REPORT ON NORWAY

Access to Justice in matters of environmental law

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A. General Questions

1. What was the influence on your national legal order, if any, of the recent developments in the case law of the Court of Justice of the European Union (CJEU) on standing of individuals and/or NGOs (notably cases C-237/07 *Janecek*; C-263/08 *Djurgarden*; C 115/09 *Trianel*; C 240/09 *Slovak Brown Bear; C 416/10, Krizan*). Have environmental laws been amended? Please illustrate.

The Norwegian legal order has not been influenced by these developments. No environmental laws have been amended.

2. Have there been any changes in the jurisprudence of the national courts concerning standing of individuals and/or standing of NGOs as a result of CJEU's recent judgements? Have the courts in your country relied on the principle of effective judicial protection or used arguments about CJEU case law in order to widen up standing for individuals and/or NGOs in environmental procedures since the signing/ratification of the Aarhus Convention? If so, please illustrate.

To my knowledge, the recent CJEU judgments have not led to any changes in the jurisprudence of the Notwegian courts. In one ruling from 2003 (Rt. 2003 p. 833) regarding the legal interest for an ad hoc organization to claim an interlocutory measure prohibiting construction work on the basis of a building permit granted by the municipal authorities, the Supreme Court majority relied inter alia on the Aarhus Convention when reasoning in favour of the organization. In the majority's view, the right for an organization to challenge a building permit would be in harmony with the Convention's purpose to grant the public access to court in the area of environmental law (paragraph 42). This ruling is however not directly relying on or mentioning CJEU case law.**3.** What are, to your opinion, the main challenges for judges in your national legal system when it comes to access to justice in the field of environment and the development of the CJEU´s case law?

Awareness of the recent development of the CJEU case law, harmonizing the rules of the national legal order with the rulings fro CJEU.

4. Taking into account that access to justice in environmental matters is required to not be prohibitively expensive (cf. Art 25.4. IED; Art 11.4. EIA Directive, both reflecting Art 9.4. Aarhus Convention): How do you, all in all, evaluate the system of access to justice in your country when it comes to costs and liability for costs (e.g., court fees, lawyer´s fees, cost for administrative procedure, expert fees)? Do costs have a chilling effect in environmental litigation?

Litigation is expensive, also in environmental matters. The costs in such a case do not in any significant way differ from the costs in cases regarding other matters. The courts and lawyers charge the same for environmental litigation and for other kinds of litigation, and these matters often give rise to expensive expert reports. The litigator also runs the risk of having to pay the opposite party's attorney fees. However, a private person or small organization who loses against the authorities or a big corporation, will often be exempted from paying the adversary's attorney

fees. Nonetheless, I am convinced that costs do have a chilling effect in environmental litigation.B. Examples:

The aim of the following examples is to facilitate understanding of standing rules and conditions for access to justice in the various legal systems. The aim is to illustrate how different countries provide for access to justice in environmental matters and to prepare a discussion on the topic. **Please highlight the specific aspects of your legal system without going to much into detail. If possible, please deal with all the examples.** *Please feel especially welcome to illustrate your answer by referring to examples of national case law.*

Example 1: The competent authority has adopted an action plan on air quality that will not adequately reduce the risk of exceeding EU air quality limits (contrary to relevant secondary EU law).

Questions Example 1:

B.1. What are the possibilities open for the public to legally challenge the plan and to ensure that an adequate plan is adopted and implemented? If any, who (individuals, NGOs, other) is entitled to challenge the plan? Is the appellant/plaintiff required to provide evidence on potential harm/damage and to specify the measures that should have been taken?

It can in principle be challenged by any person claiming to be affected by it. The Civil Procedure Act would also provide for environmental organizations to challenge the plan. As long as the plaintiff claims that the action plan is inconsistent with EU law (which is presumably adopted into Norwegian law), he should not be required to provide evidence on potential harm/damage or to specify alternative measures.

