

Effective remedies – obligation of a national judge

ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS

Workshop for judges and prosecutors

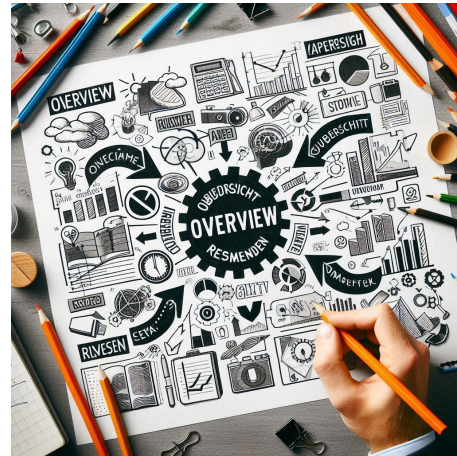
Budapest, 04-06 December 2024

Georgina Kiss
Judge
Budapest Environs Regional Court

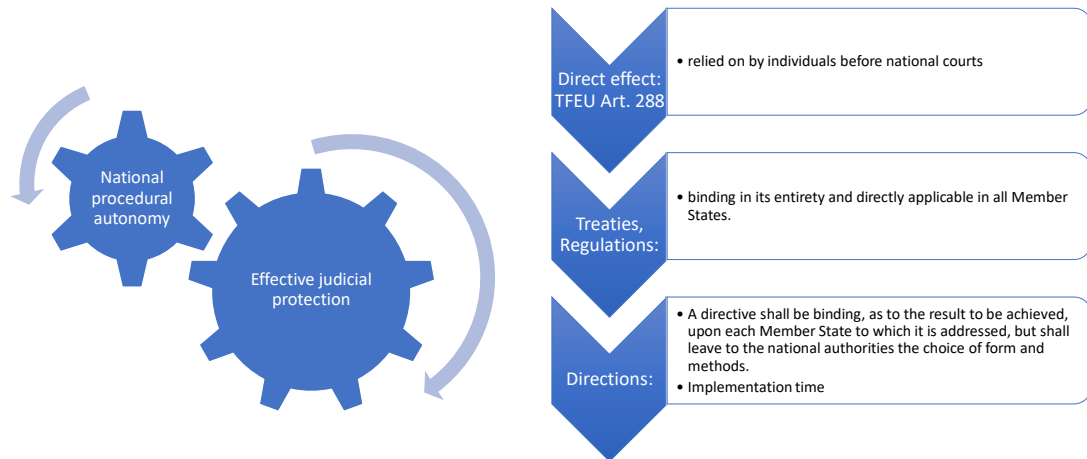
The CJEU case law has been a catalyst for the development of environmental law in MS.

Overview

- Effective remedies – national procedural autonomy, direct effect, indirect effect
- Main rules of EU law on environmental protection
- The EU law in connection with Aarhus Convention
- Interim measures (injunctive relief)

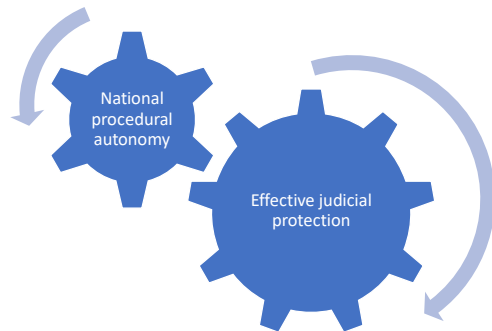


Effective remedies – obligation of a national judge I.



- Article 288 of the TFEU declares that EU Regulations have direct effect.
- Directives can also have direct effect under certain conditions.

Effective remedies –obligation of a national judge I.

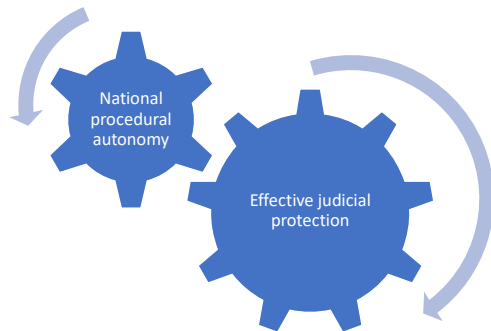


Direct effect:

- Clear
- Unconditional
- Precise
- Relevant case law:
 - **C-26/62 van Gend & Loos** - Article 12 of the Treaty establishing the European Economic Community produces direct effects and creates individual rights which national courts must protect.
 - **C-41/74 Van Duyn** - Article 48 of the EEC Treaty has a direct effect in the legal orders of the Member States and confers on individuals rights which the national courts must protect.

