

ACCESS TO JUSTICE

STANDING

Jonas Ebbesson

Chair of the Aarhus Convention Compliance Committee

Standing before MOP4

Landmark cases on Art 9(3) and standing before MOP4:

- **C/11 Belgium:** No non-compliance
- **C/18 Denmark:** No non-compliance
- Attention to the “general picture” on access to justice
- No “actio popularis” required
- National criteria, “if any”, must not effectively bar all or almost all NGOs or other members of the public from A2J
- Both cases frequently cited in subsequent findings

Standing after MOP4 – Cases

Several new cases on standing for individuals and NGOs

Findings adopted:

- C/48 Austria
- C/50 Czech Republic
- C/58 Bulgaria

Pending cases:

- C/61 UK (draft findings)
- C/62 Armenia (draft findings)
- C/63 Austria
- C/31 Germany
- C/71 Czech Republic

Standing after MOP4 – Issues

- Cases re Art 9(2) and Art 9(3)
- Cases re planning decisions
- Cases re individuals and NGOs
- “Legal interest”; “impairment”/”infringement” of right
- Who is concerned?
 - Not only property owners
 - Also tenants
 - Also persons with other right (in rem rights), social rights or other rights relating to the environment
may be impaired

C/48 Austria

- **Standing and the “impairment of right” criterion**
- **Standing for individuals:** criteria in legislation do not seem to run counter objectives of the Convention; information did not substantiate allegations; yet some concerns on definition of “neighbours” in light of objective of wide access to justice:
No non-compliance Art 9(2) or (3) in this respect
- **Standing for NGOs:** in some laws conditions so strict as to effectively bar NGOs from challenging acts/omissions...:
Non-compliance Art 9(3)

C/50 Czech Republic – I

Standing and the “infringement of rights” doctrine

Scope of public concerned – Art 2(5):

Whether members of the public is affected depends on:

- Nature and size of activity/project
- Whether their property and other related rights (in rem), social rights or other rights or interests relating to the environment may be impaired by proposed activity
- *Tenants*, even short term, may be affected by a proposed activity, to the effect that they are also “concerned”
- *NGOs* promoting environmental protection are deemed to have such an interest

C/50 Czech Republic – II

- **Standing for individuals in permit procedures:** Lack of court jurisprudence to corroborate communicant's allegation: *No non compliance Art 9(2) in this respect (yet, "if" correct,...)*
- **Standing for NGOs in permit procedures:** NGOs not able to participate during entire decision-making; limits NGOs' rights to A2J re final permit decision: *Non-compliance Art 9(2)*
- **Standing for members of public, including NGOs, in other cases:** No standing for any or considerable portion of the public, including NGOs, for some decisions (e.g. noise limits, land-use plans): *Non-compliance Art 9(3)*
- **Standing/access/scope; review procedure re EIA screening outcome:** Not such review available: *Non-compliance Art 9(2)*

C/58 Bulgaria

Standing for members of the public to challenge:

- **SEA Statements:** The fact that they cannot be reviewed separately does not amount to non-compliance
- **General Spatial Plans:** SDA explicitly prevents any person from challenging GSP; this cannot be overcome by jurisprudence: *Non-compliance with Art 9(3)*
- **Detailed Spatial Plans:** SDA provides standing only to affected owners of real estate; NGOs and other members of the public cannot challenge these plans: *Non-compliance with Art 9(3)*
- **EIA Decisions (in the form of SEA Statements):** NGOs excluded: *Non-compliance with art 9(2)*

Pending Cases

- **C/61 (UK)**: Standing/access to review procedures after adoption of the Crossrail Act; (Art 9(2)) (*Draft findings*)
- **C/62 (Armenia)**: Changed jurisprudence, reversed decision by Court of cassation re standing for NGOs; Art 9(2) (*Draft findings*)
- **C/31 (Germany)**: Standing criteria for members of the public, including NGOs; Art 9(2) and (3)
- **C/63 (Austria)**: Standing for members of the public, particularly through criminal proceedings; Art 9(3)
- **C/71 (Czech Rep.)**: Non-discrimination and standing to challenge EIA outcome documents; Art 3(9) and 9(2)

Conclusions

- Reasoning in C/11 and C/18 applied and developed
- Standing to review procedures re *permit* decisions, *planning* decisions, as well as *other* acts and omissions
- Who is concerned?
 - Not only property owners; also tenants, persons with other right (in rem rights), social rights or other rights relating to the environment *may* be impaired
- Env'l NGOs deemed to have an interest
- Standing/access/scope: review procedure to challenge outcome of EIA screening decisions, Arts 6(1b) and 9(2)

Further information:

www.unece.org/env/pp/pubcom.html

aarhus.compliance@unece.org