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

**Belgium, Constitutional Court, Nr. 9/2014, 23 January 2014, F. Lauwers c.s., vzw Ademloos c.s., G. Bergmans c.s. and M. Van Damme v. Flemish Government**

1. <i>Key issue</i>	Access to justice – Substitution of local governments by inhabitants
2. <i>Country/Region</i>	Belgium – Flemish Region
3. <i>Court/body</i>	Constitutional Court
4. <i>Date of judgment /decision</i>	23 January 2014
5. <i>Internal reference</i>	Constitutional Court, Nr. 9/2014, 23 January 2014
6. <i>Articles of the Aarhus Convention</i>	Articles 2(4), 2(5) and 9(2) to (4)
7. <i>Key words</i>	Substitute action – Local governments – Inhabitants – Legal persons - Conditions – Restrictions - Constitution

### *8. Case summary*

#### *Context*

Article 271 of the old Federal Municipal Act, dating back to 1836, and its regional successors like Art. 194 of the Flemish Municipality Decree and article 187 of the Flemish Provincial Decree allowed one or several residents of a municipality or a province (or legal persons with their seat in that jurisdiction) to act on behalf of the municipality or province if the executive bodies of those authorities failed to do so. It was accepted in the case law that this provisions could be combined with the Act of 12 January 1993, awarding a right to action for the protection of the environment – an injunctive relief procedure for manifest violations of environmental law - that is normally only available for the public prosecutor, the administrative authorities (including those of municipalities or provinces) and environmental organizations with legal personality meeting some requirements (being set up in the form of a non-profit association according the Act of 27 June 1921, having the protection of the environment as its purpose, having existed for at least 3 years and actually being active). So, individual citizens living in the municipality or province concerned were able to bring such an action themselves on behalf of a defaulting authority by taking the place of the municipality or province that refuses to bring such an action. No interest needs to be demonstrated because the municipality is presumed to have an interest. The growing use of this substitute action caused concerns with local mayors and they succeeded to have this right restricted by Parliament by an Amending Decree of 29 June 2012. This Amendment provided that the substitution action could since then only be used in case of damages to the environment or of a serious risk for damages to the environment and e.g. not any more in land use or nature conservation cases without risk for damages to the environment. Furthermore the citizens were obliged to give prior notice to the authorities and to observe a stand still period of 10 days in which the authorities could still act themselves. In addition, they were also obliged to notify the petition to the authority when it is filled with the court.

### *Judgment*

In its judgment the Constitutional Court is of the opinion that the Flemish Parliament has not encroached on federal competences, because it could base the Amending Decree on its competences for regulating the local authorities and the implied powers they have in this respect to regulate some aspects which have to do with the (federal) judiciary.

The Court however is of the opinion that the restriction of the substituting action to environmental cases in the very strict sense is not justified and violates the equality principle (art. 10 and 11 of the Belgian Constitution).

Finally, the Court is of the opinion that the new procedural rules (prior notice and notification of the petition) are not unreasonably restricting access to justice and do not violate art. 23 of the Constitution and the articles 1, 2, 3 and 9 of the Aarhus Convention. The Court understands the provision in that sense that the authorities can join the case only to support the claim of the inhabitants, not to counter the action of the inhabitants.

So the Court annuls both provisions as they restrict the field of application of the substituting action to "omissions that damage the environment or contain a serious risk of environmental damage". Except for the additional procedural requirements, the situation is now again the same as before the contested Amendment.

#### *9. Link address*

Dutch:

<http://www.const-court.be/public/n/2014/2014-009n.pdf>

French:

<http://www.const-court.be/public/f/2014/2014-009f.pdf>

German:

<http://www.const-court.be/public/d/2014/2014-009d.pdf>