- Both these cases concern direct effect.
- The Van Duyn case concerned a Dutch citizen who wanted to have a job at the scientology church in the UK. The question was whether a citizen can be forbidden to enter on the grounds that the activity of the church was not beneficial to UK citizens. The CJEU ruled that Article 48 has direct effect.

Effective remedies –obligation of a national judge II.



Indirect effect

- National judge interprets national law in conformity with EU law
- Domestic law must be interpreted, so far as possible, in order to achieve the result sought by relevant EU law.
- Courts must take the whole body of domestic law into consideration and apply all interpretative methods recognised by in their legal system to achieve the results required by EU law.
- Cannot serve as the basis for an interpretation of national law *contra legem*.

Effective remedies –obligation of a national judge II.

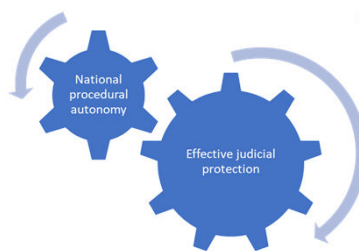
- Relevant case law - indirect effect:

- **C-282/10 Dominguez** - it is for the national court to determine, taking the whole body of domestic law into consideration and applying the interpretative methods recognised by domestic law, with a view to ensuring that Article 7 of Directive 2003/88 is fully effective and achieving an outcome consistent with the objective pursued by it, whether it can find an interpretation of that law that allows the absence of the worker due to an accident on the journey to or from work to be treated as being equivalent to one of the situations covered by that article of the Code du travail.

If such an interpretation is not possible, it is for the national court to determine whether, in the light of the legal nature of the respondents in the main proceedings, the direct effect of Article 7(1) of Directive 2003/88 may be relied upon against them.

- **C-122/17 Smith** - EU law, in particular Article 288 TFEU, must be interpreted as meaning that a national court, hearing a dispute between private persons, which finds that it is unable to interpret the provisions of its national law that are contrary to a provision of a directive that satisfies all the conditions required for it to produce direct effect in a manner that is compatible with that provision, is not obliged, solely on the basis of EU law, **to disapply** those provisions of national law and a clause to be found, as a consequence of those provisions of national law, in an insurance contract.

In a situation such as that at issue in the main proceedings, **a party adversely affected by the incompatibility of national law with EU law** or a person subrogated to the rights of that party could however rely on the case-law arising from the judgment of 19 November 1991, Francovich and Others (C-6/90 and C-9/90, EU:C:1991:428), in order to obtain from the Member State, if justified, compensation for any loss sustained.



Effective remedies –obligation of a national judge III.

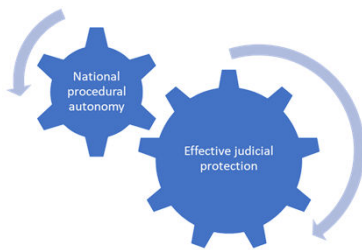
Preliminary reference

CJEU

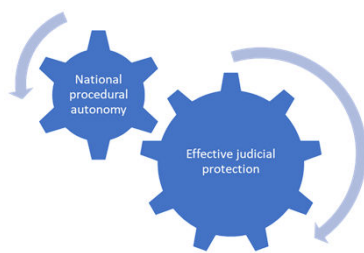
How to interpret the EU law

CILFIT criteria

- acte clair – the correct interpretation of EU law is obvious



Effective remedies –obligation of a national judge III.



There is a general requirement on every body of a Member State to nullify the unlawful consequences of a breach of EU environmental law. Member States must also refrain from taking any measures that can seriously compromise the attainment of a result prescribed by EU environmental law. Member States have discretion with regard to effective remedies, provided that they comply with the principles of equivalence and effectiveness.

The principle of equivalence

Actions under EU law must not be handled „less favourable“ than actions under domestic law.



Not make it impossible in practice to exercise the rights which the national courts are obliged to protect



Non discrimination: the remedies and forms of action shall be available to ensure the observance of national law and shall be made available in the same way to ensure the observance of EU law.



The principle of equivalence

- Relevant case law:
- **C-222/84.** – Applying the directive in direct effect is expected in order to exclude any derogation from the non discrimination principle provided by national legislation, in so far as such derogation exceeds the limits of the exceptions permitted under Article 2(2) of the Directive.
- **C-312/93.** - Community law precludes application of a domestic procedural rule whose effect, in procedural circumstances such as those in question in the main proceedings, is to prevent the national court, seised of a matter falling within its jurisdiction, from considering of its own motion whether a measure of domestic law is compatible with a provision of Community law when the latter provision has not been invoked by the litigant within a certain period.

