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- **THE AARHUS REQUIREMENTS
AND EU LAW**
- **Scope and standard of judicial
review: EU law**



FOREWORD

- This presentation is meant to stimulate an exchange of experiences on EU environmental law among judges and prosecutors from different MS.
- It is just an attempt to focus, from a very personal (and partial) point of view, on some relevant issues concerning the role of national judges dealing with cases related to environmental protection.
- Feel free to interrupt for both asking questions and adding other topics of concern to the presentation.



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- The issue of scope of judicial review is strictly tied with legal standing
- The presentation is prepared from the point of view of a national judge

DEFINITION

We can define the **judicial review** (in our sector) as the **right to challenge public decisions that have been made without respecting environmental law.**



INTERNATIONAL LEVEL

- 1948 UN Declaration of Human Rights (UDHR)
- 1966 International Covenant on Civil and Political Rights (ICCPR)
- The regional human rights agreements

a general right to a fair trial that applies also to environmental matters.



INTERNATIONAL LEVEL

- 2001 Aarhus Convention
- 1993 North American Agreement on Environmental Cooperation
- 2003 African Nature Conservation Convention

→ The parties must ensure certain **procedural guarantees or minimum standards** + provision of **remedies** with some degree of details



AARHUS CONVENTION
for our environment
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INTERNATIONAL AGREEMENTS AND DOCUMENTS OF GLOBAL REACH

- 1992 Rio Declaration
- 2002 Johannesburg Plan of Action
- International Law Commission of the United Nations (ILC)



Very general reference to judicial procedures and remedies

AARHUS CONVENTION

The parties must ensure **access to information and public participation in decision-making**, as well as **access to justice in environmental matters**.

There are three different categories of acts, decisions and omissions in relation to which access to a review must be ensured by the Convention parties.

Aarhus Convention



Access to Justice

- Third pillar of the Aarhus Convention
 - Article 9 (1)
 - Article 9 (2)
 - Article 9 (3)
- Commission Notice on access to justice in environmental matters (2017/C 275/01)
- Case law CJEU
- Practice from Aarhus Convention Compliance Committee - <https://unece.org/env/pp/cc>



**CITIZEN'S GUIDE TO
ACCESS TO JUSTICE
IN ENVIRONMENTAL
MATTERS**

Environment



Access to Justice - Article 9.1

- Each Party shall, within the framework of its national legislation, ensure that **any person** who considers that his or her **request for information under article 4 has been ignored**, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not dealt with in accordance with the provisions of that article, has **access to a review procedure** before a court of law or another independent and impartial body established by law.
- Directive 2003/4/EC on Access to Environmental Information
- Case C-71/14 East Sussex (56)



Access to Justice Article 9.2

Ensure that 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



- This paragraph corresponds to Article 6, the right to public participation.
- The Convention itself provides the scope of the public concerned.

Access to Justice Article 9(3)

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

The Slovak Brown Bear I C-240/09: Article 9(3) of the Aarhus Convention has **no direct effect** (does not contain any clear and precise obligation capable of directly regulating the legal position of individuals, since it is subject to the adoption of subsequent measures by contracting parties). It is for the national courts to **interpret its national law in a way which, to the fullest extent possible, is consistent with the objectives laid down in A 9(3) of the Aarhus convention**



It is the broadest and most controversial in terms of interpretation provision.

AARHUS CONVENTION

- The Convention **limits the discretion for the parties in defining the scope of persons with access to review procedures.**
- For all these situations, the parties shall ensure that the procedures provide *«adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive»*.
- **Aarhus Regulation n. 1367/2006**



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Injunctive relief is included in what we call an effective remedy.

EUROPEAN CONVENTION ON HUMAN RIGHTS (ECHR)

Even the European Convention on Human Rights (ECHR) provides strong support for the right of access to justice in environmental matters, addressing the right of access to justice in environmental matters in relation to

Article 6 ECHR and the right to a fair trial



We can draw useful examples from the ECtHR.

