

# ***Aarhus, EU and Access to Justice in Environmental Decision-making***

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*WCEL webinar No 7: Friday 28 August 2020*

***Recent Developments in European Environmental  
Law Jurisprudence***

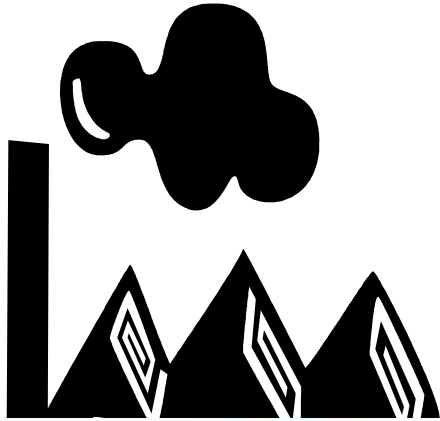
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***Ed. 24/8-20***

# Interests and "Rights" in Environmental Law..?



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# ***Constitutional Right?***

- **Art 37 TEU: *Environmental protection***
- **Art 3(3) TEU; *Sustainable development, and a high level of protection and improvement of the quality of the environment. (...)***
- **Article 11 TFEU; *Integrated, preventive approach...***
- **Article 191 TFEU; *preserving, protecting and improving the quality of the environment, protect human health, prudent utilization of natural resources, deal with worldwide environmental problems, and in particular combating climate change, precautionary principle, damage rectified at source, PPP, etc...***



# ***Access to Justice..?***

- **Principle 10 of the Rio Declaration**

*Three pillars: Info, PP and A2J*

- **Aarhus Convention**

*EU and all its Member States, mixed agreement, Union law obligation...*

- **Article 47 of the EU Charter → Article 19 Treaty of the EU (TEU)**

*Effective legal protection...*

- **Case-law of CJEU on A2J and “rights”**

*Some 40 Aarhus cases..*



# ***A substantial body of case law***

- C-237/07 *Janecek* (2008): Air quality and A2J...
- C-263/09 *DLV* (2010): ENGO standing...
- C-115/09 *Trianel* (2011); "Schutznormtheorie" ...
- C-240/09 *Slovak Brown Bear/VLK I* (2011): Art. 9.3 and EU...
- C-260/11 *Edwards* (2013): Costs...
- C-416/10 *Križan* (2013): Effective remedies...
- C-404/13 *ClientEarth* (2014): Air quality and A2J...
- C-243/15 *VLK II* (2016): Article 47...
- C-664/15 *Protect* (2017): Direct effect..?



# ***C-240/09 Slovak Brown Bear (2011)***

It is, however, for the referring court **to interpret, to the fullest extent possible**, the procedural rules relating to the conditions to be met in order to bring administrative or judicial proceedings in accordance with the **objectives of Article 9(3)** of that convention and the objective of effective judicial protection of the rights conferred by EU law, **in order to enable an ENGO**, such as the *LZ*, **to challenge before a court** a decision taken following administrative proceedings liable to be contrary to EU environmental law.

*C-240/09 Slovak Brown Bear (2011)*, para. 51



## ***C-115/09 Trianel (2011)***

It follows more generally that the last sentence of the third paragraph of Article 10a of Directive 85/337 must be read as meaning that the **'rights capable of being impaired'** which the **ENGO** are supposed to enjoy **must necessarily include the rules of national law implementing EU environment law and the rules of EU environment law having direct effect.**

*C-115/09 Trianel (2011), para. 48*

# C-664/15 Protect (2017)



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55. However, if such a **compliant interpretation** were to be found to be **impossible**, it would then be for the referring court to **disapply**, (...), the rule of national procedural law...

58. (...) that **Article 9(3)** of the Aarhus Convention, read in conjunction with **Article 47** of the Charter, must be interpreted as meaning that a **ENGO 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**.





## *C-71/14 East Sussex (2015)*

58. (...) Judicial review that is limited as regards the assessment of certain questions of fact is thus compatible with EU law, on condition that it enables the court or tribunal hearing an application for annulment of such a decision **to apply effectively the relevant principles and rules of EU law when reviewing the lawfulness of the decision.**

C-71/14 East Sussex (2015), para. 58



# ***Direct Effect of EU Law***

A forceful tool for the implementation of EU law in the MS, with two main components, namely that **provisions which are unconditional and precise;**

- **Overrules national law, “dis-apply” or “set aside”, and**
- **Carries “rights” and “obligations” for ENGOs...**



# *Key issues on A2J*

- **Standing for individuals, groups and ENGOs...**
- **Effectiveness; duration, suspensive effect, injunction (many cases “won in court, but lost on the ground”)...**



- **Court fees, costs for lawyers, cost for experts (LPP), bonds, legal aid...**



# ***Systematic Issues...***

**Trustworthy authorities or courts as the defenders of the environment..?**

**Administrative Appeal and/or Judicial Review ↔  
Direct Action in Court..? Criminal cases..?**

**What kind of court, tribunals – what kind of procedure..?**

**The environmental expertise; witness experts, expert judges, ex officio principle...**

**The outcome; cassatory or reformatory...**

# ***RoN - added value..?***

- **Standing: ENGOs or representatives? Actio popularis via the backdoor?**
- **The role of the administration, the resource issue...**
- **What kind of legal action? What can you obtain in such an action?**
- **The “intensity of the review” ...**
- **The enforcement...**
- **The cost of the proceedings?**
- **A romantic view on the indigenous people?**





....and finally...

**THANK YOU FOR LISTENING..!**



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