Transboundary Access to Justice for Environmental NGOs – the Legal Concept according to International, European and German Law

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I. Aarhus-Convention
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entitlement to bring an action

sufficient interest  impairment of a subjective right
I. Arhus-Convention: Art. 9 II

„Each Party shall, within the framework of its national legislation, ensure that members of the public concerned

(a) having a sufficient interest or, alternatively

(b) maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition,

have access to a review procedure (...).“
I. Arhus-Convention: Art. 9 II

„To this end, the interest of any non-governmental organization meeting the requirements (...) shall be deemed sufficient for the purpose of subparagraph (a) above. Such organization shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above.“
II. Implementation into EU-law

EU-legal acts: access to justice


member states  EU-matters,  ECJ
III. Transformation into German law

2003/35/EC

Environmental Appeals Act
25 – 06 – 2005

(15 December 2006)

2004/35/EC

Env. Damage Act
30 – 04 – 2007

(14 November 2007)

= lex spec. to Code of Administrative Court Proced.
IV. Germany: Preconditions for a legal action

- recognition by the Federal Environmental Agency
- limited objects (e.g. industrial facilities)
- EEZ, Continental shelf (+)
- standing is accessory to participation in the administrative procedure
  - no isolated control of an infringement of a procedural rule
  - prohibition of claims concerning the same matter in dispute
- association must have legal capacity
- NGOs: legal representative
IV. Preconditions for a legal action

Standing of an association:

§ 2 Environmental Remedies by associations

- limited to claiming the infringement of a legal rule protecting subjective rights
- legal rule must intend protection of the environment
- infringed stipulation has to be relevant for the judgement

+ limited scope of judicial review
V. Costs and average duration

A value of EUR 15,000 results in court fees of

- EUR 726 on the first level of jurisprudence
- EUR 968 on the appeal level (additional)
- EUR 1210 on the revision level (additional)
V. Costs and average duration

- Administrative Courts
- Higher Administrative Court (as first level)
- Higher Administrative Court (as appeal level)
- Overall duration of cases reaching the appeal stage

Data sources:
- Bavaria (2009)
- Lower Saxony (2009)
- North Rhine-Westphalia (2008)
VI. German environmental Appeals Act: contradiction to European law

Case C-115/09
VII. Result and perspectives