

## **Case Summary posted by the Task Force on Access to Justice**

**EUROPEAN UNION: 1) Joined cases C-401/12 P, C-402/12 P and C-403/12 P (Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht.); 2) Joined cases C-404/12 P and C-405/12 P (Stichting Natuur en Milieu and Pesticide Action Network Europe)**

1. Key issue	Access to justice - private parties cannot rely on Article 9(3) of the Convention in order to challenge the legality of EU acts before the General Court or the Court of Justice
2. Country/Region	European Union
3. Court/body	Court of Justice of the European Union (Grand Chamber)
4. Date of judgment /decision	2015-01-13
5. Internal reference	C-401/12 P, C-402/12 P and C-403/12 P, ECLI:EU:C:2015:4 C-404/12 P and C-405/12 P, ECLI:EU:C:2015:5
6. Articles of the Aarhus Convention	Art. 9 para. 3
7. Key words	Direct effect, Regulation (EC) No 1367/2006, internal review, clean air, pesticides, admissibility.

### 8. Case summary

These two joined cases concerns the effect of Article 9(3) of the Aarhus Convention in the EU's legal order, in particular, whether that article can be relied upon by individuals in challenging the legality of EU acts directly before the Union's Courts.

They are appeals brought by the EU institutions (the Council, the Commission, and in one case, the European Parliament) against two similarly-worded judgements of June 2012 of the General Court dealing with access to justice in environmental matters at EU level (cases T-396/09 and T-338/08).

The judicial proceedings originate in two requests for administrative reviews made under Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 “on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies”. Under that Regulation, qualifying ENGOs can request a Union institution that has adopted an administrative act under environmental law or, in case of an alleged administrative omission, should have adopted such an act, to do an internal review of that act or of that omission. Such a request must be made in writing and within a time limit not exceeding six weeks. Importantly for the cases, Article 2(1)(g) of the Regulation defines the reviewable administrative act as any measure of individual scope under environmental law, taken by a Community institution or body, and having legally binding and external effects.

In case T-396/09, the Dutch ENGOs Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht had challenged a Commission decision refusing to initiate an administrative review of a 2009 Commission decision granting the Netherlands a temporary exemption from the Cleaner Air for Europe Directive (directive 2008/50/EC). In case T-338/08, two other Dutch ENGOs, Stichting Natuur en Milieu and Pesticide Action Network Europe, had challenged a Commission decision refusing to initiate an administrative review of a 2008 Commission regulation amending maximum residue levels for pesticides set in Regulation (EC) no 396/2005. In both cases, the Commission had found that the request for internal review was inadmissible, because the legal act for which a request had been made concerned a measure that was not of an individual scope.

In both cases, the General Court found that the limitation set by Regulation 1367/2006 that only measures of individual scope can be administratively reviewed is too restrictive and contrary to Article 9(3) of the Aarhus Convention, and that therefore this limitation is illegal under EU law and cannot be applied. It had therefore annulled the Commissions decisions not to initiate an administrative review.

In its two short rulings of 13 January 2015, the Court of Justice concludes however that Article 9(3) cannot be invoked by individuals to challenge the legality of EU acts.

The Court of Justice first recalls its consistent case law according to which the provisions of an international agreement to which the European Union is a party can be relied on in support of an action for annulment of an act of secondary EU legislation or an exception based on the illegality of such an act only where, first, the nature and the broad logic of that agreement do not preclude it and, secondly, when those provisions appear, as regards their content, to be unconditional and sufficiently precise.

Applying that case law to Article 9(3) of the Convention, the Court of Justice then finds that this provision does not contain any unconditional and sufficiently precise obligation capable of directly regulating the legal position of individuals. Indeed, because only members of the public who ‘meet the criteria, if any, laid down in ... national law’ are entitled to exercise the rights provided for in Article 9(3), that provision is subject, in its implementation or effects, to the adoption of a subsequent measure (the Court had reached the same conclusion in the LZ case C-240/09).

The Court of Justice then analyses whether the specific case law dealing with certain obligations under the World Trade Organisation (the "Nakajima" case law) could change its conclusion, and finds that this is not the case. In particular, it finds that Regulation 1367/2006 is not intended to implement specific obligations under the Aarhus Convention, on the ground that Article 9(3) of the Convention makes clear that the Contracting Parties thereto have a broad margin of discretion when defining the rules for the implementation of the ‘administrative or judicial procedures’.

Contrary to what happened in the LZ case, the Court of Justice does not refer in these cases to the need to interpret EU law to the fullest extent possible consistently with the objectives laid down in Article 9(3) of the Convention.

The Court of Justice therefore concludes that the General Court was not entitled to review the legality of Regulation 1367/2006 in light of the Union's obligations under the Convention, and it annuls the two judgements of the General Court. The rejection by the Commission of the two requests for internal reviews made by the Dutch ENGOs is thus legally confirmed.

9. Link  
address

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