

Access to Justice in Environmental Matters

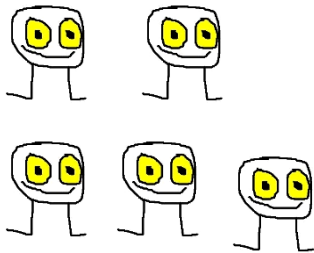
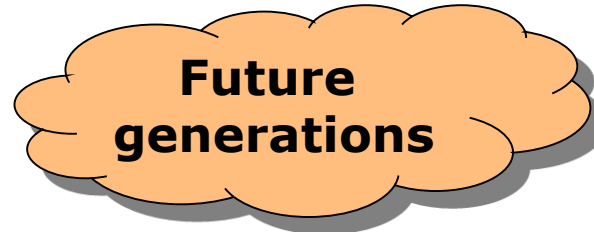
**Some general experiences in the
implementation of the Aarhus Convention in
the European Union**

*Presentation at International Workshop
on **Participation Principle Indicators**
under Environmental Law,
Osaka, 9 March 2015*

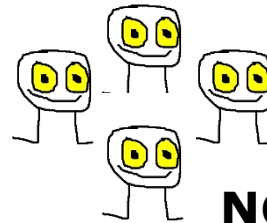
*Professor Jan Darpö
Faculty of Law/
Uppsala Universitet*



Environmental “interests”



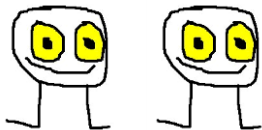
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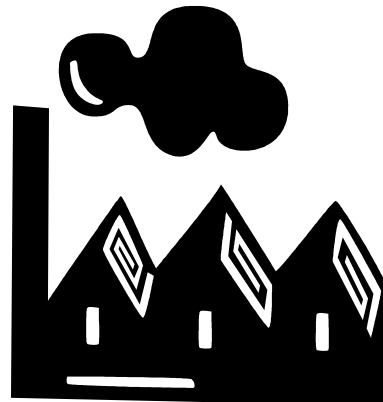
NGOs



Courts



**Public
concerned**



**Supervisory
authority**



European Convention on Human Rights (ECHR)

Article 6

- (E)veryone is entitled to a **fair and public hearing** within a **reasonable time** by an **independent and impartial tribunal** established by law...

Article 8

- Everyone has the right to **respect for his private and family life, his home** and his correspondence.

Article 13

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an **effective remedy**...



ECtHR on A2J and the environment

- **Lopez Ostra v. Spain** (ECtHR 1994-12-09)
- **Hatton ao v. United Kingdom**
(ECtHR 2001-10-02 och ECtHR/GC 2003-07-08)
- **Fadeyeva v. Ryssland** (ECtHR 2005-06-09)

- **Matti Eurén v. Finland (Art. 6)**
ECtHR 2010-01-19; 26654/08
- **Kuppinger v. Germany (Art. 8 & 13)**
ECtHR 2015-01-15; 62198/11



Outlook 2015

- The **Aarhus Convention has 47 Parties** (almost all countries in Europe, Caucuses and Central Asia)...
- The **PRTR has 33 Parties** and the EECCA countries show the interest in this instrument...
- The **GMO Amendment has 28 Parties**...

- **Three pillars**
 - ✱ **Information** (Art 4 & 5; active and passive)
 - ✱ **Public Participation** (Art 6-8; EIA procedures)
 - ✱ **Access to Justice** (Art 9; court or tribunal, adequate and effective, fair, equitable, timely and not prohibitively expensive...

Rights and interests...



UPPSALA
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Article 47 of the EU Charter...

Everyone whose **rights and freedoms** guaranteed by the law of the Union are violated has the right to an **effective remedy** before a tribunal in compliance with the conditions laid down in this Article.

Article 19 Treaty of the EU (TEU)

Member States shall provide remedies sufficient to **ensure effective legal protection** in the fields covered by Union law.



EU, the MS and CJEU

- **Both EU and its Member States have signed the Aarhus Convention...**
- **Infringement cases (Art 258 TFEU)**
- **References from national courts to CJEU for "preliminary rulings" (Art 267 TFEU)**
- **The "Janus face" of the CJEU...**





CJEU about "rights"

- **Case 262/62 *Van Gend en Loos* (1963)**

- **C-435/97 *WWF* (1999)**
- **C-244/05 *Bund Naturschutz* (2006)**



C-432/05 Unibet (2007)

In that regard, the detailed procedural rules governing actions for safeguarding an individual's rights under Community law must be no less favourable than those governing similar domestic actions (principle of equivalence) and **must not render practically impossible or excessively difficult the exercise of rights conferred by Community law (principle of effectiveness)...**

