

Access to Justice in Transboundary Cases

Aarhus Convention

Meeting of Task Force on Access to Justice

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Non-discrimination in International Environmental Law

- 1974 Nordic Convention
- 1991 Espoo Convention
- 1992 Industrial Accident Convention
- 1998 Aarhus Convention

- 1977 OECD Recommendation
- 2001 ILC Draft Articles on Prevention of Transboundary Damage from Hazardous Activities
- 1997 UN International Watercourses Convention

Non-discrimination in the Aarhus Convention, Article 3(9):

Within the scope of the relevant provisions of this Convention, the public shall have access to information, have the possibility to participate in decision-making and have access to justice in environmental matters *without discrimination* as to *citizenship, nationality or domicile* and, in the case of a legal person, *without discrimination* as to where it has its *registered seat or an effective centre of its activities*.

What *is* Non-discrimination?

- State borders to be ignored
- No less favourable treatment
- Strict domestic standards →
Strict transboundary standards
- Open access domestically →
Open transboundary access
- *If* standing is based on geographical criteria?
- *If* standing depends on status, ownership etc.?
- *If* standing for NGOs is based on membership?
- *If* standing for NGOs depends on years of activity?
- *If* access to information is conditioned?

Experience of Non-discrimination in State of the Activity?

- *Vuotos River* (Finland)
- *Saugbruksforeningen* (Norway)
- *Handen municipality* (Norway)

Alternative to sue in State of the harm?

- *Mines de potasse d'Alsace* (Netherlands)
- *Sopar waste water* (Netherlands)
- *Temelin nuclear plant* (Austria)

Aarhus Convention and Access to Justice: Non-discrimination *plus* Minimum Standards

- *Requests for Information:*
No interest to be stated, "any person" shall have access to court
- *Permit Decisions:*
"sufficient interest", "impairment of a right", challenge of substantive and procedural legality, "wide access to justice", interests of NGOs
- *Other Acts/Omissions:*
access to adm or judicial procedures, acts/omissions by private persons or public authorities contravening national law relating to the environment ... And ...

Transboundary Remedies, Procedures and Information

- Adequate and effective remedies, including injunctive relief as appropriate
- Fair, equitable, timely and not prohibitively expensive procedures
- Information on access to administrative and judicial review to be provided to the public
- Appropriate removal or reduction of financial and other barriers to be considered

Access to the Compliance Committee

- CC available in transboundary cases
- Not implied by non-discrimination, but rather by the structure of the Convention itself and of Decision I/7

Courts and Transboundary Procedures

- Only few cases
- Little experience in most courts
- Aarhus Convention requires necessary legislation and clear and transparent legal framework also for transboundary cases
- Much could also be duly handled by the courts themselves
- Realise the broader scope of concerns for courts in a globalised society

The end