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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

Twelfth meeting
Geneva, 14–16 June 2006

REPORT OF THE MEETING

Addendum

FINDINGS AND RECOMMENDATIONS

with regard to compliance by Belgium with its obligations under the Aarhus Convention in relation to the rights of environmental organizations to have access to justice (Communication ACCC/C/2005/11 by Bond Beter Leefmilieu Vlaanderen VZW (Belgium))

Adopted by the Compliance Committee on 16 June 2006

INTRODUCTION

1. On 3 January 2005, the Belgian non-governmental organization Bond Beter Leefmilieu Vlaanderen VZW (BBL; hereinafter the communicant) submitted a communication to the Committee alleging non-compliance by Belgium with its obligations under article 2, paragraph 5, article 3, paragraph 1, and article 9, paragraphs 1 to 4, of the Aarhus Convention.

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2. The communication concerns access to justice for environmental organizations in Belgium. The communicant claims that Belgian legislation and case law do not comply with the “third pillar” of the Convention, namely with the provisions requiring access to justice in environmental matters. More specifically, the concept of “interest” as a criterion for standing before the Belgian judicature is too narrowly interpreted – for example, by the Council of State in cases concerning construction permits and planning decisions. This constitutes a barrier to wide access to justice for environmental organizations. Hence, the communicant argues, Belgian law is not in compliance with article 9 of the Aarhus Convention.

3. The communication was forwarded to the Party concerned on 10 March 2005, following a preliminary determination as to its admissibility.

4. The reply from the Party concerned, received on 9 August 2005, disputed the claim of non-compliance, and held that the Belgian regime on access to justice in environmental matters complies with the relevant provisions of the Convention. The Party concerned thus asked the Committee to dismiss as unfounded the allegations made in the communication. However, while disagreeing with the Communicant on the merits, the Party concerned did not maintain that the communication failed to satisfy the formal requirements for admissibility for review by the Committee.

5. The Committee at its seventh meeting (ECE/MP.PP/C.1/2005/2, para. 14) determined on a preliminary basis that the communication was admissible, subject to review following any comments received from the Party concerned. Having reviewed the arguments put forward by the Party concerned in its response and having further consulted with both parties at its ninth meeting, the Committee hereby confirms the admissibility of the communication, deeming the points raised by the Party to be of substance rather than related to the admissibility.

6. The Committee discussed the communication at its ninth meeting (12–14 October 2005), with the participation of representatives of both the Party concerned and the communicant, both of whom provided additional information.

7. During the discussion at the ninth meeting, the Communicant elaborated on its claims and pointed out that it was not asking for a review of all the court cases referred to in its communication. Rather, it argued that the case concerned the general issue of standing for environmental organizations, as reflected in the cases referred to. The Party concerned pointed out that it also understood the communication as addressing the legal issue as a whole rather than focusing on individual cases. Since by far most of the court decisions referred to in the communication concern town planning permits and area plans (e.g. with respect to land-fill, residential constructions and nature conservation), the Committee limits its findings and evaluation to these issues. As indicated by the cases invoked by the Communicant, the remedies most frequently sought when challenging town planning permits and area plans are the annulment or suspension of the decision in question.

8. In order to further clarify the case, the Committee asked the Party concerned by a letter of 25 October 2005 to provide answers to certain questions concerning the legal situation in Belgium. The Party provided an answer to these questions by its letter of 21 November 2005. In a letter dated 9 December 2005, the Committee asked the Party to provide further information

about the legal effect of the “plan de secteur” (area plan) and the “permis d’urbanisme” (town planning permit) in Walloon law. The Party provided answers to these questions in a letter dated 15 January 2006.

9. The Committee deliberated on the communication at its eleventh session and completed its preparation of draft findings and recommendations, which were then forwarded to the Party concerned and the communicant for comments pursuant to paragraph 34 of the annex to decision I/7.

10. In accordance with paragraph 34 and with reference to paragraph 36 (b) of the annex to decision I/7, the draft findings and recommendations were forwarded for comment to the Party concerned and to the communicant on 27 April 2006. Both were invited to provide comments, if any, by 26 May 2006. The Committee took note of a letter from the Belgian Minister of the Environment dated 24 May 2006. The letter described a number of measures being taken to strengthen access to justice. A multi-stakeholder roundtable had been held in the federal parliament and plans were under way for further training for the judiciary, consultations between the relevant Ministers at federal and regional level and the establishment of a national team of officers to work on access to justice with a view to giving appropriate follow-up to the Committee’s findings and recommendations. Improvements in the law were also under consideration. Comments were received from the communicant on 29 May 2006. The Committee, having reviewed the comments, took them into account in finalizing its findings and recommendations.

