

# **Effective judicial review (scope of review, timeliness, injunctive relief, remedies, costs)**

**SDG16: Role of Judiciary in Promoting the  
Rule of Law in Environmental Matters,  
United Nations, Geneva, 27 February 2019**

**M. Clément,**

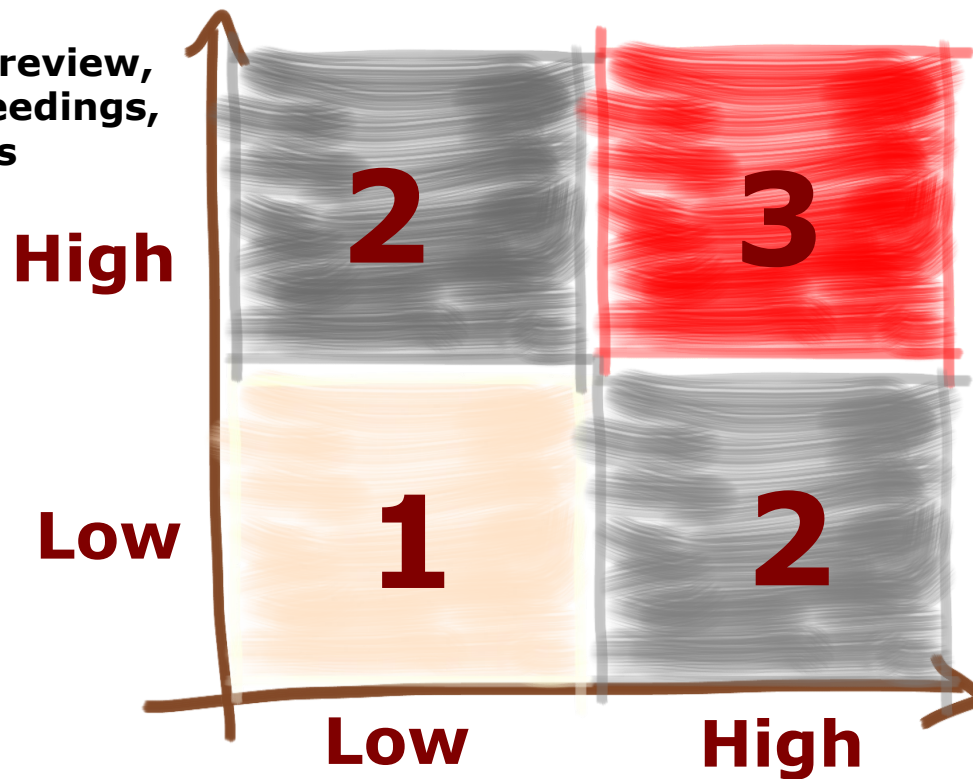
**Presiding judge Administrative Court of Lyon**

**Member of the Aarhus Convention Compliance Committee**

**Member of the French Environmental Authority**

# Effective judicial review ? A tension between efficiency and openness

**Efficiency :**  
Scope of judicial review,  
Duration of proceedings,  
Interim measures



**Openness :**  
Access to justice,  
Role of civil society,  
Collective actions

# Aarhus Convention: efficiency and openness !

- **Article 9.4** – *In addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1, 2 and 3 above shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive. Decisions under this article shall be given or recorded in writing. Decisions of courts, and whenever possible of other bodies, shall be publicly accessible.*
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# Aarhus compliance committee recommendations

- **Article 9 paragraph 4 : 33 recommendations (total of 61)**
- **Costs, interim measures, timely**
- **See [www.lawdataworkshop.eu/ACCC](http://www.lawdataworkshop.eu/ACCC)**

Search for terms in ACCC decisions

26 cases found in database.

1) ACCC/C/2007/22  France References: ACCC/C/2006/17 ECE/MP/PP/2008/5/Add.10 ACCC/C/2006/16 ECE/MP/PP/2008/5/Add.6 [-:]


1 (...) too late in the procedure to comply with the Convention. Due to the lack of public debate, two NGOs (not the communicant) requested the CNDP to arrange a public debate, according to the procedure set out in the Environmental Code. However, that request was turned down by CNDP because the estimated **costs** for the buildings and infrastructure were below the threshold mentioned in paragraph 16. Legal proceedings were instituted against the decisions not to provide for public debate, but the Conseil d'Etat dismissed this action on 28 December 2005. 21. By a resolution of 13 May (...)

