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Access to Justice in Environmental Matters

Country Reports and Case Studies

Part II
Germany – Italy – The Netherlands

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Germany Country Report

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1 Introduction

As opposed to other countries, public interest actions in environmental matters in Germany have a limited scope. German environmental protection associations (hereinafter: NGOs), which are officially recognised by the state, have special standing to bring legal claims only in nature conservation law. This exception of the general rules on standing was introduced to reduce deficiencies in the enforcement of nature conservation law.[1] The so-called "altruistic" public interest action (*altruistische Verbandsklage*) in nature conservation law thus provides for an otherwise non-existent possibility within the German system of individual legal protection (Art. 19 (4) GG and § 42 (2) Administrative Court Procedure Act[2]). It aims to ensure the consideration of nature conservation provisions when making administrative decisions.[3] If a breach of the Federal Nature Conservation Act has been established, the administrative decision can be set aside. The "threat effect" is supposed to lead authorities to better implement the Nature Conservation Act.

The introduction of the public interest action at the federal level first took place when the Federal Nature Conservation Act was amended in 2002.[4] The Constitution of the Federal Republic of Germany bestows the federal level with the right to establish the legal framework in the area of nature conservation,[5] which opens up a broad scope for the German federal states (hereinafter *Länder*) to have their own laws and regulations. The *Länder* are taking this opportunity.

In as early as 1979 Bremen was the first *Land* to introduce the public interest action at the state level, and Hesse (1980), Hamburg (1981) and Berlin (1983) followed, along with Saar (1987). After the reunification of Germany, Brandenburg (1992), Saxony-Anhalt (1992), Saxony (1992) and Thuringia (1993) adopted similar provisions. Later the other (former West German) *Länder* of Lower Saxony (1993), Rhineland-Palatinate and North Rhine-Westphalia joined in. In 2002 the public interest action was introduced in Mecklenburg-West Pomerania as well. Bavaria and Bade-Wuerttemberg so far have no *Länder* laws. In the meantime, Hesse has abolished the right of environmental associations to bring public interest actions. In these *Länder* environmental associations have access to the courts based merely on § 61 of the Federal Nature Protection Act.

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1 See in this regard the reasons given for the Federal Government's draft law for the introduction of a uniform law for public interest actions in the Federal Nature Conservation Act, BT-Drs. 14/6378, p.108 et seq.

2 See list of abbreviations in the Annex.

3 Also see Bizer/Ormond/Riedel, Die Verbandsklage im Naturschutzrecht 1990 (The Public Interest Action in the Federal Conservation Protection Act, 1990), p. 28 et seq.

4 Act to Amend the Law of Nature Conservation and of Landscape Conservation and to Adjust Other Legislation – BNatSchGNeuregG – of 25 March 2002 (BGBl. I, p.1193). The Act came into force on 4 April 2002.

5 See Art. 75 GG.

This study includes the altruistic public interest actions, which have been instituted from 1996 to 2001 on the basis of the applicable law by the *Länder*.[6] Environmental associations have the right to participate in a number of procedures such as plan approval procedures.[7] Therefore, consideration is given here to actions that are based on the possibility - recognised in court decisions – of NGOs to enforce their rights to take part in these procedures ("actions to enforce participation").[8] However, actions by NGOs based on the acquisition of ownership of so-called savings land (*Sperrgrundstück*) - the egoistic public interest actions - are not included.

2 Legal Framework of the Public Interest Action in Germany

2.1 The Federal Nature Conservation Act

When introducing the public interest action at the federal level in 2002 the legislator was aiming to limit the new provision to a "key area significant from the federal perspective."[9] § 61 (1) Federal Nature Conservation Act includes legal remedies in respect of dispensations from nature conservation law (no. 1) and plan approval resolutions (no. 2).

§ 61 (1) reads:

"An association recognised in accordance with Article 59 or on the basis of *Länder* provisions within the framework of Article 60 may, without violation of its rights, and in accordance with the Code of Administrative Procedure, lodge an appeal against:

1. Exemptions from prohibitions and orders relating to the protection of nature conservation areas, national parks, biosphere reserves and other protected areas within the framework of Article 33, paragraph (2) and

2. Planning permission relating to projects involving interventions in nature and landscapes as well as plan approvals, insofar as public participation is envisaged.

Sentence 1 shall not apply if an administrative act cited therein has been adopted on the basis of a judgement by an administrative court."

The new provision leaves self-interested actions and actions to enforce participation untouched. Nature conservation NGOs may also continue to institute legal action on

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6 For the time period between 1979 (when the first *Länder* provision was introduced in Bremen) and 1991, Thomas A. Ormond recorded an approximate number of 62 cases. See Ormond, Environmental Group Actions in West Germany, in: Martin Führ/Gerhard Roller (eds.), Participation and Litigation Rights of Environmental Associations in Europe, Frankfurt am Main, 1991.

7 See § 58 BNatSchG.

8 Based on BVerwGE 87, 62 et seq also see BVerwG of 12 November 1997 – 11 A49/46 – NVwZ 1998, 395.

9 See BT – Drs. 14/6378, p.109.

self-interested grounds when their own rights have been injured, for instance as the affected owner of a plot of land (*Sperrgrundstück*). In addition, the legislator has not regulated the scope of actions to enforce participation. This regards cases where the obligatory participation was deficient or completely omitted. According to the legislator numerous judicial precedents[10] made regulation under federal law in this regard unnecessary.[11] Generally, actions are bound by general prerequisites for admissibility. The following will briefly present individual areas of application.

Actions against dispensations from nature conservation law

According to § 61 (1) no. 1 Federal Nature Conservation Act, respectively the relevant *Länder* laws, actions are possible against the removal of regions or areas from protected areas (so-called dispensations):

- in respect to nature reserves, national parks and, with reference to § 33 (2) Federal Nature Conservation Act and
- beyond that in areas registered by the *Länder* in a list in accordance with the Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (hereinafter Habitats Directive)[12] and
- the Council Directive 79/409/EEC on the conservation of wild birds, (hereinafter Birds Directive).[13]

As a consequence of this provision, areas that have the protected status of a landscape conservation reserve or a biosphere reserve in the *Länder* can in the future be affected when the required elements for a dispensation are met or under the Habitats or the Birds Directive. The highest administrative court decided that potential FFH areas also fall under this provision.[14]

When lodging the action it is usually necessary that the intended dispensation runs counter to the conservation goals of the protected area. In accordance with § 62 (1) nos. 1 and 2, strict standards are set for a dispensation. There must be either

(1) an inadvertent severity and the deviation from the protection goals in the area in question must be compatible with the interests of nature conservation and landscape conservation or

(2) the implementation of the provisions would lead to an undesired interference with nature and landscape or

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[10] See (amongst others) BVerwGE 87, 62 et seq., OVG Lüneburg of 27 January 1992 - 3 A 221/88 in NVwZ 1992, 903 et seq.

[11] See BT–Drs. 14/6378, p.110

[12] Coucil Directive 92/43/EEC of 21 May 1992, OJ L 206/7, 22.7.1992.

[13] Coucil Directive 79/409/EEC of 2 April 1979, OJ L 103/1, 25.4.1979.

[14] See BVerwGE 4 A 9.97 of 19 May 1998; BVerwGE 4 A 18.99 of 27 October 2000; and most recently BVerwGE 4 A 28.01 of 16 May 2002. See also Case Study Germany.

(3) overriding reasons of public interest require the dispensation.

The courts are seldom faced with a difficult balancing of interests when reviewing the preceding administrative proceeding, because the corresponding *Länder* laws are just as narrow.

