PROCEDURAL ENVIRONMENTAL RIGHTS IN EUROPE: A COMPARATIVE STUDY OF CJEU AND ECTHR CASE LAW

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ÖN SÖZ

Bu yayın, Petek Bilge tarafından Leiden Üniversitesi Hukuk Fakültesi bünyesinde yürütülen İleri Düzey Avrupa ve Uluslararası İnsan Hakları Hukuku LL.M. Programı kapsamında, 2024- 2025 akademik yılında Prof. Dr. Rick A. Lawson'ın danışmanlığında tamamlanan yüksek lisans tezinin kitaplaştırılmış hâlini oluşturmaktadır. Çalışma, "Avrupa'da Prosedürel Çevre Hakları: ABAD ve AİHM İçtihadının Karşılaştırmalı İncelenmesi" başlıklı konuya odaklanmaktadır.

Bu eserde ele alınan konu, çevrenin korunmasının insan hakları yükümlülükleriyle giderek daha fazla kesiştiği çağdaş hukuk literatürünün kritik bir kavşak noktasında yer almaktadır. Bilgiye erişim, kamu katılımı ve yargıya erişim gibi prosedürel çevre hakları uzun süredir uluslararası çevre hukukunun ayrılmaz bir parçası olmakla birlikte, bu hakların Avrupa yargı sistemleri içinde doktrinel olarak kurumsallaşması hâlen düzensiz ve tartışmalıdır. Bu bağlamda çalışma, iki temel yargı merciinin – Avrupa Birliği Adalet Divanı (ABAD) ile Avrupa İnsan Hakları Mahkemesi'nin (AİHM) – söz konusu prosedürel güvenceleri kendi hukuki düzenleri içinde nasıl yorumladığını ve uygulamaya geçirdiğini sistematik ve analitik bir yaklaşımla incelemektedir.

Bu çalışmayı özgün kılan temel unsur, benimsediği karşılaştırmalı metodolojidir. Yazar, her iki mahkemenin içtihadını kendi yapısal ve normatif bağlamları içinde ele alarak, ortaya çıkan farklılıkların yalnızca Aarhus Sözleşmesi, AB Antlaşmaları ya da Avrupa İnsan Hakları Sözleşmesi gibi uygulanabilir metinler arasındaki lafzî ayrımlardan değil, aynı zamanda ABAD ile AİHM yargılamalarına yön veren farklı kurumsal mantıklardan kaynaklandığını ortaya koymaktadır. Bu çerçevede çalışma, prosedürel çevre haklarının AB hukuku kapsamında nasıl şekillendiğini ve AİHS sistemi içinde pozitif yükümlülükler doktrininin çevresel bağlamda geçirdiği evrimi açıklığa kavuşturmaktadır.

Buna ek olarak, tez çevresel dava pratiğindeki yargısal dönüşümü – yavaş fakat açıkça gözlemlenebilir biçimde – ortaya koyarak literatüre katkı sunmaktadır. Özellikle iklim değişikliği ile kırılgan grupları etkileyen çevresel zararları konu alan güncel ve dönüm noktası niteliğindeki davaların incelenmesi, iki mahkemenin içtihadında hem yakınlaşma noktalarını hem de ayrışmaları ortaya koymaktadır. Bu örtüşme ve farklılaşmalar, ortaya çıkan doktrinel yönelimlere ve Avrupa'da çevre yönetişimi ile insan hakları yargılaması arasındaki giderek gelişen etkileşime ilişkin önemli içgörüler sağlamaktadır.

Bu çalışmada ortaya konan bulgular yalnızca akademik değil, aynı zamanda pratik bir değer de taşımaktadır. Yazar, yorum farklılıklarını, prosedürel engelleri ve kurumsal sınırlamaları tespit ederek hem AB

düzeyinde hem de AİHM sistemi kapsamında gelecekte yapılabilecek mevzuat reformlarına ışık tutabilecek gözlemler sunmaktadır. Ayrıca çalışma, Avrupa yargı pratiğini küresel gelişmeler bağlamına yerleştirerek ve prosedürel hakların etkin biçimde hayata geçirilmesinin güçlü bir çevresel koruma için ön koşul olduğunu göstererek çevresel demokrasi tartışmalarına katkıda bulunmaktadır.

Tezin kitap formatına dönüştürülmesi, bu çalışmanın analitik katkısını ve devam eden akademik tartışmaları zenginleştirme potansiyelini ortaya koymaktadır. Çevre hukuku, insan hakları hukuku ve karşılaştırmalı kamu hukuku alanlarında çalışan araştırmacılar, uygulamacılar ve öğrenciler için bu eser, Avrupa'da prosedürel çevre haklarına ilişkin gelişen içtihadı anlamaya yönelik iyi yapılandırılmış ve ampirik temelli bir çerçeve sunmaktadır.

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FOREWORD

This publication represents the book version of the master's thesis written by Petek Bilge, completed within the Advanced LL.M. in European and International Human Rights Law programme at Leiden University Law School in the 2024-2025 academic year under the supervision of Professor Rick A. Lawson. The study is devoted to the topic "Procedural Environmental Rights in Europe: A Comparative Study of CJEU and ECtHR Case Law."

The subject addressed in this work lies at a critical juncture in contemporary legal scholarship, where environmental protection increasingly converges with human rights obligations. Although procedural environmental rights – access to information, public participation, and access to justice – have long been embedded in international environmental law, their doctrinal consolidation within European judicial systems remains uneven and contested. Against this background, the present study offers a systematic and analytically rigorous examination of how two central judicial bodies – the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR) – interpret and operationalise these procedural guarantees within their respective legal orders.

What distinguishes this work is its comparative methodological approach. The author situates the jurisprudence of both courts within their structural and normative contexts, thereby enabling a more nuanced understanding of the divergences that arise not merely from textual differences in applicable instruments – such as the Aarhus Convention, the EU Treaties, or the European Convention on Human Rights – but also from the distinct institutional logics that guide CJEU and ECtHR adjudication. In doing so, the study elucidates how procedural environmental rights are shaped under EU Law and the evolving doctrine of positive obligations under the ECHR system.

Moreover, the thesis advances the scholarly debate by highlighting the gradual – but discernible – judicial evolution in environmental litigation. An examination of recent landmark cases – particularly those concerning climate change and environmental harm affecting vulnerable groups – reveals both convergences and divergences in the jurisprudence of the two courts. These points of alignment and distinction provide valuable insights into emerging doctrinal trajectories, as well as into the evolving interplay between environmental governance and human rights adjudication in Europe.

The results presented in this study possess not only academic value but also practical relevance. By identifying interpretative inconsistencies, procedural barriers, and institutional constraints, the author provides a set of observations that may inform future legislative reforms at both EU and

ECtHR levels. Furthermore, the work contributes to the broader discourse on environmental democracy by situating European judicial practice within global developments and by demonstrating how the effective realisation of procedural rights serves as a prerequisite for robust environmental protection.

The transformation of this thesis into a book underscores its analytical contribution and its potential to enrich ongoing scholarly conversations. Researchers, practitioners, and students working in the fields of environmental law, human rights law, and comparative public law will find in this study a well-structured and empirically grounded framework for understanding the evolving jurisprudence on procedural environmental rights in Europe.

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INTRODUCTION

The relationship between environmental protection and human rights has received considerable attention over the recent years. Starting in the 1970s, their relationship slowly developed and led to a substantial amount of case law related to environmental matters before the human rights courts. Given the unprecedented environmental challenges, from climate change and biodiversity loss to pollution and deforestation, this relationship holds even greater significance today. The growing importance of this relationship is also reflected in the recognition of various human rights linked to environmental protection. Within this broader spectrum of environment-related human rights, procedural environmental rights stand out for their emphasis on *environmental democracy*.[1] They ensure that environmental governance is not the exclusive domain of state authorities but a participatory process in which the public plays a central role. While their emergence can be traced back to some of the earliest human rights treaties, they have only gained explicit recognition over the past few decades.

Procedural Environmental Rights: Background and Relevance

When tracing the roots of procedural environmental rights, one can realise that most of the early international human rights treaties include provisions on access to information and justice.[2] Although these treaties

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[1] The term *environmental democracy* was notably used by Kofi Annan in the foreword to Stephen Stec and Susan Casey-Lefkowitz, *The Aarhus Convention: An Implementation Guide* (UN 2000). Emily Barritt describes it as "a concept laden with the essential contestability of its foundational idea (democracy) and the inherent complexity of its modifier (environmental)" in Emily Barritt, *The Foundations of the Aarhus Convention: Environmental Democracy, Rights and Stewardship* (Hart Publishing 2020) 55. Tim Hayward's definition adds clarity by emphasising the role of procedural rights, such as the right to vote and freedom of expression, as fundamental to any democracy, and argues that the same logic extends to environmental democracy in Tim Hayward, *Constitutional Environmental Rights* (OUP 2005) 140-141.

[2] See Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III)), arts 8, 10, 19; Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (adopted 4 November 1950, entered into force 3 September 1953) ETS No 5, arts 6, 10; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 19; African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered

did not explicitly address environmental issues at the time, they laid the foundation for the later recognition of procedural environmental rights. In 1972, the Stockholm Declaration was the first to implicitly acknowledge these rights.[3] Then, in 1992, the Rio Declaration spelt them out more clearly in Principle 10, which provides:

"Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided." [4] *(emphasis added)*

Despite its soft law nature, the Rio Declaration created an important international benchmark and gave momentum to treaty-making on environmental matters.[5] Within this momentum, a turning point came with the adoption of the Aarhus Convention, which was opened for signature by the United Nations Economic Commission for Europe (UNECE) in 1998 and came into effect in 2001.[6] Recognising environmental matters as a human rights concern[7] and building upon the principles recognised in the Stockholm and Rio Declarations, the Aarhus Convention explicitly codified procedural environmental rights under its so-called three pillars:

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into force 21 October 1986) 1520 UNTS 217, arts 3, 7, 9(1), 13.

[3] United Nations Conference on the Human Environment, *Declaration of the United Nations Conference on the Human Environment* (Stockholm, 16 June 1972), preamble paras 6-7.

[4] United Nations Conference on Environment and Development, *Rio Declaration on Environment and Development* (13 June 1992) UN Doc A/CONF.151/26 (Vol I), principle 10.

[5] Jerzy Jendrośka, 'The Substantive Right to Environment and the Procedural Environmental Rights under the Aarhus Convention – Part I' (2023) 21(2) *Opolskie Studia Administracyjno-Prawne* 159; Jonas Ebbesson, 'Getting it Right: Advances of Human Rights and the Environment from Stockholm 1972 to Stockholm 2022' (2022) 52 *Environmental Policy and Law* 83.

[6] Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) (adopted 25 June 1998, entered into force 30 October 2001) 2161 UNTS 447.

[7] Ibid, preamble.

i. *Access to Information*

ii. *Public Participation in Decision Making*

iii. *Access to Justice.*

Under the first pillar, any person, without having to show any reason, can request information from the authorities and must be provided with the information as long as it does not fall within the exemptions, which must be interpreted restrictively.[8] Additionally, public authorities are required to be in possession of up-to-date environmental information and make that information effectively accessible, including on electronic databases.[9] The second pillar ensures public participation in decision-making processes regarding the permitting of certain types of activities, the preparation of certain plans and programmes, executive regulations, and legally binding rules.[10] Supporting the first two pillars, the third pillar focuses on the right to access to justice. It ensures, first, the individual's access to an independent body established by law if their request for information has not been satisfied. Beyond this, it allows individuals to seek review of the decision-making processes related to projects or activities that may have an impact on the environment. Lastly, it guarantees the right to initiate legal proceedings in cases of general violations of environmental law.[11] In light of these, it is evident that the Aarhus Convention is founded on interdependent pillars. Having clear information is essential for meaningful public participation in decision-making processes, and without access to judicial review, the other rights lack the necessary enforcement mechanism for their implementation.

Today, the Aarhus Convention comprises 48 Parties. Notably, several countries, including Türkiye, the United States, Russia, Canada, and Israel, are not among the parties. All the EU Member States, on the other hand, are parties to it. This includes the EU itself, which signed it in 1998 and ratified it in 2005.[12] Upon signing, the EU integrated it into its legislative framework by adopting directives and regulations. Now part of the EU law, the Aarhus Convention – therefore procedural environmental

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[8] Ibid, art 4.

[9] Ibid, art 5.

[10] Ibid, arts 6-8.

[11] Ibid, art 9(1)-(3).

[12] United Nations Treaty Collection, 'Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters' https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-13&chapter=27&clang=_en accessed 29 April 2025.

rights – play an important role in the case law of the CJEU. However, the CJEU is not the only court addressing these rights in its judgments; the ECtHR has also frequently referenced the Aarhus Convention, and despite the lack of an explicit right in the ECHR, recognised procedural environmental rights as part of its substantial body of case law related to environmental matters.