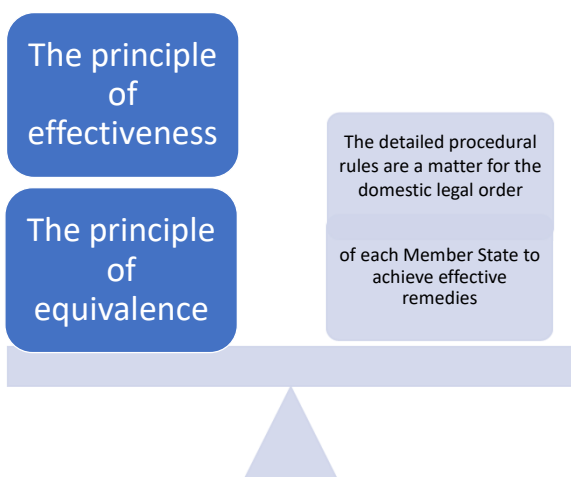


The principle of effectiveness

- Domestic rules on procedure must not lead to a situation where the validation of EU rights is „practically impossible or excessively difficult“.



Effective remedies



The national judge must make a decision on how to handle the decision-making powers vested on them by national law, balancing in with EU law while using these tools.

Main rules of EU law on environmental protection



TFEU Article 191

- Aims
- Principles
- Aspects
- International cooperation

Main rules of EU law on environmental protection - Aims



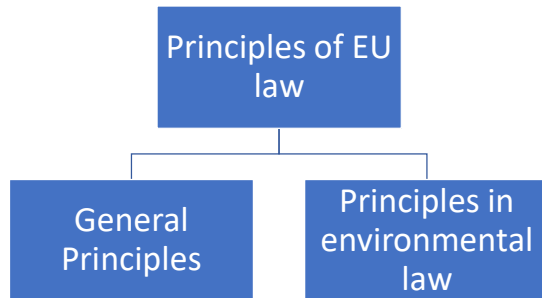
• TFEU Article 191

1. Aims of the Union policy on the environment

- preserving, protecting and improving the quality of the environment,
- protecting human health,
- prudent and rational utilisation of natural resources,
- promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.



Main rules of EU law on environmental protection



- **TFEU Article 191**

- 2. Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay. In this context, harmonisation measures answering environmental protection requirements shall include, where appropriate, a safeguard clause allowing Member States to take provisional measures, for non-economic environmental reasons, subject to a procedure of inspection by the Union.

Main rules of EU law on environmental protection - making environmental decisions

- **TFEU Article 191**

- 3. In preparing its policy on the environment, the Union shall take account of:
 - available scientific and technical data,
 - environmental conditions in the various regions of the Union,
 - the potential benefits and costs of action or lack of action,
 - the economic and social development of the Union as a whole and the balanced development of its regions.



Main rules of EU law on environmental protection – international cooperation

- **TFEU Article 191**

4. Within their respective spheres of competence, the Union and the Member States shall cooperate with third countries and with the competent international organisations. The arrangements for Union cooperation may be the subject of agreements between the Union and the third parties concerned. The previous subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

Relevant case law:

C-182/89.

C-239/03.



The EU law in connection with Aarhus Convention

- The EU and its 27 Member States are all Parties to the Aarhus Convention.
- It is the leading international agreement on environmental democracy.
- The Aarhus Convention protects every person's right to live in a healthy environment.
- It guarantees the public three key rights on environmental issues.



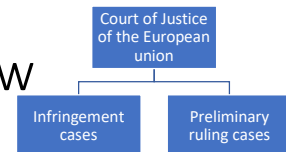
The EU law in connection with Aarhus Convention

- The EU, by signing the Aarhus Convention, has undertook to provide access to environmental information held by public authorities as a general rule within the scope of EU law.
- Made public participation in decision-making and access to justice for alleged breaches of environmental law part of EU law
- The Aarhus Convention are therefore an integral part of the European Union's legal order, the competence of CJEU to interpret them in a preliminary ruling procedure is clearly established.



- The CJEU interprets the rules of the Aarhus Convention in its case law.

