

Right to bring a legal challenge (legal standing) - part I

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Access to Justice in Environmental Matters
Workshop for judges and prosecutors
4 December 2024 – 6 December 2024 | Budapest

The presentation will be focused on 'who can access the court' and in a secondary manner on 'which procedure can they access'

Commission Notice on Access to Justice in Environmental Matters



Brussels, 28.4.2017
C(2017) 2616 final

COMMUNICATION FROM THE COMMISSION

of 28.4.2017

Commission Notice on Access to Justice in Environmental Matters



This is one of the most useful materials on the topic for the work of a judge.

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It consists of 65 pages, it is rather complex.

Publication details

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Rulings of the Court of Justice of the European Union
2022-11-25
[Latest edition]

Environmental assessments of plans, programmes and projects
Rulings of the Court of Justice of the European Union
2020-11-05

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European Commission

ENVIRONMENTAL IMPACT ASSESSMENT OF PROJECTS

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<https://op.europa.eu/en/publication-detail/-/publication/a831d19b-6f99-11ed-9887-01aa75ed71a1/language-en>

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European Union

- This is a summary of case law regarding EIA.
- It concerns the EIA Directive and the material has been updated in 2022.
- Because the most important case law deals with the EIA Directive this is important.
- It is also important for Access to Justice, even in the strict sense of Article 9 para 2.
- The aim is to enhance public participation and access to justice through the national courts.
- It is important to remember that there is always the option to ask the CJEU. It is important that these problems reach the EU Courts because they concern multiple Member States.
- If you search 'Aarhus' at the CJEU website, you might find answers to what you need.

E-learning on access to justice in environmental matters

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Structure of the ERA e-learning for this seminar.



ERA's elearning on Access to Justice is very helpful. This is available to disseminate among judges and contains links to many cases by the CJEU. It is up to date.

JUDICIAL REVIEW AT THE NATIONAL LEVEL: TRENDS?

Gradually becoming more complex and more technical?

construction permits



operation permits



operation permits – monitoring/control (inspection) – liability



monitoring + financial tools



climate change – positive obligations of the State – review of the policies?



The question of what environmental law consists of is more and more complex.

JUDICIAL REVIEW AT THE NATIONAL LEVEL: TRENDS?

C-575/20 - Apollo Tyres (Hungary)

Rules for calculating the total rated thermal input of installations for the combustion of fuels (Emission Trading Scheme)

C-524/20 - VÍTKOVICE STEEL (Czech Republic)

Allocation of allowances to an installation using an oxygen converter where the input to the process is carbon-saturated liquid iron imported from another installation belonging to a different operator if it is ensured at the same time that no double counting or double allocation of allowances occurs in respect of the product 'liquid metal' (not possible)

C-271/20 - Aurubis (Germany)

Concepts of 'combustion' and 'fuel' - Production of primary copper by slurry smelting - Application for allocation - Amounts applied for and not yet allocated at the date of expiry of the trading period - Possibility of issuing those allowances in a subsequent trading period in order to comply with a court decision made after that date

C-938/19 - Energieversorgungszentrum Dresden-Wilschdorf (Germany)

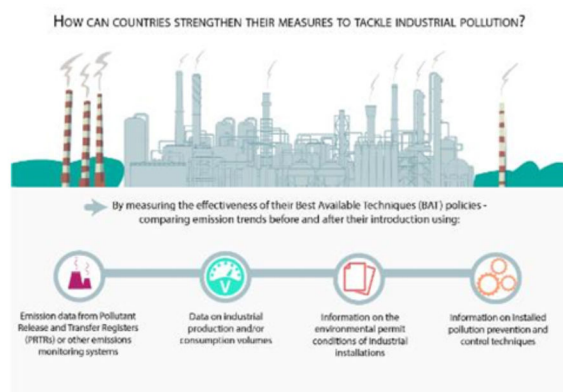
Concept of 'installation' - Impact on emissions and pollution - Ancillary installations not emitting greenhouse gases - Article 10a - Transitional system for the free allocation of emission allowances - Data collection formula - Adjusted amount of eligibility - Method of calculation



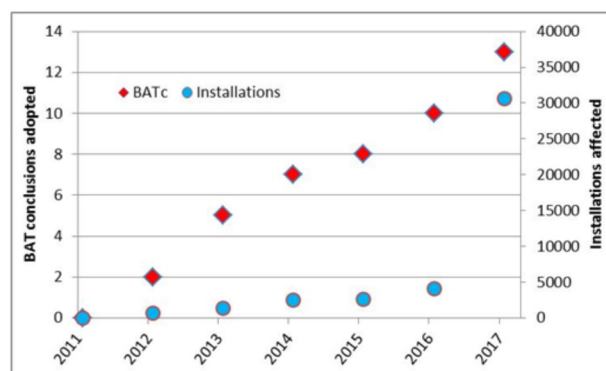
- These judgments often deal with industrial operations.

JUDICIAL REVIEW AT THE NATIONAL LEVEL: TRENDS?

Effects on access to justice?



Best Available Techniques (BAT) to Prevent and Control Industrial Pollution - OECD



REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT on implementation of Directive 2010/75/EU and final reports on its predecessor legislation (version 22/09/2017) COM/2017/0727 final

Act	Commission	Council	Parliament	Final text
Deforestation Regulation (COM proposal on 17.11.2021)	Requirements of art. 9(3)	Article on access to justice deleted	Requirements of art. 9(3), (4), and (5) added	Requirements of art. 9(3)
Nature Restoration Regulation (COM proposal on 22.6.2022)	Requirements of art. 9(3), (4), and (5) + <i>Stichting Varkens in Nood</i> requirement	Article on access to justice deleted	Article on access to justice remained deleted	No access to justice provision
Ambient Air Quality Directive Recast (COM proposal on 26.10.2022)	Requirements of art. 9(3), (4), and (5) + <i>Stichting Varkens in Nood</i> requirement	Requirements of art. 9(3), (4), and (5) + <i>Stichting Varkens in Nood</i> requirement + inclusion of new requirement in art. 27(3a) accepted	Inclusion of the new requirement in art. 27(3a)	Not yet adopted
Proposal for an Urban Wastewater Treatment Directive (COM proposal on 26.10.2022)	Requirements of art. 9(3), (4), and (5)	<i>Stichting Varkens in Nood</i> requirement added	Requirements of art. 9(3), (4), and (5) + <i>Stichting Varkens in Nood</i> requirement kept	Not yet adopted
Green Claims Directive (COM proposal on 22.3.2023)	Requirements of art. 9(3), (4), and (5)	Amendments accepted and "impairment of a right" criterion added	Multiple amendments to make the provision even clearer and more precise	Not yet adopted
Proposal for a Directive on Soil Monitoring and Resilience (COM proposal on 5.7.2023)	Requirements of art. 9(3), (4), and (5)	Requirements of art. 9(3), (4), and (5) + <i>Stichting Varkens in Nood</i> requirement kept	<i>Stichting Varkens in Nood</i> requirement added	Not yet adopted