While both courts are adjudicating cases on procedural environmental rights, their interpretations are based on different foundations. This divergence can primarily be attributed to the distinct mandates each court holds. The ECtHR, being a human rights court, shapes and refines human rights standards.[13] The CJEU, on the other hand, is primarily tasked with interpreting and applying EU law.[14] Nonetheless, although only the ECtHR started as a human rights court, the CJEU – the *Court of Justice* back then – gradually acquired a similar role. In its case law, it acknowledged fundamental rights as an integral part of the general principles of law protected by the *Court of Justice* and found a violation of fundamental rights by the EU institutions.[15]

In this context, the ECHR system has been central in the case law of the CJEU, eventually leading to the discussions on the EU's accession to the ECHR and the statement of this aspiration in the founding treaties.[16] However, even before these, the CJEU was frequently referring to the case law of the ECtHR in its judgments.[17] Over the years, this relationship became reciprocal. They both began to pay attention to each other's case law. Ultimately, the ECtHR took this relationship a step further by confirming that EU law provides equivalent protection to the ECHR, unless proven otherwise.[18]

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[13] Rick Lawson, 'The European Convention on Human Rights' in Catarina Krause and Martin Scheinin (eds), *International Protection of Human Rights: A Textbook* (Åbo Akademi University 2009) 423.

[14] Treaty on European Union (TEU) [2016] OJ C202/1, art 19(1).

[15] See **Case 11/70 *Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel*** [1970] ECR 1125; Case 4/73 *Nold v Commission* [1974] ECR 491; Case C-185/95 P *Baustahlgewebe GmbH v Commission* [1998] ECR I-8417.

[16] See TEU (n 14), art 6(2): "The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties."

[17] Romain Tinière, 'The Use of ECtHR Case Law by the CJEU: Instrumentalisation or Quest for Autonomy and Legitimacy?' (2021) 58(2) *Common Market Law Review*, 323-324.

[18] *Bosphorus Airways v Ireland* App no 45036/98 (ECtHR, 30 June 2005).

In the end, today, both courts provide different avenues for human rights protection and engage with environmental rights including its procedural aspect. Considering their long-standing interaction, a comparison between their case law becomes pertinent in order to understand points of divergence and convergence.

Research Question and Methodology

Given the reasons stated above, this thesis attempts to answer the following research question: *How do the CJEU and ECtHR interpret procedural environmental rights, and what are the similarities and differences in their approaches?*

As the research question suggests, the thesis adopts a comparative methodology. For the purposes of comparison, it first analyses each court's case law separately to provide the necessary background. The comparative analysis then focuses on points of convergence and divergence in the courts' interpretation. As a result, the focus of the thesis is more on court judgments rather than academic articles, with most of the referenced materials being case law. While the primary emphasis is on court judgments, other relevant materials like regulations and directives are also addressed. Given its significance, the Aarhus Convention is revisited in the analysis of both courts' case law. Furthermore, the three pillars of the Aarhus Convention are used to structure the chapters on the case law and comparison in order to maintain a consistent framework throughout. Lastly, only for the purpose of clarity and language refinement, Grammarly AI is used.

Structure of the Thesis

As for its structure, the thesis is organised into five chapters. The introduction has set the stage by tracing the roots of procedural environmental rights and the relationship between the CJEU and ECtHR. The Second Chapter builds upon the introduction. It focuses on the foundations of procedural environmental rights in EU law and examines the interpretations adopted by the CJEU. The Third Chapter shifts the focus to the jurisprudence of the ECtHR. It explores how the ECtHR interprets and applies procedural environmental rights within the ECHR framework. The Fourth Chapter offers a comparative analysis. Firstly, it focuses on the jurisdictional differences of the two courts and examines the role of the Aarhus Convention in this context. Secondly, it examines the similarities and differences in the case law of the courts. In the end, the conclusion summarises the findings of the study and highlights points that warrant further attention in the future.

THE CJEU'S APPROACH TO PROCEDURAL ENVIRONMENTAL RIGHTS

This chapter explores the interpretation of procedural environmental rights by the CJEU, with a particular focus on how these rights have been shaped through the Court's jurisprudence. To provide context for the case law analysis, the chapter begins by examining the legal basis and development of procedural environmental rights within the EU legal order.

In order to identify the relevant case law, CJEU's official database, the Court's factsheet, and ClientEarth's guide were consulted.[19] The selected cases were chosen based on their relevance to procedural environmental rights and their suitability for comparison with the case law of the ECtHR. In several instances, cross-references and citations within judgments, as well as the consulted materials, were followed to trace and include pertinent jurisprudence. In instances where cases could fit under multiple subchapters, they were discussed only in the section where they were most relevant, to avoid repetition. Due to the extensive body of jurisprudence from the CJEU, the study concentrates on the most representative and significant cases. As a result, some relevant cases are not included in the scope of the study.

Foundations of Procedural Environmental Rights in EU Law

Beginning in the 1970s – and later reinforced by the Single European Act and the Maastricht Treaty – environmental protection has been a recurring focus for the EU, including its procedural aspect.[20]

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[19] CJEU database https://curia.europa.eu/juris/recherche.jsf?cid=2011021; Court of Justice of the European Union, *Factsheet on Public Access to Environmental Information* (2017) https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-05/fiche_thematique_-_environnement_-_en.pdf; ClientEarth, *Access to Justice in European Union Law: A Legal Guide on Access to Justice in Environmental Matters* (2021) https://www.clientearth.org/media/fesgdu3u/clientearth_guide_2021_gb_bat.pdf all accessed 28 June 2025.

[20] The Single European Act introduced environmental protection as a formal objective of the Community for the first time, by adding Title VII on 'Environment' (Articles 130r–130t EEC, now Articles 191–193 TFEU). Article 130r(1) outlined the Community's environmental objectives, including

Frequently referring to its commitment to be an open society,[21] in its founding treaties, the EU has a substantial amount of legislation addressing procedural environmental rights. In this regard, the Aarhus Convention has played a transformative role in shaping the EU legal framework. However, it was not only with the Aarhus Convention that the EU began addressing these rights. Relevant legislative measures had already been adopted prior to its accession to the Aarhus Convention. To provide a comprehensive analysis, Section 2.1. is structured as *Before the EU's Accession to the Aarhus Convention* and *After the EU's Accession to the Aarhus Convention.*

Before the EU's Accession to the Aarhus Convention

Before its accession to the Aarhus Convention, the EU – the European Community at the time – still had several legislative instruments addressing procedural environmental rights. Directive 90/313/EEC[22], Environmental Impact Assessment (EIA) Directive[23], Integrated Pollution Prevention and Control (IPPC) Directive[24], and the Access to Documents Regulation[25] were the most prominent ones. In fact, some of these instruments served as a basis for the Aarhus Convention.[26] However, they

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environmental protection, human health, and the rational use of natural resources. The Maastricht Treaty later amended this provision (renumbered as Article 174 EC), adding a new objective: promoting international action on global and regional environmental issues; See David Langlet and Said Mahmoudi, 'Objectives, Principles, and Resources' in EU Environmental Law and Policy (OUP 2016) 27, 33.

[21] Ludwig Krämer, 'The EU, Access to Environmental Information and the Open Society' (2013) 14 *ERA Forum* 463, 464 (referring to the concept of the "open society" as used by Karl Popper).

[22] Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment [1990] OJ L158/56, hereinafter referred as "Directive 90/313/EEC".

[23] Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment [1985] OJ L175/40, hereinafter referred as "EIA Directive".

[24] Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control [1996] OJ L257/26, hereinafter referred as "IPPC Directive".

[25] Council Regulation (EC) No 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents [2001] OJ L145/43, hereinafter referred as "Access to Documents Regulation".

[26] Peter Oliver, 'Access to Information and to Justice in EU Environmental Law: The Aarhus Convention' (2013) 36 *Fordham International Law Journal* 1423,

were quite specific in nature and did not create a general framework. Directive 90/313/EEC focused solely on access to information held by public authorities.[27] The EIA Directive was limited to projects requiring environmental impact assessment, and the IPPC Directive addressed only specific industrial installations.[28] The Access to Documents Regulation pertained to access to documents held by the EU institutions in general and did not specifically address environmental matters. Therefore, these instruments were unable to establish a coherent framework for procedural environmental rights. However, they provided important groundwork for the EU's later engagement with the Aarhus Convention.

By the time the EU ratified the Convention, many of its Member States had already signed and ratified it. However, some Member States – including Germany – ratified it only after the EU's formal ratification on 17 February 2005:

EU Member State	Ratification Date
Sweden	20 May 2005
Luxembourg	25 Oct 2005
Slovakia	5 Dec 2005
Greece	27 Jan 2006
Germany	15 Jan 2007
Ireland	20 Jun 2012

As of now, all 27 EU Member States are parties to the Aarhus Convention. Among the nine EU candidate countries, eight have ratified the Convention, while Türkiye remains the only candidate country that has not ratified it and thus is not a party to the Convention.[29]

After the EU's Accession to the Aarhus Convention

The EU's signing and ratification of the Aarhus Convention marked a significant shift in the role of procedural environmental rights within EU law. As per the TEC – the treaty in force at the time of the Aarhus Convention's ratification – as an international agreement concluded by the

1426; Jonathan Verschuuren, 'Public Participation Regarding the Elaboration and Approval of Projects in the EU After the Aarhus Convention' in T Malmberg (ed), *The Aarhus Convention in Practice* (Stockholm Environmental Law and Policy Centre 2008) 39.

[27] Directive 90/313/EEC (n 22), art 3.

[28] EIA Directive (n 23), art 6; IPPC Directive (n 24), art 15.

[29] See United Nations Treaty Collection, 'Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters' https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-13&chapter=27&clang=_en accessed 20 June 2025.

EU it was binding on the institutions of the Community and on the Member States.[30] The treaty now in force – the TFEU – provides for the same.[31] Therefore, being an international agreement concluded by the EU, the Aarhus Convention forms an integral part of EU law.[32]

Upon its signing, efforts were made to adopt secondary law to implement it. This rather challenging processes resulted with two directives that actually predate the ratification of the Aarhus Convention by the EU:

Firstly, Directive 2003/4/EC[33], replacing Directive 90/313/EEC, addresses the first pillar of the Aarhus Convention. It places an obligation on the Member States to ensure the right of access to environmental information.[34] Like the Aarhus Convention, it provides the right for both natural and legal persons without them having to state any interest in the disclosure of the information.[35] It defines environmental information in a quite broad scope, going even beyond the Aarhus Convention's definition: it includes human health and safety, conditions of human life, and cultural sites; elements not listed in the Aarhus Convention.[36] Its definition of the public authority, like the Aarhus Convention, does not include bodies acting in a judicial and legislative capacity.[37] It provides a number of exceptions to the right to access to information, quite similarly to the Aarhus Convention. Nonetheless, along with exceptions, it also introduces a balancing test between the public interest in disclosure and the interest protected by the refusal.[38] Secondly, Directive 2003/35[39] addresses public participation in decision-making. It brings amendments to the existing EIA and IPPC Directives with the aim of aligning them with the Aarhus

[30] Treaty Establishing the European Community (TEC) [2002] OJ C325/33, art 300(7).

[31] Treaty on the Functioning of the European Union (TFEU) [2012] OJ C326/47, art 216(2).

[32] Case 181/73 *Haegeman v Belgian State* [1974] ECR 449.

[33] Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information [2003] OJ L41/26, hereinafter referred as "Directive 2003/4/EC".

[34] Ibid, art 3(1).

[35] Ibid, arts 2(5), 3(1).

[36] Ibid, art 2(1)(f).

[37] Ibid, art 2(2).

[38] Ibid, art 4.

[39] 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 [2003] OJ L156/17, hereinafter referred as "Directive 2003/35/EC".

Convention. Under the directive, Member States are obliged to ensure that the public is informed of proposed plans and has access to relevant information, including how to participate and where to submit comments.[40]

With these directives, the first two pillars of the Aarhus Convention were addressed straightforwardly. The access to justice pillar, on the other hand, was not that easily addressed. A separate law on this pillar has still not been adopted today. However, the pillar is not completely outside the EU's reach. The directives mentioned above have provisions addressing this pillar. Directive 2003/4/EC provides that, in the case of a violation of the right to access to environmental information, applicants must have access to an independent and impartial body established by law.[41] The decisions of this body shall be binding on the authority holding the information.[42] Directive 2003/35 provides for judicial remedies in the case of a breach of the right to public participation in decision-making processes.[43] Moreover, the founding treaties also address this pillar. Article 263(4) of TFEU ensures the right to access to justice for natural and legal persons. However, the provision's direct and individual concern requirement restricts the scope of applicants who can bring a claim. More on this article and the CJEU case law on it is discussed in Section 2.2.3.1.

Apart from these directives, in 2006, a regulation was adopted, the Aarhus Regulation[44], in order to complement the *pre-Aarhus* Access to Documents Regulation. It consists of provisions on implementing the Aarhus Convention with regard to EU institutions and bodies. It excludes bodies acting in judicial capacity but includes those acting in legislative capacity, providing a broader definition than in the Aarhus Convention.[45] One of its most significant features is the introduction of an internal review procedure for NGOs, allowing them to request the EU institutions to

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[40] Ibid, art 2(2).

