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## ***Case Summary posted by the Task Force on Access to Justice***

### **Inter-Environnement Wallonie v. Walloon Region, Nr. 137/2006**

1. Key issue	Public Participation concerning Plans, Programmes and Policies Relating to the Environment – The simplification of planning legislation concerning so-called “deferred development zones of an industrial nature” in the Walloon Region of Belgium violates Art. 23 of the Belgian Constitution in conjunction with Art. 3 to 6 of the EU Directive 2001/42/EC and Art. 7 of the Aarhus Convention. The legislation does not provide for an environmental impact assessment procedure that satisfies the requirements of the Directive 2001/42/EC and of Art.7 of the Aarhus Convention.
2. Country/Region	Belgium (Walloon Region)
3. Court/body	Constitutional Court
4. Date of judgment /decision	14 September 2006
5. Internal reference	Grondwettelijk Hof/Cour constitutionnelle/Verfassungsgerichtshof Nr. 137/2006, 14 September 2006, Inter-Environnement Wallonie v. Walloon Region
6. Articles of the Aarhus Convention	Art. 7
7. Key words	Public Participation - Plans, Programmes and Policies – Land Use Planning – SEA
8. Case summary	<p>In many regional land use plans of the Walloon Region, so-called “deferred development zones of an industrial nature” were introduced over time. Prior to the enactment of the contested Amendments of the Walloon Town and Country Planning Code (Decree of the Walloon Region of 3 February 2005), the development of such zones was conditional upon the existence of a municipal planning scheme for the whole area. Without such a scheme, the zone could not be developed. As a result of the Amendments, such a zone could since then be developed without such a prior municipal planning scheme for the whole area and permits could be granted for all economic activities with the exception of “agro-economic neighbourhood activities” and “wholesale distribution”.</p> <p>Inter-Environnement Wallonie (that is the umbrella environmental NGO in the French speaking part of Belgium) criticized the challenged decree provision for abolishing the municipal planning scheme as an instrument for the development of these zones, and for failing to put an equivalent document in its place. This abolition and this failure were thought to constitute a deterioration of the procedural guarantees and thus a violation of the standstill obligation in terms of the right to the protection of a healthy environment, as guaranteed by Article 23 of the Belgian Constitution. Furthermore, Articles 10 and 11 of the Constitution were also thought to have been infringed, insofar as the local residents of such zone would not see this area being developed in accordance with the relevant standards and regulations, nor obtain an environmental impact assessment of the programming measures for the area in question, nor have any say in the way in which the area would be developed.</p> <p>The Court found a violation of article 23 of the Constitution, taking into account Articles 3 to 6 of the EU Directive 2001/42/EC and article 7 of the Aarhus Convention.</p> <p>The Court noted that prior to the enactment of the amendment, a deferred industrial development zone was required to comply with a municipal planning scheme for the entire area, which in turn was subject to an environmental impact assessment. In contrast, the challenged legislation failed to compensate for the “loss of substantive and procedural guarantees that are linked to the preparation of a municipal planning scheme”. Therefore, the court reasoned that the legislation in question “does not provide for an environmental impact assessment procedure that satisfies the requirements</p>

of the aforementioned Directive 2001/42/EC and of article 7 of the aforementioned Aarhus convention”.

9. Link address	<a href="http://www.const-court.be/public/f/2006/2006-137f.pdf">http://www.const-court.be/public/f/2006/2006-137f.pdf</a> <a href="http://www.const-court.be/public/n/2006/2006-137n.pdf">http://www.const-court.be/public/n/2006/2006-137n.pdf</a> <a href="http://www.const-court.be/public/d/2006/2006-137d.pdf">http://www.const-court.be/public/d/2006/2006-137d.pdf</a>
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