I. SUMMARY OF FACTS¹

11. The matter concerns access to justice for environmental organizations, as evidenced by legislation and court practice up to the point of the entry into force of the Convention for Belgium. Due to the federal structure of Belgium, the implementation of the Convention involves federal law as well as the laws of the three regions (Flanders, Wallonia and Brussels Capital Region). Environmental and planning laws are part of the regions’ competence, and so is the administrative structure for managing these laws. Hence, the regions decide on administrative appeals against various forms of environmental and construction permits. All three regions provide for administrative appeal procedures against “environmental permits” for natural and legal persons who can show an interest in the case. However, there is no corresponding administrative appeal procedure for construction permits, available to third parties, including environmental organizations, in any of the regions. Thus, these decisions can only be appealed by third parties to the Belgian judicature, provided that the criteria for standing are fulfilled.

12. Legislation concerning standing, access to courts and judicial review as well as the structure of the court system is federal. The criteria for standing are set out in different laws, in particular the Judicial Code, the Act of 12 January 1993 Establishing a Right of Action in the

¹ This chapter includes only the main facts considered relevant to the question of compliance, as presented to and considered by the Committee.

Field of Environmental Protection (“Act of 1993”), the Criminal Procedural Code, the coordinated laws on the Council of State, and the Special Law on the Court of Arbitration.

13. Most important for the present case is the extent to which environmental organizations have access to the Council of State in order to challenge various administrative decisions. When trying a case, the Council of State restricts itself to either set aside the disputed act partially or in its entirety, or to confirm it. In addition to annulment, article 17 of the coordinated laws on the Council of State (“lois sur le Conseil d’Etat coordonnées”) makes it possible, under certain conditions, to ask for suspension of an act on a preliminary basis. Before making such a request, however, an environmental organization needs to show “either a violation or an interest” in order to have access to the Council of State at all.

14. The Council of State has taken a less strict position than the Supreme Court in deciding on how to interpret the criterion of “interest”. The jurisprudence of the Council of State is set out e.g. in the two most recent cases referred to by the Communicant. As pointed out, both cases were initiated before, but finally decided after the date the Convention entered into force for Belgium. In the first case, Judgement 133.834 of 13 July 2004, environmental organizations asked the Council of State to annul a decision by the Walloon Government concerning an area plan (“plan de secteur”) providing for a landfill. In the second case, Judgement 135.408 of 24 September 2004, environmental organizations asked the Council of State to annul a town planning permit (“permis d’urbanisme”) granted by the Mayor and Deputy Mayors (“bourgmestre et échevins”) of the municipality of Grez-Doiceau for certain residential constructions. In both cases, the requests by the environmental organizations were turned down for lack of standing.

15. It follows from these and other cases that environmental organizations can act before the Council of State if they satisfy the conditions that apply to all natural and legal persons, i.e. to be able to show a direct, personal and legitimate interest as well as a “required quality”. This required quality is proven by an organization when it acts in accordance with its statutory goals and these goals do not coincide with the protection of a general interest or a personal interest of its members. Two criteria must be fulfilled in order to appreciate the general character of the organization’s statutory goal, a social and a geographical criterion. The case is not admissible if the objective of the organization is so broadly defined that it is not distinct from a general interest. As to the geographical criterion, an act cannot be challenged by an organization if the act refers to a well-defined territory and the activities of the organization are not territorially limited or cover a large geographical area, unless the organization also has a specifically defined social objective. Moreover, an organization whose objective expands to a large territory may only challenge an administrative act if the act affects the entire or a great part of the territory envisaged by the organization’s statutes.

16. In addition to the national laws, Belgium, as a member State of the European Union (EU), is bound by European Community law and the approach taken by the European Court of Justice with respect to the status of international agreements concluded by the European Community. The European Court of Justice has held in two cases (Case C-213/03, *Syndicat professionnel coordination des pêcheurs de l’étang de Berre et de la région vs. Electricité de France*, of 15 July 2004; and Case C-239/03, *Commission of the European Communities vs. French Republic*, of 7 October 2004) that under certain circumstances a provision in an international agreement

concluded by the European Community may be directly applicable in the member State. Thus, the provision of an international agreement can become part of the domestic law of the EU member State. It is quite likely that some provisions of the Aarhus Convention, to which the European Community is a Party, have such properties as to be directly applicable in the EU member States. In such a case the provision of the Aarhus Convention must be applied by national courts and administrative authorities in the EU member States.

