

STUDY ON HUMAN RIGHTS AND THE ACCESS TO WATER CONTRIBUTION OF THE GOVERNMENT OF BELGIUM

Belgium welcomes the opportunity to contribute to the study on human rights and the access to water which the High Commissioner for Human Rights is currently undertaking in accordance with the Human Rights Council decision 2/104 of 27 November 2006.

Firstly, the general position of Belgium on human rights obligations regarding the access to water and sanitation is briefly described. An analysis of the legal framework in the different parts of Belgium follows. Some judicial decisions of the Belgian Constitutional Court are also analyzed to illustrate the situation of access to water and sanitation in Belgium. Finally, the existing policy plans regarding various aspect of the water policy, including the treatment of water waste, and the activities of civil society are discussed.

A) Human rights obligations regarding the access to water and sanitation

Belgium recognizes water as a public good fundamental for life and health with a strong social and environmental dimension. Belgium acknowledges the meaningfulness of the first paragraph of the Protocol on Water and Health¹: "Water is essential to sustain life and that availability in quantity, and of quality, sufficient to meet human needs is a prerequisite for improved health and for sustainable development."

Belgium can be considered as fully implementing the right to water.² Access to drinking water and sanitation form constitutive elements of the right to water. When mentioning the right to water, it implicitly includes the right to sanitation. The right to water is not yet explicitly recognized in contemporary human rights law, but can be deduced through a progressive interpretation of various international norms.

The Convention on the Elimination of all Forms of Discrimination against Women (article 14, paragraph 2 - water supply and sanitation) the Convention on the Rights of the Child (article 24 - clean drinking water), which are both ratified by Belgium, contain specific aspects of the right to water. General Comment no. 15 on the right to water issued by the Committee on Economic, Social and Cultural in 2002 enlightens the state obligations to respect, to protect and to fulfil the right to water. Everyone is entitled to sufficient, safe, physically accessible and affordable water for personal and domestic use. Priority in the allocation of water must be given to the right to water for personal and domestic uses.³ The social dimension of access to

¹ The Protocol on Water and Health to the 1992 Convention on the Use of Transboundary Watercourses and International lakes, European Commission of the United Nations for Europe (1999). Belgium ratified this Protocol in June 2004.

² This was confirmed by the independent OECD Environmental Performance Reviews – Belgium 2007, p. 170. (see http://www.oecd.org/document/61/0,2340,en_2649_34307_38168061_1_1_1_1,00.html).

³ See also article 6 (1) of the Protocol on Water and Health: The Parties shall pursue in the aims of: (a) access to drinking water for everyone; (b) provision of sanitation for everyone.

drinking water and sanitation requires that the vulnerable parts of the population are identified and corrective measures are taken to ensure the access of everyone.

The internal normative framework and the different policies in Belgium implement these different aspects as will be illustrated hereafter.

Overview of the legal framework

General overview

At the normative level, decision-making power is shared by the federal government and the three regions (Flanders, Wallonia and Brussels-Capital Region).⁴ This resulted in different regulations, but access to drinking water and sanitation for everyone is ensured in every part of Belgium.

Since exactly a century ago (1907), the responsibility for drinking water supply is assigned to the municipal authorities. As the distribution infrastructure developed, national legislation has promoted cooperation between the municipalities. This resulted in the establishment of inter-municipal drinking water companies. In order to support municipalities in the planning and coordination of the drinking water supply, Belgium set up the National Waterworks Company in 1913. The National Waterworks Company was split up in the early eighties into 3 water supply authorities, reflecting the new regional set up after the State reform.

Since 1994, article 23 of the Belgian Constitution states that all citizens should be able to live in a dignified manner and have therefore the right to the protection of a safe environment and health. This was a major step forward towards the integration of economic, social and cultural rights into the Belgian legal system. After the federal elections of 10 June 2007, there is a possibility to change article 23 of the Belgian Constitution so as to include a specific reference to the right to water. The future federal parliament will decide on this, but it should be noted that each Belgian citizen already has access to drinking water and sanitation in practice.

All three regions have laws establishing the right of access to drinking water. Since many years, access to drinking water is now facilitated according to social considerations in all three regions. Sanitation is mandatory in urban areas. VAT is at reduced rate for water supply and does not apply to sanitation. The average price for household is comparable (about 2 €/m³) in the 3 regions. Each region has introduced social tariffs in relation to water supply and sanitation.

