



# **Justiciability & legal standing: knocking on the CJEU's door**

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supporting civil action on sustainability***

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## ***Danielsson v. European Commission***

CFI 22 December 1995, T-219/95 R

French Nuclear testing

Eur Commission decision directed at France 'of direct and individual concern' to applicant ms Danielsson?

Treaty:

'Any natural or legal person may ...institute proceedings against an act addressed to that person or which is of direct and individual concern to them' (currently art. 263 TFEU)



## (Danielson v Eur Commission continued)

### CFI:

- persons not addressed by decision may claim to be individually concerned by decision only if it "affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and if by virtue of those factors it distinguishes them individually just as in the case of person addressed" *Case 25/62 Plaumann*
- applicants – residents Tahiti, like any other person
- suffering personal damage not sufficient to distinguish them individually
- damage could affect, in same way, any person in area



## 1993 SEA

sustainable growth respecting environment

## 1999 Treaty of A'dam enters into force

- sustainable development of economic activities, sustainable growth, high level protection env (art 2)
- no broadening access to justice as requested by NGOs

## 2009 Treaty of Lisbon

- sustainable development Europe based on high level protection & improvement env (art 3(3) TEU)
- contribute to sustainable development Earth + strict observance and development international law (art 3(5) TEU)



## **2009 Treaty of Lisbon (continued)**

- Integration principle art 11 TFEU

'Environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development.'

- Art. 37 Charter

'high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.'

***INVOKE when commenting on Impact Assessments, Fitness checks, Trade Sustainability Impact Assessments etc!***



## EU party to Aarhus Convention

Ratification 17 Feb 2005, in force 18 May 2005

Hence EU to observe:

Article 9, para. 3

... each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to *challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.*

Acts not defined in Aarhus...



### **Article 10 para 1 Regulation 1367/2006:**

Any non-governmental organisation which meets the criteria set out in Article 11 is entitled to make a *request for internal review* to the Community institution or body that has adopted an *administrative act* under environmental law or, in case of an alleged administrative omission, should have adopted such an act.

### **Article 2 para 1 Regulation 1367/2006 (Definitions):**

(g) 'administrative act' means any *measure of individual scope* under environmental law, taken by a Community institution or body, and having *legally binding and external effects*;



## **Article 12 para 1 Regulation 1367/2006:**

The non-governmental organisation which made the request for internal review pursuant to Article 10 may institute proceedings before the Court of Justice in accordance with the relevant provisions of the Treaty.





## CJEU 13 Jan 2015, C-401/12 P, C-402/12 P, C-403/12 P

- Commission decision asked for review Commission decision granting Netherlands temporary exemption from air quality directive
- Inadmissible because act not of individual scope, but of general scope against which no review was possible
- General Court granted the application for annulment of the contested decision, and held that the EU limitation of acts against which internal review procedures can be instigated (namely measures of individual scope) violated Aarhus Convention. Tested EU secondary law against Convention in spite of fact that its provision on access to justice not capable of conferring on the individual concerned the right to invoke it; relying on jurisprudence that opened up the possibility to test EU law against a convention where EU law is intended to implement GATT/WTO obligations imposed on the EU institutions under that agreement



## CJEU 13 Jan 2015, C-401/12 P, C-402/12 P, C-403/12 P

- CJEU: those exceptions were justified solely by the particularities of the agreements that led to their application, and could not be applied in these cases. Hence, Aarhus Convention lacks clarity and precision required for its provision on decisions and acts to be properly relied on before the EU judicature for the purposes of assessing the legality of secondary EU law.

### **Appraisal:**

- By following its familiar line of reasoning on the relationship between EU law and international law, CJEU ignored fact that EU implementation of Aarhus is robbing that instrument of its useful effect
- rather than setting the boundaries of what an implementing instrument can look like (similar to judgement in Case C 240/09, Lesoochránárske zoskupenie / Brown bears).
- missed opportunity for CJEU to see to it that EU lives up to the obligations it has committed itself under Aarhus Convention



## Non-environmental case law

**T&L Sugars Ltd** (CJEU 28.04.2015 (Grand Chamber), Case C-456/13P

- Appeals can be lodged against regulatory acts of direct concern to private individuals 'not entailing implemented measures'
- Art 47 Charter does not change judicial review TFEU/TEU

### **Former CFI judge Meij:**

- Constructive & coherent interpretation of standing requirements in light of right effective judicial protection ≠ change Treaty provisions
- Plaumann doctrine not spelled out in Treaty...

### **Hence:**

Keep knocking on CJEU door... Invoke EU duty to observe international law & commitments codified in Lisbon Treaty, notably regarding integration and promotion sustainable development plus international law.

# Further information:

- European Environmental Law website [www.eel.nl](http://www.eel.nl)
- EEL News Service
- Twitter @EurEnvlLaw