the Walloon Town and Country Planning Code (Decree of the Walloon Region of 3 February 2005) removed the environmental impact assessment and public participation requirements since these broader reservation zones are to be considered as equivalent to a projected path of a line infrastructure like a highway junction.

Neighbours and a local environmental NGO asked for the annulment of this Amendment of the Town and Planning Code for violation of Art. 10, 11 and 23 of the Constitution in combination with art. 10 of the EC Treaty, the EU Directive 2001/42/EC and the Aarhus Convention.

The Court found that although the level of protection of the environment of the plaintiffs had diminished under the challenged Amendment, the Amendment of the Walloon Town and Country Planning Code could be justified by reasons of public interest. In particular, the Court noted that an environmental assessment is required for "minor modifications" under Article 3(3) of Directive 2001/42/EC only where "the Member States determine that they are likely to have significant environmental effects, taking into account the relevant criteria set out in Annex II to the Directive (Article 3(5))". The Court held that the Walloon legislature could properly determine that conversion constituted only a "minor modification" with no significant environmental impact. In particular, the conversion "of reservation and easement zones into reservation perimeters coinciding with paths does not as such constitute a plan or programme within the meaning of article 7 of the Aarhus Convention".

Although it is henceforth possible to obtain planning permission for the construction of a motorway in such a zone

without a prior revision of the regional plan with a view to the incorporation of the path of such an infrastructural project, this does not mean that the parties concerned are deprived of any form of preventive and curative legal protection. The Court described in its judgement all relevant provisions of environmental and planning law that are still applicable before a permit can be granted for the construction of the motorway junction, including environmental impact assessments public consultation and the possibility to challenge the permit before the Council of State and concluded: "Having regard to the remaining level of preventive and curative protection, the challenged provision does not constitute a significant deterioration which cannot be justified by the underlying reasons of public interest".	
9. Link address	http://www.const-court.be/public/f/2006/2006-135f.pdf http://www.const-court.be/public/n/2006/2006-135n.pdf http://www.const-court.be/public/d/2006/2006-135d.pdf