Actions against plan approval decisions

§ 61 (1) no. 2 Federal Nature Conservation Act involves actions against plan approval resolutions. This is the most frequent action in practice. It encompasses all project planning in which plan approval procedures are used. A plan approval procedure according to German administrative law is a complex form of a formal approval procedure, which includes public participation. This form of procedure is mainly used for larger infrastructure projects. The final approval encompasses most of the other necessary licenses. Means of legal redress are restricted. The *Länder* are responsible for the enforcement of environmental laws in the Federal Republic of Germany. They mostly foresee a right of action against plan approval procedures in their nature conservation laws. The new provisions of the federal law of 2002, therefore, only affect those cases in which *federal* authorities are operating as plan approval authorities. This is the case when constructing railway facilities, extending and constructing federal waterways, as well as building or altering facilities for a magnetic railway. Furthermore, the legal remedy may also be relevant to facilities for the permanent disposal of radioactive waste.[15]

The following approval procedures are potentially affected:

- The construction of and significant alterations to roads (§ 17 FStrG in combination with § 73 Administrative Procedure Act and provisions of the *Länder* laws)
- Projects of the German railway company, Deutsche Bahn AG, especially the construction of railway infrastructure (§ 18 AEG in combination with § 73 Administrative Procedure Act and provisions of the *Länder* laws)
- The construction of tram tracks (§ 28 Abs. 1 PBefG in combination with § 73 Administrative Procedure Act and provisions of the *Länder* laws)
- The construction and siginificant alteration of airports (§ 10 Abs. 3 LuftVG)
- Permanent land fills for waste disposal (§ 31 in combination with § 73 Administrative Procedure Act and provisions of the *Länder* laws)
- The construction of telegraph infrastructure (§ 7 (3) second sentence TWG in combination with § 73 Administrative Procedure Act)
- The extension of inland waters (§ 31 (1) first sentence WHG in combination with § 73 Administrative Procedure Act and provisions of the *Länder* laws)

[15] See BT-Drs. 14/6378, p.111

- The construction of federal inland waterways (§ 17 WaStrG in combination with § 73 Administrative Procedure Act and provisions of the *Länder* laws)
- Procedures for consolidation of farm land (§ 41 (2) 2. sentence 2 FlurBG)
- Drawing up of framework industrial plans (§ 52 (2) a BBergG).

The second half sentence of § 61 (1) no. 2 Federal Nature Conservation Law provides legal remedies against plan permit procedures where public participation is provided for. This is new in contrast to legal remedies against plan approval resolutions, which were always provided for in the *Länder*. The notion is only understandable against the background of requirements of European law (IPPC-Directive, EIA-Directive). The latter tend to result in an expansion in the scope of cases.

Further general prerequisites for admissibility

In order to bring an action, environmental NGOs must fulfil not only a number of formal requirements but also a number of substantive requirements. First, only NGOs, which are recognised by the state, may bring legal actions. If they are active nationwide this recognition can be obtained directly from the Federal Ministry for the Environment, Nature Conservation and Reactor Safety in accordance with § 58 Federal Nature Conservation Law or they may get registered in the *Länder* through a recognition procedure. The criteria for nationwide recognition are laid out in § 59 (1) Federal Nature Conservation Act, and the states must apply the fundamental criteria in accordance with § 60 (3) Federal Nature Conservation Act. Up to now the practice of recognition by the states has been characterised throughout by a rather liberal interpretation of the criteria. However, it must be pointed out that the criteria are very strict in comparison to other EU countries.

Furthermore, it is usually necessary that the organisation asserts that the administrative act in contention breaches nature conservation provisions or provisions that are *also* meant to serve the interests of nature and landscape conservation. The organisation's area of responsibilities under the terms of its articles of association must be affected by the administrative act.

A further prerequisite of the action is that the recognised environmental NGO previously participated in the administrative proceeding. The legislator is thereby linking the right of action to direct participation and making this a necessary condition for the public interest action. On the other hand, not all elements of a case, which permit participation, can also be the subject matter of an action. In a multitude of cases, federal and *Länder* laws give NGOs a right to participate, but no right of legal action. If an NGO has received the documents for participation, but failed to make use of its right to participate, a later action is precluded (formal preclusion).

In accordance with § 61 (3) Federal Nature Conservation Act all objections relevant to an action should be made during the participation process. A legal action is later

limited to those arguments that the recognised organisation has made or could have made before (so-called *substantive preclusion*).[16]

Theoretically, three possibilities to participate are conceivable:

- **Participation in accordance with § 58 (1) nos. 2 and 3 Federal Nature Conservation Act**
  Here, participation is based on federal law standards. The NGO has commented on the matter in a federal plan approval procedure in which encroachments upon nature and landscape occur. Participation is also possible in a plan *permit* procedure that takes the place of a plan approval procedure and in which public participation is provided for by way of exception.[17]
- **Participation on the basis of § 60 Federal Nature Conservation Act as well as participation under the *Länder* nature conservation laws**
  § 60 Federal Nature Conservation Act prescribes a catalogue of minimum participation rights for the *Länder*. Aside from the plan approval procedure, this provision also contains participation rights significant for the public interest action, in dispensations from orders and prohibitions, which protect nature, reserves, national parks and other protected areas and which are within the framework of § 33 (2) Federal Nature ConservationAct. In addition, a number of further possibilities for participation exist in those individual *Länder* that also give a right of action.
- **Infringement of the prescribed statutory right to participate**
  The legislator grants the NGOs a further possibility for legal action when the associations "are not given the opportunity to comment contrary to § 58 (1) Federal Nature Conservation Act or the provisions of *Länder* laws enacted within the scope of § 60 (2) Federal Nature Conservation Act". In this case the claim can be filed without previous participation in the administrative proceeding. The point of time at which the NGOs obtain knowledge of the omitted administrative proceeding is decisive for filing of the claim.[18]

2.2 *Länder* Regulation of Public Interest Action

Only the *Länder* nature conservation acts of Bavaria and Baden-Wuerttemberg do not forsee a public interest action in environmental matters. The provisions in the individual *Länder* can be divided into "narrow" and "broad" fields of application:

- The provisions of the nature conservation acts in Brandenburg (§ 65), Bremen (§ 44), Rhineland-Palatinate (§37 b), Saar (§ 33), Schleswig-Holstein (§ 51 c), Thuringia (§ 46) as well as Mecklenburg-Western Pomerania (§ 65a) have a

[16] See the considerations for § 61 (2) and (3) BNatSchG p.111.

[17] See also the written question of the parliamentary representative Eva Bulling-Schröter and the PDS party, Gazette of the Federal Parliament (BT-Drs. 14/9184), p.4.

[18] See § 61 (4) BNatSchG.

narrow field of application, which is essentially limited to plan approvals and dispensations in nature reserves and national parks. In Saxony, however, an action against a plan approval is only permitted in respect of interference with certain protected areas (§ 58). Furthermore, actions against certain projects are precluded, e.g. traffic projects in Thuringia, which fall under the Traffic Infrastructure Planning Expediting Act.

- The regulations of the laws in Berlin (§ 39b), Hamburg (§ 41), Hesse (§ 36), Saxony-Anhalt (§ 52), Lower Saxony (§ 60c) and North Rhine-Westphalia (§ 12b) have a broad field of application. The legal remedies contained in these provisions, however, can be differentiated. Above and beyond dispensations and plan approval resolutions, actions can concern plan permits, exceptions from biotope protection legislation (§ 20 Federal Nature Conservation Act), dispensations in water protection areas, authorizations and licences under water law as well as approvals for building projects on undeveloped land, depending on the respective *Land*.

Some *Länder* laws expressly allow a public interest action in cases of circumvention of participation rights. This can happen when, instead of an administrative proceeding, which could lead to an action by the NGOs, another administrative act for which a participation right and a right of action does not exist, is chosen by the authorities (Berlin, Saar, Saxony, Schleswig- Holstein, Thuringia, as well as Hesse in the case of plan approval procedures). This is intended to prevent attempts, observed in practice primarily in the case of plan approvals, to circumvent participation rights and rights of action by the choice of another proceeding.

However, even the provisions of *Länder* law with a broad field of application only open up the legal remedy for some of the cases that are perceivable to reduce the enforcement deficiencies in nature conservation law by means of the public interest action. For example, the public interest action against the approval of building projects on undeveloped land is only permitted in Berlin and Lower Saxony. A right of legal action, when a dispensation from biotope protection legislation is granted, is only possible in Hamburg, North Rhine-Westphalia and Mecklenburg-Western Pomerania. Absolutely no legal remedy addresses the drawing up of development plans. However, in many cases these plans create the basis for encroachments upon nature and landscape such that the encroachment provision has to be employed here anyway.[19] In sum, the federal as well as state provisions in Germany are mainly restricted to actions for the protection of nature and landscape.[20] Through the restriction in the scope of review and the doctrine of *substantive preclusion* the judicial review is limited even further.