[41] Directive 2003/4/EC (n 33), art 6(1).

[42] Ibid, art 6(2).

[43] Directive 2003/35/EC (n 39), arts 3(7), 4(4).

[44] Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention to Community institutions and bodies [2006] OJ L264/13, hereinafter referred as the "Aarhus Regulation".

[45] Aarhus Regulation (n 44), art 2(1)(c); Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) (adopted 25 June 1998, entered into force 30 October 2001) 2161 UNTS 447, art 2.

reconsider their decisions.[46] More on the internal review procedure follows in Section 2.2.3.2.

Against this background, Section 2.2. examines the case law of the Court.

The CJEU Case Law on Procedural Environmental Rights

Before turning to the comparison, a brief explanation on the structure of the CJEU and its predecessor *Court of Justice* is deemed necessary. Prior to entry into force of the Lisbon Treaty, the structure of the *Court of Justice* included the Court of Justice, the CFI, and judicial panels.[47] Decisions of the CFI could, in exceptional cases, be reviewed by the Court of Justice.[48] Following the Lisbon Treaty, the structure of the Court has changed. Today, the Court of Justice is replaced by CJ; and CFI is replaced by GC; judicial panels are replaced by specialised courts.[49] Appeals against judgments of the GC may be brought before the CJ. Together, the CJ, GC, and specialised courts form the CJEU.

When referring to the courts' names in the text, this structure has been followed and "the Court" has been used to address both *pre-Lisbon* and *post-Lisbon* structure.

Access to Environmental Information

When looking at the Court's case law on access to environmental information, it is considered appropriate to first focus on what the Court understands from the term *environmental information.* For this purpose, Section 2.2.1.1. explains the Court's interpretation of the term. The section's focus is on cases that illustrate the Court's understanding under Directive 2003/4/EC and its predecessor, Directive 90/313/EEC. Additionally, Section 2.2.1.2. focuses on the limitations of the right.

Defining Environmental Information

The Court, in *Mecklenburg,* interpreted the term *information relating to the environment* under Article 2(a) of Directive 90/313/EEC. The application concerned a preliminary ruling asking whether the term would include a public authority's statement given in a development consent proceeding.[50] The Court's response was that the term *information*

[46] Aarhus Regulation (n 44), art 10(1).

[47] TEC (n 30), art 220.

[48] Ibid, art 225(1).

[49] Treaty on European Union (TEU) [2016] OJ C202/1, art 19(1).

[50] Case C-321/96 *Wilhelm Mecklenburg v Kreis Pinneberg – Der Landrat* ECLI:EU:C:1998:300, para 16.

relating to the environment was intended to be very broad. Therefore, it would include "any information on the state of the various aspects of the environment mentioned therein as well as on activities or measures which may adversely affect or protect those aspects, including administrative measures and environmental management programmes."[51] Accordingly, it held that even a public authority's opinion given in a development consent procedure would be deemed environmental information, provided that it is capable of influencing the outcome of the proceedings.[52]

This approach was reaffirmed by the Court in *Commission v France.* Brought under an infringement procedure by the Commission, the application concerned the French government's failure to transpose the Directive 90/313/EEC into its national legislation. The Commission argued that the scope of French law on *information relating to the environment* was narrower than in the directive. The Court in its findings reiterated that the wording of the relevant provision as *"any ... information"* was indicative of an intentionally wide scope. Therefore, according to the Court, the term "covers all information which relates either to the state of the environment or to activities or measures which could affect it, or to activities or measures intended to protect the environment, without the list in that provision including any indication such as to restrict its scope".[53] Consequently, even documents that are not related to carrying out a public service would constitute environmental information.[54] The Court's broad understanding continued also with regard to Article 2(1) of Directive 2003/4/EC. In *Stichting Natuur en Milieu and Others,* under a preliminary ruling procedure, it held that data submitted in a national procedure to set maximum pesticide residue levels in food would be considered environmental information since it concerns elements of environment that could be affected by those residues and impact human health.[55]

In addition, the scope of *information relating to emissions into the environment*[56] has been clarified by the Court. In *Bayer CropScience and Stichting De Bijenstichting,* the Court again adopted an expansive approach. It held that the term covers "not only information on emissions as such, namely information concerning the nature, composition, quantity, date and place of those emissions but also data concerning the medium to long-

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[51] Ibid, para 19.

[52] Ibid, para 22.

[53] Case C-233/00 *Commission v France* ECLI:EU:C:2003:371, para 44.

[54] Ibid, para 47.

[55] Case C-266/09 *Stichting Natuur en Milieu and Others v College voor de toelating van gewasbeschermingsmiddelen en biociden* ECLI:EU:C:2010:779, para 42.

[56] Directive 2003/4/EC (n 33), art 4(2) subpara 2.

term consequences of those emissions on the environment".[57] In other words, the public must have the right to know what will be released into environment, but also how will the released emission affect environment.[58] Moreover, with regard to the Aarhus Regulation, in *Comission v Stichting Greenpeace Nederland and PAN Europe*, any restrictive interpretation of the term has been prohibited by the Court.[59]

Another point that stands out in the Court's case law is its interpretation of the exceptions for providing access to environmental information.

Exemptions for Providing Environmental Information

Article 4(2) of Directive 2003/4/EC provides for exceptions where the information request may be refused. According to the provision, in every particular case, the public interest in the disclosure must be weighed against the interest served by the refusal.

In *Stichting Natuur en Milieu and Others,* the question was whether this public interest test should be carried out in every particular case, or it can be done in a general legislative measure. The Court held that, the authority must, in every particular case, specifically examine the situation and check if the interest in secrecy outweighs the public's interest in disclosure.[60] The information has to be released if the public-interest outweighs the protected interest in secrecy. In *Office of Communications v Information Commissioner,* it stressed that "disclosure of information should be the general rule and that public authorities should be permitted to refuse a request for environmental information only in a few specific and clearly defined cases." Accordingly, "the grounds for refusal should be interpreted restrictively, in such a way that the public interest served by disclosure is weighed against the interest served by the refusal."[61] In the same judgment, the requested data – mobile phone base station location – implicated several Article 4(2) grounds like public safety and intellectual property rights.[62] The Court, in this instance, held that when multiple exception grounds are at play an authority may cumulatively take into account

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[57] Case C-442/14 *Bayer CropScience and Stichting De Bijenstichting v College voor de toelating van gewasbeschermingsmiddelen* ECLI:EU:C:2016:838, para 87.

[58] Ibid, para 86.

[59] Case C-673/13 P *Commission v Stichting Greenpeace Nederland and PAN Europe* ECLI:EU:C:2016:889, para 51.

[60] *Stichting Natuur en Milieu and Others* (n 55), para 52.

[61] Case C-71/10 *Office of Communications v Information Commissioner* ECLI:EU:C:2011:525, para 22.

[62] Ibid, para 12.

multiple refusal grounds through the lens of the balancing test, which again must be done in every particular case.[63] Therefore, even if more than one exemption is relevant, the decision still depends on the outcome of the balancing test. Also, cumulatively taking into account the grounds cannot introduce another exception in addition to those listed in the provision.[64]

In addition, Article 4(2)(a) of Directive 2003/4/EC requires closer look. This provision allows refusal if disclosure would adversely affect "the confidentiality of the proceedings of public authorities, where such confidentiality is provided for by law". This exception was also interpreted strictly by the CJ. In *Flachglas Torgau GmbH v Germany,* which concerned a ministry's refusal to release documents from a law-making procedure, it held that the *provided by law* condition requires an express provision in national law safeguarding the confidentiality of those proceedings.[65] A general legal context would not be enough.[66] The requirement of being provided by law would apply "without prejudice to … the obligation of the public authority concerned to balance the interests involved in each particular case".[67] Therefore, still the balancing test between the public interest and the interest in secrecy remains in place.

Furthermore, Article 2(2) of Directive 2003/4/EC excludes bodies acting in a legislative capacity from the definition of *public authority.* The Court has addressed this with regard to the Member States' ability to treat certain law-making bodies as entirely outside the Directive's scope. In the same case of *Flachglas Torgau,* the Court was asked whether a ministry could be considered as a body acting in a legislative capacity to the extent that it participates in legislative process.[68] Taking a functional approach, the CJEU held that a ministry can be excluded as acting in a legislative capacity only to the extent it is actually participating in the legislative process.[69] Moreover, it stated that the derogation from the rules of the directive "may not be interpreted in such a way as to extend its effects beyond what is necessary to safeguard the interests which it seeks to secure" and the scope of the derogation "must be determined in the light of the aims" of the directive.[70] Similarly, in the case of *Deutsche Umwelthilfe,* the Court

[63] Ibid, para 28-29.

[64] Ibid, para 31.

[65] Case C-204/09 *Flachglas Torgau GmbH v Bundesrepublik Deutschland* ECLI:EU:C:2012:71, para 59.

[66] Ibid, para 61.

[67] Ibid, para 64.

[68] Ibid, para 33.

[69] Ibid, para 49-51.

[70] Ibid, para 38.

reaffirmed its position. Under a preliminary ruling procedure, it was asked whether ministries could be held exempt when they prepare and adopt normative regulations under enabling legislation.[71] As a response, the CJ refused to include the adoption of normative regulations that are of a lower rank than a law within the legislative capacity exclusion.[72] Therefore, in sum, it can be stated that the Court's case law takes an approach where the public authorities cannot escape the transparency obligations by an expansive reading of acting in a legislative capacity.

Lastly, Directive 2003/4/EC and the Court's emphasis on access to information about emissions into the environment needs mentioning. Directive 2003/4/EC provides that a request for information may not be refused on several grounds – including protection of commercial or industrial information – if the request relates to information on emissions into the environment.[73] As mentioned in Section 2.2.1.1., the CJEU applied this principle in *Bayer CropScience*. It took an expansive approach and held that the term would include a wide range of data, not only direct measurements of emissions but also information on nature, composition, quantity and effect of emissions.[74] By defining the term expansively, the Court ensured that companies could not hide information based confidentiality claims, making it clear that if the information concerns emissions into environment, the authority cannot withhold the information on the ground of commercial confidentiality.

Public Participation in Decision-Making

The Court, at different times, ruled on cases regarding the public's right to participate in decision-making processes. The case of *Križan and Others,* in this respect, was illustrative. The Court, in this case, emphasised that public participation must take place when all options are clear and can genuinely be taken into account by the public. In other words, authorities must not bypass the participation process by taking important decisions beforehand.[75] In this case, a permit for a waste landfill was issued without the public's access to a crucial urban planning decision on the site location. The Court found that this violated the public's participatory rights. The location decision contained relevant information for the environmental permit and thus "the public concerned must, in principle, have access to it

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[71] Case C-515/11 *Deutsche Umwelthilfe eV v Bundesrepublik Deutschland* ECLI:EU:C:2013:523, para 18.

[72] Ibid, para 36.

[73] Directive 2003/4/EC (n 33), art 4(2) subpara 2.

[74] *Bayer CropScience* (n 57), para 87.

[75] Case C-416/10 *Križan and Others v Slovenská inšpekcia životného prostredia* ECLI:EU:C:2013:8, para 88.

during the authorisation procedure."[76] With this, the Court made it clear that all information that is relevant to the decision-making must be disclosed to the public concerned before the decision is taken, so the public can take meaningful part in the process.

Another aspect addressed by the Court concerned situations where a decision is taken without the required public participation. In *Gemeinde Altrip and Others,* the question was whether a failure to properly involve the public in an environmental impact assessment process necessitated annulment of the development consent. The CJ, in this case, held that a planning decision does not need to be overturned for a procedural defect if that defect clearly had no influence on the outcome. The burden would be on authorities to show that the error was inconsequential.[77]

The following section turns to the Court's case law on access to justice in environmental matters.

Access to Justice in Environmental Matters

Within the EU, in environmental cases, there are three main methods of challenging acts and omissions of EU institutions:

i. *Actions for Annulment under the TFEU,*
ii. *Internal Review Procedure under the Aarhus Regulation,*
iii. *Preliminary References by National Courts.*[78]

Thus, the case law on access to justice in environmental matters is analysed based on these three methods. In this scope, the extent to which EU law imposes obligations on domestic authorities, including national courts, with regard to procedural environmental rights is not included in the study.

Actions for Annulment under Article 263 TFEU and NGO Standing

Article 263(4) of TFEU sets out the conditions under which proceedings against EU institutions can be brought before the EU courts – procedure known as action for annulment. The article provides that any natural or legal person may institute proceedings against:

i. *An act addressed to that person; or*

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[76] Ibid, para 79.

[77] Case C-72/12 *Gemeinde Altrip and Others v Land Rheinland-Pfalz* ECLI:EU:C:2013:712, para 57.

