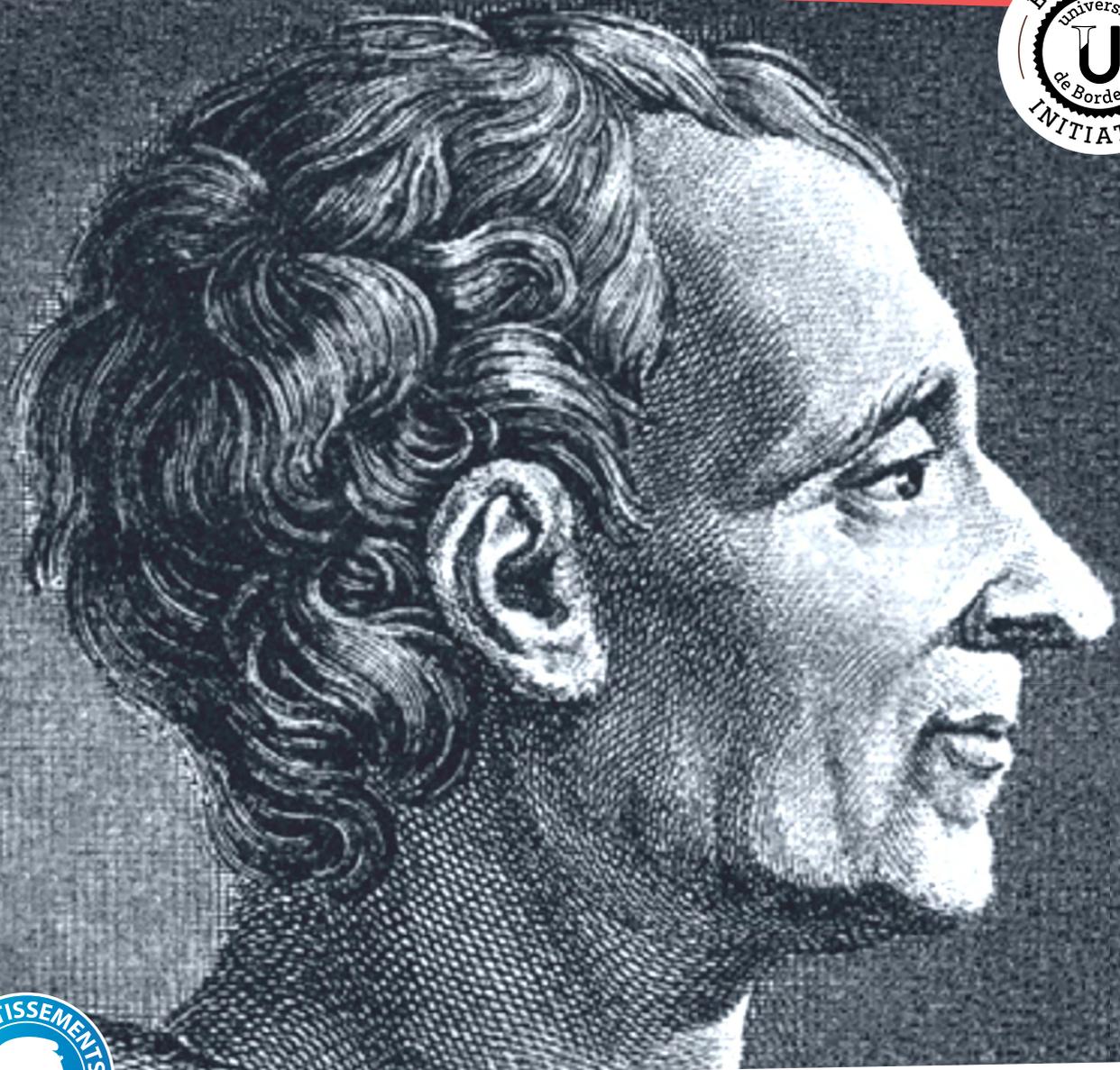


Issue | March
No. 5 | 2017

Montesquieu Law Review

Standing before French administrative courts in environmental cases
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Program supported by the ANR
n°ANR-10-IDEX-03-02

FORUM
MONTESQUIEU
Faculté de droit et science politique

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Environmental Law:

Standing before French administrative courts: too restrictive to effectively enforce environmental rights?