17. The Communicant and the Party concerned have made references to several judgements by the Council of State to prove their case. The Communicant lists cases where environmental organizations have been denied access to the Council of State, and Belgium in its reply refers to cases where the Council of State admitted standing for environmental organizations.

18. The Communicant alleges that despite the less strict attitude taken by the Council of State compared with the Supreme Court, even the interpretation by the former is too narrow to comply with article 9 of the Convention. In particular, environmental organizations are denied access to the Council of State when the claim is not brought by a local organization. Because of this various claims by organizations have been declared inadmissible. Also the different jurisprudence of the Supreme Court and Council of State (and the Court of Arbitration) as such complicates predictability. For this reason, the Communicant alleges that Belgium is also not in compliance with the requirement of article 3, paragraph 1, of the Convention, that each Party take the necessary measures to establish and maintain a clear, transparent and consistent framework to implement the provisions of the Convention.

19. In its reply, the Party concerned argues that the Communicant gives an imbalanced image of Belgian law by its selective citation. According to the Party concerned, the Council of State has often accepted the personal interest or damage of local environmental organizations, and annulled and suspended many decisions concerning hunting and bird protection. The Party concerned also considers the allegation of the Communicant, that the different approaches of the courts are in themselves inadequate to provide access to justice for environmental organizations, to be simplistic. The reason why the courts consider the notion of "interest" differently is because the different environmental laws concern different kinds of interests.

II. CONSIDERATION AND EVALUATION BY THE COMMITTEE

20. Belgium ratified the Convention on 21 January 2003. The Convention entered into force for Belgium on 21 April 2003.

21. The Communicant has referred to eleven cases decided by various courts in order show that Belgium fails to comply with the Convention. Some of the cases are only briefly referred to whereas others are annexed in their entirety. When examining the communication on the merits, the Committee notes that none of the cases referred to by the Communicant to prove that Belgium currently fails to comply with the Convention, was initiated after its entry into force for Belgium. Two cases were finally dismissed by the court after the entry into force of the Convention for Belgium, but even these cases had been initiated before a public authority before the entry into force of the Convention.

22. In both decisions made after the entry into force for Belgium the Council of State actually refers to the Convention. In one of the cases (Judgement 133.834 of 13 July 2004), it explicitly considers that the Convention had not yet entered into force at the date of the requests for the annulment. For this reason, the Committee cannot exclude the possibility that had the Convention entered into force for Belgium, it would also have been considered by the Council of State so as to alter its previous jurisprudence. In the view of the Committee, these cases therefore cannot be used to show that Belgian law, i.e. its court practice, remains the same as before the entry into force and that Belgium is still not complying with the Convention (cf. article 28 of the Vienna Convention on the Law of Treaties).

23. Nevertheless, the view of the Communicant is based on well-established court practice and a new court practice has not yet been revealed. It is therefore pertinent to consider and evaluate the established practice of the Council of State in the light of the principles on access to justice in the Convention. In this way, the findings of the Committee reveal its views on Belgian law, if the court practice is not altered. For the given reasons, however, even if the Committee will find that the court practice reflected in the given cases is not consistent with the Convention, this will not lead to the conclusion that Belgium is in a state of non-compliance with the Convention.

24. Nine of the eleven cases referred to are decisions by the Council of State, and almost all of them concern planning decisions. The two cases decided by the Council of State in 2004 concern, respectively, decisions on area plans by the Walloon Government in order to allow a landfill installation, and town planning permits given by the Mayor and Deputy Mayors of the municipality of Grez-Doiceau for residential constructions. The Committee therefore limits its findings and evaluation to whether Belgian law, up to the point of entry into force of the Convention, would have provided access to justice for challenging decisions concerning town planning permits and area plans in accordance with the Convention. The remedies most frequently sought when challenging such decisions are the annulment or suspension of the decision in question

25. The Walloon Government as well as the Mayor and Deputy Mayors of the municipality of Grez-Doiceau constitute public authorities, in accordance with article 2, paragraph 2, of the Convention.

