



Rights in Europe

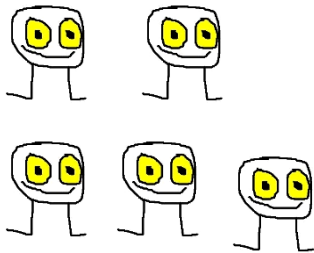
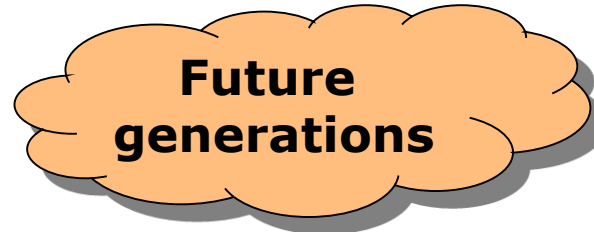
*From property rights to environmental
democracy in EU law*

Presentation at International Symposium on
**Public Participation and Access to
Justice in Environmental Matters** ,
Osaka, 3-4 November 2016

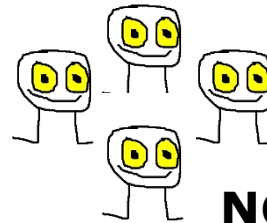
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Environmental “interests”



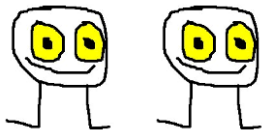
Public



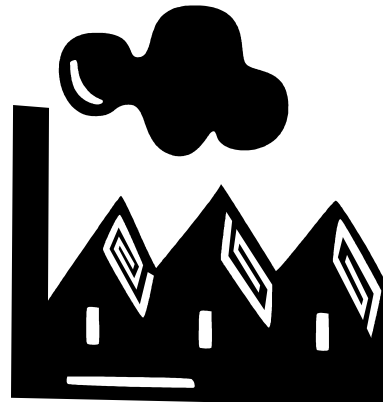
NGOs



Courts



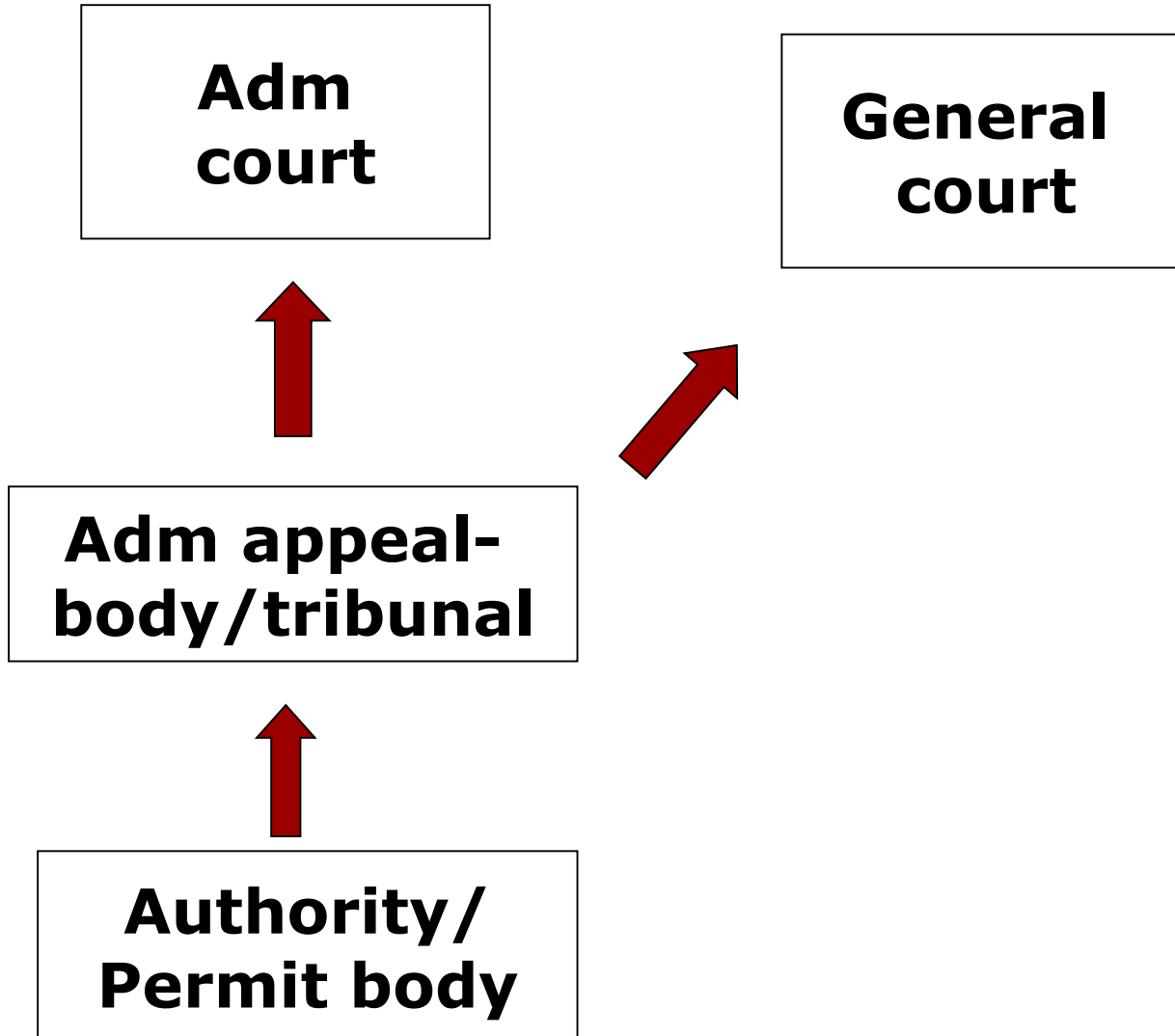
**Public
concerned**



**Supervisory
authority**



Different procedural system





Rights and Interests

Schutznormtheorie:

- **ECHR; Articles 1P1, 6, 8 and 13...**
- **Standing...**
- **Scope of review...**
- **Outcome...**
- **Effectiveness...**



Principle 10 of Rio Declaration

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.



The Aarhus Convention

THREE PILLARS

- **Art. 4-5: Environmental Information...**
- **Art. 6-8: Public Participation...**
- **Art. 9:...Access to Justice...**



3. Access to justice (A2J)

Article 9.1-9.4

Access to a review procedure before a court of law or another independent body (ECHR)

...adequate and effective remedies, including injunctive relief...

...and be fair, equitable, timely and not prohibitively expensive...

Rights and interests...



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.



A substantial body of case law

- **C-237/07 Janecek (2008): Air quality and A2J...**
- **C-75/08 Mellor (2009): Authorities must give reason.**
- **C-263/09 DLV (2010): ENGO standing...**
