



Access to justice in envtl matters: Best practice examples from across the EU

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ClientEarth

- ClientEarth is an environmental NGO composed of lawyers
- Using law to protect the environment
- Litigation, legal advocacy, capacity building, training: EU, Member States, China and Africa

Access to Justice for a Greener Europe

- ClientEarth and Justice & Environment, funded by LIFE fund
- Target countries: AT, ET, FR, DE, HU, PL, SL, ES
- Goal: disseminate information, knowledge and share best practices about Access to Justice with an audience of legal professionals, judiciary, NGOs, public interest lawyers and public administration.
- Deliverables: newsletter, handbook, national toolkits, digital information platform (“ask a lawyer service”), public interest lawyer database, 48 workshops and seminars, EU wide conference

Challenging Air Quality Plans: UK

- ACCC communication on costs
- 1st JR: preliminary reference to CJEU; AQP unlawful
- 2nd JR: AQP unlawful
- 3rd JR AQP unlawful in part
- 4th JR?

Challenging Air Quality Plans: Germany

- Germany: Stuttgart Administrative Court, July 2017
 - Standing: DUH a recognised environmental protection association
 - Very intense review!
 - Quashed the plan: it did not implement the most effective measures for bringing Stuttgart into compliance as soon as possible (vehicle ban from 2018, as opposed to 2020)
 - (Also won case in Federal Admin Court re competence to enact vehicle ban in Feb 2018)

Best Practice Examples

1. Standing
2. Suspensive effect of legal challenge
3. Standard of review
4. Remedies
5. Costs

Standing

- Actio popularis in envtl matters: Lithuania and Portugal
- Lithuania:
 - impairment of rights doctrine = very restrictive standing
 - Following implementation of AC, actio popularis for environmental matters in administrative courts
- Portugal: Constitutional right of citizens to actio popularis for the protection of the environment (applied to eNGOs by Law on ENGOS) – administrative and civil procedures

Suspensive effect?

- Lithuania and Sweden:
 - General rule: filing an application before administrative court has suspensive effect!
 - Possibility for permit/decision addressee to apply for “go-ahead” decision
 - (Lithuania) important permitting exceptions (requiring applicants to apply for injunctive relief)

Standard of review

- Sweden: Environmental Courts and Environmental Court of Appeal
 - Decides on the merits of the case
 - Ex officio principle (inquisitorial approach). Includes:
 - Refer questions to certain authorities for an opinion
 - Have an oral hearing or view the site
 - Examine causes that have not been invoked
- Portugal: Actio popularis cases (administrative or civil courts)
 - Judge is not bound by evidence presented by parties
 - Can gather evidence on own initiative

A hearing at a Swedish Environment Court

Annika Grunwaldt Svensson



Remedies

- Sweden: Land and Environmental Tribunals
 - Reformatory procedure:
 - Permitting appeal: can change or add conditions of permit, send back to authority for new investigation
 - Injunction appeal: alteration of imposed measure condition, order additional preventive or precautionary measures
- Netherlands: Administrative Court
 - Emerging case law requiring court to “solve” the dispute
 - Court can:
 - Quash act but decide that its legal effects stay in place;
 - Replace an administrative decision with the judgment of the court
 - Stay proceedings to allow the administration to ‘repair’ decisions, proceedings then resume (time saving)

Costs

- Sweden: No costs in environmental matters (except re water permitting cases)
 - No court fees
 - No obligation to pay the opponents' costs
 - No bonds to be paid for obtaining injunctive relief
 - No witness or experts' fees (responsibility to investigate the case according to « ex officio principle » lies with courts)
 - No obligation to be represented by a lawyer in court
 - If applicant does use a lawyer, own expense (no legal aid) and cannot be recovered from losing opponent (no loser pays principle)
- Negative – few law firms, pro bono lawyers or law clinics engaged in representing the public in environmental cases
- Funds provided by EPA to NGOs to taking legal action in order to develop case law

Thank you

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