EUROPEAN CONVENTION ON HUMAN RIGHTS (ECHR)

- For example:

- Zander v Sweden

Possibility of considering the existence of a right to a healthy and/or balanced environment in the defending state + recognition of the standing of the applicants under the applicable national laws

- Taskin and others v Turkey

- Giacomelli v Italy

The right to respect for privacy and family life also include a right for the individuals concerned to appeal to the courts environmental decisions, act or omission where they consider that their interests or comments have not been given sufficient weight in the decision-making process. Moreover, a failure to comply with court decisions in due time amounts to a violation of the right to a fair trial.

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EUROPEAN CONVENTION ON HUMAN RIGHTS (ECHR)

■ More recent examples (2024):



– Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (application no. 53600/20)

– Carême v. France (no. 7189/21)

– Duarte Agostinho and Others v. Portugal and 32 Others (no. 39371/20)



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- Three decisions concerning climate change.
- KlimaSeniorinnen was an organisation concerned about the consequences of climate change on their health. They claimed that the authorities did not take sufficient measures to deal with climate change.
- Duarte Agostinho ao claimed that many countries are responsible and must respond to the need to climate action. The domestic remedies had not been exhausted, it was found inadmissible.
- In Careme, the claimants submitted that France has not taken enough measures.

PRIMARY EU LAW

▪ Article 263

- **(ex Article 230 TEC)** The Court of Justice of the European Union shall review the legality of acts of the EU Institutions, bodies, agencies intended to produce legal effects *vis-à-vis* third parties.
- The action can be brought by a Member State, the European Institutions (including the Court of Auditors, by the European Central Bank and by the Committee of the Regions for the purpose of protecting their prerogatives).
- On grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaties or of any rule of law relating to their application, or misuse of powers.
- **Any natural or legal person may**, under the conditions laid down in the first and second paragraphs, **institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures.**



AARHUS REGULATION N. 1367/2006 (AS MODIFIED IN 2021)

- **The objective of this Regulation is to contribute to the implementation of the obligations arising under the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, hereinafter referred to as ‘the Aarhus Convention’, by laying down rules to apply the provisions of the Convention to Union institutions and bodies.**



AARHUS REGULATION N. 1367/2006 (AS MODIFIED IN 2021)

▪ TITLE IV

▪ INTERNAL REVIEW AND ACCESS TO JUSTICE

▪ *Article 10*

▪ **Request for internal review of administrative acts**

- 1. Any non-governmental organisation or other members of the public that meet the criteria set out in Article 11 shall be entitled to make a request for internal review to the Union institution or body that adopted the administrative act or, in the case of an alleged administrative omission, should have adopted such an act, on the grounds that such an act or omission contravenes environmental law within the meaning of point (f) of Article 2(1).
- Such requests shall be made in writing and within a time limit not exceeding eight weeks after the administrative act was adopted, notified or published, whichever is the latest, or, in the case of an alleged administrative omission, eight weeks after the date when the administrative act was required. The request shall state the grounds for the review.



AARHUS REGULATION N. 1367/2006 (AS MODIFIED IN 2021)

- 2. The Union institution or body referred to in paragraph 1 shall consider any such request, unless it is manifestly unfounded or clearly unsubstantiated. In the event that a Union institution or body receives multiple requests for review of the same administrative act or administrative omission, the institution or body may combine the requests and treat them as one. The Union institution or body shall state its reasons in a written reply as soon as possible, but no later than 16 weeks after the expiry of the eight weeks deadline set forth in the second subparagraph of paragraph 1.
- 3. Where the Union institution or body is unable, despite exercising due diligence, to act in accordance with paragraph 2, it shall inform the non-governmental organisation which made the request as soon as possible and at the latest within the period mentioned in that paragraph, of the reasons for its failure to act and when it intends to do so. In any event, the Union institution or body shall act within 22 weeks of the expiry of the eight weeks deadline set out in the second subparagraph of paragraph 1.