- **C-115/09 Trianel (2011); "Schutznormtheorie" ...**
- **C-240/09 Slovak Brown Bear (2011): Art. 9.3 & EU...**
- **C-128/09 Boxus, C-182/10 Solvay (2011): EIA and "specific legislative acts" ...**
- **C-260/11 Edwards (2013): Costs in the UK...**
- **C-72/12 Altrip (2013): Procedural defects in EIA and A2J...**
- **C-416/10 Križan (2013): Effective remedies...**
- **C-404/13 ClientEarth (2014): Air quality and A2J...**
- **C-243/15 LZ, once again (2016?): ENGO standing...**



Rights, interests and obligations

- **Standing...**
- **Omissions...**
- **Scope of review...**
- **Effectiveness...**
- **Remedies...**

Focusing on OBLIGATIONS of EU law...



Damages "on behalf of the environment"

TF Study 2016: NL, PT, FR & IT

- ✿ **ENGOS or actio popularis...**
- ✿ **Right to undertake action...**
- ✿ **Cost recovery (ELD + civil suit): remediation, activities (raising awareness), moral damages...**
- ✿ **Ecological damage: earmarked awards, to Competent Authority, funds...**
- ✿ **Declaration & Orders...**



Climate action

- **Our Children's Trust** in Washington and several more actions in USA...
- **Greenpeace**: Philippines, Pacific Ocean, Norway; opening oil fields in Barents Sea...
- **Klimaatzaak in Belgium**: 9,000 claimants, 40% reduction of GHG in 2040...
- **Magnolia-case in Sweden**: 178 claimants have sued the State for selling out Vattenfall's coal mines in Germany...

<http://blogs.law.columbia.edu/climatechange/>



Into the Future...

- **From property rights →**
- **Interests →**
- **Obligations →**
- **Environmental rights..!!??**



....and finally...

THANK YOU FOR LISTENING..!



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