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[19] See § 61 (4) BNatSchG.

[20] See also E. Rehbinder, Germany, in: Jonas Ebbesson (ed.), Access to Justice in Environmental Matters in the EU, p.231, 256/267, who stated that „the restrictive standing criteria are the most important bottleneck of administrative and judicial review of administrative action in the field of environmental protection in Germany."

3 Analysis of cases in the period 1996-2001

3.1 Methodology

The collection of cases is based on inquiries made of recognised nature conservation NGOs as well as other specialist sources. These included decisions published in journals, especially *"Natur und Recht"* (Nature and Law, NuR), and commentaries, especially Meßerschmidt, *Bundesnaturschutzgesetz* (Federal Nature Conservation Act, Commentary).[21] The goal was to record as many cases as possible. In spite of this it must be assumed that some are missing, since there exists no central register for public interest actions in Germany. When inquiring at the NGO level, not all associations had recorded the files centrally. Furthermore, in some cases members of staff of the NGOs who could have provided information often are no longer employed by the associations. Still, it is assumed that most cases for the reference period have been recorded.

3.2 Scope of the collection of cases

This analysis encompasses 115 cases in the period from 1 January 1996 to 31 December 2001.[22] Within the framework of these cases 183 individual decisions were identified and considered.

[21] We would like to thank the Unabhängiges Institut für Umweltfragen e.V. (UfU), Berlin Germany for providing the data as well as their contribution to its interpretation. For further information and their analysis of the German situation compare: Alexander Schmidt, Michael Zschiesche und Marion Rosenbaum "Die naturschutzrechtliche Verbandsklage in Deutschland", Springer Verlag, Heidelberg, Berlin 2004.

[22] Only altruistic public interest action and actions to enforce participation based on the BNatSchG are included.

Table 1: Number of actions in the individual *Länder*

***Länder* with public interest action laws = actions in federal territory**	**Actions in period 1996-2001**	**Decisions 1996-2001**
Baden-Wuerttemberg	4	6
Bavaria	7	9
Berlin	17	24
Brandenburg	14	26
Bremen	4	5
Hamburg	5	13
Hesse	6	9
Mecklenburg-Western Pomerania	1	1
Lower Saxony	15	29
North-Rhine Westphalia	2	3
Rhineland-Palatinate	4	6
Saar	6	7
Saxony	7	9
Saxony-Anhalt	6	9
Schleswig-Holstein	13	21
Thuringia	4	6
Total	**115**	**183**

The irregular distribution of legal actions between the *Länder* is reflected here: a good 50% of the cases were brought in Berlin, Brandenburg, Lower Saxony and Schleswig-Holstein.

The cases analysed also encompass interim injunctive relief proceedings[23] as well as appeals on questions of fact and law, and appeals on points of law. The following table gives firstly an overview of the ratio of the cases concluded at the court of first instance and the cases that extended over several instances.

[23] In Germany the procedure for interim judicial relief is among the most important in practice. Compare Rehbinder, supra note 20 at 256.

Overview 2: Ratio of actions completed at the court of first instance to actions, which were considered over several instances

***Länder* with public interest action laws = actions in federal territory**	**Actions in the period 1996-2001**	**Concluded at the court of first instance 1996-2001**	**Actions which extended over several instances[24]**
Baden-Württemberg	4	2	2
Bavaria	7	5	2
Berlin	17	13	4
Brandenburg	14	9	5
Bremen	4	4	0
Hamburg	5	3	2
Hesse	6	4	2
Mecklenburg-Western Pomerania	1	1	0
Lower Saxony	15	12	3
North Rhine-Westphalia	2	1	1
Rhineland-Palatinate	4	3	1
Saar	6	6	0
Saxony	7	6	1
Saxony-Anhalt	6	5	1
Schleswig-Holstein	13	10	3
Thuringia	4	3	1
Total	**115**	**87**	**28**

Of the 115 cases, 87 cases (75.7%) were conclusively decided by the court of first instance. In 28 (24.3%) cases the litigation extended over several instances, which generally led to a prolonged decision-making.

[24] In this context it must be taken into account that for actions concerning the traffic infrastructure extension of the projects "German Unity", the Federal Administrative Court represents the only instance due to the Traffic Infrastructure Planning Expediting Act. Actions that were filed with the Federal Administrative Court and additionally with the Federal Constitutional Court have been treated as one instance. See the Act to Expedite the Planning of Traffic Infrastructure in the New Federal States and in the State of Berlin (Traffic Infrastructure Planning Expediting Act) of 16 December 1991 (BGBl. p. 2174); the Investment Measures Act About the Construction of the "South By-Pass Stendal" of 29 October 1993 (BGBl. I p. 1906); Act to Expedite the Planning Process for Traffic Infrastructure (Planning Simplification Act – PlVereinfG) of 17 December 1993 (BGBl. I 2123); Act to Expedite Permit Proceedures (GenBeschlG) of 12 September 1996 (BGBl. I p. 1354); Sixth Act to Amend the Regulations Governing Administrative Courts and to Amend Other Acts (6. VwGO-ÄndG) of 1 November 1996 (BGBl. I p. 1626) and other federal state laws.

Of the 115 cases, interim injunctive relief proceedings were conducted with striking frequency.[25]

Most importantly, it can be noted that the argument that was made for decades in Germany against the introduction of the public interest action, namely that it would lead to the courts being overloaded,[26] has been empirically refuted. At present approximately 30 decisions per year[27] can be anticipated in Germany in respect to public interest actions. Compared to this 202,562 proceedings were decided by the administrative courts in 1998.[28] This shows that the administrative courts have been occupied with public interest action in only some 0.0148% of all cases.

3.3 Outcome of the cases in the period 1996-2001

The following results can be established from the actions conducted in the period analysed:

Overview 3: final judicial outcome of the respective court of last resort for actions in the period 1 January 1996- 31 December 2001

Total number of actions conducted in the period[29]	Number won	Partial success[30]	Lost
110	9	20	81
100 %	8.2	18.2	73.6

As a result, it can be recorded that approximately one quarter of the actions of the recognised nature conservation NGOs in the Federal Republic of Germany were

[25] See supra note 23. Data is not available for all cases though, so a statistical evaluation is not possible. In addition, the associations did not infrequently bring an early end to actions after a lack of success in the interim injunctive proceedings.

[26] See Philipp, B. „*Das Verbandsbeteiligungs- und Verbandsklagerecht der anerkannten Natur- und Umweltschutzverbände in Deutschland*“, (The Participation and Public Rights of Action of the recognised nature and environmental conservation associations in Germany) ed. UfU e.V., Berlin, 1988 p.19 et seq; also refer in this regard and for further counterarguments to Bizer/Ormond/Riedel (Footnote 2), p. 55 et seq., with further references.

[27] According to the investigation carried out, only 20 cases or 30.5 decisions per year can be ascertained though it has to be taken into consideration that some cases could not be captured by the investigation.

[28] See *Statistisches Bundesamt* (Federal Statistics Office), “*Verwaltungsgerichte*” (“Administrative Courts”), p.1998, p.14 et seq. (Actions ended by judgement, summary court decision, judicial ruling without including disciplinary and professional disciplinary tribunal proceedings), consecutive Nr. 2.

[29] The discrepancy compared to 115 arises from the fact that decisions are not yet available in two cases that were initiated in the period analysed (No. 38 and No. 39). Three cases were stayed by the court. The reasons were not assessed here, only whether a court decision was available. All other proceedings - even when a decision on the merits was still to come -were classified according to the latest outcome available at the present point in time, so that merely a tendency is shown here (e.g. after a summary proceeding won or lost and when a decision on the merits is still to come).

[25] All cases ending by settlement were also classified as a partial success.

completed successfully or partially successfully for the NGOs. This outcome is just above average in comparison to the success rate in the whole area of administrative jurisdiction in Germany.[31] The outcome statistics also reveal that at present infringements of nature conservation law in Germany can only be remedied inadequately.