AARHUS REGULATION N. 1367/2006 (AS MODIFIED IN 2021)

▪ *Article 11*

▪ **Criteria for entitlement at Union level**

- **1. A non-governmental organisation shall be entitled to make a request for internal review in accordance with Article 10, provided that:**
 - (a) it is an independent non-profit-making legal person in accordance with a Member State's national law or practice;
 - (b) it has the primary stated objective of promoting environmental protection in the context of environmental law;
 - (c) it has existed for more than two years and is actively pursuing the objective referred to under (b);
 - (d) the subject matter in respect of which the request for internal review is made is covered by its objective and activities.



AARHUS REGULATION N. 1367/2006 (AS MODIFIED IN 2021)

- *Article 12*
 - Proceedings before the Court of Justice
- 1.
 - The non-governmental organisation which made the request for internal review pursuant to Article 10 may institute proceedings before the Court of Justice in accordance with the relevant provisions of TFEU.
- 2.
 - Where the Union institution or body fails to act in accordance with Article 10(2) or (3), the non-governmental organisation or other members of the public that made the request for internal review pursuant to Article 10 may institute proceedings before the Court of Justice in accordance with the relevant provisions of TFEU.



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- A request for review can be made by other members of the public.
- It refers to acts or omissions of the EU, not MS.
- Concerning the acts of MS there is no general Regulation, there is only the notice by the Commission.

DOCUMENTS EUROPE

- 2017 Notice on access to justice in environmental matters analysing the substantial existing CJEU case-law relating to access to justice in order to draw careful conclusions for **national administrations, national courts, the public and economic operators**
- Citizen's Guide



Commission Notice on access to justice in environmental matters (2017/C 275/01)

- A. INTRODUCTION: ACCESS TO JUSTICE IN EU ENVIRONMENTAL LAW
- B. THE LEGAL CONTEXT: NATIONAL COURTS AND EU ENVIRONMENTAL LAW
- C. GUARANTEEING ENVIRONMENTAL ACCESS TO JUSTICE
 - 1. PUBLIC AND JUDICIAL PROTECTION
 - 2. LEGAL STANDARDS, OBLIGATIONS AND RIGHTS RELEVANT TO THE EXERCISING
 - 3. SCOPE OF JUDICIAL REVIEW
 - 4. EFFECTIVE REMEDIES
 - 5. COSTS
 - 6. TIME LIMITS, TIMELINESS AND THE EFFICIENCY OF PROCEDURES



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It is based on the legal provisions and on case law.

A. INTRODUCTION: ACCESS TO JUSTICE IN EU ENVIRONMENTAL LAW

- Where obligations or rights under EU law are affected at national level, **there has to be access to national courts** in line with the principle of effective judicial protection set out in the EU Treaties and with the requirements enshrined in Article 47 of the Charter of Fundamental Rights of the European Union.
- The Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters ('the Aarhus Convention') establishes that, in certain cases, **natural and legal persons** (such as non-governmental organisations, 'NGOs') **can bring a case to a court or to other impartial bodies in order to allow for the review of acts or omissions of public or private bodies.**



A. INTRODUCTION: ACCESS TO JUSTICE IN EU ENVIRONMENTAL LAW

- 1) The Aarhus Regulation, (EC) No 1367/2006, applies the Aarhus Convention to EU institutions and bodies.
- 2) For Member States, certain pieces of EU secondary legislation contain express access to justice provisions mirroring those of the Convention.
- 3) The current legislative provisions in the Member States on access to justice in environmental matters differ considerably.
- 4) At the same time, the Court of Justice of the European Union ('CJEU') has issued significant rulings clarifying EU requirements on access to justice in environmental matters, both within and outside the context of the harmonised secondary legislation. The result is a sizeable and valuable body of CJEU case-law touching on all aspects of the subject.