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Locus standi before French administrative courts is traditionally considered as particularly favourable to applicants, since France adopts an interests-based approach to legal standing, rather than a rights-based approach, as is the case in Germany. However, the peculiarity of environmental policy and the conditions for judicial review of administrative action in this field may contradict that statement. The challenge has now left the realms of merely theoretical discussion and gained very practical relevance with a recent ruling of the French *Conseil d'Etat* (1) and the subsequent submission of a Communication to the Aarhus Compliance Committee.

The factual background of the case is rather typical. The applicant, a university academic specialising in environmental matters and active in several NGOs, challenged a decision adopted on 30 June 2015 by the French Minister for the environment, sustainable development and energy, concerning the list, methods and periods of destruction of pest animal species (2). In rather laconic fashion, which is not untypical of French rulings (3), the French supreme administrative court dismissed the claim, ruling it inadmissible on the grounds of the lack of legal standing on the part of the applicant. It is worth noting is that the applicant had originally not raised any arguments concerning legal standing, but did so only after the *Conseil d'Etat* raised *ex officio* a question concerning the admissibility of the case (4). At that point, the applicant, in order to establish his legal standing, invoked both a constitutional source – Article 7 of the Charter for the Environment – and an international source – Article 9 of the Aarhus Convention. However, the *Conseil d'Etat* considered that neither of these provisions could confer any legal standing to the applicant.

Subsequent to the dismissal of the claim by the *Conseil d'Etat*, the applicant submitted a Communication (5) to the Aarhus Compliance Committee, a body tasked with monitoring compliance with the Aarhus Convention. In particular, the applicant argued that by denying him standing, and because of the restrictive interpretation of the applicable rules on legal standing, the French court had breached the access to justice requirements under the Aarhus Convention. At the time of writing, the Communication is still pending before the Compliance Committee.

As can be seen, the unusual aspect of this case is that it lays at the heart of the interaction between several interlocking legal orders. Indeed, access to justice, and, in particular, rules on legal standing in environmental matters are currently regulated not only by national law, but also by international and European standards, which could challenge the classical conception promoted by French administrative courts. While, under French law, the administrative courts – and primarily the *Conseil d'Etat* – hold discretionary powers to define conditions on legal standing (6), the promotion of the right to access to justice could, to a certain extent, impose restrictions on those discretionary powers. Whereas the ruling by the *Conseil d'Etat* demonstrates that access to justice

is under the tight control of the administrative courts (I), the current approach can nevertheless be challenged as being too restrictive with regard to European and international requirements (II).

I. Access to justice under the tight control of the administrative courts

In environmental matters, the conditions on legal standing with regard to individuals are the same as for any claim falling within the remit of the administrative jurisdiction. However, such conditions, determined by established French case law, may appear to be particularly restrictive (A). Indeed, the demonstration of a personal and individual interest sets a rather high threshold and challenges the appropriateness of applications for judicial review (*recours en excès de pouvoir*) to ensure an effective protection of environmental law (B).

A. A restrictive assessment of standing in compliance with the established case law of the French administrative courts

The conditions for legal standing in actions for judicial review before the French administrative courts are usually regarded as being easily fulfilled, since French administrative case law adopts an interest-based approach to legal standing. In addition to the conditions relative to legal capacity, in order to establish legal standing, the applicant has to demonstrate their “interest to act” (*intérêt à agir*). This notion is not contained in any legal statute, but has been set down in case law and has, over time, been interpreted on a case-by-case basis, as meaning that a personal material or moral interest is required. In addition, that interest has to be “direct and specific”. French administrative case law has interpreted this notion rather broadly and in such a way that the requirement has been deemed satisfied as soon as there is a link between the challenged act and the personal position of the applicant (7). The *intérêt à agir* is in this sense assessed objectively, not subjectively.

From this perspective, the ruling of the French court discussed here appears to have adopted a rather orthodox approach to assessing legal standing, since the court ruled that the applicant, an expert in environmental law and active member of several environmental NGOs, could not demonstrate a direct and personal interest in challenging the administrative decision, being “only” a member of the public, albeit interested in environmental protection issues.