The reasons for this are diverse. A first, fundamental reason is that the legislator has refrained from creating enforceable rights in environmental and nature conservation law in many respects. Secondly, the courts carry out a weighting of interests by means of a balancing process, in which a multitude of other interests are frequently set against environmental and nature conservation interests. Therefore, the impression is created that environmental interests are of minor relevance compared to the total number of the interests that have to be taken into consideration, even if infringements of environmental and nature conservation law have occurred. This is especially true in the case of legal actions against plan approval procedures. A more differentiated picture of outcomes emerges if one looks at the total number of the decisions within the cases:

Overview 4: Judicial outcomes of the individual decisions of the actions in the period 1 January 1996 - 31 December 2001

Total number of decisions[32]	Number of those won	Partial success	Lost
163	26	23	114
100%	16	14.1	69.9

The table shows that in comparison to the final outcomes of legal actions (refer to Overview 3), public interest actions are considerably more often successful or partially successful. In total a figure of 30% of decisions were successful or partially successful. The reason for this is that in fact the NGOs frequently plead breaches of environmental and nature protection law and that they are not infrequently proved right in the first examination of the summary proceeding.

When examining the outcome statistics it must be further taken into account that the NGOs, by reason of the multitude of breaches of environmental and nature

[31] Of the 91,527 administrative court decisions in which a public authority was a party in Germany in 1998, 73,693 were won by the public authority, which corresponds to approximately 80% of the cases, see *Statistisches Bundesamt* (Federal Statistics Office), „*Verwaltungsgerichte*“ („Administrative Courts“), p.1998, p.14 et seq. As the opposing party in public interest actions is always a public authority, the argument can be reversed.

[27] This is the sum of the decisions with a significant outcomes. The difference of 20 decisions (as compared to the total amount of 183) arises from the seven open and seven stayed actions as well as two transfers to other courts and three decisions in which a decision is still to be reached by a court and the outcome could not be ascertained. In one case both the summary proceeding and main action ended by settlement, and therefore only one total outcome is presented for two individual proceedings.

conservation law and the very restricted formal and material scope for application of the action in the Federal Republic of Germany, concentrate on a few exemplary cases.

Furthermore, public interest actions even in cases in which they are admissible but unsuccessful, contribute to reducing enforcement deficits in nature conservation law. They thereby are able to fulfil *one* of their functions. That applies above all to leading cases in which disputed points of law are clarified. An example is the decision of the Federal Administrative Court in the case of the Baltic Sea Motorway A-20 (Decision No. 162).[33] On the one hand, it contains fundamental observations on the scope of judicial review in public interest actions. On the other hand, it established for the first time that the so-called Habitats Directive – in spite of it not yet having been fully implemented – manifests a "pre-influence" and in this respect should be taken into consideration in plan approval procedures. Above all the fundamental observations of the "pre-influence" of the Habitats Directive, which had been rejected up until that point, had significant meaning for administrative practice and was an important contribution to its receiving more consideration when carrying out administrative acts.

In the case of plan approval decisions, which make up over half of the public interest actions, the actions that have (only) led to a further administrative procedure must be regarded as successful as well. If the court has established deficits in the consideration given to nature conservation in the balancing of interests or in application of the encroachment provision (§ 8 Federal Nature Conservation Act), the planning authority has to remedy these deficiencies and restore the legal effectiveness of the plan in the further procedure. This possibility (the so-called *principle of plan preservation*, § 75 (1a) first sentence Administrative Procedure Act) often prevents NGOs that take legal action from reaching their – in the case of many large projects certainly being the most significant – goal of setting aside the plan approval resolution. However, the public interest action also fulfils its function of eliminating deficiencies in enforcement when unlawfulness is established and the elimination of mistakes in the application of nature conservation law follows. In other words, it can also have an effect on future planning procedures , because the planning authorities try to achieve better compliance there in order to avoid delay on the project through a successful public interest action.

Finally, it must be assumed that not only "procedural" success or failure is of interest for the participants in public interest actions. In more than one case, legal action was brought on the part of the NGOs on grounds of environmental politics, although the prospects of success were negligible from the beginning.[34] This was justified,

[33] See Case Study Germany.

[34] Rehbinder, supra note 20 at 256, calls this „ideological litigation". He also points out, however, that even though most of these actions failed, they somtimes led to abandonnment of the project or to regulatory action in question

because actions that are dismissed can also constitute a success with regard to certain goals of environmental politics. From the NGOs' point of view this includes goals such as the sensitisation of the general public to deficiencies in the area of nature conservation. Another would be to mobilise the members of the NGO itself. Some of the actions recorded have obviously been brought deliberately in cases in which even the admissibility of the actions was very questionable, due to the restricted scope of application. It was done nevertheless to draw attention to the deficiencies in the consideration of nature conservation and to the lack of potential judicial control. Whether or not and to what extent these actions that are motivated by environmental politics have an effect on law making, because they stimulate an expansion of the legal remedy is difficult to prove.[35]

3.4 Subject matters of actions and types of actions

It is also interesting to consider the subject matter of the actions that were recorded, i.e. against which types of administrative decisions actions were taken. The subject matter of the actions can be divided into three groups. The first group of decisions is directed against plan approval decisions. These concern projects in the infrastructure sector (for example the building of motorways, hydro-electric power facilities or airports as well as the mining of mineral resources etc.). In this category belong actions in which the NGOs sued because the wrong procedure was chosen.

A second group represents actions against the removal of regions or areas from protected areas (dispensations). For these an authorization is required in Germany, in respect of which the recognised NGOs have to be involved. Actions against subordinate legislation constitute the third group. They are conducted in the form of a judicial review action on the constitutionality of laws.

Thirdly, certain actions are admissible only in individual *Länder* laws. They concern a subject matter only permitted as a cause of action in a few *Länder*. This group also includes actions that the NGOs institute even without an explicit right of action when there is an obvious breach of environmental and nature conservation law in order to attempt to enlarge the "window" of permitted subject matters of proceedings through judicial decisions. They include quite a few actions in the field of building law, partly on the basis of *Länder*-specific public interest actions and partly because the enforcement deficits are often very considerable while the NGOs are confronted with unlawful proceedings without possessing a legal remedy.

[35] For example no connection is ascertainable between the dismissed proceedings in Berlin against a dispensation being issued in the case of a legally protected biotope and the inception for the first time of a remedy in such cases in North Rhine-Westphalia.

Overview 5: Subject matters of actions in the period 1 January 1996 – 31 December 2001

Subject matter	Dispensations	Plan approval procedures	Subordinate legislation	Other	Total
Absolute	21	61	6	27	115
Percentage	18.3	53	5.2	23.5	100

Actions against plan approval procedures make up the largest group of actions within the public interest action. This is not surprising, however, considering the major encroachments upon nature and landscape in connection with projects affecting large areas of land and due to a corresponding significance for environmental politics. Therefore, it is no coincidence that the three actions in the period analysed that were the most significant and enjoyed the most public interest were actions against plan approval decisions ("Plan Approval Decision Federal Motorway A20" (PFB BAB A 20) in Schleswig-Holstein, "Dam Emssperrwerk" in Lower Saxony and "Mühlenberger Hole" in Hamburg).

Approximately one quarter of the actions against plan approval decisions are successful. The statutory restriction of the so-called power to object often has a negative effect on the judicial decision-making process. Predominantly, the NGOs can only argue that provisions, which are classified as nature conservation law, are being breached. It is also possible to a degree to attack breaches of provisions in respect of other fields if these regulations "are also intended to promote the interests of nature conservation law". According to the court decisions, the necessary balancing of all affected interests within the framework of a plan approval procedure should therefore only be judicially controlled with regard to whether the interests of conservation protection have been adequately considered. However, whether or not an error has been made in the investigation or in the evaluation of other interests unrelated to nature conservation is not generally examined. Such errors only matter in the case of discernable pretexts or an improper balancing of interests. Accordingly, the disadvantaging of nature conservation by too heavily weighting economic interests can only be attacked successfully in the case of a really serious error. This restriction of judicial control leads to the fact that public interest actions are at best partly being able to fulfil their function, ie. to mitigate enforcement deficits. This is especially true for plan approval decisions, even though they constitute the public interest action´s most important application.

