

2011-08-10

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

### **NIRAS v. Belgische Staat and Federale Beroepscommissie voor toegang tot milieu-informatie – Intervening party: Tinne Van der Straeten, Nr. 192.371**

|                                      |   |
|--------------------------------------|---|
| 1. Key issue                         | Access to environmental information – Nuclear sector - Access to a report on the analysis of potential "nuclear passives" of nuclear sites and installations in Belgium may not be refused for reasons of public security, public order, confidentiality of commercial and industrial information and the impossibility to separate confidential from non confidential information.   |
| 2. Country/Region                    | Belgium   |
| 3. Court/body                        | Council of State (Supreme Administrative Court)   |
| 4. Date of judgment /decision        | 14 April 2009   |
| 5. Internal reference                | Raad van State/Conseil d'État, 192.371  |
| 6. Articles of the Aarhus Convention | 4.1, 4.3, 4.4., 4.6   |
| 7. Key words                         | Access to Environmental Information – Grounds for Refusal – Restrictive Interpretation – Balancing – Separation of Information – Administrative Appeal – Judicial Appeal  |
| 8. Case summary                      | <p>A member of the federal parliament (from the Green Party) requested the National Agency for Radioactive Waste and Nuclear Fuel (NIRAS/ONDRAF) for access to a report on the analysis of potential nuclear passives (ie the expected costs for the clean up at the end of their lifetime and the expected costs relating to the treatment and storage of radioactive waste for a very long period) of nuclear sites and installations in Belgium. Access was refused for reasons of public security, public order, confidentiality of commercial and industrial information and the impossibility to separate confidential from non confidential information. The Federal Appeals Commission for Access to Environmental Information declared on 9 March 2009 the appeal of the MP against this refusal was partially founded, and declared that NIRAS/ONDRAF could only refuse access to both the information regarding the exact site of the storage of radioactive substances and forms in which they are kept. Access to all the other information should be granted. NIRAS/ONDRAF asked the Council of State on 3 April 2009 to suspend immediately the decision of the Appeals Commission. In its judgment on 14 April 2009, the Council of State rejected this demand of NIRAS/ONDRAF. Article 27 of the Federal Act of 5 August 2006 concerning public access to environmental information should be interpreted in a restrictive way because it contains exceptions on the fundamental right to transparency, enshrined in Art. 32 of the Constitution. In each case, the public interest served by disclosure should be balanced against the interests protected by the refusal grounds of Art. 27. Where possible, government agencies should opt for the separation of confidential from non-confidential information. The Court found that the decision of the Appeals Commission is well reasoned and does not violate relevant legislation.</p> <p>This judgment on the demand of suspension of the decision of the Federal Appeals Commission, was confirmed by the final judgment of the demand for annulment of the same decision, delivered on 9 June 2011, Nr. 213.770.</p> |
| 9. Link address                      | <p><a href="http://www.raadvst-consetat.be/Arresten/192000/300/192371.pdf">http://www.raadvst-consetat.be/Arresten/192000/300/192371.pdf</a></p> <p><a href="http://www.raadvst-consetat.be/Arresten/213000/700/213770.pdf">http://www.raadvst-consetat.be/Arresten/213000/700/213770.pdf</a></p>   |