Table. Positions of the EU institutions with respect to access to justice provisions in relevant secondary EU legislation



Mariolina Eliantonio and Justine Richelle: Access to Justice in Environmental Matters in the EU Legal Order: The "Sectoral" Turn in Legislation and Its Pitfalls

In January 2021, the CJEU confirmed, in its decision in the case of *Stichting Varkens in Nood*, the importance of access to justice in environmental matters. In this case, the CJEU answered preliminary questions regarding the interpretation of art. 9(2) of the Aarhus Convention. The CJEU declared that access to justice of the public concerned must be guaranteed, even without prior involvement in the public participation procedure. Although this decision relates to art. 9(2), it impacts the development of legislative proposals and shows how access to justice in environmental matters is viewed in the EU as a separate, autonomous procedure.

Case C-826/18 *Stichting Varkens in Nood and Others* ECLI:EU:C:2021:7.

TENDENCIES: WHO COMES TO THE COURT? WHO IS AFFECTED?

Joined Cases C-177/19 P to C-179/19 P - Allemagne - Ville de Paris and Others v Commission

- City of Paris (Case T-339/16), City of Brussels (Case T-352/16) and the Municipality of Madrid (Case T-391/16) brought an action for annulment of the Regulation (EU) 2016/646.
- They submitted, in particular, that the Commission could not, by that regulation, adopt NTE values for emissions of oxides of nitrogen above the limits laid down for the Euro 6 standard by Regulation No 715/2007.
- In 2018, the General Court annuled part of the Regulation.
- In 2021, the CJEU found the cities are not individually concerned – and set aside the judgment of the General Court.

Consequences?



- A case about Paris, Brussels and Madrid went against a regulation with regard to air pollution.
- The CJEU refused legal standing of the cities. They still can access national courts.
- Judges must consider whether the plaintiffs have direct access to the CJEU. IF not, then there is an obligation to ask a preliminary question.

Access to justice in Environmental Matters: Sources (Layers)

National Law

Specific Acts (EIA, IED)

Constitutional Law + judicial process

EU Law

Specific Directives (EIA, IED)

Direct applicability of EU law

Art. 47 EU Charter
Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy... (fair and public hearing within a reasonable time + legal aid)

International Law

The Aarhus Convention
 Pillar III: Access to justice

European Convention on Human Rights
 Art. 6 (procedural – access to justice)
 Art. 2 (protection of life)
 Art. 8 (protection of private and family life)
 Art. 1 of Protocol No. 1 (protection of property)



- A2J is also governed by other legal instruments.
- The ECtHR is one of them and it is part of EU law.

THE ECHR FRAMEWORK

Art. 6 ECHR: Applicable to administrative matters – construction, expropriation, environmental protection (*Sporrong and Lönnroth v Sweden*, 7152/75; *Taşkın and Others v Turkey*, 46117/99) + **climate change** (*Verein KlimaSeniorinnen Schweiz and Others v Switzerland*, 53600/20)

Art. 2 and 8: Positive obligation of the State to protect from dangerous activities (i.e. illegal industrial operations)

Dzemyuk v. Ukraine (2014): The applicant alleged that the construction of a cemetery near his house had led to the contamination of his water supply – both for drinking and gardening purposes – leaving

his home virtually uninhabitable and his land unusable (violation of Art. 8)

Solyanik v. Russia (2022): The applicant complained that the ongoing use of the cemetery near his home had led to contamination of the soil and a well, his only source of drinking water. (violation of Art. 8)

Verein KlimaSeniorinnen Schweiz and Others v Switzerland (2024): Insufficient mitigation of climate change (violation of Art. 8)



- This is a famous cases.
- The ECtHR found a violation of Article 13 on access to justice.

THE ECHR FRAMEWORK

Important to determine affected individuals:

Cordella and Others v. Italy (2019): 180 applicants complained about the effects of toxic emissions from the Ilva steelworks in Taranto on the environment and on their health. The Court considered that 19 applicants did not have victim status, since they did not live in one of the towns classified as being at high environmental risk. In respect of the other applicants, the Court held that there had been a violation of Article 8 and Article 13 (right to an effective remedy).

Fägerskiöld v. Sweden (2008): A wind turbine was erected approximately 400 metres from the applicants' house. The Court declared the application inadmissible as the applicants had in particular not furnished the Court, or the national authorities, with any medical certificates to substantiate that their health had been adversely affected by the noise or the light reflections.
(also see: *Vecbaštika and Others v. Latvia*)



- This is useful to identify the affected individuals.

echr.coe.int/Pages/home.aspx?p=home

European Court of Human Rights Cour européenne des droits de l'homme

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Interim measures
Interim measures indicated concerning Georgia
16/11/2021
The Court has decided to indicate

Chamber
Judgme
16/11/2021

Even though the European Convention on Human Rights does not enshrine any right to a healthy environment as such, the European Court of Human Rights has been called upon to develop its case-law in environmental matters on account of the fact that the exercise of certain Convention rights may be undermined by the existence of harm to the environment and exposure to environmental risks.

The Court has not yet ruled on the issue of State climate-change action. There are currently three cases pending before the Grand Chamber of the Court on this issue.

Cases pending before the Grand Chamber of the Court
On 11 January 2023 the Grand Chamber held a procedural meeting in the three climate cases pending before it – Verein Klimaseniorinnen Schweiz and Others v. Switzerland, Carline v. France and Duarte Agostinho and Others v. Portugal and 32 Others. At that

Press Unit
Unité de la Presse

Press Unit
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Summary of major ECtHR decisions in the field of environmental protection and newly in climate change (in English)

Press/Press Services/Fact Sheets/Environment

These factsheets on environment and climate protection are available on the website.