The number of actions against dispensations is likewise very large. It can possibly be explained by repeated instances of considerable enforcement deficits. From the point of view of the NGOs bringing actions therefore appears necessary for nature conservation and initially relatively promising. In fact, public interest actions against

dispensations have an above average success rate even within the area of public interest action (approx. 50%). However, NGOs are not always able to prove that the legal requirements for the dispensation were not met or that the authority responsible exercised its discretion erroneously. In addition, there are instances where the dispensation procedure is completely avoided by the authority responsible by simply amending or repealing the relevant subordinate regulation concerning protected areas. [36] In this situation there is neither a right of participation nor a right of action.

All proceedings against subordinate legislation were lost by the NGOs. Both judicial review actions on the constitutionality of laws, which were directed against development plans, were also lost. The prospects for NGOs successfully taking judicial review actions on the constitutionality of laws are, therefore, almost zero according to the court decisions up to the present time.

In the group "other actions" the probability of success is conspicuously low (only approx. 14%). This reflects the fact that – as discussed above – "experimental actions" are recorded here, for which the right of action was questionable from the outset. Furthermore, it is obviously very difficult, even when a right of action exists, to obtain a hearing for nature conservation interests in the relatively foreign milieu of construction law (in comparison to immission control law or water law).

An analysis of the types of actions shows that in many cases the NGO objected to the violation of a legal right (here the right of participation) within the framework of the so-called action to enforce participation. The legislator has not explicitly regulated this action, but it is recognised by the courts.[37] In practice the actions taken by NGOs because they were not involved make up some 35% of all actions.[38] However actions to enforce participation that are not combined with substantive objections are very rare. In this respect the classification as actions to enforce participation is difficult, since in practice, tactical considerations of litigation generally also play a role in the bringing of actions.[39] The court decisions sanction this when the authorities responsible improperly choose an inappropriate type of procedure and thereby avoid rights of action or rights of participation. Accordingly, actions are admissible, where a breach of a right of participation cannot obviously be denied. However, the courts often do not accept the merits of the claim, because they do not object to the choice of the type of administrative procedure as long as it remains within the bounds of the legally permitted possibilities and appears justifiable. The administrative decision is in danger of being set aside, though, if an improper choice of the type of procedure

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[36] This is unfortunately not a one-off case, see BVerwG, 4 BN 10/97; VG Osnabrück 2 A 12/96

[37] See footnote 10.

[38] Those proceedings marked P in the table (32 cases) as well as the judicial review action on the constitutionality of laws (8 cases) are classified together here, as these always object to a lack of participation because there is no substantive right of action.

[39] That is the reason for the additional classification (P) and A/P in the table in the case of actions that were difficult to classify as participation actions (6 cases) or which only contained some of their elements (2 cases).

comes before the court. Therefore, in many cases the authorities have in practice begun involving the NGOs when this is not actually prescribed by the chosen procedure. Unfortunately, this frequently leads to the approving authority involving the NGOs in the "wrong" procedure in order to thereby avoid the NGO's possible right of action in the "correct" procedure. Consequently, after participation has taken place, for example in an authorization procedure relating to water, no possibility exists for the NGOs to force a plan approval procedure (that lawfully must be used). As a result, there are also no grounds for action against the failure to carry out the environmental impact assessment provided for in the plan approval procedure.[40]

3.5 Socio-economic aspects

Not all environmental NGOs in Germany have the status of a recognised association.[41] For example, Greenpeace, one of the highest profile environmental NGOs, does not work as a recognised association, and is therefore not entitled to bring actions in the sense of the altruistic public interest action. In addition, many of the recognised NGOs, especially those specialising in a certain field (angling associations, fishing associations and hunting associations), which by reason of the liberal federal and state practice have till now been recognised as environmental NGOs as well, have never brought a public interest action. Most proceedings up to this time have been brought by both of the large nature conservation NGOs, the German Association for Environment and Conservation (*Bund für Umwelt – und Naturschutz Deutschland*, BUND) and the Conservation Association of Germany (*Naturschutzbund Deutschlands*, NABU). The NGOs also form joint actions and join together as plaintiffs. This happens more frequently in respect of large and highly controversial projects involving environmental politics (for example "Plan Approval Decision Federal Motorway A20" (PFB BAB A 20) in Schleswig-Holstein, "Dam Emssperrwerk" in Lower Saxony and "Mühlenberger Hole" in Hamburg). This is due to the fact that the financial risks in the case of such projects is very high, and that on the other hand the NGOs each wish to safeguard their representative function and also feel obliged to bring actions regardless for internal NGO reasons.

The values in dispute in summary proceedings generally correspond to the lowest values of matters in dispute. However, there are differences in the principal proceedings. The highest assessments of the value in dispute have been DM 100,000 (approximately € 51,000). This concerned an action in Thuringia as well as an action in Saar. After an interlocutory appeal in Thuringia brought by the NGO concerning the value of the matter in dispute, the value was reduced to DM 40,000) approx. € 20,500). In Saar the action concerned the construction of a waste management installation and objected to an "evasion" in respect of the law of emission control. In

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[40] This happened for example in case No. 79 (hydro-electric power facility).

[41] For further details, see: *Umweltgutachten des Rates von Sachverständigen für Umweltfragen* (Environmental Report of the Council of Specialists for Environmental Questions) 1996, BT-Drs. 13/4108, p. 220 et seq.

addition, there were several actions with a value of the matter in dispute of DM 50,000 (approximately € 25,500).

The above-mentioned cases lie far over the recommended DM 20,000 (approximately € 10,000) as the value of the matter in dispute for public interest actions.[42] But even the values of the matter in dispute orientated towards this recommendation are too high from the point of view of the NGOs, because even at € 10,000 a high cost risk exists, which in practice leads to a further restriction of legal redress. Recognised NGOs typically do not have sufficient financial and personnel resources to be able to bring several actions with high values in dispute. Therefore, from the point of view of the NGOs a statutory limitation of the values of the matters in dispute, as is suggested in the draft document of the Expert Commission on the Environmental Code (UGB)[43] for example, would be of great significance. The limit of DM 20,000 recommended is – as explained – considered to be too high. Unfortunately, the amendment of the Federal Nature Conservation Act in 2002 by the Federal Government did not limit the value of the matter in dispute.

It is not possible to make a statement about the NGOs' total costs within the bounds of this paper for this would require an extensive comprehensive analysis of the accounts of each individual NGO which brings actions – especially since the plaintiffs are not known in every case (for example if they were not mentioned in the case reports in the specialist journals). Together with their own lawyers' fees,[44] the NGOs are frequently obligated to meet the costs for the lawyers for the opposite side (when actions are lost), costs for additional legal opinions and expert opinions, own personnel costs, as well as further costs (for example for public relations). When the value of the matter in dispute is DM 20,000 (approx. € 10,226), in the event of a loss for the NGO based on a model calculation in accordance with BRAGO and GKG, costs for their own lawyers and the opposition's lawyers and court fees alone reach DM 5,127.50 (€ 2,618). When the value of the matter in dispute is DM 50,000 (€ 25,532) the corresponding costs would be estimated at DM 7,992.50 (€ 4,086.50).

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42 See the recommended catalogue of values of the matters in dispute in NVwZ 1996, p.563 et seq.

43 See BMU (ed.) *Umweltgesetzbuch*, UGB-KomE, *Entwurf der Unabhängigen Sachverständigenkomission zum Umweltgesetzbuch beim Bundesministerium für Umwelt, Naturschutz und Reaktorsicherheit* (Draft Document of the Independent Expert Commission on the Environmental Code for the Federal Ministry for Environment, Nature Conservation and Reactor Safety) Berlin, 1998. The Environmental Code was envisaged to unify all federal environmental legislation in a single code.

44 In this connection the associations mostly have to enter into remuneration agreements that are more expensive than the fee calculated by means of the BRAGO. It follows from this practice that the lawyers´costs cannot simply be derived from the values of the matters in dispute, as is possible in the case of accounts made in accordance with BRAGO. Completely separate research would therefore have to be carried out to comprehensively investigate costs.