Overview in the 3 regions

⁴ Belgium is a federal State composed of 3 regions (Flemish region, Walloon region and Brussels-Capital Region) and 3 communities (Flemish community, the French community and German-speaking community).

a) In Flanders, legislation recognizes the right to a minimal supply of gas, water, and electricity. Regarding water, this implies that every person is entitled to receive a minimal amount of drinking water free of charge per year (15m³), an amount based on the recommendations of the World Health Organisation. Water unit price above this 15m³ minimal amount is constant. Since many free minima are based on the household as a unit (i.e. regardless of the number of people) and not to the individual as such, this innovation may offer a more equitable approach over the long-term.

All, except the poorest ones (those living on minimum subsistence level) have to pay a sanitation tax. In order to decrease water consumption and to raise awareness about the water issue, Flanders supports initiatives to store rain water. This has led to a significant decrease of domestic water. The water supply of 2003 decree specifies all public services duties in the area of water and sanitation.

b) In Wallonia, book n°2 of the Environment Code (2004) is specifically devoted to water. In its basic principles, it is stated that: "*Water is part of the common heritage of the Walloon region... each person has the right to dispose of drinking water of quality and in sufficient quantity for its nutrition, its household needs and its health*".

Progressive water pricing⁵ is used for water supply and sanitation with a first block of 30m³ per household per year. Recently, the Walloon Region has also set up a Social Fund for Water that provides financial support to the people having problems to pay the bill, and so protecting access to water to everyone. The water distribution company has to inform the people, who are not able to pay immediately their bills, of the existence of the Social Fund for Water. This fund is financed by a tax of 0,0125 €/m³ of billed public water supply. For example, 0,5% of the total number of connected households were eligible in 2004 and received an average of 132 €. In 2006, the maximal amount given per household was 182 € (plus 52 € per person beyond the third household member)

Moreover, the principle of extending water solidarity to the international level was announced by the Walloon Minister of Environment during the fourth World Water Forum in Mexico (2006). The Walloon Region is now in the process of adopting legislation which creates a tax of 0,0125 €/m³ to provide assistance for water projects in selected developing countries. This financial and technical assistance will facilitate realization of the right to water in poorer developing countries.

c) In the Brussels-Capital region, legislation recognizes the right to distribution of drinking water for household consumption. Like in the Walloon region, an innovative progressive water pricing is introduced. It is based on three blocks of water consumption per person, followed by a fourth open block (above 60 m³/year) at a much higher price. More specifically, the unit price for the first cubic meters is 3.8 times lower than the normal price. There is a sanitation tax per m³ which is reimbursed to poor people. Brussels has also created a social fund for water, financed by a tax of 0,01 €/m³. Water disconnection in case of non payment is

⁵ Progressive pricing consists as a minimum in providing a first block of water consumption at a lower price than other blocks so as to facilitate access to water to small users. Progressive pricing is financed by cross-subsidies from large users and thus help to discourage excessive water consumption.

subject to proper information of welfare centres and prior approval by a court. Schools receive a free allocation of water (1 liter/day/pupil).

In conclusion, the innovative pricing instruments introduced in the legislation contribute to social and economic goals at the same time, in response to concerns about the affordability of household water services. The pricing policy distinguishes between essential uses at low price and luxurious use at a higher price. The detailed normative framework ensures that everyone has access to water services. People in need will not be disconnected and the price of water will be affordable to poor households. Different regulations apply in the 3 regions, but all of them reflect the recognition that water is a public good with a strong social dimension. As was stated before, Belgium as a whole can be considered as fully implementing the right to water in its internal legislation and actual policies. This was also supported in a report of the World Water Council.⁶

C) Judgements of the Belgian Constitutional Court

Given the detailed legislative framework, not so many judicial decisions have been ruled regarding the access to drinking water and sanitation. The cases that have occurred, rather deal with the division of competencies, technical and detailed aspects of the norms than with the basic principles as such. This will be illustrated by a short summary of 2 judgments of the Belgian Constitutional Court.

