

Litigation costs and time limits of the procedures

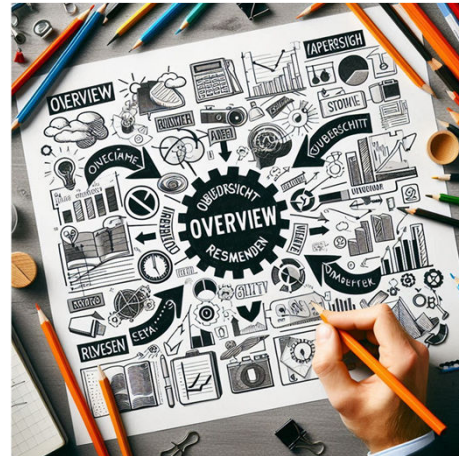
ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS

Workshop for judges and prosecutors

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Georgina Kiss
Judge
Budapest Environs Regional Court

- Introduction
- Aarhus Convention
- Excessive and prohibitive costs for access to justice
- Reasonable timelines of court procedures
- CJEU case law



- There is no point in granting access to justice if the costs are prohibitive.
- The analogy that is usually drawn here is related to the Ritz Hotel, it is open to everyone, but only in theory.

Introduction

The rule of international law in environmental cases

The courts of the member states shall ensure judicial protection of a person's right under EU law.



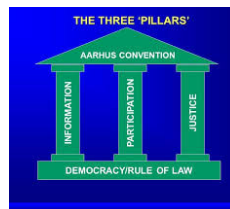
Introduction

- SDG 16
- Promote the rule of law at the national and international levels and ensure equal access to justice for all.
- How to achieve?
 - Litigation costs and time limits of the procedures



Aarhus Convention

- 1998
- Democracy in environmental law
- Region of Europe and Asia
- The EU and its 27 Member States are all Parties to the Aarhus Convention.
- The Aarhus Convention guarantees in Article 9 [a wide access](#) to justice in environmental matters („3rd pillar“).



Aarhus Convention

- Article 9 (3)

„(...) 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.”



Aarhus Convention

- Article 9 (4)

“(…) the procedures referred to in paragraphs 1, 2 and 3 above shall

Provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive.

Decisions under this article shall be given or recorded in writing.

Decisions of courts, and whenever possible of other bodies, shall be publicly accessible.”



Aarhus Convention

- Article 9

5. In order to further the effectiveness of the provisions of this article, each Party shall ensure that information is provided to the public on access to administrative and judicial review procedures and shall consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice.



Aarhus Convention

- Member States, within the framework of their own procedural systems, ensure a broad right of access to justice for the public concerned.
- It may also be motivated by an intention to allow Member States to limit the right to bring proceedings to cases where there is a real prospect of success.
- The wide discretion of Member States is also consistent with the rather limited scope of EU competence in the area of civil procedural law (or judicial review of administrative decisions, administrative litigation).
- However, the close link between the rules and the rights guaranteed by the Charter of Fundamental Rights in relation to the administration of justice.



Excessive and prohibitive costs for access to justice

- The right to a remedy under the Aarhus Convention Article 9 (3) may not result in an unnecessary or disproportionate restriction of the right to an effective remedy.
- According to the case law of the CJEU, national laws must ensure a wide access to justice, and effective redress mechanisms must be available.



Excessive and prohibitive costs for access to justice

- For individual parties, the Article 47 of the EU Charter of Fundamental Rights (legal aid, legal aid, legal aid, legal advice and representation) can contribute to effective enforcement.
- The cost of the proceedings must not exceed the amount of the financial means of the party concerned and in any event does not appear objectively unreasonable.
- C-260/11.



Excessive and prohibitive costs for access to justice

Relevant case law

C-260/11.

The fact that a claimant has not been deterred, in practice, from asserting his claim is not of itself sufficient to establish that the proceedings are not prohibitively expensive for him.

Requirements for all stages of courts

C-427/07. – Infringement case

Ireland has failed to fulfil its obligations
Costs definition: court fees, expert fees, financial guarantees

C-530/11. - the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Articles 3(7) and 4 (4) of Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003

Transposition into national cost regimes should ensure a reasonable predictability as regards costs of the judicial proceedings.

Excessive and prohibitive costs for access to justice

- EU Law (sectorial):
- Article 11 (4) EIA Directive (= Environmental Impact Assessment Directive, 2011/92/EU) “Any such procedure shall be fair, equitable, timely and not prohibitively expensive.”
- Article 25 (4) IED Directive (= Industrial Emissions Directive, 2010/75/EU) “Any such procedure shall be fair, equitable, timely and not prohibitively expensive.”



Excessive and prohibitive costs for access to justice

- Cost discounts
- a) whether the applicant is acting for profit, or not;
- b) whether there is a reasonable prospect of the applicant winning the case;
- c) what is the main point of the case in relation of environmental protection
- Aarhus Convention: there is a general requirement that procedures should not be excessively expensive, and the application of this requirement is subject to the case-by-case decision of the CJEU, even in the Member States' procedural rules.



Reasonable timelines of court procedures

- Another dimension of time
- Delaying a decision could have irreversible consequences
- European Convention of Human Rights
- unnecessarily delayed for a reason that was in the interest of the court



- In the context of Court proceedings things take significantly longer. While 1 year in a human life is long, for a court dealing with a case it is a very short time.
- There is always a balance between making a fast and a fair decision.
- The Strasbourg Court has repeatedly condemned its parties because of overly lengthy proceedings.

Reasonable timelines of court procedures

- Relevant case law:
- C-348/15.
- (41) it is compatible with EU law to lay down reasonable time limits for bringing proceedings in the interests of legal certainty, which protects both the individual and the administrative authority concerned. In particular, it finds that such time limits are not liable to make it in practice impossible or excessively difficult to exercise the rights conferred by EU law.
- (see, to that effect, judgments of 15 April 2010, *Barth*, C-542/08, EU:C:2010:193, paragraph 28, and of 16 January 2014, *Pohl*, C-429/12, EU:C:2014:12, paragraph 29).



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

- Rich in case law
- Several aspects on access to justice
- Timely procedures enable legal clarity to be provided and legal challenges resolved, without **undue** delay.



- The Notice

Thank you for your kind attention!

Questions and feedback are
welcome



Discussion

- What is your experience about costs and timeline in procedure on environmental matters in your country?
- How does this effect the case management?
- What can you do in your country as a judge in descretion power to reduce the costs?
- What are the consequences of delaying the procedure?