A. INTRODUCTION: ACCESS TO JUSTICE IN EU ENVIRONMENTAL LAW

- Not an exclusive reference to the **case law of the Court** → the decision to rely solely on the case law of the Court was not considered appropriate, because of the difficulties that arose from it
- Not a **legislative option** → a Commission proposal of 2003 is remained with the Council for over a decade without any agreement being found or in prospect
- Not a **sector-by-sector legislative approach** → it would not help and, in any case, the EU legislature does not appear to be currently receptive



A. INTRODUCTION: ACCESS TO JUSTICE IN EU ENVIRONMENTAL LAW

- The Commission decided that an interpretative communication on access to justice in environmental matters (i.e. this Notice) would be the most appropriate and effective means to address the problems.
- By bringing together all the substantial existing CJEU case-law, and by drawing careful inferences from it, it would provide significant clarity and a reference source for national administrations, national courts, the public and economic operators.
- The light adoption procedure would help the Commission deliver an effective initiative in the short term.



A. INTRODUCTION: ACCESS TO JUSTICE IN EU ENVIRONMENTAL LAW

- The Notice is based on provisions of EU law, including the Charter of Fundamental Rights, and the case-law of the CJEU.
- The scope of the Notice is limited to access to justice in relation to decisions, acts and omissions by public authorities of the Member States.
- It does not address environmental litigation between private parties. Nor does it concern the judicial review of acts of the EU institutions.
- While the Notice is closely aligned with CJEU case-law, only the CJEU itself can provide definitive interpretations.



B. THE LEGAL CONTEXT: NATIONAL COURTS AND EU ENVIRONMENTAL LAW

- EU environmental law covers EU legislation which contributes to the pursuit of the objectives of EU policy on the environment, set out in **Article 191** of the Treaty on the Functioning of the European Union (TFEU)



wide range of obligations that competent public authorities in Member States must fulfil

- **Art. 19 (1) TUE** → «*Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law*»
- **Art. 47 of the Charter of Fundamental Rights** → the right to an effective remedy
- **Art. 6 ECHR** → the right to a fair trial
- **Art. 13 ECHR** → the right to an effective remedy



B. THE LEGAL CONTEXT: NATIONAL COURTS AND EU ENVIRONMENTAL LAW

- Since its ratification by the EU and its entry into force, the Aarhus Convention is an integral part of the EU legal order and **binding on Member States under the terms of Article 216(2) of the TFEU.**
- Access to justice is addressed in Article 9 of the Convention → **three pillars of the Convention**



B. THE LEGAL CONTEXT: NATIONAL COURTS AND EU ENVIRONMENTAL LAW

- It is the **responsibility of the national judge** to provide an interpretation of national law that is as consistent as possible with the objectives set out in the Aarhus Convention.
- UE environmental legislation contains explicit access to justice requirements
- The body of CJEU case-law that has emerged on access to justice in environmental matters is primarily the result of preliminary references from national courts under **Article 267 of the TFEU** → the role of Article 267 may be put in doubt if access to national courts is either impossible or rendered excessively difficult.



C. GUARANTEEING ENVIRONMENTAL ACCESS TO JUSTICE

Under EU law, access to justice in environmental matters represents a set of supportive rights which serves two purposes:

- 1) It enables individuals and their associations to exercise the rights conferred on them by EU law;



- 2) It helps ensure that the aims and obligations of EU environmental legislation are attained.

C. GUARANTEEING ENVIRONMENTAL ACCESS TO JUSTICE

1. Public interests, obligations and rights

- The measures to secure these general public interests include the following:
 - binding environmental quality objectives and obligations that Member States must respect;
 - duties on Member States to monitor the state of the environment;
 - requirements on public authorities to prepare plans and programmes to reduce pollution and waste;
 - requirements that certain activities should take place only after a permit or consent has first been obtained from a public authority;
 - requirements that, before consents are given for certain types of plans and projects, environmental assessments should be prepared.