4 Conclusions

From the empirical material on public interest actions for the period between 1996-2001 in Germany, the following conclusions can be drawn:

- A wide field of application is pivotal for public interest actions to be a useful instrument to remedy enforcement deficits in environmental and nature protection law. This is not, or only rudimentarily so, the situation in Germany at present.[45] If the field of application of public interest actions and the judicial control of administrative decisions is strongly restricted, this results in enforcement deficits.
- Beyond that, however, it is also crucial for the effectiveness of the public interest action, how the courts implement the given statutory standards in respect of public interest action's field of application, and what influence the cases decided have for the administrative practice.
- Approximately one fifth of the legal actions of the recognised nature protection NGOs in the Federal Republic of Germany are successful or partially successful. This average compares to the success rate in the whole field of administrative jurisdiction in Germany.[46] However, the result also reveals that, at present, breaches of nature protection law in Germany can only be remedied inadequately.
- The limitation of the public interest action to the field of nature protection law leads to enforcement deficits in other environmental fields, where there exists no possibility for a legal review of an administrative decision from the point of view of the environment.
- The different provisions concerning public interest actions in the *Länder* show, that disparities exist not only between different member states in Europe but also within Germany.
- In sum, the public interest action has proved itself as an instrument for reducing enforcement deficits in environmental and nature protection law. But due to the – sometimes considerable – restrictions on the field of application, as well as on the NGO's power to object in the current law, the public interest action has shown a limited effect so far.
- Bringing public interest actions has until now involved a high risk of costs for the NGOs. The introduction of a limitation of the value of the matter in dispute would reduce that risk.
- It is less easy to assess the success of the public interest action in Germany with regard to general observance of environmental law. Here, the picture is mixed.

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[45] The regulation in the state conservation protection law of Lower Saxony is the broadest in this context. In comparison, all other regulations in *Länder* conservation protection laws clearly lag behind.

[46] Refer to footnote 32.

On the one hand, public authorities are compelled to observe provisions of nature protection law, if they might face an action. On the other hand, authorities may try to circumvent public participation by choosing the “wrong” procedure, if this is not sanctioned by the courts.

Annex I: List of Abbreviations

Abs.	Sub-paragraph (Absatz)
AEG	Alternative Energy Law (Alternative Energien Gesetz)
Art.	Article (Artikel)
BGBl.	Federal Law Gazette (Bundesgesetzblatt)
Birds Directive	Council Directive 79/409/EEC of 2 April 1979
BNatSchG	Federal Nature Conservation Act (Bundesnaturschutzgesetz)
BRAGO	Federal Code of Lawyers` Fees (Bundesgebührenordnung für Rechtsanwälte)
BT-Drs.	Bundestagsdrucksache (Printed Papers of the Lower House of the Federal Parliament)
BbergG	Federal Mining Act (Bundesberggesetz)
BverfG	Federal Constitutional Court (Bundesverfassungsgericht)
BverwG	Federal Administrative Court (Bundesverwaltungsgericht)
BverwGE	Decisions of the Federal Administrative Court (Bundesverwaltungsgerichtsentscheidung)
Habitats site	Sites protected under the Habitats Directive
EIA-Directive	Council Directive 85/337/EEC of 27 June 1985 on the assessment of effects of certain public and private projects on the environment (Umweltverträglichkeitsprüfungs-Richtlinie)
Habitats Directive	Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.
FStrG	Highway Maintanence Act (Fernstraßengesetz)
GG	German Constitution (Grundgesetz)
GKG	Court Costs Act (Gerichtskostengesetz)
IPPC-Directive	Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (Richtlinie über die integrierte Vermeidung und Verminderung der Umweltverschmutzung)

LSG	Landscape reserve (Landschaftsschutzgebiet)
LuftVG	Air Traffic Act (Luftverkehrsgesetz)
NSG	Nature reserve (Naturschutzgebiet)
NuR	Nature and Law (Natur und Recht)
NVwZ	New Journal for Administrative Law (Neue Zeitschrift für Verwaltungsrecht)
OVG	Higher Administrative Court (Oberverwaltungsgericht)
PBefG	Act on the Transportation of Passengers (Personalbeförderungsgesetz)
PDS	Democratic Socialist Party (Partei des demokratischen Sozialismus)
TWG	Telecommunication Traffic Act (Telekommunikationswegegesetz)
UGB	Environmental Code (Umweltgesetzbuch)
VG	Administrative Court (Verwaltungsgericht)
VwGO	Administrative Court Procedure Act (Verwaltungsgerichtsordnung)
VwVfG	Administrative Procedure Act (Verwaltungsverfahrensgesetz)
WaStrG	Federal Waterways Act (Wasserstraßengesetz)
WHG	Federal Water Act (Wasserhaushaltsgesetz)
ZUR	Journal for Environmental Law (Zeitschrift für Umweltrecht)

Germany Case Study

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1 Setting of the case

The case concerned the construction of the German federal motorway A20, the so-called "Baltic Sea Motorway", connecting the "old" state (hereinafter: *Land*) Schleswig-Holstein and the "new" *Land* Mecklenburg-Western Pomerania. The motorway is constructed close to the Baltic Sea running from Lübeck via Wismar and Rostock to Tessin and Grimmen and supposed to be finalised in 2005. This motorway is one of the 17 traffic projects "*Deutsche Einheit*" (German Unity), which were decided on by the Federal Ministry of Transport, Building and Housing through the Federal Motorway Upgrading Act of 1993.[1]

Several non-governmental organisations (NGOs), landowners and a municipality brought actions against different sections of the overall project of the motorway. Therefore, the case led to a number of decisions.[2] However, here only the decision of the Federal Administrative Court of May 1998, the so-called A20 decision, will be discussed.[3]

It was preceded by interim decision of January 1998 of the Federal Administrative Court, which led to an injunction that preliminarily stopped the construction of this section of the motorway until the oral proceeding of the principal decision. [4]

The A20 decision related to the first part of the construction in the Western part of Germany. For the realisation of this first part of the motorway between the existing motorway A 1 in the west and the state route (*Landesstraße*) 92, the *Land* Schleswig-Holstein adopted a plan approval decision (*Planfeststellungsbeschluss*) in April 1997. The projected route of the motorway was to lead around Lübeck in the south, where it had to cross the small river *Trave*. The decision concerned this 6,335-meter long section of the motorway, which crossed the *Trave*. The NGOs claimed that the construction of the motorway south of Lübeck would lead to environmental damages, which could be avoided if the motorway was build around the north of the city. In the next planned section the motorway was to go through the low grounds of the stream *Wakenitz*, which is part of the nature park (*Naturpark*) "Lauenburgisch Lakes" and the nature conservation area (*Naturschutzgebiet*) *Wakenitz*, and close by the nature park *Schaalsee*.

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1 *Fernstraßenausbaugesetz* – FStrAbG, 30 June 1971, BGBl I 1971, 873, amended 15 November 1993, BGBl I 1904.

2 Also in 1998, another part of the Baltic Sea Motorway was subject to a judgment by the Federal Administrative Court, BVerwG, 16 March 1998, NuR 1998, 647. This section of the motorway was located in Mecklenburg-Western Pomerania, whose laws do not foresee a public interest action. Here, the NGO had failed to make objections to the plan approval in the timeframe foreseen by the law and was therefore precluded. The consecutive section of the highway, which was at issue in the decisions discussed here, was decided on in the beginning of 2002, BVerwG, 31 January 2002, NuR 2002, 539. See 1.4, further development of the case.

3 BVerwG, 19 May 1998, NuR 1998, p. 544.

4 BVerwG, Court Order, 21 January 1998, NVwZ 1998, p. 661.

The so called “A20 decision” against the plan approval decision before the Federal Administrative Court has been called a milestone in the adjudication of the highest German administrative court, mainly because of its consequences concerning the effect of European nature conservation law in Germany, presenting a precedent in that respect.[5]

But the case is also of major importance for access to justice in environmental matters. It shows the limitations that NGOs face in intervening in court against infrastructure projects.[6] Under the relevant *Länder* acts they are only able to claim infringements of nature conservation law. This is particularly relevant for the weighing of different facts and circumstances of a case by the courts.

[5] Andreas Fisahn, ZUR 2000, p. 47.

[6] For other possible actions, see Access to Justice, Country Report Germany.

2 Admissibility of the action

All actions against the planned motorway brought by the NGOs and other plaintiffs were decided by the Federal Administrative Court. This was due to § 1 (1) no. 5 and § 5 of the Traffic Infrastructure Planning Expediting Act (hereinafter: Expediting Act)[7] according to which the highest administrative court was exclusively competent to decide the case. The intention of this act was to speed up the construction of infrastructure projects in the former GDR. Even though the part of the planned motorway was not in a new *Land* but in the old *Land* Schleswig-Holstein, the Court held that the planning related to the motorway as a whole, and its purpose was to connect the old and the new *Länder*. As a consequence, there was no possibility to appeal the decision.