[78] ClientEarth, *Access to Justice in European Union Law: A Legal Guide on Access to Justice in Environmental Matters* (n 19), 61-62.

ii. *An act which is of direct and individual concern to them; and*

iii. *A regulatory act which is of direct concern to them and does not entail implementing measures.*[79] *(emphasis added)*

In order to bring a case before the CJEU, plaintiffs need to comply with these standing rules. Under these rules, decisions that are addressed to the applicants do not require further conditions. This is relevant, for instance, when a document request is rejected by an EU institution. The direct and individual concern requirement, on the other hand, is quite strict.[80] Within this context, there appears to be a big hurdle for the environmental NGOs. The so-called *Plaumann test*[81] developed by the Court, stand in the way of NGOs. According to this test, "persons other than those to whom a decision is addressed may only claim to be individually concerned if that decision affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons".[82] So, the NGOs need to be singled out by the decision. General interests shared with others do not suffice. This test has been strictly applied by the Court. Therefore, most environmental NGOs have been barred from bringing cases. Despite this, promising attempts have also been made to soften the *Plaumann test.* In *Jego-Quere,* the CFI challenged the situation by finding the applicant individually concerned.[83] It held that "a natural or legal person is to be regarded as individually concerned by a Community measure of general application that concerns him directly if the measure in question affects his legal position, in a manner which is both definite and immediate, by restricting his rights or by imposing obligations on him."[84] However, on appeal the decision was overturned by the Court of Justice, referring to the *Plaumann test.*[85] Again, in *Unión de Pequeños Agricultores,* the Court of Justice rejected the same claim. It insisted that only a treaty amendment – not judicial innovation – could change standing rules.[86]

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[79] TFEU (n 31), Art 263(4).

[80] ClientEarth, *Access to Justice in European Union Law: A Legal Guide on Access to Justice in Environmental Matters* (n 19), 68.

[81] Case 25/62 *Plaumann & Co v Commission* [1963] ECR 95.

[82] Ibid, admissibility para 8.

[83] Case T-177/01 *Jégo-Quéré & Cie SA v Commission* ECLI:EU:T:2002:112, para 53.

[84] Ibid, para 51.

[85] Case C-263/02 P *Commission v Jégo-Quéré* ECLI:EU:C:2004:210, para 45.

[86] Case C-50/00 P *Unión de Pequeños Agricultores v Council of the European Union* ECLI:EU:C:2002:462, para 45.

Consequently, in 2009, Lisbon Treaty brought a modest amendment to Article 230 of TEC.[87] It introduced the third limb of Article 263(4) of TFEU, which allows challenging certain regulatory acts. With that, the scope of acts that can be challenged has been broadened. However, in practice this did not really solve the issue. NGOs continue to face challenges accessing the courts. For instance, in 2016, an environmental NGO sought to challenge an EU measure on pesticides as a directly concerning regulatory act in the case of *PAN Europe and others*. The GC rejected the case as inadmissible, stating that the requirements under the third limb of Article 263(4) were not met.[88] Likewise, individuals have also struggled to meet these criteria. In 2019, the case of *Carvalho and Others*, concerning climate change, was brought by 36 individuals and an association to challenge the EU's 2030 climate target regulation. Both the GC and the CJ found that the applicants were not individually concerned, and the regulatory act route was inapplicable to a legislative act.[89]

Internal Review under the Aarhus Regulation

Following the EU's ratification of the Aarhus Convention in 2005, the Aarhus Regulation was adopted in 2006.[90] Recognising that both individuals and NGOs often struggle to access the EU Courts, the Aarhus Regulation introduced an internal review procedure. This procedure allowed certain NGOs to challenge administrative acts and omissions by the EU institutions.[91] Under the regulation, in order to challenge the acts and omissions of the EU institutions NGOs needed to comply with the following criteria:

i. *It is an independent, non-profit legal person under national law;*
ii. *It has the primary stated objective of promoting environmental protection in the context of environmental law;*
iii. *It has existed for more than two years and is actively pursuing that objective; and*
iv. *the subject matter of the request falls within its stated objective and*

[87] See Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community [2007] OJ C306/1.

[88] Case T-600/15 *Pesticide Action Network Europe and Others v Commission* ECLI:EU:T:2016:601, paras 62-63.

[89] Case T-330/18 *Carvalho and Others v Parliament and Council* ECLI:EU:T:2019:324, paras 46-52; Case C-565/19 P Carvalho and Others v European Parliament and Council ECLI:EU:C:2021:252, paras 76-80.

[90] Aarhus Regulation (n 44).

[91] Ibid , art 10(1).

activities.[92]

NGOs that meet these criteria could ask the EU institutions to reconsider their decisions. If the request is refused or does not adequately remedy the issue, they could then bring an action before the CJ.[93] However, the scope of the internal review procedure was heavily criticised for being too limited. Firstly, because it did not include individuals; and, as seen, covered only NGOs with certain qualifications. Moreover, it subjected only administrative acts and omissions to this review, which were defined as:

"(g) 'administrative act' means any measure of individual scope under environmental law, taken by a Community institution or body, and having legally binding and external effects;

(h) 'administrative omission' means any failure of a Community institution or body to adopt an administrative act as defined in (g)." [94] *(emphasis added)*

The scope of the "administrative acts" was also quite limited. As seen, only those acts that were of an individual scope under environmental law, and that have legally binding and external effects were within the scope.

In this context, the term "individual scope" was interpreted by the Court in *Mellifera v Commission*. In the judgment, the Court clarified when an act can possess general application, thereby illustrating instances where there is no individual scope. It held that "an act has general applicability if it applies to objectively determined situations and produces legal effects with regard to categories of persons envisaged in a general and abstract manner".[95] Moreover, according to the Court, "the general applicability of an act is not called into question by the fact that it is possible to determine more or less exactly the number or even the identity of the persons to whom it applies at any given time, as long as it applies to them by virtue of an objective legal or factual situation defined by the measure in question in relation to its purpose."[96] So, it is immaterial that the law concerns only one person.[97] The "individual scope" has therefore been interpreted by the Court in a very limited way.

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[92] Ibid, art 11.

[93] Ibid, art 12(1).

[94] Aarhus Regulation (n 44), art 2(1)(g)(h).

[95] Case C-784/18 P *Mellifera v Commission* ECLI:EU:C:2020:630, para 66.

[96] Ibid, para 67.

[97] ClientEarth, *Access to Justice in European Union Law: A Legal Guide on Access to Justice in Environmental Matters* (n 19), 64.

Regarding the term "under environmental law", the Court, in *ClientEarth v EIB,* held that the concept must be interpreted broadly to include any measure of individual scope subject to requirements under secondary EU law which, regardless of their legal basis, directly aims to achieve EU environmental policy objectives.[98] As for the requirement that the act has "legally binding and external effects," the Court, in the same case of *ClientEarth v EIB,* held that this term should be interpreted in light of Article 263 TFEU, which pertains to acts intended to produce legal effects concerning third parties. Hence, the term under the regulation would also refer to acts that generate legal effects with respect to third parties.[99]

With these, the regulation fell short of Article 9(3) of the Aarhus Convention which does not limit the scope of acts and omissions. The provision provides:

" ... each Party shall ensure that, ... members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment." (emphasis added)

This gap between the two raised the question of whether the Aarhus Regulation had any added value for the implementation of the Aarhus Convention and for procedural environmental rights. Given its limited scope, the answer appeared to be in the negative.[100] This was also supported by the outcome of the communication lodged with the ACCC by ClientEarth in 2008. In this communication ClientEarth and other applicants alleged failure by the EU to comply with the Aarhus Convention's requirements on access to justice, specifically Article 9(2)-(5).[101] After a considerable time, the ACCC, in 2017, found the EU to be in violation of the access to justice provisions of the Aarhus Convention.[102] Following an initial refusal to comply with the ACCC's findings, members

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[98] Case T-9/19 *ClientEarth v EIB* ECLI:EU:T:2021:42, para 126.

[99] Ibid, para 149.

[100] Charles Poncelet, 'Access to Justice in Environmental Matters – Does the European Union Comply with Its Obligations?' (2012) 24 *Journal of Environmental Law* 287, 307.

[101] ClientEarth, *Communication to the Aarhus Convention Compliance Committee* (1 December 2008) https://unece.org/fileadmin/DAM/env/pp/compliance/C2008-32/communication/Communication.pdf accessed 22 June 2025.

[102] Aarhus Convention Compliance Committee, *Findings and Recommendations of the Compliance Committee with regard to Communication ACCC/C/2008/32 (Part II) concerning compliance by the European Union* (Part II, 2 June 2017), para 122.

of the European Parliament reached an agreement in 2021 to amend the Aarhus Regulation.[103] On 6 October, 2021, Regulation 2021/1767 amended the Aarhus Regulation.[104]

One of the most important changes the Regulation 2021/1767 brought was with regard to the scope of administrative acts and omissions. It replaced the provisions as follows:

"(g) 'administrative act' means any non-legislative act adopted by a Union institution or body, which has legal and external effects and contains provisions that may contravene environmental law within the meaning of point (f) of Article 2(1);

(h) 'administrative omission' means any failure of a Union institution or body to adopt a non-legislative act which has legal and external effects, where such failure may contravene environmental law within the meaning of point (f) of Article 2(1)."[105] *(emphasis added)*

By removing the restriction of "individual scope", the amendment broadened the scope of administrative acts and opened the door for a wider range of acts to be subject to internal review. Although the reform has not led to a dramatic increase in the number of internal review requests, it has nonetheless been utilised by NGOs.[106]

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[103] European Parliament, 'MEPs reach deal to ensure access to environmental justice for EU citizens' (Press release, 12 July 2021) https://www.europarl.europa.eu/news/en/press-room/20210708IPR08022/meps-reach-deal-to-ensure-access-to-environmental-justice-for-eu-citizens accessed 22 June 2025.

[104] Regulation (EU) 2021/1767 of the European Parliament and of the Council of 6 October 2021 amending Regulation (EC) No 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies [2021] OJ L356/1.

[105] Ibid, art 1(1).

[106] Juliette Delarue, 'The Amended EU Aarhus Regulation One Year In: New Requests in Review' (ClientEarth, 7 March 2023) https://www.clientearth.org/projects/access-to-justice-for-a-greener-europe/updates-annual-newsletters/the-amended-eu-aarhus-regulation-one-year-in-new-requests-in-review/ accessed 25 June 2025.

Preliminary Rulings under Article 267 TFEU

Under Article 267 of the TFEU, the CJEU can give preliminary rulings upon the national courts' referral of a question. The questions may relate to the validity and/or interpretation of EU law. National courts may refer questions when necessary to resolve a case and must do so if no further appeal is possible under national law. This mechanism helps ensure uniform and harmonised application of EU law across Member States.[107]

On this issue, *Greenpeace and Others v Commission* was an important case. In this case, Greenpeace together with other associations and local residents sought to annual an EU approval for a power plant. The CFI did not soften the individual concern test and held that local residents and NGOs were affected in the same way as any member of the public in the area. Therefore they were not individually concerned.[108] When appealing to the CJ, applicants claimed that there was a legal vacuum if no one could challenge such decisions. However, the CJ did not overturn the judgment. It held that any gaps in judicial protection could be filled by national courts, reviewing the implementing measures and referring questions for preliminary ruling to the EU courts if needed.[109] In other words, and in line with the CJEU's traditional position on this issue, national courts and preliminary rulings were said to compensate the lack of standing that the NGOs face at the EU level.

However, the ACCC, in response to the same communication submitted by ClientEarth – highlighted in section 2.2.3.2. – found this inadequate. Although it acknowledged that the preliminary reference mechanism is essential for the coherent implementation of EU law, it emphasised that this mechanism cannot justify the general denial of access to EU courts for individuals and environmental NGOs. According to the ACCC, Article 267 TFEU does not provide for an appeal system and does not satisfy the access to justice requirements under Article 9(3) of the Aarhus Convention.[110]

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[107] TFEU (n 31), art 267.

[108] Case T-585/93 *Stichting Greenpeace Council (Greenpeace International) and Others v Commission* [1995] ECR II-2205, paras 63-65.

[109] Case C-321/95 P *Stichting Greenpeace Council (Greenpeace International) and Others v Commission of the European Communities* ECLI:EU:C:1998:153, para 33.

[110] Aarhus Convention Compliance Committee, *Findings and recommendations with regard to communication ACCC/C/2008/32 (Part I) concerning compliance by the European Union* (24 August 2011), para 90.

Conclusions

In conclusion, the CJEU's – and the *Court of Justice's* – understanding of procedural environmental rights can be viewed as progressive with regard to right to access to environmental information and public participation in decision-making. The legislative framework of the EU offers a comprehensive basis for these two pillars. The Court also contributes to this approach by clarifying definitions, makings sure exceptions are not exploited, and public participation is reinforced. However, the third pillar has been tackled in a considerably weaker manner. The *Plaumann test* with its restrictive criteria for individual concern, has significantly constrained the ability of NGOs and individuals to challenge environmental decisions, especially those of general application. The Aarhus Regulation, with the internal review procedure, attempted to create an avenue for NGOs. However, the initial formulation of the internal review procedure was too restrictive, as confirmed by the ACCC. Although NGOs have already begun to make use of the amended Aarhus Regulation, it remains to be seen whether these changes will offer a meaningful solution to the persistent access to justice deficit within the EU legal order - a concern that gains further relevance when considered alongside the approach taken by the ECtHR, which will be the focus of the next chapter.

