

# ***Aarhus, EU and Access to Justice in Environmental Decision-making***

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***Presentation on Judicial Colloquium,  
Geneva 27-28 February 2019***

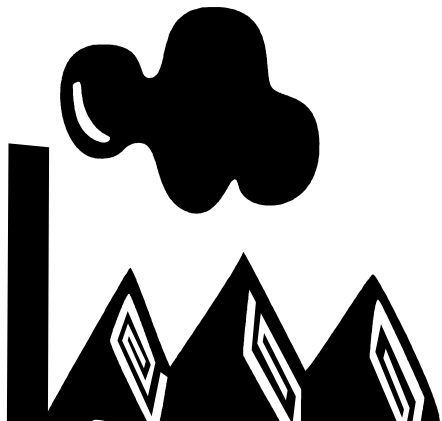
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# Interests and "Rights" in Environmental Law..?



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# *European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)*

## **Article 6**

- Everyone is entitled to a **fair and public hearing** within a **reasonable time** by an **independent and impartial tribunal** established by law...

## **Article 8**

- Everyone has the right to **respect for his private and family life, his home** and his correspondence.

## **Article 13**

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an **effective remedy**...



# ***Aarhus Convention on Access to Justice***

## ***Article 9.1-9.4***

**Access to a review procedure before a court of law or another independent body (ECHR)**

**...adequate and effective remedies, including injunctive relief...**

**...and be fair, equitable, timely and not prohibitively expensive...**

# ***Rights and interests...***



## **Article 47 of the EU Charter...**

Everyone whose **rights and freedoms** guaranteed by the law of the Union are violated has the right to an **effective remedy** before a tribunal in compliance with the conditions laid down in this Article.

## **Article 19 Treaty of the EU (TEU)**

Member States shall provide remedies sufficient to **ensure effective legal protection** in the fields covered by Union law.



# ***A substantial body of case law***

- C-237/07 *Janecek* (2008): Air quality and A2J...
- C-263/09 *DLV* (2010): ENGO standing...
- **C-115/09 *Trianel* (2011)**; "Schütznormtheorie"...
- C-240/09 *Slovak Brown Bear* (2011): Art. 9.3 and EU...
- C-260/11 *Edwards* (2013): Costs...
- C-416/10 *Križan* (2013): Effective remedies...
- **C-404/13 *ClientEarth* (2014)**: Air quality and A2J...
- C-243/15 *LZ II* (2016): Article 47...
- **C-664/15 *Protect* (2017)**: Direct effect..



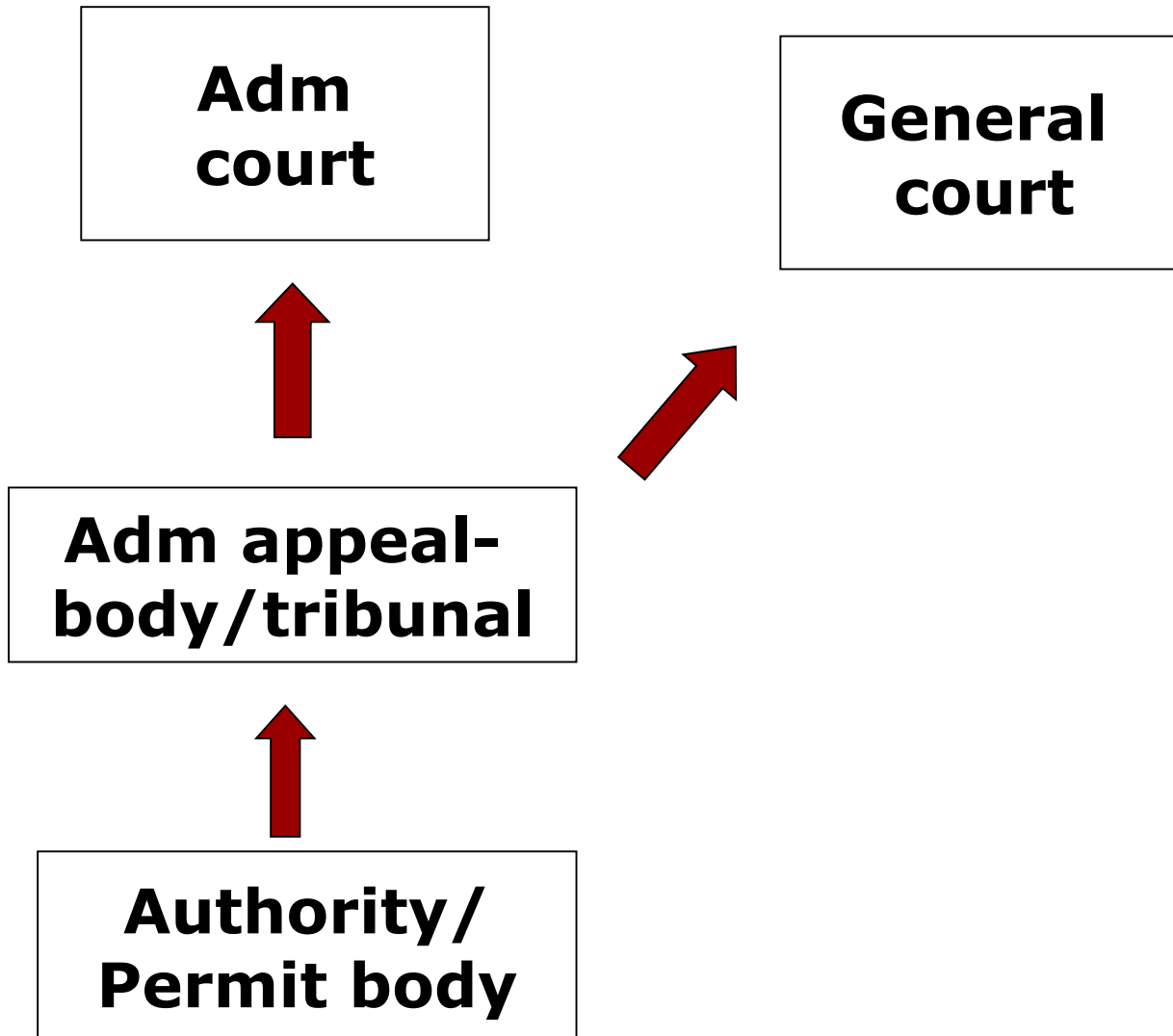
# ***Direct Effect of EU Law***

A forceful tool for the implementation of EU law in the MS, with two main components, namely that **provisions which are unconditional and precise;**

- **Overrules national law, “dis-apply” or “set aside”, and**
- **Carries “rights” and “obligations” for ENGOs...**



# *Different procedural system*







# ***Systematic Issues...***

**Trustworthy authorities or courts as the defenders of the environment..?**

**Administrative Appeal and/or Judicial Review ↔  
Direct Action in Court..? Criminal cases..?**

**What kind of court, tribunals – what kind of procedure..?**

**The environmental expertise; witness experts, expert judges, ex officio principle...**

**The outcome; cassatory or reformatory...**



# *Key issues on A2J*

- **Standing for individuals, groups and ENGOs...**
- **Effectiveness; duration, suspensive effect, injunction (many cases “won in court, but lost on the ground”)...**



- **Court fees, costs for lawyers, cost for experts (LPP), bonds, legal aid...**



....and finally...

**THANK YOU FOR LISTENING..!**



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