In environmental matters, actions brought by individual applicants against acts of general application have indeed been considered admissible only if a specific individual interest in the action may be identified. In order to identify an individual interest, geographic proximity or vicinity has been considered as a determining factor, especially in the context of nuisance cases (8). The decisive element is therefore the fact that the individual’s situation (and not only the environment as a whole or part of it) is objectively affected by the measure. Therefore, it is not exclusively in the name of environmental protection and interest that the court may rule that an action is admissible.

The French approach to legal standing, therefore, does not allow for any specificity when reviewing the lawfulness of environmental measures is at stake, as far as individuals are concerned. Applied to environmental matters, the allegedly liberal French approach to legal standing may, however, lead to rather perverse results. Indeed, if we imagine a situation where a breach of environmental law occurs in an area that is scarcely populated, or if the measure concerns the protection of biodiversity (as is the case in the *Conseil d’Etat* ruling discussed here), it can easily be seen that no individual would be able to prove a personal interest. While the

recours en excès de pouvoir is usually presented as a weapon in the defence of the general interest as well as the lawfulness of administrative action, its suitability in guaranteeing the environmental rule of law may in fact be questioned.

B. The *recours en excès de pouvoir*: an unsuitable weapon in defending the environmental rule of law

Perhaps to some extent paradoxically in light of its objective dimension, the *recours en excès de pouvoir* is not open to anyone who would be only willing to promote the rule of law. The defence of the general interest is not a ground as such for access to the *recours en excès de pouvoir*. This fact confirms the importance, under French administrative law, of the distinction between the conditions for admissibility of a claim and the merits of the case. Indeed, traditionally judicial review, in line with the *recours objectif* conception, is seen as being aimed, first and foremost, at protecting the general interest, individual interests being protected only incidentally. Nevertheless, what provides access to the courts is the existence of an individual interest (9).

This is because, according to the traditional French conception, the *recours en excès de pouvoir* is not to be assimilated to an *actio popularis*. An overly broad, or even unlimited, access to the courts would mean that any individual could challenge any administrative act considered unlawful, with the risk of endangering legal certainty and even the continuity of the public services in question. According to French jurisprudence, such an approach would go against the presumption of legality attached to administrative acts. From a theoretical point of view, the requirements as to legal standing reveal the specificity of the very task of judging itself: the court is not the place where general interests and political choices ought to be debated by individuals. From a more practical point of view, the assessment of legal standing is also a way for the judge to regulate access to court, avoiding an overflow of litigation (10).

Furthermore, environmental claims should not profit from a different approach towards standing, despite the constitutionalisation of the Charter for the Environment. Indeed, the *Conseil d'Etat* ruled that Article 2 of the Charter for the Environment, according to which “[e]veryone is under a duty to participate in preserving and enhancing the environment”, did not constitute grounds for general access to the courts (11). Such a solution was to be expected, since the provisions of the Charter are generally denied of direct effect (12).

The standing requirements for the *recours en excès de pouvoir* seem to be incompatible with the collective and general dimension which is characteristic of environmental protection. The constitutionalisation of the Charter for the Environment has not as yet changed the perspective and scope of the discretionary powers held by the French administrative courts in defining requirements as to legal standing. The increasing development of procedural standards by international and supranational law might, however, encourage French courts to consider the possible ways to amend the rules on legal standing so as to guarantee access to justice in environmental matters.

II. A restrictive assessment of legal standing in breach of international and European standards?

The adoption of the Aarhus Convention has stressed the importance to ensure access to justice in environmental matters, as an essential tool in enforcing environmental law and promoting a high level of environmental protection. The French authorities are bound by it, not only because France ratified it in 2002 (13), but also because of the subsequent ratification by the European Union in

2005 (14) as a mixed agreement. The Convention imposes obligations on the French legal system to ensure access to justice in environmental matters (A), as well as interpretative duties on the French administrative courts through the case law of the European Court of Justice (B).

A. The obligation of guaranteeing access to justice in environmental matters

Apart from national French rules, legal standing in environmental matters is also regulated by Article 9 of the Aarhus Convention (15). As the foundation of the three pillars of environmental democracy (access to information, public participation and access to justice), the Aarhus Convention increasingly plays a key role in environmental litigation (16).