THE ECTHR AND PROCEDURAL ENVIRONMENTAL RIGHTS

This chapter explains the ECtHR's case law and aims to clarify the Court's approach to procedural environmental rights. For the purpose of identifying the relevant cases in this section, the HUDOC database and the guidelines and factsheets on the Court's environmental case law prepared by the Court were consulted.[111] The selected cases were chosen based on their relevance to procedural environmental rights and their suitability for comparison with the case law of the CJEU. In several instances, cross-references and citations within judgments were followed to trace and include pertinent jurisprudence. To ensure clarity and conciseness, cases establishing identical or overlapping principles were not repeated. Moreover, when similar principles appear across multiple judgments, only the most illustrative cases were included. Therefore, some of the relevant cases have remained outside the scope of the study.

Procedural Environmental Rights under the ECHR

The ECHR was adopted in 1950 by the Member States of the CoE. Given the fact that environmental protection emerged as a concern in the 1970s, the Convention did not contain any provision on the right to a healthy environment at the time of its adoption.[112] This remains the case today. In response to this gap, an additional protocol containing the right to a healthy environment to the ECHR has been recommended by the Parliamentary Assembly of the Council of Europe (PACE) several times.[113] However, this has not produced any results yet. Also, more recently, in May 2025, a new Convention on the Protection of the Environment through Criminal Law was adopted by the Committee of Ministers, alongside a new

[111] HUDOC database https://hudoc.echr.coe.int; ECtHR, ECtHR, Guide to the case-law of the European Court of Human rights – Environment (August 2024) https://ks.echr.coe.int/documents/d/echr-ks/guide_environment_eng; ECtHR, Factsheet – Environment and the European Convention on Human Rights (April 2024) https://www.echr.coe.int/documents/d/echr/FS_Environment_ENG all accessed 28 June 2025.

[112] United Nations Conference on the Human Environment, *Declaration of the United Nations Conference on the Human Environment* (Stockholm, 16 June 1972).

[113] Parliamentary Assembly of the Council of Europe (PACE), Rec 1431 (1999) https://rm.coe.int/09000016804d9323, Rec 1885 (2009) https://pace.coe.int/en/files/17777/html, Rec 2211 (2021) https://pace.coe.int/en/files/29501/html accessed 27 May 2025.

environmental strategy. The strategy is particularly relevant to procedural environmental rights, as it underscores the importance of democratic governance in environmental matters and engages with the Aarhus Convention.[114] All these developments represent important steps, but they have not yet resulted in the inclusion of a specific right to a healthy environment.

However, the absence of an explicit provision in the Convention has not prevented the ECtHR from adjudicating cases on environmental matters. By interpreting the Convention as a *living instrument,*[115] the Court has read environmental dimensions into the existing rights. A turning point was in 1994, with *Lopez Ostra v Spain*, where it formally recognised the right to a healthy environment.[116] Since then, its protection of environmental rights expanded to include its procedural aspect. The Court, in different cases, secured the applicants' right of access to information, public participation, and access to justice on environmental issues. The judgments mainly relied on different provisions of the ECHR, as well as the Aarhus Convention.

Since the Aarhus Convention played a central role in the EU framework, understanding how it features in the case law of the ECtHR is also important for the purposes of this study.

The Role of the Aarhus Convention in the ECtHR's Case Law

The ECtHR, like the EU, places a considerable emphasis on the Aarhus Convention in its case law. It cites and draws on it. This practice is rooted in the landmark case of *Golder v. United Kingdom.* In that case, the Court confirmed that the ECHR should be interpreted in line with the Vienna Convention on the Law of Treaties.[117] Accordingly, "any relevant rules of international law applicable in the relations between the parties" must be taken into account when interpreting international treaties.[118] This allows the ECtHR to incorporate international legal instruments, like the

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[114] Committee of Ministers of the Council of Europe, *Council of Europe Convention on the Protection of the Environment through Criminal Law* CM(2025)52-final (14 May 2025); Committee of Ministers of the Council of Europe, *Strategic Framework for Environmental Protection and Human Rights* CM(2025)51-final (14 May 2025), paras 17-24.

[115] *Tyrer v the United Kingdom* App no 5856/72 (ECtHR, 25 April 1978).

[116] *Lopez Ostra v Spain* App no 16798/90 (ECtHR, 9 December 1994).

[117] *Golder v United Kingdom* App no 4451/70 (ECtHR, 21 February 1975), para 35.

[118] Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art 31(3)(c).

Aarhus Convention, into its interpretation of the ECHR.

For the first time, in *Taşkın and others v. Turkey*, a case concerning the granting of permits to operate a goldmine, it referred to the Aarhus Convention as the relevant international text for the protection of the right to a healthy environment.[119] This was noteworthy because the Turkish government had not ratified the Aarhus Convention.[120] Subsequently, the Court cited the provisions of the Aarhus Convention in various cases.[121] This emphasis was further highlighted in its landmark ruling on climate change, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland.*[122] In this judgment, the Court recognised the role of the Aarhus Convention but also drew a distinction between its objectives and those of the ECHR. It provided the following:

"The Court must, however, be mindful of the difference between the basic nature and purpose of the Aarhus Convention, which is designed to enhance public participation in environmental matters, and that of the Convention, which is designed to protect individuals' human rights."[123]

With this, while the Aarhus Convention played an important role in the case law of the ECtHR, its function within the Court's jurisprudence differed from its role in the EU legal system. The distinction is further explained in Section 4.1.

Against this background, Section 3.3. provides a closer analysis of the ECtHR's case law on procedural environmental rights.

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[119] *Taşkın and Others v Turkey* App no 46117/99 (ECtHR, 10 November 2004), paras 99-100.

[120] See in this connection *Demir and Baykara v Turkey*, where the Court held that for an international instrument to be applicable, it need not be ratified by the respondent government, provided it reflects common ground in modern societies: *Demir and Baykara v Turkey*, App no 34503/97 (ECtHR, 12 November 2008), paras 83-86.

[121] See *Tătar v Romania* App no 67021/01 (ECtHR, 27 January 2009), paras 81, 118; *Grimkovskaya v Ukraine* App no 38182/03 (ECtHR, 21 July 2011), paras 39-40; *Di Sarno and Others v Italy* App no 30765/08 (ECtHR, 10 January 2012), para 107; *Locascia and Others v Italy* App no 35648/10 (ECtHR, 19 October 2023), para 125.

[122] *Verein KlimaSeniorinnen Schweiz and Others v Switzerland* App no 53600/20 (ECtHR, 9 April 2024) paras 490-492.

[123] Ibid, para 501.

The ECtHR's Case Law on Procedural Environmental Rights

Access to Environmental Information

The Court's protection for access to environmental information is triggered only when the denial can be established as an interference with a specific right under the Convention or its protocols. Although in cases like *Öneryıldız v. Turkey*,[124] Article 2 came into play, the Court's judgments on access to environmental information mainly revolved around Articles 8 and 10. Accordingly, the cases discussed in Sections 3.3.1.1. and 3.3.1.2. focuses on the application of these two provisions in order to understand the scope of the right. Additionally, Section 3.3.1.3. focuses on the limitation of the right.

The Recognition of Access to Environmental Information under Article 8

When assessing access to environmental information under Article 8 of the Convention, it is important to note that the provision does not expressly guarantee a procedural right. It primarily protects private and family life. Its first paragraph provides:

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

However, the Court, in different cases, has identified the availability of procedural safeguards as a crucial factor in assessing whether the states have remained within their Margin of Appreciation under Article 8.[125] Therefore, Article 8 has been read by the Court as encompassing a procedural dimension, including on environmental matters. Nonetheless, when discussing procedural environmental rights under Article 8, a limitation highlighted by Alan Boyle deserves attention. According to Boyle, the protection under Article 8 does not take into account broader issues of environmental governance, transparency, or public participation. Instead, its focus is solely on the risks to private and family life, which makes it fundamentally different from the protections offered under the Aarhus Convention.[126] Boyle's observation is reaffirmed by the Court in the

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[124] *Öneryıldız v Turkey [GC]* App no 48939/99 (ECtHR, 30 November 2004), paras 90, 108.

[125] *Flamenbaum and Others v France* App no 3675/04 (ECtHR, 13 December 2012), para 137; *Verein KlimaSeniorinnen Schweiz (n 122)*, para 539.

[126] Alan Boyle, 'Human Rights or Environmental Rights? A Reassessment' (2008) 18(3) Fordham Environmental Law Review 471, 491.

distinction it set out between the objectives of the Aarhus Convention and the ECHR in *KlimaSeniorinnen.*[127]

With regard to the Court's case law on the issue, *Giacomelli v. Italy* is an illustrative case. It concerned the operation of a hazardous waste treatment plant located near the applicant's home. The Court, in this case, held that effective investigations and studies must be conducted prior to reaching a decision on environmental matters, and consequently, the public must have access to the results of these studies and other relevant information that would enable them to evaluate the dangers they may face.[128] Moreover, in *McGinley and Egan v. United Kingdom,* it decided that when a government engages in hazardous activities that might adversely affect the health of those involved, Article 8 would put a positive obligation on the state to establish an effective and accessible procedure which allows persons to seek all relevant and appropriate information.[129] On the same issue, in *Hardy and Maile v. United Kingdom,* the Court reaffirmed this principle, noting that such a right applies unless there are legitimate national security concerns justifying its limitation.[130]

The Scope of the Right to Receive Environmental Information under Article 10

Article 10 of the ECHR guarantees the right to freedom of expression. The provision provides:

"Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises." (emphasis added)

As seen, the provision explicitly encompasses the right to receive and impart information. This aspect of Article 10 has been invoked in several cases involving environmental matters. In *Guerra and others v. Italy,* the applicants living near a chemical factory complained that the air pollution caused by the factory's emissions was raising issues under Article 10. However, the Court held that the freedom under Article 10(2) could

[127] See Section 3.2.

[128] *Giacomelli v Italy* App no 59909/00 (ECtHR, 2 November 2006), para 83.

[129] *McGinley and Egan v United Kingdom* App no 21825/93 (ECtHR, 9 June 1998), para 101; see also *Roche v United Kingdom [GC]* App no 32555/96 (ECtHR, 19 October 2005), para 162.-

[130] *Hardy and Maile v United Kingdom* App no 31965/07 (ECtHR, 14 February 2012), para 246.

not be construed as imposing a positive obligation on the state to collect and disseminate information of its own motion. The provision, according to the Court, only prohibited governments from restricting a person's ability to receive information.[131]

Nonetheless, the Court did not entirely rule out the possibility of recognising states' positive obligations under Article 10. In *Magyar Helsinki Bizottság v. Hungary*, it held that, although in principle Article 10 did not impose a positive obligation on the states to disseminate information, this right could arise in two situations. Firstly, "where disclosure of the information has been imposed by a judicial order which has gained legal force" and secondly "in circumstances where access to the information is instrumental for the individual's exercise of the right to freedom of expression, in particular 'the freedom to receive and impart information' and where its denial constitutes an interference with that right."[132] In the second case, whether the denial of access to information constituted an interference with the applicant's freedom of expression would be assessed in each individual case and in the light of its particular circumstances. In order to define the scope of the right, the following criteria would be applied:

i. *The purpose of the information request,*
ii. *The nature of the information sought,*
iii. *The applicant's role,*
iv. *The availability of the requested information.*[133]

According to these criteria, firstly, the motivation behind the information request must be to exercise the freedom to receive and impart information. Secondly, the requested information must pass a public-interest test in order to justify the need for disclosure. Thirdly, the applicant's role would be decisive, as such special importance would be given to the requests of NGOs, the press, academic researchers, and public watchdogs. Lastly, the availability of the information would be a decisive factor.[134] By applying the criteria to the facts of the case, the Court found a violation of Article 10. This showed that Article 10 could also be invoked to address the obligation of the state to disseminate information, provided that the request meets the stated criteria.

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[131] *Guerra and Others v Italy* App no 14967/89 (ECtHR, 19 February 1998), para 53.

[132] *Magyar Helsinki Bizottság v Hungary [GC]* App no 18030/11 (ECtHR, 8 November 2016), para 156.

[133] Ibid, para 157.

[134] *Magyar Helsinki Bizottság* (n 132), paras 158-170.

The application of these criteria when the requested information is related to the environment can be seen in *Cangı v. Turkey*, a case concerning the plan for a dam which would lead to the submersion of an ancient site. The applicant, upon the denial of his request for a signed copy of the record of a meeting, alleged a violation of Article 10. The Court applied the same criteria as in *Magyar Helsinki Bizottság*. Accordingly, it held that the information was unquestionably a matter of general interest since the flooding of a historic site by the waters of a dam is a matter which the public would benefit from being informed. Also, the requested information was available, and it has not been argued before the Court that the document's disclosure would put a burden on the authorities. In the end, the Court considered that by denying the applicant access to the requested document, the domestic authorities impeded his exercise of freedom to receive and impart information under Article 10, resulting in a violation.[135] Therefore, the same criteria are applied when the information in question relates to the environment.

