



Access to Justice and the **EIA Directive**

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Understanding the Aarhus Convention

- **Decisions from the AACC:**

C/2004/01; Kazakhstan, C/2004/03; Ukraine, C/2005/11; C/2006/18; Denmark, C/2008/33; UK

<http://www.unece.org/env/pp/>

- **National case law:**

<http://www.unece.org/env/pp/a.to.j.html>

- **Studies:**

<http://live.unece.org/env/pp/a.to.j.html>

http://ec.europa.eu/environment/aarhus/access_studies.htm



Effective Justice?

European Commission study on implementation of Art. 9.3 and 9.4 of the AC in the Union's Member States

- ***Synthesis report I (Nov 2012); 17 MS***

http://ec.europa.eu/environment/aarhus/access_studies.htm

- ***Synthesis report II (August 2013); + 11 MS***



Article 1.2 EIA (2011/92)

(d) ‘**public**’ means one or more **natural or legal persons** and, in accordance with national legislation or practice, **their associations, organisations or groups**;

(e) ‘**public concerned**’ means the public affected or likely to be **affected by**, or having an **interest in**, the environmental decision-making procedures referred to in Article 2(2). For the purposes of this definition, **non-governmental organisations promoting environmental protection** and meeting any requirements under national law shall be deemed to have an interest;



Article 11 EIA (2011/92)

1. Member States shall ensure that, in accordance with the relevant national legal system, members of the **public concerned**: (a) having a **sufficient interest**, or alternatively; (b) maintaining the **impairment of a right...have access to a review procedure** before a **court of law or another independent and impartial body** established by law to challenge the **substantive or procedural legality of decisions, acts or omissions** subject to the public participation provisions of this Directive.

2. MS shall determine **at what stage...**



Article 11 EIA (2011/92)

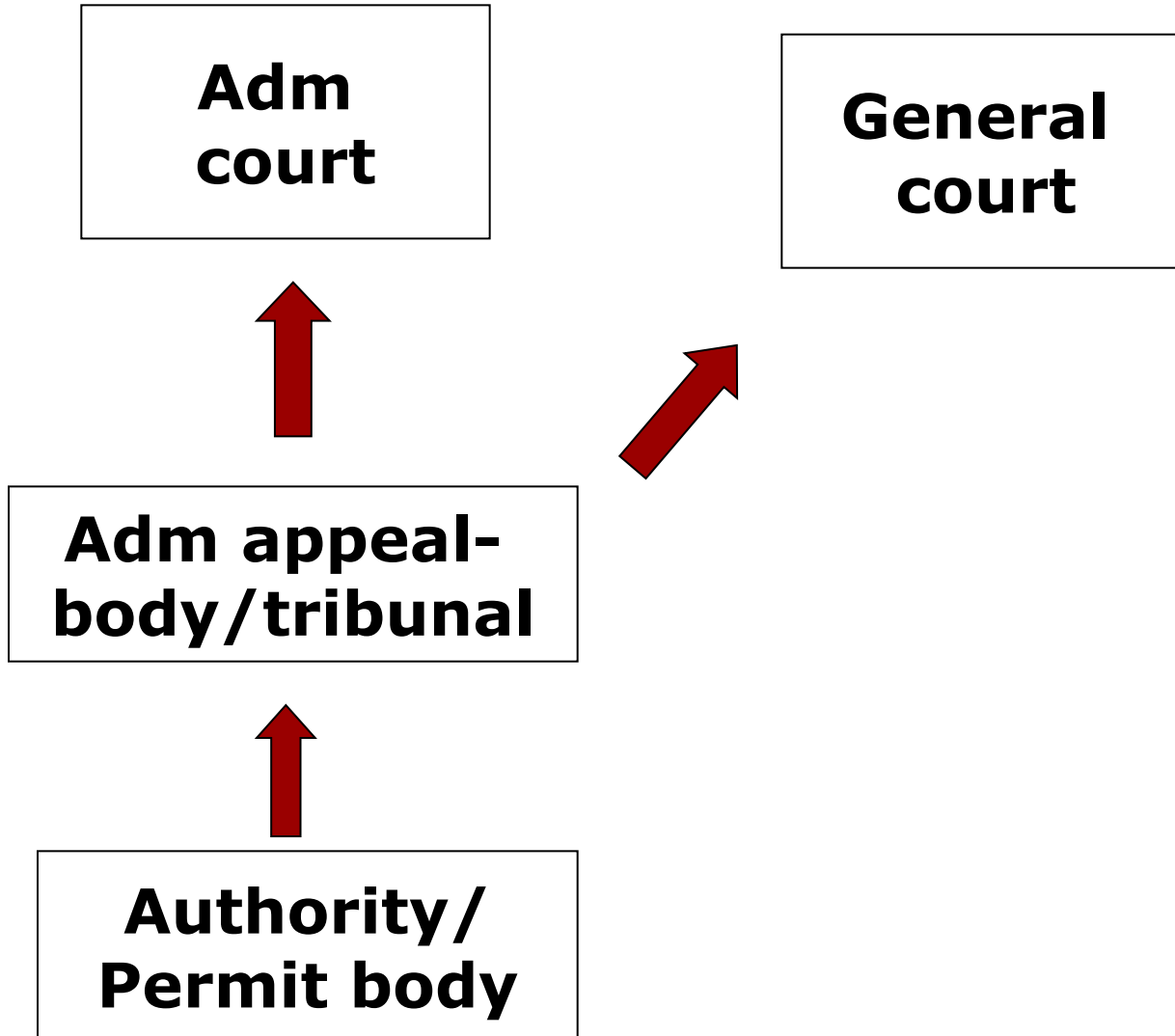
3. What constitutes a sufficient interest and impairment of a right shall be **determined by the MS, consistently with the objective** of giving the public concerned wide access to justice. To that end, the interest of any **non-governmental organisation** meeting the requirements referred to in Article 1(2) **shall be deemed sufficient for the purpose...** to have a right...