Specifically with regard to the access to justice pillar, Article 9(2) of the Convention provides that the contracting parties should ensure that concerned members of the public with (1) a sufficient interest or (2) maintaining impairment of a right (where the administrative procedural law of a state requires this as a precondition), have access to a review procedure to challenge the substantive and procedural legality of decisions concerning activities subject to the public participation requirements contained in Article 6 of the Convention itself. Article 9(2) covers projects which can have a significant environmental impact. Furthermore, Article 9(3) provides for a general obligation on the parties to provide wide access for the members of the public to review procedures to challenge the legality of all kinds of decisions affecting the environment.

The action brought by the applicant in the case discussed here calls into question the compatibility of French rules on legal standing with the access to justice requirements set by the Aarhus Convention. However, the possible violation of the Aarhus Convention, and in particular of Article 9, has not been expanded upon either in the supplementary submissions by the applicant, or in the decision of the French court. In the supplementary submissions requested from the applicant by the *Conseil d'Etat*, the applicant does not elaborate on why a denial of legal standing would violate Article 9, but simply states that, whilst not demanding an *actio popularis*, the Convention requires access to justice “in the best possible conditions” (17). This statement is admittedly rather vague and, one might add, somewhat odd, given that the phrase “in the best possible conditions” is not to be found in the text of the Convention. The *Conseil d'Etat* simply ruled that “the requirements of Article 9 of the Aarhus Convention do not on any view have either the aim or the effect of giving every person a right to review of any decision likely to affect the environment” (18).

The inadmissibility of an individual action does not, however, mean that the environment is left without judicial protection under the French legal system. It is primarily NGOs that are tasked protecting the environment. These benefit in fact from more relaxed rules on legal standing than individuals and they do not need to meet the “interest to act” threshold discussed above. Indeed, according to the Law of 10 July 1976, approved NGOs benefit from a presumption of legal standing when bringing a claim for judicial review (19), which is interpreted broadly (20). Such a legislation-based presumption illustrates the will of the legislative power to limit the courts’ margin of discretion in regulating access to justice. It has been considered as the express recognition of the importance of NGOs in the promotion of environmental democracy (21). From a political point of view, it may also be considered as a way of “selecting” *a priori* who can go to court to defend environmental interests. This selection implies, firstly, that not all NGOs fall within the scope of application of the more favourable conditions for legal standing (22); and, secondly, that not just any individual can go to court. In this sense, the legislation could be interpreted as an

implicit refusal to recognise an equally broad access for individuals in environmental matters. At the same time, it legitimises the restrictive approach to legal standing for individuals promoted by French case law, since the administrative courts have discretion to define the legal standing requirements in the absence of any legislative requirements.

Even if environmental NGOs are relatively active in litigation, anchoring judicial review in environmental matters in an associational approach (23) does not seem to grant sufficient access to justice to meet the requirements imposed by Article 9 of the Aarhus Convention. Firstly, where an NGO would fail to bring a claim against a certain environmental breach, essentially no remedy would be open to individuals in those cases in which no individual would be able to demonstrate a personal interest, as illustrated by the case in point. Secondly, the limited number of approved NGOs (24) tangibly reduces the opportunities for litigation. In conclusion, one may raise doubts as to the ability of NGO access to justice to compensate for the inadmissibility of individual actions.

Such a statement may seem paradoxical with regard to the “classical” obstacles ordinarily discussed with regard to environmental claims: while the Aarhus Convention is aimed at boosting access to justice for NGOs, under the French system it is actually easier for NGOs than for individuals to gain such access. Therefore, from the perspective of the Aarhus Convention the privileged access of NGOs (approved NGOs, at least) might be considered as fulfilling with the requirements concerning access to justice for the “public”. Indeed, comparative research has shown that the Aarhus Convention did not have a significant impact in the French legal system (25), and has not led to courts giving a broader interpretation to their own rules on legal standing (26).

