The future of a decentralized defence of the public interest.

Thematic cluster: 5(e) Access to justice, Plaumann test and the Aarhus Convention

There is a tradition of criticising the Court of Justice of the European Union (CJEU) for its doctrine on standing under (now) Article 263 TFEU. Ever since its judgment in the *Plaumann* case, the interpretation of the terms that dictate the access to justice at the EU level has been considered too restrictive. For advocates of public interest litigation (PIL), particular interest has been given to the term 'individual concern' as the definition of that term has excluded any possibility for NGOs to request the review of actions by the Union affecting the environment. Cases such as the *Greenpeace* case illustrate how the Court did not envisage a place for public interest litigation in the European legal order.

Public interest litigation need not be limited to the protection of the environment, yet it is in this field that we can observe a clash of ideas on the nature of the EU. Accession to the Aarhus Convention and the changes brought about in Article 263 TFEU due to the Treaty of Lisbon have sparked hope amongst NGOs. However, the reaction of the CJEU to attempts of NGOs to make use of the rights the Convention aims to ensure have been disappointing. Access to the internal review procedure has been limited, the term direct concern has been interpreted restrictively and the direct reliance on the Convention has been denied.

The question that arose in relation to *Plaumann*, is rising again after the developments in recent years: “Why?”. Why is the Court limiting access to justice to this extent? Why is it so difficult to rely on rights granted by an Aarhus? More recently, why is the Court enforcing these rights so strictly in a national context, whilst not applying them in the EU's legal order? Although the criticism has been vocal, both then and now, there has never been a fulfilling answer since the days of Stein and Vinnig's first exploration into these questions.

This contribution aims not only to offer an answer to the “why” behind the Court's case-law, but in doing so it also offers a vision on what the future will hold. Making use of a framework first used by David Feldman, composed of four elements that influence the interpretative space of a court, it is possible to conclude that the CJEU never had the authority to interpret the standing criteria in any other way than it has done before the Lisbon. Changes brought about by Lisbon and Aarhus have brought about such a shift that it has created an impasse that the Court is now trying to resolve.

Thesis: The Court envisions a more federal, decentralized approach to the protection of the environment. Although it does not see a concrete relationship between the EU and the NGOs that can lead to successful challenges of EU actions on the Kirchberg, it aims to force Member States to accept a greater involvement of NGOs through, amongst other things, litigation.

Biography,

Matthijs (M.J.) van Wolferen LL.M. is a PhD student in the field of European Environmental and Procedural law, focussing on the role of public interest litigation in the EU context. He is currently finishing his manuscript on this subject, which builds on the work of his supervisor prof. dr. L.W. Gormley at the University of Groningen. Areas related to his work are the constitutional development of standing requirements in a comparative perspective; the implementation of the Aarhus Convention in the European legal order and the diverse ways in which the environmental protection can be achieved.