Effective remedies –relevant case law



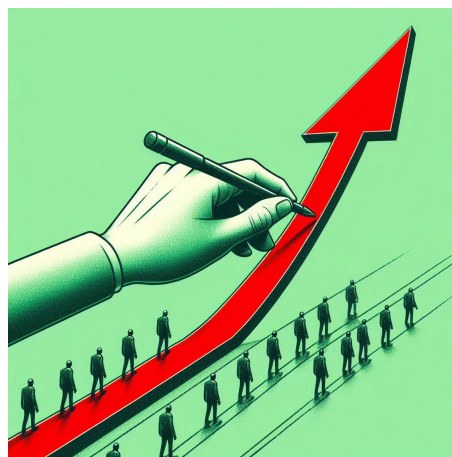
- **C-664/15.** Article 9(3) of the Aarhus Convention read in conjunction with Article 47 of the Charter of Fundamental Rights must be interpreted as meaning that a duly constituted environmental organisation operating in accordance with the requirements of national law must be able to contest before a court a decision granting a permit for a project that may be contrary to the obligation to prevent the deterioration of the status of bodies of water as set out in Article 4 of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy.
- The combined provisions of Article 9(3) of that convention, Article 47 of the Charter of Fundamental Rights and Article 14(1) of Directive 2000/60 must be interpreted as precluding national procedural rules that deprive, in situations such as that in question in the main action, environmental organisations of the right to participate, as a party to the procedure, in a permit procedure that is intended to implement Directive 2000/60 and limit the right to bring proceedings contesting decisions resulting from such procedure solely to persons who do have that status.
- Subject to verification by the referring court of the relevant matters of fact and national law, Article 9(3) and (4) of that convention approved by Decision 2005/370, read in conjunction with Article 47 of the Charter of Fundamental Rights, must be interpreted as precluding, in a situation such as that in question in the main action, a national procedural rule that imposes a time limit on an environmental organisation, pursuant to which a person loses the status of party to the procedure and therefore cannot bring an action against the decision resulting from that procedure if it failed to submit objections in good time following the opening of the administrative procedure and, at the very latest, during the oral phase of that procedure.
- **C-752/18.** EU law, in particular the first paragraph of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that, in circumstances in which a national authority persistently refuses to comply with a judicial decision enjoining it to perform a clear, precise and unconditional obligation flowing from EU law, in particular from Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe, it is incumbent upon the national court having jurisdiction to order the coercive detention of office holders involved in the exercise of official authority where provisions of domestic law contain a legal basis for ordering such detention which is sufficiently accessible, precise and foreseeable in its application and provided that the limitation on the right to liberty, guaranteed by Article 6 of the Charter of Fundamental Rights, that would result from so ordering complies with the other conditions laid down in that regard in Article 52(1) of the Charter. On the other hand, if there is no such legal basis in domestic law, EU law does not empower that court to have recourse to such a measure.

- In the first case, an NGO alleged infringement of Article 9. The question is whether the Convention gives this NGO legal standing.
- In the second case, the land of Bavaria did not implement the Air Quality Directive and received a fine. It was asked whether domestic law can impose stricter sanctions.

Interim measures (injunctive relief)

- Special cases
- may be used by the court in the framework of the **action against the Member State**
- if it is carrying out an activity which is **contrary to the interests of the environment** and any delay would have **irreversible consequences**
- Legal basis: TFEU Article 279

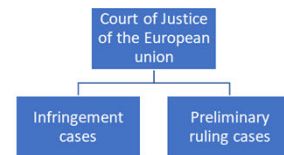
The Court of Justice of the European Union may in any cases before it prescribe any necessary interim measures



In the Commission notice it is clarified that a national court dealing with an environmental case must be able to provide interim relief.

Interim measures (injunctive relief)

Relevant case law



C-503/06: Failure by a Member State to fulfil obligations — Adoption and application by the Region of Liguria of legislation authorising derogations from the system of protection for wild birds failing to satisfy the conditions laid down in Article 9 of Council Directive 79/409/EEC of 2 April 1979 concerning the conservation of wild birds

The Italian Republic shall suspend operation of Law No 36/2006 of the Region of Liguria of 31 October 2006, implementing the derogation provided for in Article 9 of Directive 79/409/EEC concerning the conservation of wild birds, for the hunting season of 2006/2007, until delivery of the order terminating the present interim proceedings.

C-193/07: the Commission of the European Communities requests the Court to order the Republic of Poland, as a measure to compensate for the damage caused to the Puszcza Augustowska Special Protection Area (Augustów Primeval Forest), to refrain from commencing or suspending, without delay and until judgment on the substance of the case has been delivered by the Court, the works for the afforestation project

C-76/08: The Republic of Malta may not adopt the provisions of the 1979 Act on the Conservation of Wild Birds, as amended by Council Directive 2006/105/EC of 20 November 2006 adapting Directives 73/239/EEC, 74/557/EEC and 2002/83/EC in the field of the environment, by reason of the accession of Bulgaria and Romania. The measures derogating from Article 9 of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, as amended by Council Directive 2006/535/EC of 29 June 2006 on measures derogating from Article 9 of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, as regards the hunting of quails (*Coturnix coturnix*) and wild turtle doves (*Streptopelia turtur*) during their spring migration in 2008

In all case MS had not implemented EU environmental legislation and the question was whether there should be injunctive relief in order to prevent serious damage to the environment.

Thank you for your kind attention!

Questions and feedback are
welcome



Discussion

- What is your experience about access to justice in environmental matters?
- Are there any restrictions on access to justice in your country?
- Do you have any information on the effectiveness of legal protection in environmental matters?