The defendant was the Ministry of Economic Affairs, Labour and Transport of the *Land* Schleswig-Holstein, which was the plan approval authority for the construction of the motorway and had issued the plan approval decision.

The NGOs had legal standing in the case according to § 51c of the Nature Conservation Act of Schleswig-Holstein.[8] In order to bring a public interest action, the NGOs suing had to be recognised by the German Federal Ministry of the Environment according to § 29 (2) of the Federal Nature Conservation Act (in the version of 12 March 1987).[9] § 29 (2) Federal Nature Conservation Act limited the possibilities for associations to institute public interest actions. In order to get recognised, the association had to fulfil various requirements: it must be a non-profit organisation, certified by the tax authority, must support predominantly and on a permanent basis the aims of nature conservation and landscape maintenance, its field must cover the territory of at least one *Land*, and it has to prove by its activities that it is capable of performing its tasks. The latter is evaluated based on the financial and

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7 Act to Expedite the Planning of Traffic Infrastructure in the New Federal States and in the State of Berlin (Traffic Infrastructure Planning Expediting Act) of 16 December 1991, BGBl. p. 2174, (*Gesetz zur Beschleunigung der Plannungen für Verkehrswege in den neuen Ländern sowie im Land Berlin*) of 16 December 1991.

8 *Naturschutzgesetz*, LNatSchG, 16 June 1993, GVOBl Schleswig-Holstein, p. 215.

9 *Gesetz über Naturschutz und Landschaftspflege*, BGBl. I 2994. The Nature Conservation Act was considerably amended in 2001 and the amendment went into force in 2002, which also led to the introduction of the public interest action on the federal level.

organisational competence and its membership. These requirements have even been tightened in the new provision, § 59 Federal Nature Conservation Act .[10]

According to § 51c of the Nature Conservation Act of Schleswig-Holstein, a recognised NGO has a right to bring an action against an administrative act only, if the latter contravenes provisions of the Federal Nature Conservation Act, the Nature Conservation Act of Schleswig-Holstein, statutory provisions based on these, or other statutory provisions, which also serve the interest of nature conservation. A case brought by NGOs on environmental matters in the form of a public interest action is thus only admissible if provisions of nature conservation law can be decisive for the outcome of the case. While this was the case here, the provision also served to limit the scope of judicial review in the case.

In an interim decision of January 1998 the Court issued an injunctive relief, which stopped the construction of the motorway until the oral proceedings of the main proceedings. While bringing an action generally has the effect of halting the execution of a decision, here the NGOs had to apply for the injunctive effect due to § 5 (2) of the Expediting Act, which prevents the action from automatically having an injunctive effect.

[10] The revised provision, § 59 Federal Nature Conservation Act, of 25 March 2002, BGBl I 2002, 1193, reads:
Recognition by the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety
Recognition shall be granted upon application. It is to be granted to any association which satisfies the following conditions:
1. The main purpose of the association, as defined in its Articles of Association, is to promote, for non-profit purposes and not for a limited period of time only, the cause of nature and landscape conservation
2. Its field of operation extends beyond the territory of one *Land*
3. At the time of recognition, it has existed for at least three years, and has been active within the meaning of number 1 during this period
4. There is sufficient evidence suggesting that the association is able to pursue its objectives adequately. This assessment shall be based on the type and scope of the society's past activities, as well as on its membership composition and its past efficiency.
5. Because of its non-profit character, the association is exempt from corporate income tax under Article 5 paragraph (1), no. 9 of the Corporate Income Tax Act.
6. Membership is open to anyone who supports the association's objectives, and who shall thereby receive full voting rights in the general Assembly. In the case of associations whose members consist solely of legal entities, the requirement cited in sentence 1 may be waived, provided the majority of these legal entities meet this requirement.
Recognition shall outline the scope of activities, as specified in the Articles of Association, to which the recognition applies.

3 Decision on the merits

From the substantive point of view, the case has three interesting aspects. The first concerns formal irregularities in the plan approval procedure and their effects on the lawfulness of the decision. Secondly, the case demonstrates the limited scope of review by the courts in public interest actions against plan approval decision, because the provisions on standing of NGOs are interpreted to constrain the assessment by the courts. The last aspect relates to European nature conservation law, i.e. the effect of European directives that have not been transposed into German law.

Formal irregularities

During the plan approval procedure, the associations did not get the possibility to participate on the procedure to the extend they wanted to. The complainant in the interim court proceeding brought forward a number of omissions by the planning authority, which, according to his view, should have resulted in the repeal of the plan approval:

(1) The authority had not made all relevant planning and decision material available to the claimant.

(2) After the public hearings, the complainant had demanded access to specific documents, which was refused.

(3) The objections raised by the NGOs in the public hearing were treated only partially.

(4) The organiser of the public hearing was biased and the public hearing was interrupted preliminarily.

(5) The plan approval decision was made ahead of time, so that an important expert opinion could not be taken into account.

However, the omissions with regard to participation by and information of the NGOs were already declared irrelevant in the interim injunctive decision. In conclusion, the Court rejected all arguments on the grounds that if they had been avoided, the conclusions reached in the plan approval decision would not have been different. Case law of the Federal Administrative Court asserts that neglecting procedural requirements does not in itself lead to the nullification of a plan approval decision by the court.[11] In addition, it is necessary that the formal error has influenced the outcome of the authority's decision. The mistake is only causal for the result reached, if in the given case it is concretely possible that the authority would have reached a different decision without the error. Only the theoretical possibility of a different result is not sufficient. As a consequence, shortcomings of an authority concerning procedural rights of NGOs seldom result in decisions being revoked. This

[11] BVerwG, 31 October 1990, NuR 1991, p. 130.

interpretation of participatory rights also illustrates that they are not seen as valuable as such but only within their (possible) influence on the planning decision. On the one hand, this reflects the attempt to expedite the complex planning process of major infrastructure projects that can suffer a drawback if a plan approval decision is revoked only on formal reasons. On the other hand, it also sheds some light on the lacking significance that the actual execution of participatory rights enjoys in these procedures. [12]

An important limitation of public interest actions is illustrated by the fact that the NGOs were not heard with regard to their argument that the area around the *Trave* river was a nature conservation area. This was due to strictly formal reasons. The NGOs had failed to substantiate their claim with regard to the nature conservation value of the *Trave* in the time limit foreseen in § 5 (3) of the Expediting Act. § 5 (3) gives the plaintiff a time limit of six weeks to bring forward facts by which he is aggrieved. The plaintiff had mentioned the importance of EU nature conservation directive in regard to the area. However, the Court found that the plaintiff should have brought forward further facts to substantiate the argument. Admitting the production of further factual evidence would have delayed the proceedings. The NGOs were therefore "substantially precluded" with regard to this argument, because they would have been able to support it at least after the Court granted them access to the records. The Habitats and Birds directive nonetheless played a major role in the decision with regard to the next section of the motorway.

In sum, procedural requirements for public interest actions in Germany can generally be assessed as a rather limiting factor for effective actions in this field.

Scope of review

§ 51c of the Nature Conservation Act of Schleswig-Holstein and its counterparts in other *Länder* laws[13] restrict not only the access of NGOs to the courts but also the scope of the courts review of the case. According to the interpretation given by the Federal Administrative Court to § 51c of the Nature Conservation Act of Schleswig-Holstein, which can be expected to be repeated in future decisions based the new

[12] With regard to these procedural aspects, the principal decision referred to the findings of the injunction.

[13] See Access to Justice, Country Report Germany, p. 6 et. seq.

federal provision, § 61 Federal Nature Conservation Act ,[14] the courts are permitted to review only parts of the planning decision. Insofar as the planning approval decision contravenes nature conservation law, it can be assessed by the courts. But a plan approval decision of a major infrastructure project also includes the consideration and weighing of public interests i.e. economic aspects. According to § 17 (1) second sentence of the Federal Motorway Act the plan approval procedure has to take account of the public and private interests affected, including the environmental impact in the weighing process.

