

Jurisprudence of CJEU regarding access to justice in the Member States

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elni Forum

Green Deal – A way forward for EU environmental legislation?

Access to Justice in EU and the Member States

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- **What can be challenged in court**
- **By whom and under what conditions (standing)**
- Effective remedies (in particular: injunctive relief)
- Scope of judicial review

What + by whom

- C-72/95 (Kraaijeveld) – members of the public concerned whose participation rights have been violated are entitled to challenge decisions authorising a project
- C-243/15 (VLK II; LZ II) – env. NGOs are entitled to challenge decisions authorising activity affecting Natura 2000 site
 - via Article 6(1)(b) of the AC such decisions should be subject to pp
 - Commission Notice: this verdict may apply to decisions in other sectors of env.law (para 70 of the Notice)
- C-570/13 (Gruber) and C-75/08 (Mellor) – negative EIA screening decisions can be challenged by persons entitled to challenge the development consent

What + by whom

- C-240/09 (Slovak Brown Bears; VLK I; LZ I) – env. NGO is entitled to challenge a decision authorising brown bear hunting
 - (*„decision taken following administrative proceedings liable to be contrary to European Union environmental law”*)
- C-237/07 (Janecek) – persons whose health is concerned are entitled to challenge insufficient local air protection plan
 - Commission Notice: this verdict may be relevant for sectors of env. law (para 52 of the Notice)
- C-165/09 – C-167/09 (Stichting Natuur en Milieu) – env NGOs entitled to challenge a failure by authorities to establish national emission ceilings
- C-404/13 (Client Earth) – similar approach

What + by whom

- C-664/15 (Protect Natur) – env NGO is entitled to challenge a decision authorising a project that may cause deterioration of the status of bodies of water (i.e. may be contrary to Article 4 of the Water Framework Directive)

Injunctive relief

- C-416/10 (Krizan) - members of the public concerned shall have a right to ask for the interim measures such as to suspend the application of an integrated permit

Scope of review

- C-137/14 (Commission vs Germany) - legal standing for individuals may be limited to situations where their rights are impaired
 - = the court examines only the provisions which entitled the individual to bring the legal challenge
- C-115/09 (Bund für Umwelt und Naturschutz, Trianel) – this limitation does not apply to env NGOs

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