

Case study
on the role of the judges
when dealing with EU assessment procedures

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Case Study by Dr Matthias Keller, Aachen

Case: „Super Supermarket“



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Notice:

The case scenario has nothing to do with the above shown US chain of „Super Supermarkets“ but is drawn from a German case I had to decide.



Structure of the Case Study

- Admissability ?
- On the Merits ?



■ A. Admissability



A. Admissibility

1. Urban plan = a reviewable administrative act?

In all Member States and the EU “administrative acts” are subject judicial review. A commonly used definition in this context would be:

“Administrative act means any measure of individual scope taken by a public authority and having legally binding and external effects.”

My legal solution:

In the light of Art 9 Aarhus Convention (Access to Justice) and Art 47 of the EU Charta (Right to an effective Remedy) the challenged urban plan must be categorized as an

“administrative act”

if otherwise there will be no judicial review as regards to urban plans that contradict the SEA-Directive.



A. Admissibility:

2. Standing of Mr. Will Sleep

Problem in Germany, Austria, Czech-Republic:
Ordinary standing requires a

„possible violation of an individual public-law right.“

Mr. Will Sleep is affected in his health and/or property
which will grant him standing.

However, the general idea is totally different:
Mr Will Sleep is a part of the „public concerned“
and should therefore be entitled to Access to Justice,
cf. Art. 9 Aarhus Convention.



■ On the Merits



Is the lawsuit well-founded? Yes !

The urban plan is procedurally illegal.

The necessary procedural steps of a proper SEA,
inter alia public participation, have not been followed.



The explanatory statement of the City Council justifying a fast procedure is not convincing!

The urban plan is likely to have significant effects on the environment (here on residents like Mr. Will Sleep affected by noise).

The argument put forward that a danger to human health is excluded by the urban plan and the project establishes a **far to high threshold** when it comes to the question whether to open the door to the SEA / public participation.



Thank you
for your kind attention!