The issue of whether the notion of *intérêt à agir* as applied to individuals’ claims in environmental matters has been the subject of neither academic nor jurisprudential debate, perhaps due to traditional ideas (as mentioned above) that the French legal system is traditionally generous towards granting standing in administrative matters (27). However, in light of the peculiarities of environmental policy highlighted above, there remain legitimate questions as to whether the proximity or neighbourhood requirement in establishing legal standing complies with Article 9(3) of the Aarhus Convention. While it is true that the Convention does not require an *actio popularis* (28), it is equally true that national provisions on legal standing must comply with the objective of securing “*wide access to justice*”. As mentioned above, there are legitimate doubts as to whether a legal system which *de facto* immunises decisions from judicial review in the absence of a challenge brought by an approved NGO, complies with this objective. It is, therefore, to be hoped that the Compliance Committee will consider a possible violation of Article 9(3) by France: this will shed light on an important part of the Convention and will also provide guidance for other legal systems adopting an interests-based approach to legal standing.

The requirements applied to individuals also have to be assessed against European standards, especially those developed by the European Court of Justice with regard to the implementation of the third pillar of the Aarhus Convention. Under a duty of consistent interpretation, the French administrative courts might be encouraged to develop their interpretation of the applicable legal standing requirements.

B. A duty of consistent interpretation imposed by the Court of Justice on French domestic courts

Apart from the international aspect, the case discussed here also presents a (notably omitted) European dimension. This is because the challenged decision was taken pursuant to Regulation no. 1143/2014 (29).

As mentioned above, the EU is party to the Aarhus Convention which is, therefore, binding upon the EU as well as the Member States when they are acting within the scope of application of EU law. With a view to aligning Member State legislation with Article 9(2) of the Convention, the EU has *inter alia* enacted Directive 2003/35/EC (30). This Directive has inserted Article 10a into the text of the Environmental Impact Assessment (EIA) Directive (31) and Article 15a into the text of the Integrated Pollution Prevention and Control (IPPC) Directive (32). These provisions are an almost identical copy of Article 9(2) of the Aarhus Convention, securing effective access to justice. As Article 9(2) covers access to justice only with regard to projects which can have a significant environmental impact, it is actually Article 9(3) which seems more relevant in assessing the suitability of the French rules on the legal standing of individuals (33).

This provision has not yet been implemented by the EU. In 2003, the Commission presented a Proposal for a Directive of the European Parliament and of the Council on access to justice in environmental matters (34) which would give effect to Article 9(3) of the Convention. The Directive has not been adopted to date, on the grounds that 'Member States remained unconvinced that legislative action at EU level was needed to implement Article 9(3)' (35) and that the proposal was overly intrusive with regard to the national judicial systems of Member States (36). The Commission has, since 2012, been preparing a new proposal for a directive which gives consideration to the legal situation in the Member States and the recent case law of the CJEU (37).

Meanwhile, in the absence of EU harmonising measures giving effect to Article 9(3), the CJEU has been required to determine whether Article 9(3) could be directly relied upon by individuals before national courts (38). In the 2011 *VLK* case, a referral for a preliminary ruling submitted by a Slovakian court, the Court denied direct effect to this provision arguing that it was not sufficiently precise and unconditional. This is because the provision is subject, in its implementation and effects, to the adoption of a subsequent measure, namely one which would establish the criteria for the identification of those who are entitled to exercise the rights provided for in Article 9(3) itself. However, it added that national courts had a duty to interpret their national law in a way which is to the fullest extent possible consistent with the objectives laid down in Article 9(3) of the Aarhus Convention. In general, this ruling implies that national courts are under the duty to test their rules on legal standing against Article 9(3) of the Aarhus Convention and, if necessary, allow claims even where national rules would not allow it.

Consequently, the fact that the *Conseil d'Etat* denied any direct effect to Article 9(3) (39), on the basis of a literal interpretation of the provision (40), is in line with European case law. However, on the basis of the decision in *VLK*, the *Conseil d'Etat* was under an obligation not only to take it into consideration but also to interpret French law, and especially the applicable standing requirements, in line with the objectives and principles of the Aarhus Convention.

The case in point, which may appear to have applied a rather restrictive approach towards legal standing requirements, is in line with the classical assessment of the concept of the "interest to act" of individual applicants. However, the lack of consideration given to the inherent specificity of

the conditions of access to justice in environmental matters begs the question of the limits of the discretionary power of the courts when assessing standing. Indeed, in environmental matters, the French legislature and courts are not entirely free to set their own rules on legal standing, as they are bound to comply with increasingly demanding international and European standards. These standards demand the reconsideration of an issue closely linked to State sovereignty in the name of fundamental rights, respect for the environmental rule of law and adherence to international and European obligations (41).

