

Case study on public participation in environmental matters with a focus on the IED

Proposed solutions:

- a) Please decide who of the Claimants has standing in the case and why

NGOs:

The NGOs listed in the case study description should be granted standing regardless of their place of registration. This means that the foreign NGOs should be accepted too, provided that they meet the requirements foreseen in the legislation of Country A for their own national NGOs. According to Art. 3(9) of the Aarhus Convention access to justice should be granted “without discrimination as to citizenship, nationality or domicile and, in the case of legal person, without discrimination as to where it has its registered seat or an effective centre of its activities” (non-discrimination clause).

Neither the Aarhus Convention nor the IED gives a basis to exclude foundations from the scope of NGOs entitled to have access to justice. According to Art. 9(2) of the Convention, the Parties to the Convention may set certain conditions under which the standing is granted but they shall do so “with the objective of giving the public concerned wide access to justice”. Thus, also foundations, and not only associations, shall be granted standing in this case.

Natural persons:

Both the neighbours living in Country A and abroad should have equal access to justice, provided that they are equally affected by the installation subject to this case study. The aforementioned non-discrimination clause applies.

Some countries give standing only to the owners of land affected by the activity subject to a permit challenged before the court. This means that persons like tenants or persons working in the vicinity of the installation (like the teacher described in the case study) would be deprived the right of access to justice.

As far as tenants are concerned, the Aarhus Convention Compliance Committee indicated that they shall have standing (ACCC/C/2010/50, Czechia, para 73-76 and ACCC/C/2010/48, Austria, para 63).

There are no rulings regarding persons working in the neighbourhood of the activity, however bearing in mind “the objective of giving the public concerned wide access to justice” their right to challenge a decision should be considered on a case by case basis (they should not be excluded a priori). Health or other goods of such persons may also be affected by the activity.

- b) Please decide which charges are justified and why.

All charges but the simple protest (veto) shall be regarded justified provided they are confirmed by the court during the procedure.

Neither the Aarhus Convention, nor the IED gives a right to block the issuance of a permit just because the public concerned does not agree to it.

Other charges listed in the case study concern violation of requirements for proceedings regarding integrated permit, so once they are confirmed by the court, they should be regarded justified.

- c) Is it important who raised a given charge in their appeal?

No, it is not important. According to Art. 9(2) of the Aarhus Convention and Art. 25 of IED, members of the public concerned (meeting relevant requirements) shall have access to justice to challenge the **substantive and procedural legality** of the decision (permit). This means that a person, once they are granted standing, shall have a right to challenge all aspects of the legality of the decision (and not only those issues which violate their own right).

- d) Is it important whether the charge had been raised already before, during the administrative proceedings carried out by the Regulator?

No, it is not important. Some countries introduced a rule that an issue which was not raised during the administrative proceedings cannot be raised by a claimant for the first time before the court (so-called preclusion). However, the Court of Justice dismissed the general preclusion as being contrary to EU law (case C-137/14, judgment of 15 October 2015, Commission / Germany).