C-432/05 Unibet [2007], para. 43



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 Trianel [2011], para. 50



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



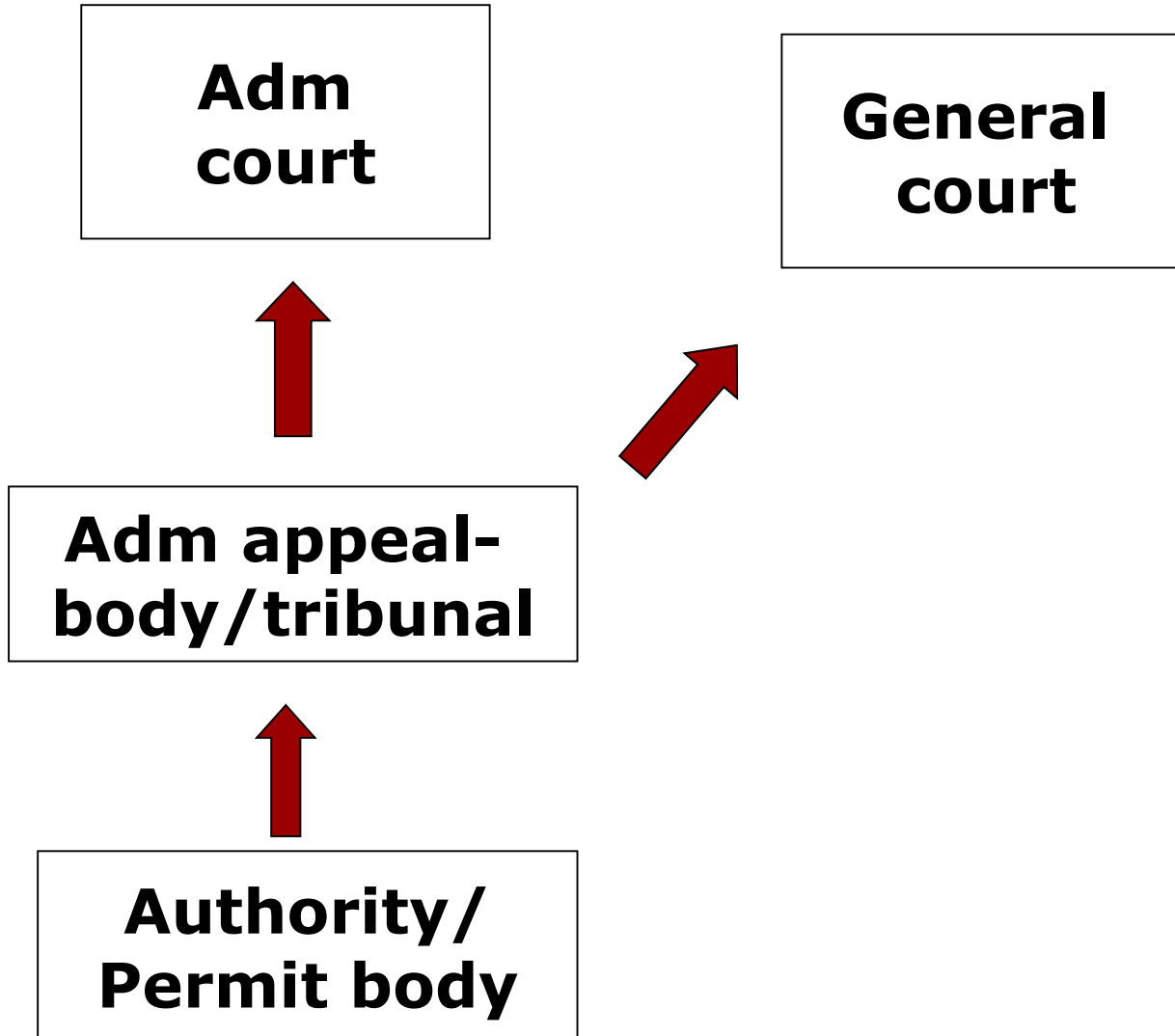
AG Kokott in Trianel

“However, like a Ferrari with its doors locked shut, an intensive system of review is of little practical help if the system itself is totally inaccessible for certain categories of action.”

C-115/09 *Trianel* [2011], AGs opinion para. 77



Different procedural system





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...



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...**

Understanding the AC



- **Decisions from the AACC:**

C/2004/01; Kazakhstan, C/2004/03; Ukraine, C/2005/11; C/2006/18; Denmark, C/2008/33; UK

<http://www.unece.org/env/pp/cc.html>

- **Case law from CJEU:**

**C-237/07 *Janecek*, C-75/08 Mellor, C-263/09 *DLV*,
C-115/09 *Trianel*, C-240/09 *VLK*, C-260/11 *Edwards***

- **National case law:**

<http://www.unece.org/env/pp/tfaj/jurisprudenceplatform.html>

- **Studies:**

http://www.unece.org/env/pp/tfaj/analytical_studies.html

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