

2016-05-04

**BELGIUM: Constitutional Court, N° 7/2016, 21 January 2016, *Vogelbescherming Vlaanderen and Terre wallonne***

1. Key issue	The right of environmental NGOs to claim moral damages
2. Country/Region	Belgium
3. Court/body	Constitutional Court
4. Date of judgment /decision	2016-01-21
5. Internal reference	Constitutional Court, Nr. 7/2016, 21 January 2016, <i>Vogelbescherming Vlaanderen and Terre wallonne</i>
6. Articles of the Aarhus Convention	Art. 9, paras. 3 and 4
7. Key words	Criminal Proceedings – Plaintiff – Environmental NGO – Standing – Right to claim moral damages - Constitutionality

8. Case summary

In a criminal case pending before the Criminal Court of East Flanders, Ghent Division, concerning illegal hunting practices, a bird protection organisation (*Vogelbescherming Vlaanderen*) acted as a civil party on the basis of the case-law of the Belgian Supreme Court (*see BELGIUM: PP and PSLV v. Gewestelijk Stedenbouwkundig Inspecteur and M vzw*), claiming 1.900 euro for material and moral damages. According to the Supreme Court's case-law, it is impossible to award a bird protection organisation a sum per bird killed, as they belong to no one. Furthermore, in the absence of statutory law, the moral damage of an environmental NGO can only be compensated symbolically by awarding 1 euro compensation.

*Vogelbescherming Vlaanderen* argued that this case-law discriminated against environmental NGOs in comparison with other legal and natural persons, as such parties are entitled to receive full compensation for the moral damage suffered. The Criminal Court referred that constitutional issue to the Constitutional Court for a preliminary ruling.

The Constitutional Court reached the conclusion that the provision of the Civil Code (Art. 1382) concerning fault based liability is violating Articles 10 and 11 of the Constitution, if interpreted in such a way so that Environmental NGO's can only claim one symbolic euro as compensation for moral damages. The Court argued that the moral disadvantage an environmental NGO may suffer due to the degradation of the collective interest in the defence of which it is established is, in several respects, special.

In the first place, that disadvantage does not coincide with the ecological damage caused, since ecological damage constitutes damage to nature, so that the whole of society is harmed. The damage concerns goods such as wildlife, water and air, belonging to the category of *res nullius* or *res communes*. Furthermore, the damage to non-appropriated environmental components can as a rule

not be estimated with mathematical precision, because it involves non-economic losses. In terms of the rules governing civil liability, judges must assess the damage *in concreto* and they may base it on equity if there are no other means to determine it. The compensation must, as far as possible, reflect reality even in the case of moral damage. It should be possible that in the case of moral damage to an environmental NGO, the judge can estimate the damage *in concreto*. In these circumstances, s/he should take into consideration the statutory objectives of the NGO, the extent of its activities, its efforts to realise its objectives and the seriousness of the environmental damage at stake. Limiting the moral damage to one symbolic euro is in that respect not justified. It would disproportionality harm the interests of environmental NGOs that play an important role in guaranteeing the constitutional right of the protection of the environment.

Therefore, the Constitutional Court promoted another interpretation, concluding that “*Article 1382 of the Civil Code does not infringe Articles 10 and 11 of the Constitution, whether or not read in conjunction with Articles 23 and 27 of the Constitution and Article 1 of the First Additional Protocol of the European Human Rights Convention in that the interpretation does not preclude the granting to a legal entity pursuing a collective interest, such as the protection of the environment or specific components of it, compensation for moral damages to that collective interest, that goes beyond the symbolic sum of one euro.*” This interpretation, that is consistent with the Constitution, is binding for the referring judge and in fact also for other judges charged with ruling upon similar cases. The judgement should put an end to different approaches taken in case law. In fact, there are already some past examples of Belgian courts awarding full compensation for moral damages of environmental NGOs (see e.g. CITES crimes - Court of Appeal, Ghent, 7 May 2015).

9. Link address

<http://www.const-court.be/public/n/2016/2016-007n.pdf>

<http://www.const-court.be/public/f/2016/2016-007f.pdf>

<http://www.const-court.be/public/d/2016/2016-007d.pdf>