

**Draft Questionnaire
EUFJE Conference 2013, VIENNA
29/30 November 2013**

Access to Justice in matters of environmental law

Please note: On the Aarhus web pages of DG Environment¹ you can find informative material that can be useful for the preparation of your national reports.

Introduction

The topic of the 2013 Conference of EUFJE is access to justice in matters of EU environmental law.

The principle of effective judicial protection has been recognized as a general principle of EU law. The Charter of Fundamental Rights has incorporated in Art 47 the principle of effective judicial protection.

Art 9.1 and 9.2. of the Aarhus Convention provide for access to justice in cases involving environmental information, EIA and industrial permitting procedures and decisions. Art 9.3. of the Aarhus Convention aims at a wider access of justice requiring contracting parties to ensure members of the public have access to judicial procedures to challenge acts or omissions by private persons and public authorities which contravene provisions of its national law relating to the environment Art 9.4. of the Aarhus Convention requires that access to justice procedures should provide adequate and effective remedies, and be fair, equitable, timely and not prohibitively expensive

Several pieces of EU secondary legislation in the field of environmental law contain specific provisions on “access to justice” reflecting the requirements of Art 9.1 and 9.2 as well as Art 9.4. of the Aarhus Convention (cf. Art 11 EU EIA Directive and Art 25 Industrial Emissions Directive – IED).

The Court of Justice of the European Union (CJEU) has delivered a number of rulings on issues of access to justice in environmental matters both with regard to specific secondary legislation as well as with referral to rights of access based on general principles of EU law and in engagement with Art 9.3 of the Aarhus Convention (c.f. C-237/07, Janecek; C-263/08, Djurgarden; C-115/09, Trianel; C-240/09, Slovak Brown Bear; C-416/10, Križan). The relevant case-law of the Court is constantly evolving and raises challenging issues for national judges in applying EU law.

The Commission has commissioned a number of studies on the issue of effective justice and the implementation of Art 9.3 and 9.4 of the Aarhus Convention and in its proposal for a 7th Environment Action Programme it has identified a need to ensure that national provisions on access to justice reflect the case-law of the court. Moreover, it has reflected several options for a new commission initiative on access to justice. In June 2013 the Commission has launched a public consultation on options for improving access to justice at Member State level.

It is in the light of the relevant EU law, the Aarhus-Convention, the case-law of the CJEU and recent policy documents and political developments that the 2013 EUFJE Conference will tackle the topic of Access to Justice in environmental matters.

¹ http://ec.europa.eu/environment/aarhus/access_studies.htm

A. General Questions

1. What was the influence on your national legal order, if any, of the recent developments in the case law of the Court of Justice of the European Union (CJEU) on standing of individuals and/or NGOs (notably cases C-237/07 *Janecek*; C-263/08 *Djurgarden*; C 115/09 *Trianel*; C 240/09 *Slovak Brown Bear*; C 416/10, *Krizan*). Have environmental laws been amended? Please illustrate.

2. Have there been any changes in the jurisprudence of the national courts concerning standing of individuals and/or standing of NGOs as a result of CJEU's recent judgements? Have the courts in your country relied on the principle of effective judicial protection or used arguments about CJEU case law in order to widen up standing for individuals and/or NGOs in environmental procedures since the signing/ratification of the Aarhus Convention? If so, please illustrate.

3. What are, to your opinion, the main challenges for judges in your national legal system when it comes to access to justice in the field of environment and the development of the CJEU's case law?

4. Taking into account that access to justice in environmental matters is required to not be prohibitively expensive (cf. Art 25.4. IED; Art 11.4. EIA Directive, both reflecting Art 9.4. Aarhus Convention): How do you, all in all, evaluate the system of access to justice in your country when it comes to costs and liability for costs (e.g., court fees, lawyer's fees, cost for administrative procedure, expert fees)? Do costs have a chilling effect in environmental litigation?

B. Examples:

The aim of the following examples is to facilitate understanding of standing rules and conditions for access to justice in the various legal systems. The aim is to illustrate how different countries provide for access to justice in environmental matters and to prepare a discussion on the topic. **Please highlight the specific aspects of your legal system without going to much into detail. If possible, please deal with all the examples.** *Please feel especially welcome to illustrate your answer by referring to examples of national case law.*

Example 1: The competent authority has adopted an action plan on air quality that will not adequately reduce the risk of exceeding EU air quality limits (contrary to relevant secondary EU law).

Questions Example 1:

B.1. What are the possibilities open for the public to legally challenge the plan and to ensure that an adequate plan is adopted and implemented? If any, who (individuals, NGOs, other) is entitled to challenge the plan? Is the appellant/plaintiff required to provide evidence on potential harm/damage and to specify the measures that should have been taken?

Example 2: The competent authority has issued a permit for an infrastructural construction project (e.g., a motorway, a power line or a funicular). Part of the site concerned is situated in a Natura 2000 area. In spite of a negative assessment of the implications for the Natura 2000 site, the competent authority agreed to the project for imperative reasons of overriding public interest (Art 6.4. Habitats Directive).

Questions Example 2:

B.2.1. Who (individuals, NGOs, other) is entitled to challenge this decision by legal means? In what way do individuals need to be affected by the decision in order to have standing? With regard to standing rules for individuals and NGOs, does it make any difference whether the project in the example is subject to an EIA or not?

B.2.2. Does an administrative appeal or an application for judicial review automatically have a “suspensive effect” on the decision at stake?

In case there is no automatic suspension in your national legal order: Under which conditions can the appellant obtain a suspension of the permit decision for the infrastructural project? Are there other measures of interim relief available to prevent negative harm to the environment until the final decision has been taken? In case of an automatic suspension: Can the developer of the infrastructural project ask for a “go-ahead-decision” in your national legal order?

Example 3: The competent authority has issued a permit and established permit conditions for an installation falling under the scope of the Industrial Emissions Directive – IED (e.g., a waste treatment facility or a tannery) The national permit procedure had been carried out in accordance with requirements on public participation (Art 24 IED).

Questions Example 3:

B.3.1. Are individuals in your country entitled to challenge the permit decision on the grounds that permit requirements of the IED have not been met: say, that the best available techniques have not been applied and energy is not used efficiently?

B.3.2. Is an NGO entitled to judicial review of the permit decision, even if it did not previously take up the opportunity to participate in the decision-making procedure?

Example 4: Citizens are concerned about a landfill that has been granted permission but is obviously operating in breach of permit conditions. Samples that have been taken by an NGO indicate that there is imminent danger of a drinking water source being contaminated. The competent authority is not taking any action.

Question Example 4:

Evaluate the possibilities of members of the public (individuals, NGOs) to ensure that (remedial) action is taken.