C. GUARANTEEING ENVIRONMENTAL ACCESS TO JUSTICE

1. Public interests, obligations and rights

- The public and other interests set out in EU environmental law and the related obligations placed on public authorities give rise to procedural and substantive rights for individuals and their associations. These rights need to be protected by national courts
→ **Case C-243/15 LZ II, paragraph 44**
- Environmental NGOs play an important role in ensuring compliance with the obligations of EU environmental law and enjoy a broad right to protect the environment which national courts need to uphold → **Causa C-240/09, LZ I, paragraph 51**



C. GUARANTEEING ENVIRONMENTAL ACCESS TO JUSTICE

1. Public interests, obligations and rights

- EU environmental law confers **procedural and substantive rights** on individuals. These relate in particular to requirements for public authorities to correctly follow a procedure intended to involve the public as well as provisions which concern human health and property.
 - Article 2(4) of the Aarhus Convention
 - the Environmental Impact Assessment Directive, 2011/92/EU
 - the Industrial Emissions Directive, 2010/75/EU
 - the Public Participation Directive, 2003/35/EC
 - the Strategic Environmental Assessment Directive, 2001/42/EC
- Case C-72/95 Kraaijeveld, paragraph 56
- Case C-420/11 Leth, paragraph 36



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- Procedural rights concern the submission and consideration of concerns.
- Substantive rights concern the essence of the rights.

2. LEGAL STANDING (*locus standi*)

It's the entitlement to bring a legal challenge to a court of law or other independent and impartial body in order to protect a right or interest of the claimant regarding the legality of a decision, act or omission of a public authority.

A few EU environmental directives contain access to justice provisions expressly requiring Member States to provide legal standing.

However, **express provisions on access to justice, including standing, are absent in most EU secondary environmental legislation.**

Nevertheless, despite the absence of express legislative provisions, the requirements concerning legal standing have to be interpreted in the light of the principles established in the case-law of the CJEU.



2. LEGAL STANDING (*locus standi*)

▪ Four main categories can be distinguished:

1) Requests for environmental information and entitlement to receive information → Directive 2003/4/EC, Art. 9(1) of the Aarhus Convention; Case C-71/14, East Sussex;

2) Specific activities that are subject to public participation requirements → Article 9(2) of the Aarhus Convention, EU secondary legislation, case-law of the CJUE (Case C-72/95 Kraaijeveld, paragraph 56K; Case C-243/15 LZ II;

3) Requests for action under environmental liability rules;

4) Other subject-matter, such as national implementing legislation, general regulatory acts, plans and programmes and derogations.



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- For the 1st category, the provision is quite clear, any natural or legal person enjoys legal standing.
- The second paragraph stipulates that the public concerned benefits from the public participation provisions.

2. LEGAL STANDING (*locus standi*)

- «Public concerned» → «the public affected or likely to be affected by, or having an interest in, the environmental decision-making»

- Individuals → precondition of needing to show the impairment of a right or a sufficient interest



↓
procedural rights of the individual stemming from EU environmental law (e.g. public participation rights) and substantive rights conferred on the individual (e.g. protection of human health, property rights)

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- There is no requirement to allow for *actio popularis*.
- For individuals there is a precondition.

2. LEGAL STANDING (*locus standi*)

■ Environmental NGOs

the member States have the discretion to impose certain conditions on their legal standing to avoid *actio popularis*, provided that these conditions are not excessively difficult to satisfy and take into account the interests of small local NGOs

legal standing *de lege*

Case C-263/08 Djurgården

Specific criteria:

- 1) Active in the environmental field
- 2) Membership requirement
- 3) Other criteria (the independence; non-profit-making character of the NGO, etc.)

GREENPEACE



LEGAMBIENTE



WWF

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- The sole fact of being a recognised ENGO is sufficient to grant legal standing.



2. LEGAL STANDING (*locus standi*)

- **Non-discrimination against foreign NGOs** → the conditions to be fulfilled by environmental NGOs in order to obtain legal standing *de lege* must not be less favourable for foreign NGOs than for domestic ones.
- **Other associations, organisations and groups** → while not enjoying legal standing *de lege*, other associations, organisations and groups may, subject to national law, enjoy legal standing on the same basis as individuals.
- **Prior participation** → Member States may not restrict legal standing to challenge a decision of a public authority to those members of the public concerned who participated in the preceding administrative procedure to adopt that decision.



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- The CJEU case law demonstrates how stringent the rules of legal standing for ENGOs can be.