Notes :

- (1) CE, 23 October 2015, req. n° 392550
- (2) Order of 30 June 2015 (OJFR n°0153 of 4 July 2015 page 11288)
- (3) A. Desrumeaux, « L'intérêt donnant qualité pour agir en justice. D'une règle du contentieux administratif à l'esprit du droit administratif français », in V. Donier, B. Lapérou- Schneider (dir.), *L'accès au juge - Recherche sur l'effectivité d'un droit*, Bruylant, 2013, p. 319.
- (4) In the French administrative legal system, the courts may raise *ex officio* arguments based on public policy (so-called *moyens d'ordre public*) and are obliged to give parties the opportunity to respond to those arguments (Art. R. 611-7 of the Code of Administrative Justice)
- (5) Communication to the Aarhus Compliance Committee ACCC/C/2015/135, at http://www.unece.org/fileadmin/DAM/env/pp/compliance/Communications/PRE-ACCC-C-2015-135-France/Communication_Eng_France_Janin_04.11.pdf >
- (6) A. Desrumeaux, *op. cit.*
- (7) R. Chapus, *Droit du contentieux administratif*, Montchrestien, 2008.
- (8) CE, 15 avril 2005, *Association des citoyens et contribuables de la communauté de communes Saane-et-Vienne et autres*, n°273398 ; CE, 3 juin 2009, *Canavy*, n° 305131.
- (9) A. Desrumeaux, *op. cit.*
- (10) A. Desrumeaux, *op. cit.*
- (11) CE, 3 August 2011, *Mme Buguet*, n. 330566.
- (12) B. Mathieu, « Observations sur la portée normative de la Charte de l'environnement », *Cahiers du Conseil Constitutionnel*, n° 15, p. 146 ; M. Prieur, « La charte de l'environnement : droit dur ou gadget politique ? », *Pouvoirs* 4/2008 (n° 127) , p. 49.
- (13) Law n. 2002-285 of 28 February 2002 authorizing approval of the Convention and Decree n. 2002-1187 of 12 September 2002 on publication of the Convention, Official Journal of the French Republic, 21 September, p. 15 563.
- (14) Council Decision 2005/370/EC of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters [2005] OJ L 124/1.
- (15) United Nations Economic Commission for Europe, Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, at <http://www.unece.org/fileadmin/DAM/env/documents/cep43e.pdf>.> See e.g. on Article 9 of the Aarhus Convention, J. Jendroska, « Accès à la justice: remarque sur le statut juridique et le champ des obligations de la convention d'Aarhus dans le contexte de l'Union Européenne », *Revue Juridique de l'Environnement*, 31 Special Issue (2009).
- (16) J.-M. Sauvé, « Le juge administratif et le droit de l'environnement », Speech on 1st June 2015, At < <http://www.conseil-etat.fr/Decisions-Avis-Publications/Etudes-Publications/Dossiers-thematiques/Le-juge-administratif-et-le-droit-de-l-environnement>>
- (17) Attachment n. 2 to the Communication to the Aarhus Compliance Committee, at

<http://www.unece.org/fileadmin/DAM/env/pp/compliance/Communications/PRE-ACCC-C-2015-135-France/Communication_Att2_freFrance_Janin_04.11.2015.pdf>, p. 2.

