

# The Role of Citizens and NGO's in German Environmental Policy



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- In the „Grundgesetz“ (German constitution) is no own legislative competence for the environment
- legislative competences of the federal state and the Länder concerning the environment are for example for water, soil, immission, energy, agriculture, nuclear safety

- Art. 20a Grundgesetz

*„Mindful also of this responsibility toward future generations, the state shall protect the natural foundations of life and animals by legislation and, in accordance with the law and justice, by executive and judicial action, all within the framework of the constitutional order.“*

Art. 20a GG as a national policy  
objective

But no basic right, which  
guarantees individual rights like a  
constitutional lawsuit to the  
constitutional court

- **Civil Court:**  
legal action against somebody  
enroaching the environment of  
the private property based on  
usual civil law protecting property
- **Administrative Court:** lawsuit  
against administration because of  
illegal administrative approval /  
approval procedure

- As basic on any administrative approval for all construction works – private houses, factories or huge infrastructure projects – the administration will have to examine the expected impact on the environment on different levels

- In any approval procedure administration has to make official hearings with all stakeholders and must investigate all their objections and must consider them by preparing the decision to approve

- Participation of approved environmental associations as stakeholder and „advocate of the nature“ since Bundesnaturschutzgesetz (BNatSchG) / law of nature conservation from 1976



- Beginning with Umweltrechtsbehelfsgesetz (UmwRG) /law on appeal in environmental affairs from 2006 environmental associations got an own right of taking legal action in public interest in case of encroachment of environmental law / „altruistic legal action“

- Umweltrechtsbehelfsgesetz/ law on appeal in environmental affairs (UmwRG) bases on „Aarhus Convention“ – „Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters“ of the UNECE (United Nations Economic Commission for Europe), adopted June 25th 1998 in Aarhus / Danmark

## The three pillars of the „Aarhus Convention“:

- Access to relevant information on environmental matters from government and administration
- Public participation in decision-making
- Access to justice in environmental matters for environmental associations

- The Bundestag / German Parliament currently discusses an amendment to the Umweltrechtsbehelfsgesetz / law on appeal in environmental affairs (UmwRG) according to the adjusted „Aarhus Convention“:

- Every approved environmental association should be allowed:
- In case of encroachment of any law, not only environmental law
- No preclusion in substantial arguments in the procedural law
- The participation of the association should be no longer pre-condition to take legal action

- A political discussion of the right of legal action for environmental associations action detached from their participation in the administrative procedure and from environmental law and issues in view of the impact on economical decisions and investments

- Since the „Energiewende“ (energy transition - as the German reaction on Fukushima nuclear accident) 2011 with nuclear phase-out until 2022 and transition to renewable energy the need of huge infrastructure projects increases – building f.e. grids, wind energy and solar parks

- As one result 2013  
Verwaltungsverfahrensgesetz  
(VwVfG) / administrative  
procedure law was amended of  
the „civic participation at an  
early stage“ (§ 25 Abs. 3  
VwVfG):



- Administration „should aim at the fact“ that developer of infrastructure project will rely on a civic participation „in a early stage“ – outside/before the administration procedure to approve the project
- Therefore administration should be neutral and not be involved in this pre-procedure

Civic participation in a early stage as a confidence-building measure to prevent objections and long standing approval procedures and legal actions:

- Communication of the aim of the project and its benefit
- Direct respons on the objections of the stakeholder
- Opportunity for the deveolper to adapt the project to requirements of the stakeholder