26. The Convention obliges the Parties to ensure access to justice for three generic categories of acts and omissions by public authorities. Leaving aside decisions concerning access to information, the distinction is made between, on the one hand, acts and omissions related to permits for specific activities by a public authority for which public participation is required under article 6 (article 9, paragraph 2) and, on the other hand, all other acts and omissions by private persons and public authorities which contravene national law relating to the environment (article 9, paragraph 3). It is apparent that the rationales of paragraph 2 and paragraph 3 of article 9 of the Convention are not identical.

27. Article 9, paragraph 2, applies to decisions with respect to permits for specific activities where public participation is required under article 6. For these cases, the Convention obliges the Parties to ensure standing for environmental organizations. Environmental organizations, meeting the requirements referred to in article 2, paragraph 5, are deemed to have a sufficient interest to be granted access to a review procedure before a court and/or another independent and

impartial body established by law. Although what constitutes a sufficient interest and impairment of a right shall be determined in accordance with national law, it must be decided “with the objective of giving the public concerned wide access to justice” within the scope of the Convention.

28. Article 9, paragraph 3, is applicable to all acts and omissions by private persons and public authorities contravening national law relating to the environment. For all these acts and omissions, each Party must ensure that members of the public “where they meet the criteria, if any, laid down in its national law” have access to administrative or judicial procedures to challenge the acts and omissions concerned. Contrary to paragraph 2 of article 9, however, paragraph 3 does not refer to “members of the public concerned”, but to “members of the public”.

29. When determining how to categorize a decision under the Convention, its label in the domestic law of a Party is not decisive. Rather, whether the decision should be challengeable under article 9, paragraph 2 or 3, is determined by the legal functions and effects of a decision, i.e. on whether it amounts to a permit to actually carry out the activity.

30. Relevant in this case is also article 9, paragraph 4, according to which the procedures for challenging acts and omissions that contravene national law relating to the environment shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive.

31. Based on the information received from the Party concerned and the Communicant, the Committee understands that decisions concerning area plans (“plan de secteur”) do not have such legal functions or effects as to qualify as decisions on whether to permit a specific activity. Therefore, article 9, paragraph 3, is the correct provision to review Belgian law on access to justice with respect to area plans, as provided for in Walloon legislation.

32. The situation is more complicated with respect to the legal functions and effects of town planning permits (“permis d’urbanisme”), as defined by Walloon law. Based on the information provided by the Party and the Communicant, it appears to the Committee that in Walloon law some town planning permits may amount to permit decisions for specific activities where public participation is required (e.g. when an environmental impact assessment is required; cf. annex I, paragraph 20 of the Convention), whereas other do not. Hence, it is not possible for the Committee to generally conclude whether Belgian law on access to justice for these cases should be assessed in light of article 9, paragraph 2 or 3. Therefore, the Committee will assess the case under both provisions.

33. In the view of the Committee, the criteria that have been applied by the Council of State with respect to the right of environmental organizations to challenge Walloon town planning permits would not comply with article 9, paragraph 2. As stated, in these cases environmental organizations are deemed to have a sufficient interest to be granted access to a review procedure before a court or an independent and impartial body established by law. Although what constitutes a sufficient interest and impairment of a right shall be determined in accordance with national law, it must be decided “with the objective of giving the public concerned wide access to justice” within the scope of the Convention. As shown by the cases submitted by the

Communicant with respect to town planning permits this is not reflected in the jurisprudence of the Council of State. Thus, if the jurisprudence is maintained, Belgium would fail to comply with the article 9, paragraph 2, of the Convention.

34. To the extent that a town planning permit should not be considered a permit for a specific activity as provided for in article 6 of the Convention, the decision is still an act by a public authority. As such it may contravene provisions of national law relating to the environment. Thus, Belgium is obliged to ensure that in these cases members of the public have access to administrative or judicial procedures to challenge the acts concerned, as set out in article 9, paragraph 3. This provision is intended to provide members of the public with access to adequate remedies against acts and omissions which contravene environmental laws, and with the means to have existing environmental laws enforced and made effective. When assessing the Belgian criteria for access to justice for environmental organizations in the light of article 9, paragraph 3, the provision should be read in conjunction with articles 1 to 3 of the Convention, and in the light of the purpose reflected in the preamble, that “effective judicial mechanisms should be accessible to the public, including organizations, so that its legitimate interests are protected and the law is enforced.”