- (18) Ruling, p. 3 on the English version
<http://www.unece.org/fileadmin/DAM/env/pp/compliance/Communications/PRE-ACCC-C-2015-135-France/Att1_Eng_Communication_France_Janin_04.11.pdf>
- (19) Loi n° 76-629 du 10 juillet 1976 relative à la protection de la nature (OJFR 13 July 1976) ; Article L. 142-1 of the Environmental Code.
- (20) CE, 17 mars 2014, *Association des consommateurs de la Fontaulière*, N°354596.
- (21) F. Ost, *Droit et intérêt*, Vol. 2, Facultés universitaires de Saint-Louis, 1990.
- (22) CE, 25 juillet 2013, N° 355745.
- (23) B. Grimonprez, « L'accès au procès civil des associations de défense de l'environnement », in V. Donier, B. Lapérou- Scheneider (dir.), *op. cit.*, p. 292.
- (24) On the procedure of approval, see Article L. 141-1 of the Code of Environment ; Decree n° 2011-832 of 12 July 2011 relatif à la réforme de l'agrément au titre de la protection de l'environnement et à la désignation des associations agréées, organismes et fondations reconnues d'utilité publique au sein de certaines instances.
- (25) M. Eliantonio, Ch.W. Backes, C.H. van Rhee, T.N.B.M. Spronken and A. Berlee, *Standing Up for Your Right(s) in Europe – A Comparative Study on Legal Standing (Locus Standi) before the EU and Member States' Courts*, at <<http://www.europarl.europa.eu/RegData/etudes/etudes/join/2012/46247.EN.pdf> >, p. 83.
- (26) J. Makowiak, *French report*, at <http://ec.europa.eu/environment/aarhus/access_studies.htm>, p. 16.
- (27) It is worth noting that for other legal systems, such as Germany, the impact has instead been very significant. See e.g. M. Eliantonio, Ch.W. Backes, C.H. van Rhee, T.N.B.M. Spronken and A. Berlee, *op. cit.*
- (28) This was made clear in a decision from the Compliance Committee in a case concerning Belgium (C/2005/11 Belgium, para 35).
- (29) Regulation 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species [2014] OJ L 317/35.
- (30) Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC [2005] OJ L156/17. On the interplay between the Aarhus Convention and EU law, see e.g. Jonas Ebbeson, Access to Justice at the National Level – Impact of the Aarhus Convention and European Union Law, in: M. Pallemarts (ed) *The Aarhus Convention at Ten – Interactions and Tensions between Conventional International Law and EU Environmental Law* 247 (Europa Law Publishing 2011).
- (31) Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment [1985] OJ L175/40 as amended by Directive 97/11/EC [1997] OJ L73/5 and Directive 2003/35/EC [2003] OJ L156/17.
- (32) Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control [1996] OJ L257/26. This Directive has been amended again, and has been renamed the Industrial Emissions Directive: Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) [2010] OJ L334/17.
- (33) It is worth mentioning that, in its Communication to the Aarhus Compliance Committee, the

applicant grounded his complaint on a possible violation of Article 9(2) of the Convention. However, the act which the applicant challenged before the national court, and with the regard to which his participatory position has allegedly been violated, cannot be considered as falling within the scope of application of Article 9(2) of the Convention. See the comments by France on the preliminary decision on admissibility, at

<http://www.unece.org/compliance/Correspondence_with_Party_concerned/2015.pdf>

- (34) Proposal for a Directive of the European Parliament and of the Council on access to justice in environmental matters, COM(2003) 624 final.
- (35) European Commission, 'Explanatory Consultation Document', at <<http://ec.europa.eu/environment/consultations/pdf/access.pdf>>, p. 2.
- (36) European Commission, 'Roadmap, Commission Initiative on Access to Justice in Environmental Matters at Member State Level in the Field of EU Environment Policy', at <http://ec.europa.eu/smart-regulation/docs/access_to_justice_en.pdf>, p. 1.
- (37) The Commission has undertaken a number of studies: European Commission, 'The Aarhus Convention: 2012/2013 Access to Justice Studies', at <http://ec.europa.eu/environment/aarhus/access_studies.htm>.
- (38) Case C-240/09 *Lesoochránárske zoskupenie VLK v Ministerstvo životného prostredia Slovenskej republiky* [2011] ECR I-1255. For a comment on this case, see M. Eliantonio, 'Case C-240/09 *Lesoochránárske zoskupenie VLK v. Ministerstvo životného prostredia Slovenskej republiky*, Judgment of the Court of Justice (Grand Chamber) of 8 March 2011' (2012) CMLRev p. 767.
- (39) CE, 5 avril 2006, *Mme Dupont et al*, n° 275742, Rec. Lebon, p. 1042
- (40) J. Bétaille, « The direct effect of the Aarhus Convention as seen by the French "Conseil d'Etat" », *Environmental Law Network International Review*, n° 2/2009, p. 63.
- (41) Y. Aguila, Rapport sur la France – L'étendue du contrôle du juge dans les Etats membres, Special Issue *Revue Juridique de l'Environnement*, 2009, p. 99.