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Case Summary posted by the Task Force on Access to Justice

Lenaerts c.s. v. nv 's Heerenbosch, Nr. 70/2007

1. Key issue	Standing for individuals (art. 2.5, 9.3) - Residents of a municipality are allowed to bring, on behalf of an inactive municipality, an action for cessation of building activities that harms the environment, even when they are based on an (illegal) building permit delivered by that same municipality. If these rules are interpreted in such a way that this right of “substitute action” cannot be used by individual citizens in cases in which a (by hypothesis illegal) permit was delivered by the same local authorities for the criticised activity that harms the environment, such an interpretation would create a difference in treatment between citizens that cannot be justified. Such an interpretation violates the principle of equality and non-discrimination enshrined in Art. 10 and 11 of the Belgian Constitution.
2. Country/Region	Belgium
3. Court/body	Constitutional Court
4. Date of judgment /decision	26 April 2007
5. Internal reference	Grondwettelijk Hof/Cour constitutionnelle/Verfassungsgerichtshof Nr. 70/2007, 26 April 2007, Lenaerts c.s. v. nv 's Heerenbosch
6. Articles of the Aarhus Convention	Art. 9, para. 3
7. Key words	Access to Justice – Individual citizens - Right of Action for the Protection of the Environment – Illegal permit – Non-Discrimination
8. Case summary	<p>Context</p> <p>The Act of 12 January 1993 “establishing a right of action for the protection of the environment” allows environmental organizations that satisfy certain requirements to bring an action for cessation of acts that are evident infringements of environmental law or are serious threats of such infringements before the President of the Court of first instance (District Court). The Act empowers the President of the Court of first instance to establish and, where appropriate, to order the cessation of evident infringements or serious threats of such infringements, or to order measures to prevent damage to the environment.</p> <p>In addition to environmental organizations, administrative and municipal authorities may bring actions for cessation. Moreover, Article 271 of the New Municipal Act allows one or several residents of a municipality to act on behalf of the municipality if the mayor and aldermen fail to do so. It was soon accepted in the case law that this provision could be combined with the Act of 12 January 1993, so that individual citizens are able to bring such an action themselves on behalf of a defaulting municipal authority by taking the place of the municipality that refuses to bring such an action. This jurisprudence was endorsed by the Supreme Court (Hof van Cassatie, 14 February 2002, RW 2001-2002, 1504) when it determined from the joint reading of the two aforementioned Acts that if the mayor and aldermen fail to take action under those circumstances, one or several residents can take legal action on behalf of the municipality in order to protect the environment. No interest needs to be demonstrated because the municipality is presumed to have an interest. The Supreme Court also considered that an action for cessation is not contingent on the condition of speed or urgency (Hof van Cassatie, 5 March 1998, TMR 1998, 161).</p>

The Case

Some residents of the municipality of Oostmalle brought an action for cessation on behalf of that municipality to stop building activities based on a building permit delivered by that same municipality that was allegedly awarded illegally. The resident brought the action after a demand for suspension of the permit was rejected by the Council of State (Supreme Administrative Court). The President of the Court of First Instance of Antwerp declared the action inadmissible by stating that Art. 271 of the New Municipal Act cannot be applied when the permit was delivered by the municipality on behalf of which the residents are taking action. On appeal, the Court of Appeal of Antwerp referred a constitutional question for a preliminary ruling to the Constitutional Court, asking the Court if the said provisions violate Articles 10, 11 and 23 of the Constitution if they are interpreted in such a way that an action for cessation is excluded when the municipality has delivered the building or environmental permit.

The Court's judgment

The Constitutional Court ruled that if these rules are interpreted in such a way that the right of "substitute action" cannot be used by individual citizens in cases in which a (by hypothesis illegal) permit was delivered by the same local authorities for the criticised activity that harms the environment, such an interpretation would create a difference in treatment between citizens that cannot be justified. Such an interpretation violates the principle of equality and non-discrimination enshrined in Articles 10 and 11 of the Constitution. Only an interpretation that allows citizens to introduce such an action is compatible with the said provisions of the Constitution. As a consequence, the action should be declared admissible.

9. Link address

Constitutional Court:

French: <ftp://ftp.const-court.be/pub/f/2007/2007-070f.pdf>;
<ftp://ftp.const-court.be/pub/f/2007/2007-121f.pdf>

<ftp://ftp.const-court.be/pub/f/2007/2007-121f.pdf>

Dutch: <ftp://ftp.const-court.be/pub/n/2007/2007-070n.pdf>;
<ftp://ftp.const-court.be/pub/n/2007/2007-121n.pdf>

German: <ftp://ftp.const-court.be/pub/d/2007/2007-070d.pdf>
<ftp://ftp.const-court.be/pub/d/2007/2007-121d.pdf>

Supreme Court :

http://jure.juridat.just.fgov.be/pdfapp/download_blob?idpdf=N-20080310-5