35. While referring to “the criteria, if any, laid down in national law”, the Convention neither defines these criteria nor sets out the criteria to be avoided. Rather, the Convention is intended to allow a great deal of flexibility in defining which environmental organizations have access to justice. On the one hand, the Parties are not obliged to establish a system of popular action (“actio popularis”) in their national laws with the effect that anyone can challenge any decision, act or omission relating to the environment. On the other hand, the Parties may not take the clause “where they meet the criteria, if any, laid down in its national law” as an excuse for introducing or maintaining so strict criteria that they effectively bar all or almost all environmental organizations from challenging act or omissions that contravene national law relating to the environment.

36. Accordingly, the phrase “the criteria, if any, laid down in national law” indicates a self-restraint on the parties not to set too strict criteria. Access to such procedures should thus be the presumption, not the exception. One way for the Parties to avoid a popular action (“actio popularis”) in these cases, is to employ some sort of criteria (e.g. of being affected or of having an interest) to be met by members of the public in order to be able to challenge a decision. However, this presupposes that such criteria do not bar effective remedies for members of the public. This interpretation of article 9, paragraph 3, is clearly supported by the Meeting of the Parties, which in paragraph 16 of decision II/2 (promoting effective access to justice) invites those Parties which choose to apply criteria in the exercise of their discretion under article 9, paragraph 3, “to take fully into account the objective of the Convention to guarantee access to justice.”

37. When evaluating whether a Party complies with article 9, paragraph 3, the Committee pays attention to the general picture, namely to what extent national law effectively has such blocking consequences for environmental organizations, or if there are remedies available for them to actually challenge the act or omission in question. As mentioned, Belgian (Walloon) law does not provide for administrative appeals or remedies for third parties to challenge town planning permits or decisions on area planning. The question therefore is whether sufficient access is

granted to the Council of State. This evaluation is not limited to the wordings in legislation, but also includes jurisprudence of the Council of State itself.

38. Up to the point of entry into force of the Convention for Belgium, the general criteria for standing of environmental organizations before the Council of State have not differed from those of natural persons. According to this practice, to be able to challenge a town planning permit or a plan before the Council of State, an environmental organization must thus claim a direct, personal and legitimate interest. It must also prove that, when acting in accordance with its statutory goals, the goals do not coincide with the protection of a general interest or a personal interest of its members. Hence, federations of environmental organizations have generally not been able to meet this criterion, since their interest is not seen as distinct from the interests of its members. Moreover, according to this practice, two criteria must be fulfilled in order to appreciate the general character of the organization's statutory goal, a social and a geographical criterion. The case is not admissible if the objective of the organization is so broadly defined that it is not distinct from a general interest. As to the geographical criterion, an act cannot be challenged by an organization if the act refers to a well-defined territory and the activities of organization are not territorially limited or cover a large geographical area, unless the organization also has a specifically defined social objective. Furthermore, an organization whose objective expands to a large territory may only challenge an administrative act if the act affects the entire or a great part of the territory envisaged by the organization's statutes.

39. The Convention does not explicitly refer to federations of environmental organizations. If, in the jurisdiction of a Party, standing is not granted to such federations, it is possible that, to the extent that member organizations of the federation are able to effectively challenge the act or omission in question, this may suffice for complying with article 9, paragraph 3. If, on the other hand, due to the criteria of a direct and subjective interest for the person, no member of the public may be in a position to challenge such acts or omissions, this is too strict to provide for access to justice in accordance with the Convention. This is also the case if, for the same reasons, no environmental organization is able to meet the criteria set by the Council of State.

40. The Convention does not prevent a Party from applying general criteria of the sort found in Belgian legislation. However, even though the wordings of the relevant Belgian laws do not as such imply a lack of compliance, the jurisprudence of the Belgian courts, as reflected in the cases submitted by the Communicant, implies a too restrictive access to justice for environmental organizations. In its response, the Party concerned contends that the Communicant "presents an unbalanced image by its 'strategic use' of jurisprudence," and that "the difficulties that the BBL experiences by the Communicant to bring an action in court are not representative for environmental NGOs in general". In the view of the Committee, however, the cases referred to show that the criteria applied by the Council of State so far seem to effectively bar most, if not all, environmental organizations from challenging town planning permits and area plans that they consider to contravene national law relating to the environment, as under article 9, paragraph 3. Accordingly, in these cases, too, the jurisprudence of the Council of State appears too strict. Thus, if maintained by the Council of State, Belgium would fail to provide for access to justice as set out in article 9, paragraph 3, of the Convention. By failing to provide for effective remedies with respect to town planning permits and decisions on area plans, Belgium would then also fail to comply with article 9, paragraph 4.