4. The provisions...shall not exclude the possibility of a **preliminary review (or) exhaustion** of administrative review procedures prior...

Any such procedure shall be **fair, equitable, timely and not prohibitively expensive.**

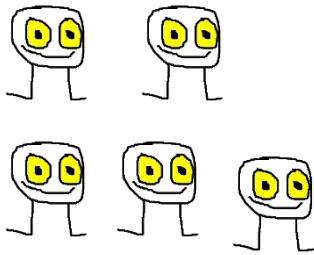
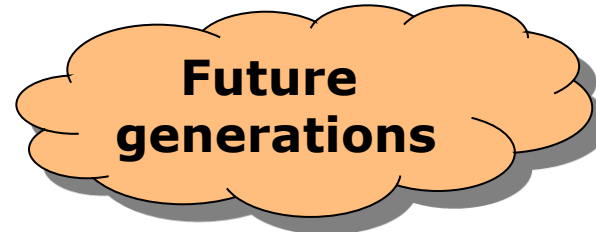


Different procedural system

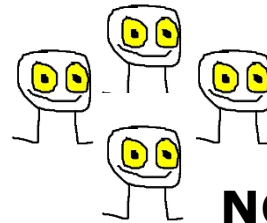




Environmental “interests”



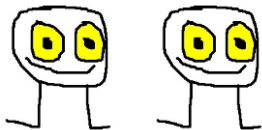
Public



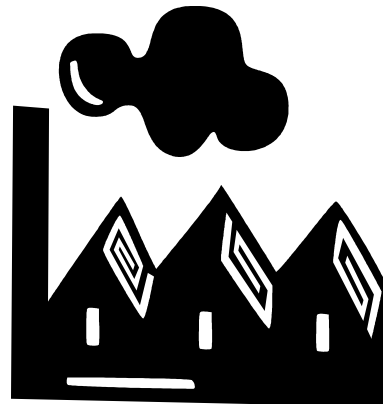
NGOs



Courts



**Public
concerned**



**Supervisory
authority**



Court of Justice of the EU

C-237/07 *Janecek* - “rights”

C-75/08 ***Mellor*** - investigation, omissions...

C-263/09 *DLV* – NGO standing

C-115/09 ***Trianel*** - NGO standing...

C-128/09 ***Boxus*** - parliamentary acts...

C-260/11 *Edwards* – costs...

C-416/10 ***Križan*** - injunction



Public participation & Access to Justice

C-263/08 para 39:

“Accordingly, the answer to the second question is that the members of the public concerned (...) must be able to have access to a review procedure to challenge the decision by which a body attached to a court of law of a Member State has given a ruling on a request for development consent, **regardless of the role they might have played in the examination of that request by taking part in the procedure before that body and by expressing their views.**”



The scope of the trial...

- **The substantive and procedural legality...**
- **National courts on EIA procedural rights, C-72/12 *Altrip* (pending, request for preliminary ruling from DE)**



Procedural or substantive legality

C-263/08 para 39:

“Accordingly, the answer to the second question is that the members of the public concerned (...) must be able to have access to a review procedure to **challenge the decision by which a body attached to a court of law of a Member State has given a ruling on a request for development consent**, regardless of the role they might have played in the examination of that request by taking part in the procedure before that body and by expressing their views.”



Decisions, Acts or Omissions...

SCREENING → NOT EIA

Certain cost rules (IE), access to justice (SE) or other procedures...

- **Distinction between Article 9.2 and 9.3 AC**
- **Screening decisions should be challengeable, but WHEN..?**



Aarhus and EU law

Article 6.1.a Aarhus Convention – listed activities...

Article 6.1.b - Significant Impact to the Environment...

- **Self-executing effect..?**
- **...in accordance with its national law...**
- **EIA and Appropriate Assessment according to Habitats Directive (92/43), etc...?**



GA Sharpston in C-263/08 (Celex 62008C0263), para 89

Finally, I add that, in my view, the result would have been the same **had there not been a specific provision** such as Article 9 of the Aarhus Convention or Article 10a of Directive 85/337, as amended. The case-law of the Court contains numerous statements to the effect that Member States cannot lay down procedural rules which render impossible the exercise of the rights conferred by Community law. Directive 85/337, which introduces a system of environmental assessment and confers rights, **would be stripped of its effectiveness if the domestic procedural system failed to ensure access to the courts.** The present case is clear proof that, given that access to justice is made impossible for virtually all environmental organisations, such a measure would fall foul of the Community law **principle of effectiveness.**



....and finally...

THANK YOU FOR LISTENING..!



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