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Case Summary posted by the Task Force on Access to Justice

EUROPEAN UNION, European Commission v Federal Republic of Germany, C-137/14

1. Key issue	Non-compliant national procedural rules resulting in incompatible restrictions on access to justice: restrictions included the need for there to be no EIA, need for applicant to establish causal link between procedural defect and outcome of decision, standing and scope of review limited to objections raised during administrative procedure, standing and scope of review of actions brought by ENGOs and exclusion of certain administrative procedures from scope of review.
2. Country/Region	European Union (EU)
3. Court/body	Court of Justice of the European Union (CJEU)
4. Date of judgment /decision	2015–10-15
5. Internal reference	CJEU- second chamber, C-137/14
6. Articles of the Aarhus Convention	Art. 9, paras. 2 and 3
7. Key words	Environmental Impact Assessment; EU EIA Directive; EU Industrial Emissions Directive; access to justice; NGOs; standing; scope of review, impairment of a right; national legislation
8. Case summary	<p>This case raises a number of interesting issues regarding the implementation of the access to justice clauses in the EU Environmental Impact Assessment Directive (2011/92, EIA Directive) and the EU Industrial Emissions Directive, Directive (2010/75, IED). Following notification of Germany's incorrect transposition of what is now Article 11 of the EIA Directive and Article 25 of the IED, and subsequent unsuccessful discussions with Germany to remedy the issue, the Commission raised court proceedings.</p> <p>The Commission's first complaint related to the restriction of review of the legality of administrative decision, to consideration only of national law conferring rights on individuals. The relevant provision in German law, Paragraph 113(1) of the Verwaltungsgerichtsordnung, provides that a court can annul an unlawful administrative act only in so far as a claimant's rights have been infringed. The CJEU referred to its previous findings in <i>Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen</i> (C-115/09), that the national legislature is entitled to confine public-law rights to those rights whose infringement may be relied on by an individual to challenge an administrative decision, however reiterated that such limitation cannot be applied to environmental NGOS. Thus the Court rejected the Commission's first complaint.</p> <p>The first part of the Commission's second complaint related to a restriction of review to only those administrative decisions where there was a total absence of the mandatory EIA or pre-assessment. The Court agreed that transposing the requirements of Article 11 of the EIA so that review was only possible in such circumstances, and not for example where there was serious defects in the EIA, would go against the aim of ensuring wide access to courts. Thus the relevant national provision (Paragraph 46 of the <i>Verwaltungsverfahrensgesetz (VwVfG)</i>) was deemed incompatible with Article 11 of the EIA Directive.</p>

The second part of the Commission's second complaint related to the need for there to be a causal link between the procedural defect and the outcome of the contested administrative decision, in order for the German court to have jurisdiction to review. The Court held that such a requirement makes it excessively difficult to exercise the right to seek review and undermines the objective of Article 11 of the EIA Directive which seeks to secure broad access to justice for members of the public. The Court highlighted again that placing the burden of proof on the member of the public concerned makes exercising this right to review excessively difficult, especially given the complexity of the procedures in questions and the technical nature of EIAs. Thus the relevant German law (Paragraph 46 of the VwVfG) was deemed to infringe Article 11 of the EIA Directive.

The Commission's third complaint related to a restriction on the scope of review by the courts to objections already made by the applicant during the administrative procedure. The Court highlighted again that Article 11 of the EIA Directive lays down no restrictions whatsoever on the pleas which be relied upon by an applicant. Indeed, this formulation contributes to the objective of the provision of ensuring broad access to justice in the area of environmental protection. Whilst recognising that a national legislature may lay down specific rules to ensure efficiency of the review proceedings, for example rules that arguments submitted in bad faith are inadmissible, it does not follow that restrictions on pleas of law, so as to limit them to those made before as part of the earlier administrative procedure, is compatible with EU law. Thus the Court upheld this complaint, deeming paragraph 2(3) of the Umwelt-Rechtsbehelfsgesetz (UmwRG), as amended, and Paragraph 73(4) of the VwVfG, in breach.

The fourth and fifth complaints related to time restrictions placed on ENGOs on standing to bring proceedings and the scope of review. The Court reiterated that ENGOS are deemed to have either sufficient interest or rights which may be impaired. Consequently, in judicial proceedings, those organisations must necessarily be able to rely on the rules of national law implementing EU environment law and the rules of EU environment law having direct effect. The old German law which failed to secure this had been amended, however these amendments only applied to procedures initiated after 15 December 2006, the date the new law came into force. The Court held that such limits, provided for in paragraph 2(1), read in conjunction with Paragraph 5(4) of the UmwRG, on the temporal scope could not be justified. The sixth complaint similarly related to a general exclusions to procedures initiated before 25 June 2005, provided for in paragraph 5(1) and (4) of the UmwRG. The Court also upheld it.

Thus the Court found that Germany had failed to fulfil its obligations under Article 11 of the EIA Directive and Article 25 of the IED.

9. Link address

<http://curia.europa.eu/juris/liste.jsf?language=en&td=ALL&num=C-137/14>