

Effective Justice?

- Key issues on Access to Justice in Environmental Decision Making

Presentation at Green Access Conference
Osaka 2013-03-30

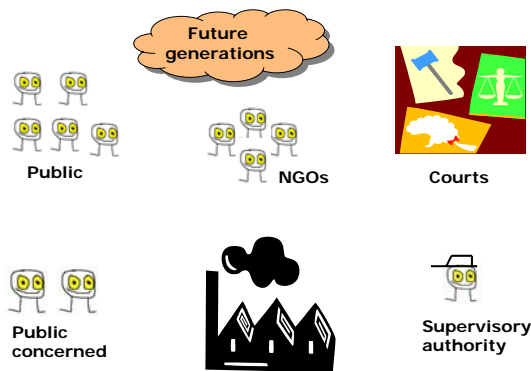
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What is to be reviewed..?

- **Article 9.2:** Art. 6: Permits, listed activities, SIE, substantive and procedural legality of any decision, act, omission...
- **Article 9.3:** Adm or judicial procedures to challenge **acts and omissions** by **private persons and PA** which contravene “**national law**” on the environment...
- **Article 9.4:**...adequate and **effective remedies**, including injunctive relief as appropriate... fair, equitable, **timely** and **not prohibitively expensive**...

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Environmental “interests”



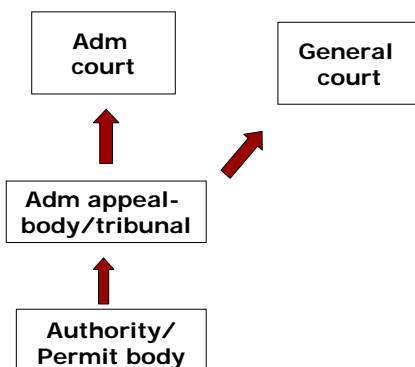
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Main outcomes

- Diverging, random and inconsistent...
- Compared with Milieu 2007; more lenient - more strict...
- Many obstacles and barriers...
- The role of the national courts...

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Different Procedural Systems



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General issues

- Administrative omissions
- A2J and Participation
- **Scope and intensity:** “the wider the entrance, the smaller the room”...
- **Review of infringement of rights, interests or full legality...**
- **Preclusion of arguments...**
- **Reformatory or cassatory procedure – what remedies do the court have..?**

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Standing for individuals

- Great variety: from Actio popularis (PT) to Schutznormtheorie (G)
- Some (property) right based, most interest based
- Application by courts differs; the two gentlemen, shore protection...

Standing for ENGOs I

- Less differences (DE ← →UK)...
- Statutes: Geographic, substance...
- Regional (and local) ENGOs sometimes discriminated...
- Sometimes limited to appeal against certain decisions (9.2), often not...
- Sometimes limited to appeal against certain legislation...

Standing for ENGOs II

- Registration: often...
- Minimum duration: often (1-5 yrs)...
- Non profit or democratic structure: sometimes...
- Numeric criterion: rarely...



- **Court fees:** between 100 - and 5.000 €, commonly fixed (Streiwertkatalog)..
- **Costs for lawyers:** between 0 and 10.000 €...
- **Costs for experts:** courts' responsibility, tables, without limits...
- **Cost distribution:** all models (LPP, PCOs, OCS, security/bonds...
- **Legal aid** with significance...
- **Barrier to A2J:** (BE), CY, FR, DE, IE, IT, NL, UK...

Effectiveness of A2J

- **Duration!** (rare positive exceptions)...
- Usually no suspensive effect...
- Injunction sometimes difficult to obtain (bonds)
- **Many cases** 'won in court, but lost on the ground': *Fluxys* (BE), *D8 Highway* (CZ), *Wattelez* (FR), *Santa Caterina* (IT), *Eemscentrale* (NL), *Castro Verde Highway* (PT), *Pezinok* (SK), *M-30 Highway* (ES), *Lappel Bank* (UK).

Case Law Data Base of the Task Force on Access to Justice

<http://www.unece.org/env/pp/a.to.j.html>

<http://aarhusclearinghouse.unece.org/>

....and finally...

THANK YOU FOR LISTENING..!



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