The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (The Aarhus Convention)



Access to information

✓ public
✓ passive obligation
✓ active obligation

Public participation in decision-making

✓ public concerned
✓ Annex I and other activities with significant effects (<i>EIA, IED, Natura 2000, SEVESO III</i>)
✓ plans and programmes
✓ general legal regulation

Access to justice

✓ public (concerned)
✓ denied information
✓ decisions from pillar II (<i>EIA, IED, NATURA 2000, SEVESO III</i>)
✓ violation of (other) provisions of the national law relating to the environment



- The second pillar is rather narrow. It concerns only specific activities with significant effect.
- The third pillar is wide.
- As regards the conditions for legal standing there is a difference between the decisions stemming from pillar II (public participation)

LEGAL STANDING: Preconditions and wide access to justice

Stichting Varkens in Nood and Others (C-826/18, Admissibility of the action subject to prior participation in the decision-making procedure):

Art. 9(2) regime: participation in the administrative procedure is not a suitable condition for the admissibility of the judicial proceedings brought by NGO, even though that condition does not apply where such organisations cannot reasonably be criticised for not having participated in that procedure.

However, **Article 9(3) AC** does not preclude the admissibility of judicial proceedings to which it refers from being made subject to the participation of the applicant in the procedure preparatory to the contested decision, unless the applicant cannot reasonably be criticised, in the light of the circumstances of the case, for not having intervened in that procedure

The three-pillar structure – PILAR III

III. Access to justice (Art. 9)

a) Denied information

- Anyone who is denied access to environmental information shall have access to a **review procedure before a court of law or another independent and impartial body** established by law.
- Standing should be granted to anyone whose request has been ignored, wrongfully refused or otherwise not dealt with in accordance with the Convention. In certain cases, the Parties should also provide for expeditious procedures for reconsideration by a public authority.

b) Decision-making concerning specific activities

- access to court or another independent and impartial body of law should also be granted with respect to decision-making concerning specific activities for members of the public concerned who either have a sufficient interest or, where so required in national law, maintain impairment of a right.
- These criteria should be determined in accordance with national law and consistently with the objective of giving the public concerned wide access to justice. To this effect, environmental NGOs are deemed to have a sufficient interest to be granted standing.
- This right to access to justice pertains to challenging the substantive as well as procedural legality of any decision, act or omission concerning specific activities



The three-pillar structure – PILAR III

III. Access to justice (Art. 9)

c) Violation of provisions of the national law relating to the environment

- Access to administrative or judicial procedures to members of the public, meeting the criteria in national law, "if any", **to challenge other acts and omissions by private persons and public authorities "which contravene provisions of its national law relating to the environment"** (Art 9(3)).
- EU law relating to the environment should also be considered to be part of the domestic, "national law".
- Contrary to the first and the second categories, **it may suffice to ensure access to administrative review procedures** to challenge acts and omissions in the third category.
- Access to justice must not be *pro forma* only. Therefore, all procedures referred to above under the three categories, including any administrative procedure, ***must provide "adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive"***



That's already groundbreaking for many countries.

The Aarhus Convention – Art. 9(2)



2. Each Party shall, within the framework of its national legislation, ensure that members of the public concerned

(a) Having a sufficient interest

or, alternatively,

(b) Maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition,

have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 and, where so provided for under national law and without prejudice to paragraph 3 below, of other relevant provisions of this Convention.

What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention. To this end, the interest of any non-governmental organization meeting the requirements referred to in article 2, paragraph 5, shall be deemed sufficient for the purpose of subparagraph (a) above. Such organizations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above.



44

As regards non-governmental organisations which promote environmental protection, Article 1(2) of Directive 85/337, read in conjunction with Article 10a thereof, requires that those organisations 'meeting any requirements under national law' are to be regarded either as having 'sufficient interest' or as having a right which is capable of being impaired by projects falling within the scope of that directive.

45

While it is true that Article 10a of Directive 85/337, by its reference to Article 1(2) thereof, leaves to national legislatures the task of determining the conditions which may be required in order for a non-governmental organisation which promotes environmental protection to a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.

who: public concerned (affected individuals + NGOs meeting national criteria consistent with giving wide access to justice - see C-263/08) **if not?**

what: review procedure of decisions/acts/ommissions concerning activities with significant effect on the environment (EIA/IED/Natura 2000 + national law)

3. In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.

who: members of the public where they meet criteria laid down in the national law

what: review procedure of acts/ommissions of private persons/authorities which contravene (any) provisions of the national law. **if not?**



- The CJEU was dealing with a Swedish case. The Court confirmed that the criteria should be such that there is wide access to justice.
- The criteria were changed, and the minimum is now 200 members.
- In Czechia, there was no limit, now the limit is 200 members.
- In Ireland they raised the fee to participate in land use litigation.

Various restrictions:

C-263/08 (*Djurgården-Lilla Värtans*)

- **only NGOs with environmental objectives**
- **active for 3 years**
- **2.000 members**





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Ferrari with the doors closed: Balancing the system

C-115/09 Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen eV v. Bezirksregierung Arnsberg Trianel Kohlekraftwerk Lünen

The German system of judicial review

- involves a “careful and detailed” **scrutiny of administrative decisions**,
- admissibility criteria are such that **few are able to access this system**, particularly groups bringing actions alleging environmental harm.



This is a famous case that refers to the Ferrari with closed doors.


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The Aarhus Convention: An Implementation Guide (second edition)

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<https://unece.org/environment-policy/publications/aarhus-convention-implementation-guide-second-edition>




The CJEU regularly makes reference to this guidance.

EU Law – EIA Directive (2011/92/EU, Art. 11)

1. Member States shall ensure that, in accordance with the relevant national legal system, **members of the public concerned**:
 - (a) having a sufficient interest, or alternatively;
 - (b) maintaining the impairment of a right, where administrative procedural law of a Member State requires this as a precondition;have access to a review procedure before a court of law or another independent and impartial body established by **law to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of this Directive**.
2. Member States **shall determine at what stage** the decisions, acts or omissions may be challenged.
3. What constitutes a sufficient interest and impairment of a right shall be determined by the Member States, consistently with the objective of giving the public concerned **wide access to justice**. To that end, the interest of any non-governmental organisation meeting the requirements referred to in Article 1(2) shall be deemed sufficient for the purpose of point (a) of paragraph 1 of this Article. Such organisations shall also be deemed to have rights capable of being impaired for the purpose of point (b) of paragraph 1 of this Article.
4. The provisions of this Article shall **not exclude the possibility of a preliminary review** procedure before an administrative authority and **shall not affect the requirement of exhaustion of administrative review procedures** prior to recourse to judicial review procedures, where such a requirement exists under national law.