2) ACCC/C/2008/23  United Kingdom References: ACCC/C/2008/27 ACCC/C/2008/33 ACCC/C/2008/27 ACCC/C/2008/27 ACCC/C/2008/33 ACCC/C/2008/27 [-:]

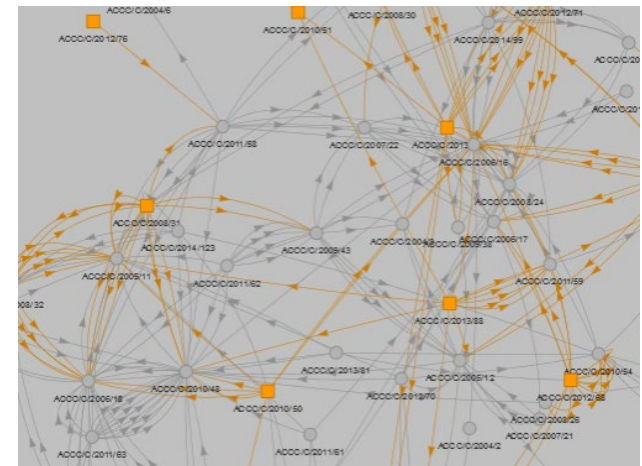
1 (...) "the operator" seeking an injunction to prohibit offensive odours arising from the operator's waste composting site near the communicants' homes. Following the discharge (cancellation) of an interim injunction in respect of the offensive odours, the communicants were ordered to pay the **costs** of the operator and added parties (the Environment Agency and Bath & North East Somerset Council) amounting to approximately £25,000. 3. At its nineteenth meeting (5-7 March 2008), the Committee determined on a preliminary basis that the communication was admissible. (...)

2 (...) seeking further background information regarding its communication. 5. By letter dated 7 July 2008, the Party concerned requested the Committee to extend the five-month deadline for its response until the Court of Appeal delivered its judgement regarding an appeal of the **costs** order by the communicants. 6. On 26 September 2008, the Committee wrote to the Party concerned indicating that, in light of the fact that the request related to some of the issues addressed in the communication which were currently subject to review by the Court of Appeal and (...)

3 (...) the Party concerned provided its initial response, including its answers to the questions posed by the Committee on 17 April 2008. Due to further postponement of the hearing of the communicants' appeal in the Court of Appeal, the response of the Party concerned was provided before the matter of **costs** had been resolved in the national courts. On 22 May 2009, the Party concerned provided an amended version of its letter of 30 October 2008. 9. On 24 March 2009, the communicants sent a further letter enclosing the judgement of the Court of Appeal dated 2 March 2009 regarding the (...)

3) ACCC/C/2008/24  Spain References: ECE/MP/PP/2006/2/Add.1 ECE/MP/PP/2006/4/Add.2 ECE/MP/PP/2008/5/Add.6 ECE/MP/PP/2007/4/Add.1 ACCC/C/2007/22 ACCC/C/2006/16 ECE/MP/PP/2008/5/Add.6 ACCC/C/2007/22 ACCC/C/2007/22 ECE/MP/PP/2008/5/Add.10 [-:]

1 (...) that the refusal by the courts to suspend administrative decisions that lacked an environmental impact assessment (EIA), as well as the length of the related judicial review procedure, were not in compliance with article 9, paragraph 4. The communicant furthermore claims that imposing high court **costs** on a non-profit organization, while there were no assistance mechanisms available to offset such **costs**, constituted a failure by the Party concerned to comply with the requirements of article 9, paragraphs 2, 3, 4 and 5. On 6 June 2008, the Committee notified the Party (...)



# Evaluation of adequate and effective remedies?

- ***Need to have an holistic approach :***
    - One parameter is not enough : length proceedings vs costs, costs vs standing etc
  - ***Focus on proceedings, however review on the merits is the goal !***
  - ***Difficult to develop ranking***
    - Benchmark ?
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# Difficulties ...way forward ?

- *Demonstration of structural problems vs specific deficiencies (see for instance ECHR case-law on excessive length of proceedings)*
- *Need to collect statistics from Courts (see work of CEPEJ in Council of Europe) ... maybe a specific role for the Task-Force in collaboration with CEPEJ or European Commission DG Justice Scoreboard*



**The environmental access  
to justice scoreboard ?**

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