



**7. Seminar on Cooperation on the EIA Convention in the
Baltic Sea Region -
6./7. November 2014
Berlin**

**Agenda Item 9:
Transboundary access to Justice by
members of the public, including NGOs**

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I. Legal Background:

Article 9 para. 2 and 3 of the Aarhus Convention

II. ECJ – cases / Federal Administrative Court Germany / Decision V/9h of the 5. MOP on the Aarhus Convention

III. Ongoing discussion in Germany on amendments

IV. Outlook:

-> Future EU Directive?

-> Aarhus Compliance Committee:

Cases C-91 and C-92



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I. Legal Background

Article 9

Access to Justice

...

2. Each Party shall, within the framework of its national legislation, ensure that members of the public concerned

- (a) Having a sufficient interest or, alternatively,**
- (b) Maintaining impairment of a right,**

where the administrative procedural law of a Party requires this as a precondition, have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 and, where so provided for under national law and without prejudice to paragraph 3 below, of other relevant provisions of this Convention.





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Article 9 para. 3 Aarhus Convention

- 3. In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.**



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II. Cases and Decisions:

- **ECJ 12.5.2011 C-115/09: Trianel**
- **ECJ 8.3.2011 C-240/09: Slovak Brown Bear**
- **Federal Administrative Court Germany 5.9.2013
(7 C 21.12): Access to justice for NGOs
concerning the adoption of air quality plans**
- **ECJ 7.11.2013 C-72/12: Altrip**
- **July 2014 - Decision V/9h of the 5. MOP on the
Aarhus Convention: Germany is in non-
compliance**



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III. Ongoing discussion in Germany on amendments of the Environmental Appeals Act

- ⇒ **Need for further implementation of Article 9 para. 3 of the Aarhus Convention in the domestic legislation**
- ⇒ **Discussion inter alia on access to justice by NGOs concerning plans and programmes (incl. transboundary cases)**
- ⇒ **Access to justice by members of the public in the German view already granted properly (but: Article 6 and 9 Aarhus focus on the public (concerned) including citizens of other countries)**



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IV. Outlook:

-> Future EU Directive?

- **KOM-Proposal concerning a final Directive on access to justice (2003) -> withdrawn during the REFIT exercise in 2014**
- **BUT: work on a new proposal is ongoing, possible adoption and publication in 1. quarter of 2015? Inclusion of provisions in Directives on EIA and IE?**



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IV. Outlook:

-> Aarhus Compliance Committee:

Cases C-91 and C-92

- Ongoing cases related to the nuclear project Hinkley Point C in the UK**
- Case C-91 concerns compliance of UK for not notifying the German public**
- Case C-92 concerns compliance of DE for not requesting a transboundary EIA**
- On both cases hearing in September 2014**



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=> Open questions:

- **Application of the Espoo Convention and as well the Aarhus Convention in the same case - how?**
- **Beside Espoo obligation under Article 6 para. 2 of the Aarhus Convention to notify the public of other countries directly without an transboundary EIA?**
- **Are there additional obligations under Article 3 para. 2 of the Aarhus Convention to support its own public, even if no transboundary EIA is necessary?**



Federal Ministry for the
Environment, Nature Conservation,
Building and Nuclear Safety

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Thank you for your attention!

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