Any such procedure shall be **fair, equitable, timely and not prohibitively expensive**.
5. In order to further the effectiveness of the provisions of this Article, Member States shall ensure that practical information is made available to the public on access to administrative and judicial review procedures.



- The most important legislation in EU law is the EIA Directive. The old Directive is from 1985 and we have some important case law concerning the old version.
- There is a definition of the public concerned, including the wide access to justice requirement.
- The EIA Directive copies the requirements of the Aarhus Convention for a fair, equitable, timely, and not prohibitively expensive procedure.

EU Law – IED Directive (2010/75/EU, Art. 25)

1. Member States shall ensure that, in accordance with the relevant national legal system, **members of the public concerned** have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to Article 24 when one of the following conditions is met:
 - (a) they have a sufficient interest;
 - (b) they maintain the impairment of a right, where administrative procedural law of a Member State requires this as a precondition.
2. Member States **shall determine at what stage** the decisions, acts or omissions may be challenged.
3. What constitutes a sufficient interest and impairment of a right shall be determined by the Member States, consistently with the objective of giving the public concerned **wide access to justice**. To this end, the interest of any non-governmental organisation environmental protection and meeting any requirements under national law shall be deemed sufficient for the purpose of paragraph 1(a). Such organisations shall also be deemed to have rights capable of being impaired for the purpose of paragraph 1(b).
4. Paragraphs 1, 2 and 3 shall **not exclude the possibility of a preliminary review** procedure before an administrative authority and **shall not affect the requirement of exhaustion of administrative review procedures** prior to recourse to judicial review procedures, where such a requirement exists under national law.

Any such procedure shall be **fair, equitable, timely and not prohibitively expensive**.
5. Member States shall ensure that practical information is made available to the public on access to administrative and judicial review procedures.



The Habitats Directive (92/43/EEC)

Article 6(3) *Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.*

C-243/15 (Lesoochránárske zoskupenie II, para. 45 - 48): *the project of constructing an enclosure on a protected site, at issue in the main proceedings, is not among the activities listed in Annex I to the Aarhus Convention, the fact that the competent national authorities decided to initiate an authorisation procedure for that project pursuant to Article 6(3) of Directive 92/43 permits, however, the inference that those authorities considered it necessary to assess the significance of the project's effect on the environment, within the meaning of Article 6(1)(b) of the Aarhus Convention. It is true that the latter provision states that the application of Article 6 of the Aarhus Convention is governed by the domestic law of the contracting party concerned. However, that statement must be understood as relating solely to the manner in which the public participation specified by Article 6 is carried out, and does not call into question the right to participate which an environmental organisation such as LZ derives from that article.*



- The Habitats Directive and Natura 2000 belong to the strict regime according to the CJEU.
- This is one of the Brown Bear cases.
- This does not mean all procedures under the Habitats Directive fall under the 2nd pillar.

The Habitats Directive (92/43/EEC)

C-166/22 Hellfire Massy Residents Association

Question: ...whether arts. 12 and/or 16 of directive 92/43/EEC and/or those provisions as read in conjunction with arts. 6(1) to (9) and/or 9(2) of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters done at Aarhus, Denmark, on 25 June 1998 have the consequence that, in respect of a development where the grant of development consent was subjected to appropriate assessment under art. 6(3) of directive 92/43/EEC, and in a context where a post-consent derogation may be sought under art. 16 of directive 92/43/EEC, there is a requirement for a public participation procedure in conformity with art. 6 of the Aarhus Convention.

Answer: ... it should be noted that the dispute in the main proceedings does not concern a derogation under Regulation 54 of the 2011 Regulations. Consequently, there is no need to ascertain whether, and under what conditions, members of the public concerned derive from the provisions of the Aarhus Convention a right to participate in the administrative procedure relating to such a derogation.



- The case concerned protection of species and whether it falls under the 2nd pillar.
- Essentially the Habitats Directive has 2 basic requirements:
Assess the plans (strict regime)
Protection of species that does not necessarily fall under the 2nd pillar and the strict regime.

Case-law on the scope of the EIA Directive I: Which proceedings

EIA Directive: Development consent

C-463/20 (*Namur-Est Environnement*)

...decision adopted under Article 16(1) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora and which authorises a developer to derogate from the applicable species protection measures in order to carry out a project within the meaning of Article 1(2)(a) of Directive 2011/92 forms part of the development consent procedure

EIA Directive: Procedure for amending a permit

A new environmental impact assessment is **not required** for the renewal of an existing permit **in the absence of any works** or interventions involving alterations to the physical aspect of the site (*C-275/09, C-121/11*)

IED Directive: Procedure for amending a permit

C-43/21 (*FCC Česká republika*)

Extension of the duration of operation of a landfill is not 'substantial change' to the installation because the mere extension of the duration of waste disposal at a landfill changes neither the functioning nor the nature of the landfill

Case-law on the scope of the EIA Directive II: Who is affected?

C-570/13 (*Gruber*):

40 Therefore, *although the national legislature is entitled, inter alia, to confine the rights whose infringement may be relied on by an individual in legal proceedings contesting one of the decisions, acts or omissions referred to in Article 11 of Directive 2011/92 to individual public-law rights, that is to say, individual rights which, under national law, can be categorised as individual public-law rights (see, to that effect, judgment in Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen, C-115/09, EU:C:2011:289, paragraphs 36 and 45), the provisions of that article relating to the rights to bring actions of members of the public concerned by the decisions, acts or omissions which fall within that directive's scope cannot be interpreted restrictively.*

41 In the present case, *it appears from the order for reference that Ms Gruber is a 'neighbour', within the meaning of Paragraph 75(2) of the Gewerbeordnung, a concept which includes persons to whom the construction, continued existence or operation of a facility might pose a risk or cause a nuisance or whose property or other rights in rem might be put at risk.*



Who may rely on these Directives that fall under the strict regime?