Although not finding a violation of Article 10, the same principle was reiterated in *Association Burestop 55 and Others v. France*. In this judgment, concerning an environmental association's opposition to a projected industrial site, the Court held that the same principle would apply where the alleged interference does not result from a refusal to give access to information but from insincere, inaccurate or inadequate information. According to the Court, such information would also amount to a refusal to provide information.[136]

In the end, the Court's approach to the right to receive and impart information under Article 10 ECHR shifted with *Magyar Helsinki Bizottság*, a development that was reaffirmed in an environmental context with the case of *Cangı*. In light of this evolution, Boyle's earlier criticism of Article 8 remains only partially valid. It carries less weight now that the Court has recognised a positive obligation on states to disseminate information, including environmental information under Article 10. Nonetheless, the critique remains relevant insofar as the applicability of Article 10 is still subject to certain conditions. Moreover, the protection afforded by the Convention remains embedded within a broader human rights framework and does not explicitly guarantee transparency in environmental matters as a standalone right.

Limitations on the Right to Access to Environmental Information

[135] *Cangı v Turkey* App no 24973/15 (ECtHR, 29 January 2019), paras 30-37.

[136] *Association Burestop 55 and Others v France* App nos 56176/18 and 5 others (ECtHR, 1 July 2021), para 85.

In the ECHR framework, the right to access to environmental information, similar to the EU framework, is not an absolute right. It may be subject to limitations, on the grounds set out in Articles 8 and 10, where interferences with the right can be justified.[137] In order to be justified, the interference must be:

i. *In accordance with law*
ii. *Pursue a legitimate aim*
iii. *Necessary in a democratic society.*

This proportionality test assesses whether the interference with the right is pursuing one of the legitimate aims specified in the provisions and whether it is necessary in a democratic society. In applying this test, the ECtHR grants states a Margin of Appreciation, which is balanced by European supervision.[138] The scope of the margin varies based on the circumstances, subject matter, and background of each case.[139] Under certain circumstances, states enjoy a wide Margin of Appreciation, particularly in matters involving public emergency, national security, protection of morals, and the implementation of social and economic policies, especially when there is no European consensus.[140] Notably, in the case of *Dubetska and Others v. Ukraine* the ECtHR noted that "in cases involving environmental issues, the State must be allowed a wide Margin of Appreciation."[141] This illustrates that environmental matters generally permit states discretion in balancing competing interests.

A clear example of how this operates in a case related to access to environmental information can be seen in *Sdružení Jihočeské Matky v. the Czech Republic.* In this case which concerned an environmental association's complaint about the denial of access to documents related to a nuclear power station, the Court found that although there was an interference with the right to receive information, the denial was based on

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[137] See the second paragraphs of art 8 and art 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, opened for signature 4 November 1950, entered into force 3 September 1953) 213 UNTS 221.

[138] *Handyside v United Kingdom* App no 5493/72 (ECtHR, 7 December 1976).

[139] *Rasmussen v Denmark* App no 8777/79 (ECtHR, 28 November 1984), para 40.

[140] Open Society Justice Initiative, *Margin of Appreciation: An Overview of the Strasbourg Court's Margin of Appreciation Doctrine* (April 2012) https://www.justiceinitiative.org/uploads/918a3997-3d40-4936-884b-bf8562b9512b/echr-reform-margin-of-appreciation.pdf accessed 16 June 2025.

[141] *Dubetska and Others v Ukraine* App no 30499/03 (ECtHR, 10 February 2011), para 141.

commercial confidentiality and contractual obligations, reasons that would fall under the protection of the rights of others, public safety and health as outlined in Article 10(2). Taking into account the State's Margin of Appreciation, the Court concluded that the interference with the applicant's freedom to receive information was not disproportionate to the aims pursued and thus declared the application inadmissible.[142]

Thus, the ECHR system, through the application of the proportionality test and the doctrine of the Margin of Appreciation, introduces certain limitations to the right of access to environmental information, ultimately affording states considerable discretion in determining the scope and extent of their disclosure obligations.

Public Participation in Environmental Decision-Making

The ECtHR case law addresses how decision-making should take place with regard to environmental matters. For instance, in *Taşkın and Others*, the Court held that decision-making on environmental issues must be a fair process that affords due respect to the interests of individuals. Accordingly, the Court is required to consider the extent to which the views of individuals were taken into account during the decision-making process.[143] Also, in *KlimaSeniorinnen*, the Court reiterated that individuals concerned must have an opportunity to participate effectively in the environmental decision-making processes, and have their relevant arguments examined, even in cases where the actual subject of the process is a matter falling within the states' Margin of Appreciation.[144]

Another important aspect concerns situations where the decision-making process has failed to ensure public participation. Here, the Court's approach appears to be similar to that of the CJEU's. In *Büttner and Krebs v. Germany*, referencing the CJEU judgment *Gemeinde Altrip and Others*[145], the Court held that, if domestic courts conclude that the authorities adequately considered the rights at stake and determined that any procedural deficiencies did not influence the outcome, then there would be no grounds to find a violation of Article 8.[146] Thus, a failure to guarantee public participation would not automatically lead to a violation, provided that the authorities have sufficiently addressed the effective rights and confirmed that the outcome would have remained unchanged.

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[142] *Sdružení Jihočeské Matky v the Czech Republic (dec.)* App no. 19101/03 (ECtHR, 10 July 2006).

[143] *Taşkın and Others* (n 119), para 118.

[144] *Verein KlimaSeniorinnen Schweiz (n 122)*, para 539(e).

[145] See Section 2.2.2.

[146] *Büttner and Krebs v Germany* App no 27547/18 (ECtHR, 4 June 2024), para 73.

Access to Justice in Environmental Matters

When assessing the Court's case law on access to justice, particular attention must be paid to Articles 6 and 13 of the ECHR, as well as the victim requirement under Article 34. Accordingly, this section is structured around these three key elements.

The Right to a Fair Trial under Article 6

Article 6 of the ECHR guarantees individuals the right to a fair trial when determining their civil rights and obligations, as well as in relation to criminal charges against them. For Article 6 to apply, there must be either a civil right or obligation at issue or a criminal charge. As a result, administrative cases fall outside the scope of Article 6.

In the context of environmental matters, the Court has primarily relied on Article 6 to address issues related to right to access to court and the enforcement of final judicial decisions. Although these rights are not explicitly articulated in the text of Article 6, the Court's jurisprudence has interpreted them as falling within its ambit.[147]

With this in mind, the Section is divided into two parts: *the right to access to court* and *the right to enforcement of final court decisions.*

Right to Access to Court

When looking at the case law where applicants alleged a violation of their right to access to court, two cases stand out. Firstly, in *Balmer-Schafroth and Others v. Switzerland,* applicants living near a nuclear power station argued that their right to access a court was violated when they challenged the extension of the plant's operating license. The Court found Article 6(1) inapplicable, stating that the connection between the license extension and the applicants' right to protect their physical integrity was too weak.[148] Similarly, in *Athanassoglou and Others v. Switzerland,* applicants claimed they were denied access to court regarding the same issue. The Court again ruled that Article 6(1) did not apply, noting the applicants did not claim any losses for which they sought compensation. The Court emphasised that the best way for a Contracting State to regulate the use of nuclear power is through policy decisions made via its own democratic processes. Therefore, the outcome of the procedure did not significantly affect any civil rights of the applicants.[149] In both cases, the Court adopted a narrow approach regarding the applicability of Article 6(1). For the article

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[147] *Golder* (n 117); *Hornsby v Greece* App no 18357/91 (ECtHR, 19 March 1997).

[148] *Balmer-Schafroth and Others v Switzerland* App no 22110/93 (ECtHR, 26 August 1997), paras 39-40.

[149] *Athanassoglou and Others v. Switzerland [GC]* App no 27644/95 (ECtHR, 6 April 2000), paras 49-55.

to apply, there must be a specific and direct risk linking the contested administrative decision to the applicants' civil rights.

In *Karin Andersson and Others v. Sweden*, a case concerning the Swedish Government's permit for the construction of a railway that is on or close to the property of the applicants, the Court found a violation of Article 6(1). The applicants complained that they had been refused a full judicial review of this decision. While acknowledging the complexity of infrastructure planning and respecting the States' democratic policy choices, the Court reaffirmed that Article 6(1) requires access to a court where there is an arguable claim of interference with a civil right. In this case, although the applicants were later accepted as parties in domestic proceedings, they were never granted a full legal review of the key Government decision affecting their property rights. The domestic courts have not examined the impacts of the initial permissibility decision on the applicants' rights. The Court therefore found a violation of Article 6(1).[150]

In *Stichting Landgoed Steenbergen and Others v. the Netherlands*, a case concerning applicants whose premises and land were located near a motocross track. The Provincial Executive had published only online notifications of a draft decision and the final decision to extend the track's opening hours, which the applicants did not see in time. As a result, their appeal, lodged after the deadline, was declared inadmissible. The applicants claimed that the exclusive use of electronic publication violated their right of access to a court. The Court, however, found no violation of Article 6(1). It held that the system of electronic publication was coherent, legally grounded, and reasonably accessible, and struck a fair balance between administrative efficiency and individual rights. Since the applicants did not demonstrate that they lacked internet access or were unable to navigate online procedures, the Court found no disproportionate restriction on their access to a court.[151]

Right to Enforcement of Final Court Decisions

The Court, in different cases, held that execution of a final court judgment is an integral part of the right to a fair trial under Article 6 of the Convention. For instance, in *Kyrtatos v. Greece*, the applicants owned property on a Greek island and complained that the Greek authorities failed to enforce two final judgments from the Supreme Administrative Court,

[150] *Karin Andersson and Others v Sweden* App no 29878/09 (ECtHR, 25 September 2014), paras 68-70.

[151] *Stichting Landgoed Steenbergen and Others v the Netherlands* App no 19732/17 (ECtHR, 16 February 2021), paras 46-54.

which annulled building permits for constructions near their land. The Court found that this failure, lasting over seven years, rendered the guarantees of Article 6(1) ineffective, resulting in a violation of the article.[152] Similarly, in *Apanasewicz v. Poland,* the applicant faced ongoing environmental harm from a concrete factory built without planning permission. Despite a 2001 court order to shut down the factory, it continued to operate due to the authorities' ineffectiveness in enforcement. The Court found that the excessive duration of enforcement proceedings and lack of diligence meant the applicant did not receive effective judicial protection, violating Article 6(1).[153] In *Bursa Barosu Başkanlığı and Others v. Turkey,* the applicants reported the failure to enforce judicial decisions that annulled permits for a starch factory. The Court emphasised that Article 6(1) includes the enforcement of final judgments and found that the Turkish authorities had failed to implement these decisions over many years, denying the applicants effective judicial protection and resulting in a violation of Article 6(1).[154]

In sum, Article 6 has been used to address access to court and enforce final court decisions. However, the Court has not restricted itself to Article 6 alone. For example, in the case of *Taşkın and others,* it assessed the procedural aspect under Article 8 and stated that individuals must have access to the courts to appeal against any decision, act, or omission if they believe that their interests or comments were not adequately considered during the decision-making process.[155] Thus, Article 8 has also been invoked in this context.

Right to an Effective Remedy in Environmental Cases under Article 13

Another important article under the Convention that addresses the access to justice pillar is Article 13. Article 13 guarantees the right to an effective remedy, at the national level, to enforce the Convention rights and freedoms. In *Hatton and Others v. the United Kingdom,* it has been invoked regarding applicants, all of whom lived or had lived close to Heathrow airport, who complained that night flight policies had led to a violation of their rights under Article 8, due to health issues and sleep disruption caused by aircraft noise. They also alleged that they had no effective domestic remedy for this complaint. The Court held that there had been a violation

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[152] *Kyrtatos v Greece* App no 41666/98 (ECtHR, 22 May 2003), paras 27-32.

[153] *Apanasewicz v Poland* App no 6854/17 (ECtHR, 3 November 2022), paras 67-83.

[154] *Bursa Barosu Başkanlığı and Others v Turkey* App no 25680/20 (ECtHR, 21 March 2023), paras 133-145.

[155] *Taşkın and others* (n 119), para 119.

of Article 13. It found that, at the relevant time, the scope of judicial review in the United Kingdom was limited to traditional public-law standards like irrationality or manifest unreasonableness. It did not permit a substantive assessment of the applicants' Convention rights, such as whether the night flights amounted to a justifiable interference with their private and family life under Article 8. The remedy was not effective, as required by Article 13.[156]

In *Kolyadenko and Others v. Russia*, the applicants were victims of a severe flash flood. They alleged that the authorities had endangered their lives by releasing water without warning and by failing to maintain flood defences. They also complained about damage to their homes and property and argued that they lacked effective judicial remedies. The Court found no violation of Article 13 in conjunction with Article 8 and Article 1 of Protocol No. 1. It held that Russian law had made civil proceedings available, enabling the applicants to seek compensation for property damage. The domestic courts had sufficient material, including expert reports from the criminal case, to assess liability and render a decision. The mere fact that the courts ultimately rejected the applicants' claims did not mean that the remedy was ineffective for the purposes of Article 13. The Court reiterated that Article 13 does not guarantee a favourable outcome, only that an accessible and effective remedy exists in law and practice.

