

2013-08-19

Case Summary posted by the Task Force on Access to Justice

BELGIUM: PP and PSLV v. Gewestelijk Stedenbouwkundig Inspecteur and M vzw

1. <i>Key issue</i>	Standing for Environmental NGOs: The Supreme Court of Belgium changed its position on standing in criminal cases in view of implementing Art 9 (3) of the Aarhus Convention, allowing an environmental NGO to take action for reparation in a case dealing with illegal constructions.
2. <i>Country/Region</i>	Belgium
3. <i>Court/body</i>	Supreme Court (Cour de cassation)
4. <i>Date of judgment</i>	11 June 2013
5. <i>Internal reference</i>	Hof van Cassatie, 11 June 2013, Nr. P.12.1389.N
6. <i>Articles of the Aarhus Convention</i>	Art. 2, para. 4, art. 3, para. 4, and art. 9, para. 3
7. <i>Key words</i>	Access to Justice – Criminal case – Violation of Domestic Environmental Law – Civil Party – Environmental NGO – Standing – Compensation for moral damages

8. Case summary

In the 1970s, a trend could be discerned in Belgium whereby the civil courts and the criminal courts (as far as actions for damages are concerned) increasingly acknowledged that environmental groups could rely on a collective interest to have standing. This trend was stemmed by the Supreme Court in the so-called *Eikendael* judgment of 19 November 1982 (Hof van Cassatie, *Nv S. v. Vzw Werkgroep voor Milieubeheer Brasschaat*, 19 November 1982). In this judgment the Supreme Court considered that, in accordance with Article 17 of the Judicial Code, no legal action is admissible if the plaintiff has no interest in bringing such an action. According to the Court, unless the law provides otherwise, legal proceedings instituted by a natural or legal person were not admissible if the plaintiff had no personal and direct interest, in other words, no interest of its own. The court left no doubt that public interest does not amount to 'own interest'. The own interest of a legal person is only that which affects its existence or its tangible and intangible assets, its property, honor and reputation. A corporate purpose, even if this be the protection of the environment, was in the Court's view not an own interest.

The Supreme Court had till recently not the opportunity to reconsider this case law in the light of the Aarhus Convention. The first occasion to do so, the judgment of 11 June 2013, brought a radical change in the Court's approach towards standing of environmental NGO's.

In this case, the Supreme Court – referring to article 2, paragraph 4, article 3, paragraph 4, and article 9, paragraph 3, of the Aarhus Convention – stated that Belgium has engaged itself to secure access to justice for environmental NGOs when they like to challenge acts or omissions of private persons and public authorities which contravene domestic environmental law, provided they meet the criteria laid down in national law. Those criteria may not be construed or interpreted in such a way that they deny such organizations in such a case access to justice. Judges should interpret the criteria laid down in national law in conformity with the objectives of article 9, paragraph 3, of the Aarhus Convention.

According article 3 of the Preliminary Title of the Criminal Procedure Code, the legal action to repair damages belong to the victims. They shall demonstrate a direct and personal interest. When such an action is introduced by an environmental NGO and aims to challenge acts and omissions that contravene domestic environmental law, such an environmental NGO has a sufficient interest to do so.

After having granted the NGO standing in the case, the Supreme Court upheld the challenged judgment and accepted the action for reparation in a criminal case dealing with violations of the Flemish Code on Town and Country Planning. The illegal construction of horse stables and an outdoor arena in an area where this was not allowed had to be removed and the prior situation restored.

<i>9. Link address</i>	http://jure.juridat.just.fgov.be/ http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence_prj/BELGIUM/Crim_standing/Belgium_2013_Criminal_Standing_judgement.pdf
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