The Gruber case concerned an Austrian citizen who wanted to challenge a permit that required an EIA. In principle the procedure will fall under the strict regime. But is she concerned? There must be a link between what she is claiming and the project.

She is not there to protect the environment, she wants to protect her property.

The scope of the EIA is very broad, it takes into account impacts on the property around, or cultural heritage. Everything is within the scope of the EIA Directive.

Case-law on the scope of the EIA Directive II: Who is affected?

C-570/13 (*Gruber*):

42 Having regard to that provision's terms, *it appears that persons falling within the concept of 'neighbour' may be part of the 'public concerned'*, within the meaning of Article 1(2) of Directive 2011/92. Those 'neighbours' can bring an action only against a consent granted for the construction and operation of a facility. Since they are not parties to the procedure examining whether an EIA need be carried out, they cannot challenge that decision in the context of an action against the development consent decision. *Thus, by restricting the right to bring an action against decisions examining whether an EIA need be carried out in relation to a project only to the project applicants, the participating authorities, the ombudsman for the environment (Umweltanwalt) and the municipality concerned, the UVP-G 2000 deprives a large number of individuals from exercising that right to bring an action, including, in particular, 'neighbours' who may meet the conditions laid down in Article 11(1) of Directive 2011/92.*

43 That near general exclusion restricts the scope of Article 11(1) and is accordingly *incompatible* with Directive 2011/92.



There can be conditions, such as fees, for the neighbours but wide access must be ensured at all times.

EU Law – Environmental Liability Directive (2004/35/CE, Art. 13)

1. The persons referred to in Article 12(1)* **shall have access to a court or other independent and impartial public body competent to review the procedural and substantive legality of the decisions, acts or failure to act of the competent authority under this Directive.**
2. This Directive shall be without prejudice to any provisions of national law which regulate access to justice and those which require that administrative review procedures be exhausted prior to recourse to judicial proceedings.

*

Natural or legal persons:

- (a) affected or likely to be affected by environmental damage or
- (b) having a sufficient interest in environmental decision making relating to the damage or, alternatively,
- (c) alleging the impairment of a right, where administrative procedural law of a Member State requires this as a precondition, shall be entitled to submit to the competent authority any observations relating to instances of environmental damage or an imminent threat of such damage of which they are aware and shall be entitled to request the competent authority to take action under this Directive.

What constitutes a 'sufficient interest' and 'impairment of a right' shall be determined by the Member States.

Folk (C-529/15): Persons with a fishing licence must be able to initiate review proceedings before a court or other competent public authority in accordance with Articles 12 and 13 of the Directive



What about the rest with no detailed rules? (Art. 9/3 regime)

Janecek (C-237/07), ClientEarth (C-404/13, ambient air quality assessment and management): The affected individuals must be able to require adoption of air-pollution action plans

= POSSIBLE DIRECT EFFECT

LINK BETWEEN THE AIR PROTECTION AND RIGHTS OF INDIVIDUALS?

- The air quality legislation (other than the EIA and IED) **does not contain comprehensive rules as regards access to justice.**
- However, **there is a link between the air protection and rights of individuals which satisfies the conditions for direct applicability of certain provisions of directives which do not contain requirements on access to justice** – such as the AQD or the NEC Directive.
- This is because the quality (concentration) limit values aim at the protection of human health. Thus, they have the objective to protect the individual right to health. They are sufficiently precise and unconditional to be of direct application.
- This means that **the individual person has a right to trace back the limit values in his national legislation**; it follows from this that Member States are obliged to transpose the limit values of the air pollution directive into their national law (C-361/88, Commission v. Germany)



- The CJEU says that regardless of the type of legal act there should be a possibility to bring a legal action.

What about the rest with no detailed rules? (Art. 9/3 regime)

C-237/07 (Janecek):

„the natural or legal persons directly concerned by a risk that the limit values or alert thresholds may be exceeded must be in a position to require the competent authorities to draw up an action plan where such a risk exists, if necessary by bringing an action before the competent courts”.

WHY:

Protection of health

- *the failure to observe the measures required by the directives which relate to air quality and drinking water, and which are designed to protect public health, could endanger human health, the persons concerned must be in a position to rely on the mandatory rules included in those directives (see Case C-361/88 Commission v Germany; Case C-59/89 Commission v Germany; and Case C-58/89 Commission v Germany).*

WHO:

- the natural or legal persons directly concerned



- Direct effect is based on the relation between these individuals and public health.

THE A2J ALGORITHM (simplified)

1) **What kind of case are you dealing with? Is it an environmental case?**

2) **Is it an EIA, IED or Natura 2000 assessment-related case?**

2a) YES: Art. 9(2) AC regime + specific rules in EU Directives

= public concerned wide A2J (NGOs meeting criteria + affected individuals)

Is there an obstacle to locus standi? EU Directives are directly applicable

2b) NO, it is *another environmental case*: Art. 9(3) AC regime

= members of the public where they meet criteria laid down in the national law

Is there an obstacle to locus standi?

The case is EU-related: EU Directives could be directly applicable

The case is not EU-related: AC requirements still apply



This is a simplified approach to A2J.

Point1 Is a tricky question, it could be determined by the interests/rights of participants in their claims.

Right to bring a legal challenge (legal standing) - part II

JUDr. Vojtěch Vomáčka, Ph.D., LL.M.



Access to Justice in Environmental Matters
Workshop for judges and prosecutors
4 December 2024 – 6 December 2024 | Budapest

Directive (EU) 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC

Article 15

Publication of information in the public interest and access to justice for the public concerned

Member States shall ensure that persons affected or likely to be affected by the criminal offences referred to in Articles 3 and 4 of this Directive and persons having a sufficient interest or maintaining the impairment of a right, as well as non-governmental organisations that promote environmental protection and meet requirements under national law, have appropriate procedural rights in proceedings concerning those offences, where such procedural rights for the public concerned exist in the Member State in proceedings concerning other criminal offences, for instance as a civil party. In such cases, Member States shall also ensure, in accordance with their national law, that the information on the progress of the proceedings is shared with the public concerned, where that is done in proceedings concerning other criminal offences.