The Victim Status and NGO Standing in Environmental Cases

An important element of the access to justice pillar in the ECtHR case law is the requirement of victim status under Article 34 of the Convention, which provides:

"The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation…"

In *Lambert and Others v. France*, the Court held that to qualify as a victim under Article 34, the applicants must show that they have been directly affected by the alleged violation.[157] In *Cordella and Others v. Italy*, the applicants complained about the harmful emissions from a steel plant in Taranto, claiming that the pollution had negatively affected their health and well-being, thus violating their rights under Article 8 of the Convention. The Court reiterated that the Convention system does not allow actio popularis and that applicants must demonstrate they have been

[156] *Hatton and Others v the United Kingdom [GC]* App no 36022/97 (ECtHR, 8 July 2003), paras 137-142.

[157] *Lambert and Others v France [GC]* App no 46043/14 (ECtHR, 5 June 2015) para 89.

personally and directly affected to claim victim status under Article 34. It distinguished between:

i. *Applicants living in municipalities officially recognised by domestic authorities as environmentally high-risk zones, and*

ii. *Applicants who lived outside these zones and provided no evidence of being directly affected.*

For the first group, the Court accepted that there was a rebuttable presumption that residents of the polluted zone were exposed to serious health risks, supported by numerous scientific and epidemiological studies. These applicants were deemed victims and allowed to proceed. For the second group, the Court upheld the Government's preliminary objection and found they lacked victim status due to insufficient personal impact.[158]

An important result of the Court's approach is that the NGOs have a difficult time establishing direct victim status and bringing a case before the Court. This was affirmed by the Court in various cases. For instance, in *Asselbourg and Others v. Luxembourg,* the Court found that Greenpeace-Luxembourg could not claim to be a "victim" merely because its registered office was located near a polluting steel plant. The Court held that only natural persons could invoke a violation of the right to respect for their "home" under Article 8 in relation to pollution-related nuisances. It also clarified that while NGOs can act on behalf of individuals (e.g. as representatives), they cannot themselves claim victim status unless they are personally and directly affected. Moreover, the Court found the case as a whole inadmissible, noting that the applicants (including individuals) had not sufficiently demonstrated personal harm or a reasonable likelihood of future damage. It reiterated that the Convention does not allow actio popularis, and that speculative risks or general concerns are insufficient to establish victim status.[159]

However, the Court's approach in recent years has shown a slight shift with its recognition of the special characteristics of climate change cases. In *KlimaSeniorinnen,* the Court addressed the standing and victim status of an environmental NGO and individual applicants who challenged the Swiss government's alleged failure to act on climate change. In its judgment, it accepted the NGO's standing and clarified the criteria for the associations to have standing before it. According to the Court, in order to

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[158] *Cordella and Others v Italy* App nos 54414/13 and 54264/15 (ECtHR, 24 January 2019) paras 100-109.

[159] *Asselbourg and Others v Luxembourg (dec.)* App no 29121/95 (ECtHR, 29 June 1999).

have standing, the associations had to be:

"(a) lawfully established in the jurisdiction concerned or have standing to act there;

(b) able to demonstrate that it pursues a dedicated purpose in accordance with its statutory objectives in the defence of the human rights of its members or other affected individuals within the jurisdiction concerned, whether limited to or including collective action for the protection of those rights against the threats arising from climate change; and

(c) able to demonstrate that it can be regarded as genuinely qualified and representative to act on behalf of members or other affected individuals within the jurisdiction who are subject to specific threats or adverse effects of climate change on their lives, health or well-being as protected under the Convention."[160] *(emphasis added)*

The Court also clarified the criteria for individuals to have standing in the context of climate change. According to its judgment, following criteria would apply:

"(a) the applicant must be subject to a high intensity of exposure to the adverse effects of climate change, that is, the level and severity of (the risk of) adverse consequences of governmental action or inaction affecting the applicant must be significant; and

(b) there must be a pressing need to ensure the applicant's individual protection, owing to the absence or inadequacy of any reasonable measures to reduce harm."[161] *(emphasis added)*

However, the individuals in this case were not granted standing due to the insufficient intensity of adverse effects.[162]

Moreover, the case of *Gorraiz Lizarraga and Others v. Spain* provides an important clarification of the Court's interpretation of victim status. In this judgment, the Court held that where an NGO has been established to defend the specific interests of its members and brings a legal action before domestic courts concerning a public project, in this case a dam threatening to flood several villages, the individual members of the NGO may claim victim status under Article 34, even if they were not formally parties to the proceedings in their own names. The Court emphasised that the term victim must be interpreted in an evolutive manner in light of contemporary conditions. In complex environmental or administrative cases, citizens often rely on associations as collective bodies

[160] *Verein KlimaSeniorinnen* (n 122), para 502.-

[161] Ibid, para 487.

[162] Ibid, para 533.

to assert their rights. An overly formalistic reading of victim status would render the Convention protections ineffectual and illusory. Given that the applicant association had been set up for the purpose of defending members' property and lifestyle interests, and had acted as their procedural representative, the Court concluded that the members had been directly and personally affected and could be considered victims under Article 34.[163]

Lastly, it is necessary to address the concept of the "potential victim". According to the established ECtHR case law, Article 34 does not permit complaints in abstracto - that is, applicants cannot challenge a law, practice, or administrative act simply because it appears incompatible with the Convention, without being personally and directly affected.[164] However, the Court has accepted in certain cases that an applicant may qualify as a potential victim. This applies particularly where the violation has not yet materialised but is foreseeable and imminent. To claim potential victim status, the applicant must provide:

i. *Reasonable and convincing evidence of a likelihood that a violation personally affecting them will occur.*
ii. *Mere suspicion or conjecture is insufficient.*[165]

The application of this criteria in an environmental context is seen in the case of *Vecbaštika and Others v. Latvia* which concerned a complaint under Article 8 of the Convention regarding the planned construction of wind turbines. The applicants claimed that the nearby wind farms would harm their private and family life due to issues like noise and vibrations. However, the Court noted that the applicants fail to show they would be directly and significantly affected, as the turbines had not been built, and the status of the project was uncertain. According to the Court, the applicants did not provide specific evidence of personal harm, instead they relied on general risks associated with wind turbines. Consequently, the Court found that the evidence did not support a likely personal violation and rejected the complaint as incompatible with the Convention.[166]

Conclusions

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[163] *Gorraiz Lizarraga and Others v Spain* App no 62543/00 (ECtHR, 27 April 2004), paras 38-39.

[164] *Klass and Others v Germany* App no 5029/71 (ECtHR, 6 September 1978); *Centre for Legal Resources on behalf of Valentin Câmpeanu v Romania [GC]* App no 47848/08 (ECtHR, 17 July 2014), para 101.

[165] *Senator Lines GmbH v fifteen member States of the European Union (dec.) [GC]* App no 56672/00 (ECtHR, 10 March 2004).

[166] *Vecbaštika and Others v Latvia (dec.)* App no 52499/11 (ECtHR, 3 October 2019), paras 79-84.

In conclusion, the ECtHR case law demonstrates that, despite the lack of an explicit provision on (procedural) environmental rights in the Convention, the Court increasingly interprets the existing provisions to encompass procedural safeguards. Although, its reliance on the existing provisions sometimes points to a limitation, like with Article 8 on the right to access to environmental information, highlighted by Boyle. Over the years, it has developed its case law in a way to recognise a positive obligation on the states to disseminate information under Article 10 of the Convention. However, in the context of access to justice, the requirement of victim status continues to present barriers for applicants. That said, the Court's approach has evolved over time. Notably, the growing recognition of the urgency and complexity of climate change has led to the development of new criteria for standing in such cases. The Court's recognition of the "potential victim", along with its reasoning in *Gorraiz Lizarraga and Others*, reflects a relatively flexible interpretation of standing, one that avoids an overly formalistic application of Article 34. In this respect, it stands in contrast to the more formalistic standards applied in the case law of the CJEU. The following chapter offers a comparative analysis of the case law of both courts.

COMPARISON OF THE CASE LAW OF CJEU AND ECTHR

This chapter presents a comparison between the case law of the CJEU and the ECtHR. Before turning to their judgments, Section 4.1. analyses their jurisdictional differences and highlights the different role of the Aarhus Convention in both systems. Section 4.2. then focuses on the case law itself.

Jurisdictional Differences Between the Two Courts and the Role of the Aarhus Convention

As highlighted in Chapter 1, both the CJEU and the ECtHR, today, offer different avenues for human rights protection. However, the CJEU, although gradually engaging with fundamental rights concerns, is, in fact, not a human rights court. Its primary mandate lies in interpreting and applying EU law.[167] Therefore, it does not position environmental matters primarily as human rights issues. Within this context, it has been highlighted that many environmental cases brought before the EU courts deal only with the proper implementation of the legislation, not with the human rights implications of the matter.[168] In contrast, for the ECtHR, considering its role as a human rights court, environmental matters emerge as a human rights concern, including its procedural aspect. It is not the environmental damage that paves the way for bringing the case before the ECtHR but its interference with one of the human rights enshrined in the ECHR. For instance, with regard to Article 8, it is not the lack of information itself but the adverse effect it has on the applicants' personal or family life, that enables to bring a case.

Given the jurisdictional differences, the role of the Aarhus Convention in the two legal systems also requires attention. As explained in Chapter 1, the Aarhus Convention was a turning point in the codification of procedural environmental rights and has influenced the practice of both courts. However, the nature of this influence differs:

The EU's engagement with the Aarhus Convention stems from its authority to enter into international agreements, which are binding on its

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[167] Treaty on European Union (TEU) [2016] OJ C202/1, art 19(1).

[168] Ellen Hey, 'The Interaction Between Human Rights and the Environment in the European "Aarhus Space"' in Anna Grear and Louis J Kotzé (eds), *Research Handbook on Human Rights and the Environment* (Edward Elgar Publishing 2015) 367.

institutions.[169] Consequently, the international agreements entered by the EU become an integral part of EU law.[170] This means that the Aarhus Convention serves as a direct legal source and a binding legal instrument within the EU framework. The EU, being a party to it, has obligations to comply with its provisions. Concerns about the EU's compliance have been raised and discussed in Sections 2.2.3.2 and 2.2.3.3.

In contrast, for the ECtHR, the Aarhus Convention is not a binding law. Unlike the EU, the ECtHR is not bound by the Aarhus Convention. The way it engages with the Aarhus Convention is an interpretive one. Its approach set out in *Golder v. United Kingdom*[171] allows it to use international treaties, like the Aarhus Convention, when interpreting the existing ECHR rights.

The jurisdictional differences and the distinct roles of the Aarhus Convention shapes how each court interprets and applies procedural environmental rights in their case law.

Comparison of Case Law

In order to maintain clarity, the case law has been compared using the same structure as in the previous chapters. As a result, the matters have been divided into three main sections: *access to environmental information, public participation in decision-making,* and *access to justice: standing rules and NGOs.*

Access to Environmental Information

With regard to courts' case law on access to environmental information, two points should be emphasised: *the nature of the right* and *the limitations and the Margin of Appreciation doctrine.* Accordingly Sections 4.2.1.1. and 4.2.1.2. focuses on these matters.

The Nature of the Right to Access to Environmental Information

When comparing the two systems, one of the most salient differences regarding the right to access to environmental information is the right's codification. Under EU law, access to environmental information is an explicitly defined self-standing right.[172] Therefore, a

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[169] Treaty on the Functioning of the European Union (TFEU) [2012] OJ C326/47, art 216(1).

[170] Case 181/73 Haegeman v Belgian State [1974] ECR 449, para 5.

[171] *Golder v United Kingdom* App no 4451/70 (ECtHR, 21 February 1975) para 35.

[172] Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information [2003] OJ L41/26,

failure to handle an information request appropriately is enough to invoke the right before the CJEU. In contrary, the ECHR framework does not explicitly recognise a right for the public to obtain information; it only protects access to information when the failure to disclose information interferes with an ECHR right, usually respect for private and family life under Article 8 or freedom of expression under Article 10.

Regarding Article 8, the case of *McGinley and Egan v United Kingdom* provides an example on this. In this case, the positive obligation to establish a procedure to enable persons to seek information arises due to the possibility that the activities in question might have adverse effects on the applicants' rights under Article 8. Moreover, with regard to Article 10, although now it encompasses a positive obligation on the states to disseminate information, the case of *Magyar Helsinki Bizottság* shows that specific criteria must be met to impose this obligation on the states.[173] This also applies when the information pertains to the environment as the case of *Cangı* shows.[174]

Thus, within the ECHR framework, the right to access to environmental information appears more as a derivative right that requires specific conditions whereas at the EU level, it stands alone as an independent right.