Example 2: The competent authority has issued a permit for an infrastructural construction project (e.g., a motorway, a power line or a funicular). Part of the site concerned is situated in a Natura 2000 area. In spite of a negative assessment of the implications for the Natura 2000 site, the competent authority agreed to the project for imperative reasons of overriding public interest (Art 6.4. Habitats Directive).

Questions Example 2:

B.2.1. Who (individuals, NGOs, other) is entitled to challenge this decision by legal means? In what way do individuals need to be affected by the decision in order to have standing? With regard to standing rules for individuals and NGOs, does it make any difference whether the project in the example is subject to an EIA or not?

Environmental organizations will probably be entitled to challenge the decision. Individuals will not in general be entitled to this, but if the individual is a neighbour to the site or otherwise a frequent user, he might be sufficiently affected to have a standing. It should not make any difference whether the project is subject to an environmental impact assessment or not.

B.2.2. Does an administrative appeal or an application for judicial review automatically have a “suspensive effect” on the decision at stake?

It does not in itself have a suspensive effect.

In case there is no automatic suspension in your national legal order: Under which conditions can the appellant obtain a suspension of the permit decision for the infrastructural project? Are there other measures of interim relief available to prevent negative harm to the environment until the final decision has been taken? In case of an automatic suspension: Can the developer of the infrastructural project ask for a "go-ahead-decision" in your national legal order?

The appellant can apply for an interlocutory measure, normally provided that such a measure is necessary in order to prevent substantial loss or damage.

Example 3: The competent authority has issued a permit and established permit conditions for an installation falling under the scope of the Industrial Emissions Directive – IED (e.g., a waste treatment facility or a tannery) The national permit procedure had been carried out in accordance with requirements on public participation (Art 24 IED).

Questions Example 3:

B.3.1. Are individuals in your country entitled to challenge the permit decision on the grounds that permit requirements of the IED have not been met: say, that the best available techniques have not been applied and energy is not used efficiently?

Provided that the individual is sufficiently affected by the permit, such a lawsuit would probably be accepted. Whether or not he is sufficiently affected depends for example on where he lives.

B.3.2. Is an NGO entitled to judicial review of the permit decision, even if it did not previously take up the opportunity to participate in the decision-making procedure?

An NGO would in such a situation not in principle be prevented from claiming judicial review, provided that environmental protection falls within the scope of the purpose of the NGO.

Example 4: Citizens are concerned about a landfill that has been granted permission but is obviously operating in breach of permit conditions. Samples that have been taken by an NGO indicate that there is imminent danger of a drinking water source being contaminated. The competent authority is not taking any action.

Question Example 4:

Evaluate the possibilities of members of the public (individuals, NGOs) to ensure that (remedial) action is taken.

Norwegian case law provides rather few examples from law suits against authorities for failure to take action. In a recent judgment from the Supreme Court on 25 April 2013 (Rt. 2013 p.588), the Government was held responsible for not having in a sufficient manner protected a woman from harassment from her previous partner. This was found to be a breach of the Convention for the Protection of Human Rights and Fundamental Freedom, in particular article 3. It must be held as uncertain whether or an equivalent lawsuit regarding breach of the Government's responsibility to secure the environment would be allowed. Article 110 b in The Norwegian Constitution obliges the Government to protect the environment, but it is uncertain how far this obligation goes and whether or not it can be relied upon as a basis for a lawsuit. Even if a lawsuit against the responsible authorities claiming that the responsibility to take action has been breached could be filed, it would

be reserved to environmental organizations and/or individuals that are sufficiently affected by the alleged breach. A lawsuit directly against the landfill claiming that the permit conditions have been breached is thinkable, but this is traditionally held to be a task for the responsible authorities. Whether such a direct lawsuit would be allowed, must be held uncertain.

A neighbor to the landfill may file suit against the landfill claiming that the landfill is contravening with provisions of the Norwegian Neighbor Act, in particular the obligation in article 2 to refrain from actions that in an unreasonable manner bother the surroundings. Such a lawsuit may be based on the claim that permit conditions have been breached.