- There are two categories of individuals who should have procedural rights.
- In those cases MS must ensure that the information is shared with the public concerned.

Directive (EU) 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC

- (57) Since the environment cannot represent itself as a victim in criminal proceedings, for the purpose of effective enforcement, members of the public concerned should have the possibility of acting on behalf of the environment as a public good, in accordance with national law and subject to the relevant procedural rules.
- (58) This Directive does not require Member States to introduce new procedural rights for the members of the public concerned. However, when such procedural rights for members of the public concerned exist in a Member State in equivalent situations concerning criminal offences other than those provided for pursuant to this Directive, such as the right to participate in proceedings as a civil party, such procedural rights should also be granted to the members of the public concerned in proceedings concerning the environmental criminal offences defined in this Directive. The rights of the members of the public concerned are without prejudice to the rights of victims as set out in Directive 2012/29/EU of the European Parliament and of the Council ⁽¹⁴⁾. The notion of ‘members of the public concerned’ and of ‘victims’ should remain distinct and Member States should not be required to apply victims’ rights to members of the public concerned. This Directive does not require Member States to grant to members of the public concerned the procedural rights in criminal proceedings that they grant to categories of persons other than members of the public concerned.



Direct effect: From EIA to AIR to WATER...

Janecek (C-237/07), ClientEarth (C-404/13, ambient air quality assessment and management): The affected individuals must be able to require adoption of air-pollution action plans

Folk (C-529/15, Environmental Liability Directive): Persons with a fishing licence must be able to initiate review proceedings before a court or other competent public authority in accordance with Articles 12 and 13 of the Directive

Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation (C-664/15, Water Framework Directive): The NGO must be able to challenge a permit for a project of abstracting water from the river to produce snow for a ski resort under the EU law

Land Nordrhein-Westfalen (C-535/18, EIA, Water Framework Directive): Members of the public concerned by a project must be able to assert, before the competent national courts, that there has been a breach of the requirements to prevent the deterioration of bodies of water; EU law permits Member States to provide that, when a procedural defect vitiating the decision approving a project does not alter the meaning of that decision, an application for annulment of that decision is admissible only if the irregularity at issue has denied the claimant his or her right to participate in the environmental decision-making process

Wasserleitungsverband Nördliches Burgenland and Others (C-197/18, Nitrates Directive): Affected natural and legal persons, such as the applicants in the main proceedings (**incl. municipality and a water distribution association**), should be in a position to require the competent national authorities to amend an existing action programme or adopt additional measures or reinforced actions



if not... direct effect

The last case is interesting because the CJEU concluded that natural and legal persons (not public concerned, direct applicability) should be in a position to require authorities to amend an action programme or adopt other measures.

1. Similar to the Janecek case, the legal act is not an individual act, it's a plan. It is a strategic act. The public concerned must be in a position to challenge the non-existence or bad quality of strategic documents.
2. The CJEU includes other entities in relation to the quality of water on the basis of direct effect of EU law.

From the perspective of EU law municipalities can rely on direct effect of EU law concerning certain rights.

Protect Natur-, Arten- und Landschaftschutz Umweltorganisation (C-664/15, Water Framework Directive):

The NGO must be able to challenge a permit for a project of abstracting water from the river to produce snow for a ski resort under the EU law.

The NGO claimed, on the basis of certain studies, that the project at issue would have a significant impact on areas protected under Directive 92/43, in particular due to the noise of the snow-production facility, and that it would cause considerable harm to certain species present in those areas, including numerous protected bird species whose habitats are already threatened by the existing facility; it has indeed already led to the disappearance of several of those species from those areas.

By its first question, the referring court asks, in essence, whether Article 4 of Directive 2000/60 or that directive as a whole must be interpreted as meaning that, under Article 9(3) of the Aarhus Convention, an environmental organisation must be able to contest before a court a decision on a permit that is governed exclusively by the legislation governing water-related matters in respect of a project that is not subject to an environmental impact assessment under Directive 2011/92.



This only confirms that it was not a big project, because EIA was not required here.

Land Nordrhein-Westfalen (C-535/18, EIA, Water Framework Directive):

The construction of the section of the motorway/federal road comprising three to four lanes over a distance of approximately 3.7 kilometres. That decision authorised the developer to discharge rainwater running off the road surfaces into three bodies of surface water or into the groundwater. In that regard, the decision contained a number of provisions in annexes intended to ensure that waters are protected, in respect of both the discharge of rainwater into surface waters and its infiltration into the groundwater.

Point (b) of the first paragraph of Article 1 of Directive 2000/60 and the first indent of the second paragraph of Article 1 of that directive, together with Article 4(1)(b) thereof, read in the light of Article 19 TEU and Article 288 TFEU, must be interpreted as meaning that the members of the public concerned by a project must be able to assert, before the competent national courts, that there has been a breach of the requirements to prevent the deterioration of bodies of water and to improve the status of those bodies of water, if that breach concerns them directly.



This decision included two parts.

Land Nordrhein-Westfalen (C-535/18, EIA, Water Framework Directive):

- the claimants in the main proceedings were subject to expropriation or had a domestic well within the area covered by the project for their private water supply
- *However, neither the information contained in the order for reference nor the observations submitted to the Court are capable of establishing the relevance, for the claimants in the main proceedings, of the bodies of surface water that may also be affected by the project at issue. In those circumstances, it does not appear that the claimants in the main proceedings can be concerned by a possible infringement of obligations deriving from Article 4(1)(a) of Directive 2000/60, with the result that the Court's examination will concern only Article 4(1)(b), regarding groundwater.*
- *it must be held that, by its objective and the obligations laid down in Article 4(1)(b) in order to attain that objective, Directive 2000/60 also pursues the specific objective of protecting groundwater as a resource for human use.*



Even the NGOs are not deemed to be particularly concerned in terms of direct effect.

Wasserleitungsverband Nördliches Burgenland and Others (C-197/18, Nitrates Directive):

Protection of waters against pollution caused by nitrates from agricultural sources

Affected natural and legal persons, such as the applicants in the main proceedings (**incl. municipality and a water distribution association**), should be in a position to require the competent national authorities to amend an existing action programme or adopt additional measures or reinforced actions

municipality = not public concerned under the Aarhus Convention, but can be affected by violation of EU law

The obligations provided for in Article 5(4) and (5) of Directive 91/676 are clear, precise and unconditional, which means that they can be invoked by individuals against the State (see, by analogy, judgment of 26 June 2019, Craeynest and Others, C-723/17, EU:C:2019:533, paragraph 42).



