



LEUPHANA
UNIVERSITÄT LÜNEBURG



AARHUS CONVENTION
for our environment

**GERMAN ACT ON ACCESS TO COURTS IN ENVIRONMENTAL
MATTERS (UMWELTRECHTSBEHELFSGESETZ)
DECISION V/9H & EU COURT OF JUSTICE, C-137/14
FOLLOW-UP 2017**

AARHUS CONVENTION TASK FORCE ON ACCESS TO
JUSTICE
GENEVA, 27-28 FEBRUARY 2017

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Agenda

What to remember

I Aarhus-Convention level

II EU-level

Implementation in Germany

I How far has Germany got in implementing the decisions?

II How did German courts react?

Conclusions



What to remember ... (Aarhus-Convention level)



➤ Decision V/9h of 30 June/1 July on compliance by Germany:

- ❖ Germany **fails to comply** with article 9 par. 2 and 3 AC by
 - **requiring** that to be able to file an appeal under the **German Environmental Appeals Act** (Umweltrechtsbehelfsgesetz) an environmental NGO must assert that the challenged **decision contravenes a legal provision “serving the environment”**
 - **not ensuring the standing of environmental NGOs** in many of its sectoral laws to challenge acts or omissions of public authorities or private persons which contravene provisions of national law relating to the environment
- ❖ Germany **is recommended** to ensure that
 - NGOs promoting environmental protection **can challenge both the substantive and procedural legality of any decision**, act or omission subject to article 6 of the Convention, **without** having to assert that the challenged decision contravenes a **legal provision “serving the environment”**
 - **criteria for the standing of NGOs** promoting environmental protection, including **standing with respect to sectoral environmental laws**, to challenge acts or omissions by private persons or public authorities which contravene national law relating to the environment under article 9, paragraph 3, of the Convention are revised



What to remember ... (EU-level)

- **ECJ, 15 October 2015, C-137/14 (EU Commission/Federal Republic of Germany):**
 - ❖ Germany has **failed to fulfil its obligations** under Article 11 of Directive 2011/92/EU (**EIA**) and Article 25 of Directive 2010/75/EU (**IED**) by restricting
 - the **annulment of an administrative decision** falling within the scope of Directives 2011/92 and 2010/75 on the **grounds of procedural defect**
 - the **standing** to bring proceedings and the scope of the review by the courts to the **objections which have already been raised** within the time-limit set during the administrative procedure which led to the adoption of the decision
 - the **standing** to bring proceedings of environmental associations to the legal provisions which confer **individual public-law rights**



How far has Germany in implementing the decisions?

➤ Legislative procedure:

- ❖ 5 September 2016: Fed. Government introduced a bill amending the **Environmental Appeal Act** and further acts (BT-Drs. 18/9526)
- ❖ 26 September 2016: Federal Parliament - parliamentary **public hearing**
- ❖ 5 October 2016: opinion of **Federal Council** (Bundesrat)
- ❖ to date: still **pending**, **conflicts** between Fed. Government, Fed. Parliament & Fed. Council

➤ Crucial points:

- ❖ **standing** concerning **objections which have already been raised**
- ❖ **standing** with regard to **certain plans & programmes**, such as
 - spatial plans for wind-energy & high voltage power lines
 - federal transport infrastructure planning
 - nature reserves et al.
- ❖ **standing** concerning **environmental legal requirements** („umweltbezogene Rechtsvorschriften“)
- ❖ **recognition of NGOs** with standing
- ❖ procedural rules for **abusively submitted arguments**
- ❖ **6-week time-limit** for submitting reasoning in actions





How did German courts react?

➤ **Federal Administrative Court** (Bundesverwaltungsgericht)

❖ judgements of 11 August 2016, 7 A 1/15 (**deepening of river Weser**) and of 28 September 2016, 7 C 1/15 (pig farm)

- **supremacy of EU-law**: no application of preclusion-clause in German Environmental Appeal Act

➤ **Higher Administrative Court of Lower Saxony** (Oberverwaltungsgericht Lüneburg)

❖ judgement of 13 October 2016, 7 KS 3/13 (**high voltage power line**)

- **supremacy of EU-law**: no application of preclusion-clause in German Environmental Appeal Act – plaintiff won the case



Bundesverwaltungsgericht





Conclusions

- The reform of the legislation on access to justice in Germany is still pending.
- Apart from the Environmental Appeal Act, it covers a broad range of statutes, such as the EIA-Act, Fed. Immission Control Act, Fed. Nature Protection Act, Fed. Construction Act, Fed. Mining Act et seq.
- The legislative procedure reveals several conflicts between the federal government, parliament and council and various stakeholders, such as
 - ❖ the restriction of standing of NGOs on environmental concerns and on certain recognized NGOs
 - ❖ the exclusion of certain plans & programmes such as the federal transport infrastructure planning or
 - ❖ the introduction of a wide abuse clause.
- The major question whether, with regard to art. 9 II and 9 III AC, the German limitations of standing on the infringement of individual rights can be upheld, remains unanswered.



Thank you for your attention!

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