Aarhus, EU and Access to Justice in Environmental Decision-making

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Interests and “Rights” in Environmental Law...?
European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)

Article 6
- Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...

Article 8
- Everyone has the right to respect for his private and family life, his home and his correspondence.

Article 13
Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy...
Aarhus Convention on Access to Justice

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-263/09 DLV (2010):** ENGO standing...
- **C-115/09 Trianel (2011):** "Schütznormtheorie”...
- **C-240/09 Slovak Brown Bear (2011):** Art. 9.3 and EU...
- **C-260/11 Edwards (2013):** Costs...
- **C-416/10 Križan (2013):** Effective remedies...
- **C-404/13 ClientEarth (2014):** Air quality and A2J...
- **C-243/15 LZ II (2016):** Article 47...
- **C-664/15 Protect (2017):** Direct effect..
Direct Effect of EU Law

A forceful tool for the implementation of EU law in the MS, with two main components, namely that provisions which are unconditional and precise;

- Overrules national law, “dis-apply” or “set aside”, and
- Carries “rights” and “obligations” for ENGOs…
Different procedural system

Adm court

Adm appeal-body/tribunal

Authority/Permit body

General court
Systematic Issues…

Trustworthy authorities or courts as the defenders of the environment..?

Administrative Appeal and/or Judicial Review ↔ Direct Action in Court..? Criminal cases..?

What kind of court, tribunals – what kind of procedure..?

The environmental expertise; witness experts, expert judges, ex officio principle...

The outcome; cassatory or reformatory…
Key issues on A2J

- Standing for individuals, groups and ENGOs…

- Effectiveness; duration, suspensive effect, injunction (many cases “won in court, but lost on the ground”)…

- Court fees, costs for lawyers, cost for experts (LPP), bonds, legal aid…
....and finally...

THANK YOU FOR LISTENING..!

😊 😊 😊

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