C-252/22 (Societatea Civilă Profesională de Avocați AB & CD)

*Does **the public** include a **legal entity such as a law firm partnership**, which does not rely on the infringement of any right or interest specific to that entity, but rather the infringement of the rights and interests of natural persons – namely the lawyers of which that partnership is comprised – [and] can such an entity be treated as a group of natural persons acting through an association or organisation for the purposes of Article 2(4) of the Convention?*

CJEU: It is not contrary to EU law for national legislation to grant such standing under Article 9(3) of the Aarhus Convention only to environmental NGOs and to other entities only in the event of an infringement of their private interest. That provision has a broader scope than Article 9(2) of the Aarhus Convention, since it applies to a wider category of acts and decisions and is addressed to members of the general 'public'. It confers greater discretion on the Member States in establishing criteria for determining the real holders of the right to judicial protection among all members of the public.

It is essential that, as a result of the criteria laid down, 'certain 'categories' of members of the public are not denied any right to a remedy. On the contrary, the need to establish a legitimate private interest merely renders inadmissible actions brought by persons who have no specific relationship with the administrative act they wish to challenge.



A law firm entity wanted to challenge a waste treatment facility permit.

The CJEU once again said the conditions are conform with EU law as long as they do not obstruct wide access to justice.

C-613/22 (Dublin 8 Residents Association)

WITHDRAWN CASE:

Does article 11(1)(a) of The EIA Directive read in conjunction with article 47 of the Charter of Fundamental Rights and/or article 9(2) to (4) of the Aarhus Convention have the effect that where an environmental NGO meets the test for standing set out in that provision, the NGO concerned is to be regarded as having sufficient capacity to seek a judicial remedy notwithstanding a general rule in the domestic law of a member state which precludes unincorporated associations from bringing legal proceedings?

If not, does it have that effect in circumstances where the domestic law of the member state concerned provides that an NGO that meets the test for standing conferred by article 1(2)(e) of the directive is thereby conferred with capacity to seek a judicial remedy?

Or, does it have that effect in circumstances where the domestic law of the member state concerned and/or procedures adopted by the competent authority of the member state concerned have enabled an environmental NGO which would not otherwise have legal capacity in domestic law to nonetheless participate in the administrative phase of the development consent process?



The question was whether the notion of public can cover entities not recognised by law.

There was no CJEU answer.

THE CONTENT OF THE RIGHT – AIR QUALITY PLANS

- An individual person (and also an NGO) has a **right to see the action plan elaborated**, since the key element in the AQD is the setting of binding limit values together with the obligation to adopt air quality plans containing adequate measures to achieve compliance in the shortest time possible.
- In Case C-404/13 (*ClientEarth*), the CJEU confirmed that **the national court should order any measure necessary to bring the air pollution plan into line with EU air quality legislation**.
- The Court of Justice **limited the right of persons to request a specific content of a plan**. It held that the public authorities were to take measures to keep the time of (the risk of) exceedance as short as possible, but that they benefitted of a large amount of discretion, so that specific measures could not be asked for (C-237/07).
- Similar approach applies to the obligations in the **NEC Directive**. The natural and legal persons directly concerned must be able to require the competent authorities, if necessary by bringing the matter before the national courts, to observe and implement such rules of EU law – for example **to draw up national programmes for the progressive reduction of national emissions of inter alia SO₂ and NO_x** (Joined Cases C-165/09, C-166/09 and C-167/09)



In these cases, the CJEU said that they can ask for the plan to be adopted, but the applicants have no say as to the content of the plan.

THE CONTENT OF THE RIGHT – AIR POLLUTION MONITORING SYSTEM

- The individuals must be able to **challenge the air pollution monitoring system** in their cities because the AQD lays down detailed rules concerning the use and location of sampling points to measure air quality in zones and agglomerations comprising the territory of each Member State (*Case C-723/17 Craeynest and Others*)
- The **obligation to establish sampling points** in such a way that they provide information on the most polluted locations, and the obligation to establish at least a **minimum number of sampling points** are clear, precise and unconditional.
- It is for **the national courts to verify whether those obligations have been complied with**. In this respect, the average values across a whole zone or city are insufficient as they may underestimate the actual exposure to polluted air.



- The public may challenge individual measures.
- The third pillar includes acts and omissions that are not 'decisions'.
- With climate laws MS are required to adopt plans for energy efficiency and other objectives. We can expect that they will be challenged.

OBLIGATIONS OF THE NATIONAL COURTS - EFFECTIVENESS

Furthermore, the national court **must be able to provide full review of the facts** to take all necessary measures against the national authority concerned.

Example: In [Case C-723/17 Craeynest and Others](#), the CJEU ruled that **the national courts have jurisdiction to review the choice of location of air quality measuring stations and to take all necessary measures against the national authority concerned.** In assessing whether limit values have been complied with, the pollution level at each sampling point must be taken into account individually. **The competent courts (in this case the Brussels court) must enforce EU rules to make sure monitoring stations are located where the highest concentrations of air pollution occur.** This means that the court also has jurisdiction to **take all necessary measures** in respect of the national authority concerned, such as an order, to ensure that such points are sited in accordance with the criteria laid down in the AQD.



To achieve effective regulation of air quality, the national court *should be able to bring the national practice in line* with EU legislation.

Example: In [Case C-404/13 ClientEarth](#), the CJEU ruled that **the national court should order any measure necessary to bring the air pollution plan into line with EU air quality legislation**. In this case, an NGO asked the UK courts to order the government to improve plans required under EU law to reduce dangerous levels of nitrogen dioxide in 16 urban areas, including Greater London. High nitrogen dioxide levels affect the health of millions of British people, especially vulnerable groups such as children and old people. The first UK court ruled that it was not its business to order the government to improve air quality measures but the UK Supreme Court sought guidance from the CJEU which confirmed it is (also) up to the national courts to achieve effectiveness of the EU law.