2. LEGAL STANDING (*locus standi*)

General basis (Other subject matter, such as national implementing legislation, general regulatory acts, plans and programmes and derogations)

- National law
- Article 9(3) of the Aarhus Convention
- Article 19(1) TEU
- Article 47 of the Charter of Fundamental Rights
- Case C-240/09 LZ I, paragraph 45 → Article 9(3) does not contain any clear and precise obligation capable of directly regulating the legal position of individuals, since it is subject to the adoption of subsequent measures by contracting parties, but it intends to ensure effective environmental protection.

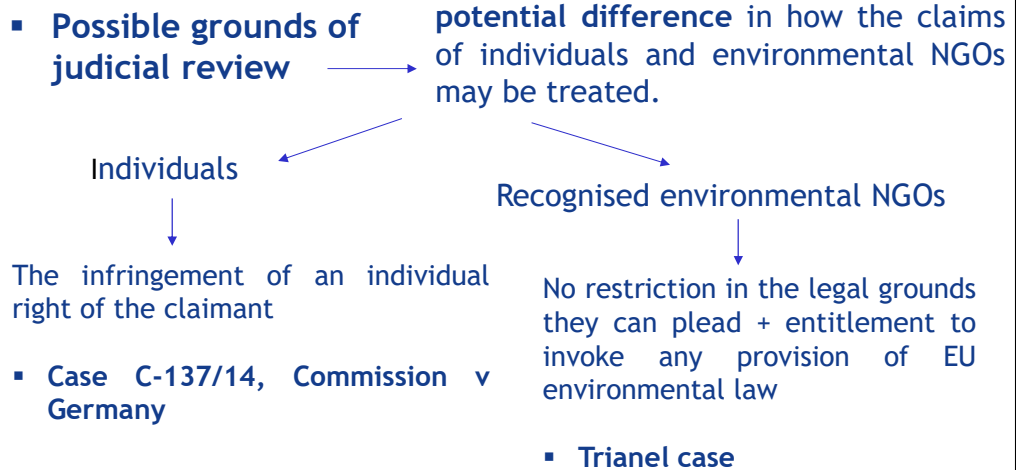


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- For its uniform application, this part of the Convention requires more intervention on behalf of the EU institutions.

3. SCOPE OF JUDICIAL REVIEW

(GROUNDS)



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- In the Case Commission v Germany, the CJEU ruled that the MS following the correspondence approach are conform with the Aarhus Regulation.
- In Trianel, it ruled that the scope of review can extended for NGOs.

3. SCOPE OF JUDICIAL REVIEW

(POSSIBLE RESTRICTIONS)

- The scope of the review by a national court may not be reduced to the objections which have already been raised within the time-limit set during the administrative procedure. However, courts can treat as inadmissible arguments submitted abusively or in bad faith.
- (C-137/14 Commission v Germany, paragraph 80)



3. SCOPE OF JUDICIAL REVIEW (INTENSITY)

- **Intensity of scrutiny/standard of review** → how thoroughly the national court is obliged to assess the legality of the decision, act or omission
 - ↓
 - an effective judicial review**
 - ↓
- **Articles 9(2) and 9(3) of the Aarhus Convention**
- **Case C-71/14 East Sussex, paragraph 53**
- **the Environmental Liability Directive, 2004/35/EC**



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- In the East Sussex decision the Court ruled that the objective pursued is not the widest review possible, but the control of procedural and substantive legality of the act.