Ruling 9/1996 of 8 February 1996

Legislation of the Brussels-Capital Region provides that the consumer of the water services has to pay the water bills, but that the water distribution company has, in case of impossibility of the consumer to pay, the right to invoice the bill to the owner of the house. When a house is not let, this regulation does not add something fundamentally as the owner and consumer are the same person. Things are differently in a scenario when a house is let. An association of owners lodged a petition to the Constitutional Court asking the nullification of this regulation arguing that owners should not be forced to pay for water services that were consumed by the tenant.

The Belgian Constitutional Court did not agree to this and so did not nullify this legislation of the Brussels-Capital Region basing its judgment on the following reasons. Each owner of a house has the right his property is connected to the water distribution system and to let the property or not. There is no discussion the primary obligation to pay the bills for water services falls on the tenant. But access to a minimum of drinking water and sanitation is considered to be so crucial, that even if a tenant is unable to pay the bill, access to basic water services should continue to be assured. Therefore, the water distribution company can, in a second phase, invoice the water bill to the owner who initially decided to connect its property to the water distribution system. Through this mechanism it is almost impossible that access to drinking water and sanitation will be denied to individuals. In its ruling the Belgian Constitutional Court upheld this legislation that contributes to the social and

⁶ World Water Council, *The right to water – from concept to implementation*, p. 33-34 (see also http://www.worldwatercouncil.org/fileadmin/wwc/Library/RightToWater_FinalText_Cover.pdf).

economic goals at the same time and decided that every person has a right to a minimum supply of drinking water.

Ruling 36/98 of 1 April 1998

When competence was given to the 3 regions in the field of access to drinking water and sanitation for everyone, Flanders introduced the minimal amount of drinking water free of charge per year (15m³) to which every person is entitled to. Of course, this has led to an increase of the water price above this minimal amount. One of the members of the inter-municipal drinking water companies opposed to this new regulation by reasoning Flanders did interfere with the competence of the municipal drinking water companies. The Belgian Constitutional Court ruled Flanders had the competence to introduce this free amount of drinking water and the Court followed the reasoning of the Flanders: this regulation meets the right of each person to have a minimum access to drinking water, it promotes rational water consumption and so diminishes the amount of waste water.

D) Other information

The detailed normative framework is a first and necessary step to ensure the access of drinking water and sanitation. Concrete action plans and infrastructure are equally important to realize these rights. The treatment of waste water in Belgium and some more environmental perspectives will be shortly discussed. Civil society in Belgium is very active on the water topic as will be illustrated hereafter.

The 3 regions have established detailed regulations regarding the treatment of waste water. In the two largest regions (Flanders and Wallonia), drinking water companies are also responsible for the clean-up of the water they deliver to customers. Since 2004, Flemish drinking water companies have concluded agreements about the required services with the company responsible for building and operating the waste water treatment. A similar system is introduced in Wallonia in 2000 where a public company, on behalf of the drinking water companies, formulates waste water management plans for all sub-basins in the region, finances waste water infrastructure and protects drinking water sources. Brussels-Capital Region maintained its structure with three companies responsible for, respectively, the collection and purification of drinking water, the distribution of water to customers and the collection and treatment of sewage. A special fund is also set up to finance the construction of the large collectors that take sewage to the very large treatment station.

The multi-disciplinary and comprehensive approach of the water policy of the 3 regions reflects the complexity of the water issue. For example, Flanders has established a Consultation Committee gathering all the different stakeholders. A specific Committee has been set up in the Walloon Region to monitor the fulfillment of the norms of Book n°2 of the Environment Code (2004) that is specifically devoted to water.

In a more environmental perspective, one can conclude that the concerted efforts of the three Belgian regions have resulted in the drop of the concentration of pollutants in many surface

water. Groundwater monitoring networks now include almost 3 000 wells across the country.

The progressive Belgian legislation corresponds to a grassroots evolution in public opinion and civil society in Belgium that are strongly in favour of a right to water. In 2001-2002, a "Water Manifest" or "Manifeste de l'eau" has been drawn up asking for water to be considered as the common heritage of the mankind, with guaranteed access to water for present and future generations. The manifest was subscribed by 120 00 citizens as well as the three regional governments and parliaments.

Many different NGOs are active in the field of water and try to raise awareness on the crucial aspects of water in Belgium and in the developing world. Some of these NGOs have created study packages on the water topic specially designed for young people, and have organized water fora gathering children to discuss the water issue. Other NGOs focus more on the existing water problems in developing countries.