OBLIGATIONS OF THE NATIONAL COURTS - EFFECTIVENESS

- The EU requirements must be enforced.
- The national judges should not put the EU requirements aside because of the **difficulties related to the transposition** and effective application for the Member States (such as socio-economic situation, large-scale investments and structural changes or technical difficulties).
- A Member State which encounters temporarily insuperable difficulties preventing it from complying with its obligations under European Union law **may plead force majeure only for the period necessary in order to resolve those difficulties** ([Case C-68/11 Commission v Italy](#), [Case C-488/15 Commission v Bulgaria](#), [Case C-336/16 Commission v Poland](#) concerning limit values for concentrations of PM₁₀ in ambient air).

Example: [Opinion of Advocate General Kokott](#) in Case C-488/15 *Commission v Bulgaria*: “96. The air quality plans under Article 23(1) of Directive 2008/50 can also be adopted only on the basis of such a balance of interests. *The high importance of ambient air quality for the protection of life and health leaves only very little room for consideration of other interests. It therefore also requires a strict review of the assessment made.* However, there are undeniably overriding interests which may preclude certain appropriate measures.”



The CJEU has ruled that when a plan is of low quality the effects of its annulment must be taken into account. If the annulment will be more environmentally harmful than the maintenance of the low quality existing plan, then it should not be annulled.

THE CONTENT OF THE RIGHT – APPROVAL OF VEHICLES

- **C-873/19 (*Deutsche Umwelthilfe*)**
- Article 9(3) of the Aarhus Convention on access to information read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as **precluding a situation where an environmental association**, authorised to bring legal proceedings in accordance with national law, is unable to challenge before a national court an **administrative decision granting or amending EC type-approval which may be contrary to Article 5(2) of Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information.**
- *The finding that Regulation No 715/2007, and in particular Article 5(2) thereof, has such an environmental objective and therefore forms part of the 'law relating to the environment', within the meaning of Article 9(3) of the Aarhus Convention, is not, contrary to what the KBA maintains, in any way undermined by the fact that that regulation was adopted on the basis of Article 95 EC, now Article 114 TFEU, which concerns measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.*

EFFECTIVENESS = COMPENSATION

The courts should be able to award damages (compensation) since in practice, there may be limits to the full effectiveness of EU law. The **national court, which has the task of applying EU law, sometimes has to balance a number of fundamental rights**. In particular, deprivation of liberty must be a measure of last resort

Example: In [Case C-752/18 Deutsche Umwelthilfe](#), the CJEU dealt with refusal of a German regional government to comply with a court judgement ordering the Land of Bavaria to amend its air quality plan by imposing a traffic ban on diesel vehicles in the city of Munich. The Land of Bavaria refused to introduce such a ban, however, despite an order for recurring financial penalties having been made against it (the payment of financial penalties does not reduce the Land's resources). **The national court contemplated taking the senior political representatives into coercive detention (prison) which could collide with the Constitution.** The CJEU concluded that the national court could not order coercive detention solely on the basis of the principle of effectiveness and of the right to effective judicial protection. Any limitation on the right to liberty must be provided for by a law that meets the requirements of Article 52(1) of



Compensation is important as a last resort when the judge cannot do much else.

THE CONTENT OF THE RIGHT – DAMAGES (COMPENSATION)

C-61/21 (*Ministre de la Transition écologique a Premier ministre*)

Due to the non-adoption of air quality improvement plans (for almost ten years), individuals living in the affected area are seeking compensation for the damage caused. They invoke, inter alia, the Aarhus Convention.

OPINION: The limit values laid down for pollutants in ambient air and the obligations to improve ambient air quality laid down in Articles 7 and 8 of Directive 96/62, read in conjunction with Directive 1999/30, and Articles 13 and 23 of Directive 2008/50 are intended to confer rights on individuals.

A claim for compensation for damage resulting from health problems caused by the exceedance of limit values set for PM10 and nitrogen dioxide in ambient air (...) is that the injured party proves the existence of a direct link between that injury and his or her residence in a place where the relevant limit values were exceeded without an air quality improvement plan having been drawn up...

CJEU: ...must be interpreted as meaning that they are *not intended to confer rights on individuals capable of entitling them to compensation* from a Member State under the principle of State liability for loss and damage caused to individuals as a result of breaches of EU law attributable to that Member State.



These damages are part of the huge bulk of effectiveness of EU law.

TIMELINESS, EFFICIENCY AND COSTS

Klohn (C-167/17, EIA): No direct effect of EU law implementing Art. 9(4) of the Aarhus Convention (requirement for a procedure which is not prohibitively expensive)

C-470/16 (North East Pylon, EIA): ...but it is for the national court to give an interpretation of national procedural law which, to the fullest extent possible, is consistent with the Aarhus Convention

C-252/22 (Societatea Civilă Profesională de Avocați AB & CD)

Article 9(4) and (5) of the Convention must be interpreted as meaning that, in order to ensure compliance with the requirement that judicial proceedings not be prohibitively expensive, a court called upon to make an order for costs against an unsuccessful party in an environmental dispute must take into account all the circumstances of the case, including that party's interest and the public interest in the protection of the environment.

TIMELINESS, EFFICIENCY AND COSTS

East Sussex (C-71/14), Gruber (C-570/13), Mellor (C-75/08): The requirement of effectiveness covers the judge's examination of the assessment of the merits of a decision, act or omission, such as in the case as well the scrutiny of national legislation and regulatory acts (**C-41/11, Inter-Environnement Wallonie**)

Leth (C-420/11): A national court dealing with a dispute governed by EU environmental law must be in a position to order interim measures as well as to award compensation for pecuniary damages, provided the three conditions for state liability are met

Vereniging Hoekschewaards Landschap (C-281/16): A national court must be in a position to ask the CJEU to examine the validity of acts adopted by EU institutions and bodies

Uniform interpretation of EU law by the CJEU is ensured by the possibility for national courts to submit questions concerning the validity and interpretation of EU law (Article 267 of the TFEU)

'Commission Implementing Decision (EU) 2015/72 of 3 December 2014 adopting an eighth update of the list of sites of Community importance for the Atlantic biogeographical region is invalid, in so far as, by that decision, the Haringvliet site (NL 1000015) was placed on that list without the inclusion of the Leenheerenpolder'.



Direct effect does not mean the entire Directive is directly applicable, it is reserved to certain provisions. This still allows for conform interpretation.

THANK YOU FOR YOUR ATTENTION!

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