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Access to Justice in legislation and case-law

Role of NGOs

- International (1992 Rio Declaration, Aarhus Convention)
- Supranational (example of European Court of Justice)
- National legislations and case-law (example of Sweden)

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1992 Rio declaration

Principle 10

“Environmental issues are best handled with **participation of all concerned citizens**, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. **Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.**”

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UNEP Bali Guidelines

Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters (Bali Guidelines):

“The public concerned” may be defined as the public affected or likely to be affected by, or having an interest in, the environmental decision-making. For the purposes of this definition, **non-governmental organizations promoting environmental protection and meeting any requirements under national law should be deemed to have an interest.**”

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Aarhus Convention

Preamble:

Affirming the need to protect, preserve and improve the state of the environment

Recognizing that adequate protection of the environment is essential to human well-being and the enjoyment of basic human rights

...citizens must have access to information, be entitled to participate in decision-making and have access to justice in environmental matters

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Aarhus Convention

Article 2.5

“The public concerned” means the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.

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Aarhus Convention - Information

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Article 2.3 (definition)

Environmental information; any form...state of elements of the environment...factors...state of human health

Article 4 (passive)

Public authorities...info available upon request from the public...without stating interest, including copies (reasonable charges)...asap (one/two months)...may be refused if...interpreted in a restrictive way...in writing

Article 5 (active)

Collection and dissemination of information

Aarhus Convention – Public participation

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Article 6, Annex 1 (list, permit procedure, significant effect on the environment)

The public...informed early in a environmental decision-making procedure...adequate, timely and effective manner

Aarhus Convention – Access to Justice

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- **Article 9.1:** Environmental information to the public, Article 4;
- **Article 9.2:** Permits - article 6; listed activities and activities with significant effect on the environment;
- **Article 9.3:** 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

Monitoring of the Aarhus Convention

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Reporting mechanism: National implementation reports submitted to each Meeting of the parties, prepared in consultation with public

Aarhus Clearinghouse for Environmental Democracy: launched July 2004 at <http://aarhusclearinghouse.org>

Special procedure - Compliance mechanism: Compliance Committee mandated to consider communications from the public

Compliance Mechanism

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Article 15 and Decision I/7 (2004); Review of Compliance

- **Compliance Committee (CC);** independent and impartial experts nominated by the Parties and the Public (NGOs)
- **Public trigger, open sessions/ communications**
- **Recommendations ("decisions")**
- **Report to Meeting Of the Parties;** advice & recommendations, ask for strategy, declaration of non-compliance, cautions, suspension...

Compliance Mechanism

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C/2004/01; Kazakhstan & **C/2004/03;** Ukraine

- Information, standing, substantive legality, EIA procedure, omissions

C/2008/33; United Kingdom - Costs

C/2010/50; Czech Republic - Standing NGOs

Aarhus Convention webpage and Case law of the Aarhus Convention Compliance Committee

European Union

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European Court of Justice

C-115/09 Trianel: "those organisations must be able to rely on the same rights as individuals, it would be contrary to the objective of giving the public concerned wide access to justice and at odds with the principle of effectiveness if such organisations were not also allowed to rely on the impairment of rules of EU environmental law solely on the ground that those rules protect the public interest"

C-240/09 Slovak brown bears: "...to enable an environmental protection organisation, such as the zoskupenie, to challenge before a court a decision taken following administrative proceedings liable to be contrary to EU environmental law"

National legislations - example of Sweden

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Environmental Code Chapter 16 Section 13

"Appeals may be made against judgments or decisions concerning permits, approvals and exemptions issued according to this Code"

"by non-profit associations whose purpose according to their statutes is to promote nature conservation or environmental protection interests. The right of appeal against judgments and decisions shall be subject to the requirement that the association has operated in Sweden for at least three years and has not less than 100 members or can show public support."

Hunting of protected species (wolves)

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- Decisions on hunting of wolves according to Hunting ordinance
- Supreme Administrative Court and Administrative Court of Appeal in Stockholm
- Use of the judgment of the European Court of Justice C-240/09 Slovak brown bear



Forestry in areas of valuable virgin forests

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- Forest legislation
- Failing in Implementation
- Clear cutting in virgin forests in Änok, in area of national interest, North of Sweden, on going case. (Administrative Court, Administrative Court of Appeal, Supreme Court of Appeal 2013-03-20)



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Naturskyddsforeningen

Thank you for your attention!
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