41. In this context, the Committee notes that the Party concerned, in its reply, makes two points that concern a State's internal law and constitutional structure in relation to its obligation under international law to observe and comply with a treaty. A similar argument was made in its written additional points in response to the questions asked by the Committee. First, the Party concerned holds that the federal structure of the Belgian State sometimes complicates the implementation of the Convention. Second, it argues that the separation of powers between the legislative, executive and judicial branches of government, as a fundamental part of the Belgian State, should be taken into account. The Committee therefore wishes to stress that its review of the Parties' compliance with the Convention is an exercise governed by international law. As a matter of general international law of treaties, codified by article 27 of the 1969 Vienna Convention on the Law of Treaties, a State may not invoke its internal law as justification for failure to perform a treaty. This includes internal divisions of powers between the federal government and the regions as well as between the legislative, executive and judicial branches of government. Accordingly, the internal division of powers is no excuse for not complying with international law.

42. An independent judiciary must operate within the boundaries of law, but in international law the judicial branch is also perceived as a part of the state. In this regard, within the given powers, all branches of government should make an effort to bring about compliance with an international agreement. Should legislation be the primary means for bringing about compliance, the legislature would have to consider amending or adopting new laws to that extent. In parallel, however, the judiciary might have to carefully analyse its standards in the context of a Party's international obligation, and apply them accordingly.

43. The Committee also recalls that according to article 3, paragraph 1, the Parties shall take the necessary legislative, regulatory and other measures to establish and maintain a clear, transparent and consistent framework to implement the provisions of the Convention. This too reveals that the independence of the judiciary, which is indeed presumed and supported by the Convention, cannot be taken as an excuse by a Party for not taking the necessary measures. In the same vein, although the direct applicability of international agreements in some jurisdictions may imply the alteration of established court practice, this does not relieve a Party from the duty to take the necessary legislative and other measures, as provided for in article 3, paragraph 1.

44. Noting the observations made in the communication regarding the existence of different criteria for standing with respect to the procedures for seeking annulment and suspension, respectively, of decisions before the Council of State, the Committee is of the opinion, without, however, having made any in-depth analysis, that the provisions of article 9, paragraphs 2 and 3, of the Convention do not require that there be a single set of criteria for standing for these two types of procedure.

III. CONCLUSIONS

45. Having considered the above, the Committee adopts the findings and recommendations set out in the following paragraphs.

A. Main findings with regard to non-compliance

46. Since all the court decisions submitted by the Communicant refer to cases initiated before the entry into force of the Convention for Belgium, they cannot be used to show that the practice has not been altered by the very entry into force of the Convention. Therefore, the Committee is not convinced that Belgium fails to comply with the Convention. However, as evidenced by the consideration and evaluation of the Committee, if the jurisprudence of the Council of State is not altered, Belgium will fail to comply with article 9, paragraphs 2 to 4, of the Convention by effectively blocking most, if not all, environmental organizations from access to justice with respect to town planning permits and area plans, as provided for in the Walloon region.

47. The Committee appreciates the statement in the reply from Belgium to the effect that it continues to make efforts and is open to improvements on its implementation of the Convention.

B. Recommendations

48. While the Committee is not convinced that the Party concerned fails to comply with the Convention, it considers that a new direction of the jurisprudence of the Council of State should be established; and notes that no legislative measures have yet been taken to alter the jurisprudence of the Council of State. It also notes that the Party concerned agrees that the Committee take the measure referred to in paragraph 37 (b) of the annex to decision I/7.

49. Therefore, the Committee, pursuant to paragraph 36 (b) of the annex to decision I/7, recommends the Party concerned to:

- (a) Undertake practical and legislative measures to overcome the previous shortcomings reflected in the jurisprudence of the Council of State in providing environmental organizations with access to justice in cases concerning town planning permits as well as in cases concerning area plans; and
- (b) Promote awareness of the Convention, and in particular the provisions concerning access to justice, among the Belgian judiciary.