Limitations and Margin of Appreciation

Both the ECtHR and the CJEU recognise that the right to access to environmental information is not an absolute right, and limitations can be placed on this right, but under different interpretations. Although both systems have a balancing/proportionality test, the Margin of Appreciation doctrine of the ECtHR appears to afford states more discretion. The case of *Sdružení Jihočeské Matky v. the Czech Republic* provides an example on this.[175]

In contrast, for the CJEU, limitations appear to be interpreted more strictly. The case of *Office of Communications v Information Commissioner* demonstrates that the CJEU adopts a stricter approach by providing the access to information to be the general rule, and exceptions to be interpreted in a strict manner, only applied in specific, clearly defined

art 3.

[173] *Magyar Helsinki Bizottság v Hungary [GC]* App no 18030/11 (ECtHR, 8 November 2016).

[174] *Cangı v Turkey* App no 24973/15 (ECtHR, 29 January 2019).

[175] *Sdružení Jihočeské Matky v the Czech Republic (dec.)* App no. 19101/03 (ECtHR, 10 July 2006).

circumstances.[176] Moreover, the EU's prohibition of exemptions when the information relates to emissions into environment and the CJEU's broad interpretation of the term in *Bayer CropScience,* once again demonstrates its stricter stance on limitations.[177]

Public Participation in Decision-Making

Both systems protect the individuals' right to meaningfully participate in the decision-making processes. Their case law, in this respect, appears quite similar. The cases of *Krizan and Others* and *Taşkın and Others* provide examples on this.[178] Both cases emphasise the importance of ensuring that public participation is effective: the public must be able to meaningfully engage in the proceedings, and due respect must be given to their views and interests.

Moreover, both courts share a similar stance when authorities fail to ensure effective public participation in environmental decision-making. Both their case law asserts that a decision should not be overturned solely due to a lack of participation, provided that effective rights were still upheld. The responsibility lies with the authorities to show that any such defect did not affect the outcome.[179]

Access to Justice in Environmental Matters

With all the similarities they have on access to environmental information and public participation in decision-making, the case law of the two courts reveals notable differences in the area of access to justice. A key point of divergence lies in the standing rules, particularly with respect to the standing of NGOs.

Both courts' standing requirements present challenges in environmental matters, yet the CJEU's formalistic approach appears to be more restrictive. Its longstanding *Plaumann test,* which it insists on maintaining, explicitly excludes applicants who are not "by reason of certain attributes ... differentiated from all other persons".[180] As explained, this

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[176] Case C-71/10 *Office of Communications v Information Commissioner* ECLI:EU:C:2011:525, para 22.

[177] Case C-442/14 *Bayer CropScience and Stichting De Bijenstichting v College voor de toelating van gewasbeschermingsmiddelen* ECLI:EU:C:2016:838, para 87.

[178] Case C-416/10 *Križan and Others v Slovenská inšpekcia životného prostredia* ECLI:EU:C:2013:8, para 88; *Taşkın and Others v Turkey* App no 46117/99 (ECtHR, 10 November 2004) para 118.

[179] *Büttner and Krebs v Germany* App no 27547/18 (ECtHR, 4 June 2024), para 73; Case C-72/12 *Gemeinde Altrip and Others v Land Rheinland-Pfalz* ECLI:EU:C:2013:712, para 57.

[180] Case 25/62 *Plaumann & Co v Commission* [1963] ECR 95, admissibility para.8

implies that in order to have standing, the applicants must be singled out by the measure in question. The ECtHR, at first, was similarly hesitant to accept broad concerns, like in *Asselbourg and Others,* where it held that only natural persons could invoke the right to respect for home, and NGOs could not claim victim status unless they were personally and directly affected.[181] However, the ECtHR's approach appears different from the CJEU's, in the sense that for the protection to be afforded under the ECHR system, the applicants do not have to show that they have been singled out in order to have a standing before the ECtHR. The case of *Cordella and Others* provides an example on this, where the ECtHR accepted the standing of the applicants who were residents of the polluted zone as a whole.[182] There was no requirement for the applicants to be singled out by the contested effects of environmental pollution in order to bring a case. Only those living outside the affected zone, without evidence of direct impact, were excluded from having standing.

Moreover, two climate change cases also illustrate the differing approaches of the two courts: *Carvalho and Others* and *KlimaSeniorinnen.* The rejection of the case of *Carvalho and Others* reaffirms the CJEU's expectation that the applicants must be in a different position from the general public in order to be directly and individually concerned and bring a case before the Court.[183] In contrast, the case of *KlimaSeniorinnen,* points out to the fact that, the ECtHR, facing with a similar argument, clarified the criteria for claiming victim status in the context of climate change and in the end accepted the NGO's standing. Although the individuals in this case were not granted standing due to the insufficient intensity of adverse effects, the ECtHR's clarification of victim status criteria opens the door for future applicants to meet these criteria and have standing before the Court.[184] Additionally, other cases of the ECtHR, like *Gorraiz Lizarraga and Others,* also demonstrates a more flexible approach by the Court with regard to victim requirement.[185]

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[181] *Asselbourg and Others v Luxembourg (dec.)* App no 29121/95 (ECtHR, 29 June 1999).

[182] *Cordella and Others v Italy* App nos 54414/13 and 54264/15 (ECtHR, 24 January 2019) paras 100-109.

[183] Case T-330/18 *Carvalho and Others v Parliament and Council* ECLI:EU:T:2019:324, paras 46-52; Case C-565/19 *Consorzio Italian Management and Catania Multiservizi SpA v Rete Ferroviaria Italiana SpA* ECLI:EU:C:2021:919, paras 76-80.

[184] *Verein KlimaSeniorinnen Schweiz and Others v Switzerland* App no 53600/20 (ECtHR, 9 April 2024), paras 533-535.

[185] *Gorraiz Lizarraga and Others v Spain* App no 62543/00 (ECtHR, 27 April

However, recent reforms on the EU side should also not be overlooked. The amended Aarhus Regulation has enhanced the internal review procedure, which now provides a relatively more accessible avenue for individuals and NGOs. Moreover, certain limitations are also present at the ECtHR level. Cases like *Athanassoglou and Others* points to a limitation with regard to Article 6, more specifically access to court.[186]

Conclusions

In summary, the jurisdictional differences between the two courts shows that the ECtHR, established as a human rights court, addresses (procedural) environmental matters through a human rights lens. The CJEU, on the other hand, does not primarily frame them as a human rights concern. This divergence in mandate also informs their differing relationships with the Aarhus Convention. Furthermore, the comparison between the two courts' case law shows that, both courts adopt broadly similar approaches regarding access to environmental information and public participation in environmental decision-making, albeit with some variations – most notably, the CJEU's stricter stance on limitations. However, a more pronounced divergence emerges in the area of access to justice. The ECtHR tends to interpret the victim requirement more flexibly and has demonstrated openness to NGO standing in specific contexts, such as climate change litigation. Conversely, the CJEU adheres to a more rigid and formalistic approach to standing rules. Despite mechanisms like the internal review procedure introduced under the Aarhus Regulation, access to justice – particularly for NGOs – remains considerably more constrained before the CJEU than before the ECtHR.

2004), paras 38-39.

[186] *Athanassoglou and Others v. Switzerland [GC]* App no 27644/95 (ECtHR, 6 April 2000), paras 49-55.

CONCLUSION

The starting point for this thesis was the established link between human rights and the environment. This focus brought attention to the substantial amount of case law related to environmental rights, including its procedural aspect, before the human rights courts. Two courts stood out in this respect: the ECtHR and the CJEU. The EU being a party to the Aarhus Convention and the ECtHR with its interpretive methods, both engaged with procedural environmental rights. While both courts addressed these rights, they differed in their understanding of certain aspects, while showing similarities in others.

In this context, the thesis tried to compare the case law of the two courts to understand how these rights are interpreted by them in practice and what the points of divergence and convergence are. In order to do so, the thesis tried to answer the following research question: *How do the CJEU and ECtHR interpret procedural environmental rights, and what are the similarities and differences in their approaches?*

From the findings of the thesis following conclusions can be drawn:

Firstly, the two courts' engagement with procedural environmental rights is founded on different jurisdictional bases. The ECtHR, being a court shaping and refining human rights standards, brings a human rights dimension and reads procedural dimensions into the existing ECHR framework. On the other hand, the CJEU, while having intersected with fundamental rights over the years, is primarily concerned with the application of EU law. Consequently, it does not frame environmental matters as inherently linked to human rights.

Secondly, case law shows that with regard to access to environmental information, the EU framework and the CJEU's interpretation can provide valuable insights for the ECtHR. Although the ECtHR's approach now includes a positive obligation on the states to disseminate information, this still depends on certain criteria as seen in the case of *Magyar Helsinki Bizottság,* and, in an environmental context, *Cangı.*[187] From the CJEU approach in *Office of Communications,* it can be drawn that, the term "environmental information" must be construed broadly and regarding the authorities' duty to share information about the environment, disclosure must be the general rule, not the exception. Limitations on access to environmental information must be construed

[187] *Magyar Helsinki Bizottság v Hungary [GC]* App no 18030/11 (ECtHR, 8 November 2016); *Cangı v Turkey* App no 24973/15 (ECtHR, 29 January 2019).

carefully, with due regard to the public interest in disclosure.[188]

Thirdly, regarding public participation in decision-making, the courts' case law shows notable similarities. As seen in *KlimaSeniorinnen* and *Križan and Others,* public participation in decision-making processes must take place in a meaningful and timely manner. It must occur at stages where decisions are still open to be influenced, and all relevant information must be made available to the public to ensure that participation goes beyond mere formality.[189] Also, as seen in *Gemeinde Altrip and Others* and *Büttner and Krebs,* although a failure to involve the public in a decision-making process would not directly lead to a violation, the burden would be on the authorities to show that the defect did not affect the outcome of the proceedings.[190]

Fourthly, case law shows that there is need for more consistency with regard to access to justice, especially in standing rules. The NGOs' standing is still not completely resolved in both systems. However, the CJEU's restrictive approach appears more open to criticism, including from the ACCC. More inclusive standing rules enabling NGOs and individuals to challenge acts and omissions by public authorities are needed. In this connection, the role of civil society should not be overlooked. Special importance should be given to NGOs, as seen in the ECtHR case *Magyar Helsinki Bizottság* and in the context of climate change, *KlimaSeniorinnen.*[191] Considering their vital role in holding public institutions to account and ensuring that environmental decisions reflect the public interest, their right to access to justice should not be overlooked.

Nonetheless, despite existing gaps, the presence of two separate yet interconnected courts addressing similar rights contributes to strengthening the procedural dimension of environmental protection in Europe. At the ECtHR level, judgments like *Magyar Helsinki Bizottság* show a readiness to advance these rights, interpreting Article 10 to include a right of access to information held by public authorities. The

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[188] Case C-71/10 *Office of Communications v Information Commissioner* ECLI:EU:C:2011:525.

[189] *Verein KlimaSeniorinnen Schweiz and Others v Switzerland* App no 53600/20 (ECtHR, 9 April 2024); Case C-416/10 *Križan and Others v Slovenská inšpekcia životného prostredia* ECLI:EU:C:2013:8.

[190] Case C-72/12 *Gemeinde Altrip and Others v Land Rheinland-Pfalz* ECLI:EU:C:2013:712; *Büttner and Krebs v Germany* App no 27547/18 (ECtHR, 4 June 2024).

[191] *Magyar Helsinki Bizottság v Hungary [GC]* App no 18030/11 (ECtHR, 8 November 2016).

reaffirmation in *Cangı* that this also applies to environmental cases reinforces the Court's stance on procedural environmental rights. Similarly, in *KlimaSeniorinnen*, the ECtHR's engagement with climate change and granting of standing to an environmental NGO, reflects a willingness to evolve in order to better address these rights.

Lastly, the research reaffirms an established insight: the interpretive approach adopted by courts plays a decisive role in shaping the scope and effectiveness of rights. While the CJEU, despite being directly bound by the Aarhus Convention, has faced criticism for not fully meeting its access to justice obligations, the ECtHR – although lacking a dedicated environmental rights framework and relying on the Aarhus Convention as an interpretive tool – demonstrates more openness to considering environmental claims including its procedural aspect.

Looking ahead, both courts have areas for improvement. For the ECtHR, one potential avenue for reform is the adoption of a new protocol to the ECHR, which would ideally recognise and reinforce environmental rights. The extent to which procedural environmental rights will be incorporated into such a protocol remains uncertain. Also, the newly adopted strategy by the Committee of Ministers warrants attention with its emphasis on democratic governance in environmental matters. As for the CJEU, more time is needed to see the practical effects of the amended Aarhus Regulation. Moreover, it remains to be seen if the CJEU will change its approach under Article 263 of TFEU and adopt a more flexible approach on standing requirements.

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