3. SCOPE OF JUDICIAL REVIEW

- **Procedural legality** → Judicial power of the competent judge + compliance with the prescribed procedure + compliance with the legal form of the act
- **Substantive legality** → Verification of the actual violation of the law → assessment of the merits of a decision, act, or omission + review of national legislation and regulatory acts
 - C-71/14 East Sussex
 - C-75/08 Mellor
 - C-570/13 Gruber
 - C-201/02 Inter-Environnement Wallonie



4. EFFECTIVE REMEDIES

General requirement on every body of a Member State to nullify the unlawful consequences of a breach of EU environmental law →
Principle of procedural autonomy of the Member States

- Suspension
- Revocation
- Annulment of unlawful decision or act, including disapplication of legislation and regulatory acts
- Compensation for pecuniary damage
- Interim measures



5. COSTS

- **Not prohibitively expensive costs + reasonable predictability** as regards both whether the costs of the judicial proceedings in which he becomes involved are payable by him, and their amount.
- **Loser pays principle** → the cost of proceedings is not objectively unreasonable, taking into account both the subjective and objective aspects of the individual case and the losing party.
- Desirable identification of a **cost-capping system** → Commission v United Kingdom case

6. TIME LIMITS, TIMELINESS AND THE EFFICIENCY OF PROCEDURES

A number of temporal considerations are relevant to environmental access to justice:

- Environmental claimants must bring their challenges within specified time limits
 - Judicial review procedures should be conducted in a timely manner
- ↓
- Reasonable time limits → **Stadt Wiener Neustadt case**
 - Article 9(4) of the Aarhus Convention
 - Article 47 (2) CFR



CONCLUSIONS

- 1) In environmental matters, access to justice is guaranteed by Article 9 of the Aarhus Convention → Before the Aarhus Convention entered into force, there was almost no sign of access to justice in EU environmental law.
- In particular, access to justice in art. 9 is organised on the basis of three pathways, accompanied by an umbrella provision.
 - Art. 9(1) → access to information
 - Art. 9(2) → public participation
 - Art. 9(3) → access to justice
 - Art. 9(4) → general minimum standards in terms of timeliness, fairness and effectiveness applying to all review procedures, decisions and remedies under art. 9 itself



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- The basis of this discipline is the Aarhus Convention and it needs implementation.

CONCLUSIONS

- 2) Access is granted by the Aarhus Convention to the «**members of public, including individuals and organisations.**
- **The implementation of access to justice provisions is influenced by existing national rules.** Still, this may lead to a diversity of approaches across legal systems, as well as to a certain unclarity in terms of identification by the Parties of who falls under the category of the «public».

CONCLUSIONS

3)

- **2003** → the Commission presented a **Proposal for a Directive of the European Parliament and of the Council on access to justice in environmental matters**
- **2014** → because of Member States' **resistance in the Council**, this Directive was withdrawn without ever being adopted

There is still no dedicated legislative instrument transposing art. 9(3) with respect to access to justice at domestic level. In this regard, only de facto transposition can be identified:

- the Environmental Liability Directive
- the Seveso III Directive



CONCLUSIONS

4)

- **2017** → the Commission decided to issue a **soft law instrument**, the **Notice on access to justice in environmental matters**, in order to systematise the existing body of CJEU's case law on access to justice and provide concrete guidance to national courts on how to operationalise it.



CONCLUSIONS

5)

- The approach to judicial review is «sectoral», limited to some provisions of some pieces of EU legislation in specific sectors.

The decision to include or exclude provisions on access to justice in environmental sector legislation, as well as the level of precision of such provisions, therefore appears to be more of a **political matter**, driven by political negotiations rather than by tangible legal justifications.



SECTORAL APPROACH TO THE TRANSPOSITION OF ART. 9(3) AS A CHOSEN WAY FORWARD

Hedemann-Robinson: «*fragmented delivery of safeguards and protections*»

→ Problem of consistency among the many legislative acts covering the environmental field in the EU:

- the Regulation and Directives mentioned above only represent a minor part of EU environmental law
- EU citizens and environmental NGOs can rely on a justice access mechanism provided by supranational law only in certain specific areas, while Article 9(3) aims to cover all environmental areas
- existence of discrepancies within the mechanisms provided by the current sectoral approach → difficulties for states in transposing multiple similar but not perfectly overlapping obligations

Therefore, we are still far from the goal of ensuring the “wide access to justice” promise of the Aarhus Convention.

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- Legal standing and judicial review are close but legal standing concerns access to jurisdiction, not the consideration of the facts.

Thank you

for your kind attention!