The NGOs claimed that the construction of the motorway was not indispensable, because less traffic was to be expected then claimed by the defendants. Also, the costs would be much higher than projected by the planning authority. Finally, the associations held that noise pollution as well as the immissions of air pollutants had been underestimated.

The NGOs were not heard with these arguments. The first two points, i.e. the traffic prognosis, and the cost calculations were found to be outside the scope of review. These aspects, the Court held, did not present public interests that are intended to serve nature conservation and could thus not be claimed by the NGOs. The same conclusion was reached concerning the prediction of noise and immissions of air pollutants. Immissions, the court reasoned, can be detrimental to the environment according to the Federal Immission Control Act (*Bundesimmissionsschutzgesetz* - BImSchG). In the concrete case, however, the immissions prognosis was linked to the traffic projection, which was outside the scope of review. The NGOs were thus claiming a deficit in the factual investigations of the planning authority that they were unable to argue due to § 51c Nature Conservation Act of Schleswig-Holstein. Noise predictions were found erroneous by the NGOs as well. Again the Court

[14] § 61 Federal Nature Conservation Act reads:
Appeals by Associations
An association recognised in accordance with Article 59 or on the basis of *Länder* provisions within the framework of Article 60 may, without violation of its own rights, and in accordance with the Code of Administrative Procedure lodge an appeal against:
1. Exemptions from prohibitions and orders relating to the protection of nature conservation areas, national parks, biosphere reserves and other protected areas within the framework of Article 33 (2) and
2. Planning permission relating to projects involving interventions in nature and landscapes as well as plan approvals, insofar as public participation is envisaged.
Sentence 1 shall not apply if an administrative act cited therein has been adopted on the basis of a judgement by an administrative court.
(2) Appeals in accordance with paragraph (1) shall only be admissible if the association:
1. asserts that the adoption of an administrative act cited in paragraph (1) sentence 1 contradicts the provisions of this Act, statutory provisions adopted on the basis of or within the framework of this Act or which continue to apply, or other statutory provisions, which must be observed when adopting the administrative act and which are at least intended to serve the interests of nature conservation and landscape management.
2. is thereby affected in its scope of activities as set forth in the Articles of Association, provided recognition refers to this, and
3. was entitled to participate in accordance with Article 58 (1), nos. 2 and 3 or under *Länder* provisions, within the framework of Article 60 (2) nos. 5 to 6 and expressed its views on the matter or contrary to Article 58 (1) or *Länder* provisions adopted within the framework of Article 60 (2) was given no opportunity to express its views. (3) – (5) […]

rejected this reasoning on the formal grounds that it did not relate to nature conservation law.

The example of a complex infrastructure project illustrates that the scope of review of public interest actions on aspects of nature conservation is thus very limited.

Weighing of interest

However, the court undertook a summary review of the decision in this regard and stated that the planning decision was not based on pretexts or represented an abuse of its obligation to include nature conservation interests in the weighing process. This assertion obviously intended to restrict the possibilities of public planning authorities to attempt to circumvent environmental aspects altogether. The fact that the NGOs claimed that the planning authority committed a number of legal errors in the planning process nevertheless was not sufficient to result in an abuse of the rights of the planning authority.

The Court findings can be summarised in a four-step test for the weighing of interests in the review of plan approval decisions in a public interest action initiated by NGOs. The court held that an unrestricted judicial review has to be carried out concerning the questions whether:

(1) A weighing in regard to the nature conservation aspects was undertaken at all,

(2) this process included all nature conservation aspects that should have been included,

(3) the importance of the nature conservation aspects had not been underestimated and

(4) the balance between the private and public interests concerned by the planning was executed in a form that took the objective importance of the nature conservation aspects into account.

Within this framework, the obligation of the authorities to weigh different positions is not infringed if the authority eventually decides in favour of one interest involved, e.g. the necessity of creating new motorways due to high traffic. The “control of abuse” is a very restrictive test compared to the complete evaluation of a weighing process in an action of a landowner against a plan approval decision, where the court examines all aspects.

Plan justification

The overall plan justification (*Planrechtfertigung*) and the need for the new motorway found due to growing traffic was based on federal law.[15] Therefore the court found it did not have to decide whether an NGO generally would be allowed to reprove the plan justification. Nevertheless, it held that the concrete project could

[15] The Motorway Upgrading Act, see supra note 1.

have been stopped, if the overall weighing of interests was flawed. This would have been the case if German or European nature conservation law had not been taken into account, because these aspects were not included when the act was adopted.

Alternatives

The most important argument of the NGOs was that the plan approval authority should have decided in favour of a route leading around Lübeck in the north to avoid negative effects for the environment. The NGOs had claimed that the route south of Lübeck was more detrimental to the environment, because it went through areas that were more sensible than the region in the north. With regard to this point, the court restricted its scope of review even further. The court rejected this argument on the grounds that the alternative route was irrelevant to the actual case, because it would have been "another project". Whether the other option would have been more environmentally friendly was not the issue since the route actually chosen complied with legal requirements. Even though the administration itself had observed that the alternative was advantageous for the environment, it had at an early stage of the planning decided against it, arguing that the bypass in the south of Lübeck could not be avoided in the long run. The north-bypass thus also was not an alternative in the meaning of Art. 6 (4) of the Habitats-Directive. The most important argument of the NGOs against the next planned section of the motorway was thus not heard.

The argument that a more environmentally friendly planning was impossible, because an alternative route would represent a different project, was afterwards used by the planning authorities in a number of cases against plan approval decision. The court therefore put this argument into perspective already in a decision of December of the same year,[16] and finally completely overruled it later, holding that generally alternative routes have to be considered when planning a motorway.[17] It also detailed the conditions for another route to be an alternative in the meaning of Article 6 (4) habitats directive.

Birds and Habitats Directives

The main importance of the decision is in its fundamental findings in regard to the effect of the EU Council Directive on the conservation of wild birds (Birds directive)[18] and the Council Directive on the conservation of natural habitats and of wild fauna and flora (Habitats Directive)[19], which had then not yet been transposed into German law. As mentioned above, the decision concerned only the section of the motorway, which was to cross the *Trave*. The next section threatened to cross the nature protection area of the *Wakenitz* low lands. While the NGOs were precluded

[16] BverwG, 18 December 1998, 4A 10.97. This decision concerned the same section of the motorway in an action that was brought by a landowner .

[17] BverwG, 17 May 2002, ZUR 1/2003, p. 22.

[18] Coucil Directive 79/409/EEC of 2 April 1979, OJ L 103/1, 25.4.1979.

[19] Coucil Directive 92/43/EEC of 21 May 1992, OJ L 206/7, 22.7.1992.

with regard to the argument that the *Trave* represented a habitats site, this was not the case for the *Wakenitz* low lands.

In a first step, the Federal Administrative Court held that the planning of one section of a road has to take into account whether it results in an irreversible decision concerning the next section in order to avoid a "planning torso", i.e. a first part of the plan that could not be realised, because the next section was not viable. If the consecutive section was not impossible, the whole project could meet "insurmountable obstacles". To assess this, the Court did not limit itself to the findings of the planning authority but based its evaluation on the objective circumstances. The possible "insurmountable obstacles" in this case were legal ones: the Habitats and Birds Directives.

Secondly, the Court evaluated the importance of the *Schaalsee* with regard to the Birds Directive. The area *Schaalsee* was found to be legally a special protection area under Article 4 (1) Birds Directive. However, the motorway was to be constructed 400 to 500 meters away from the area. The experts in the case considered this distance sufficient to avoid major disturbances in the sense of Article 4 (4) Birds Directive.

Thirdly, the relevance of the ecological qualities of the *Wakenitz* low lands was considered. The authorities of Schleswig-Holstein brought forward that they did not intend to declare the area as a protected site according to the Habitats Directive. The plaintiff argued that the *Wakenitz* low lands are a factual bird protection area under the Birds Directive as well as a "potential" Habitats site. The Court did not decide on these factual questions, because it held that even if it assumed in favour of the plaintiff that the area fulfilled both requirements, the planning did not meet insurmountable obstacles.

Following case law of the European Court of Justice (ECJ),[20] the Federal Administrative Court held that Article 4 (4) of the Birds Directive prohibited member states to put economical interests over the nature conservation interests of the directive. The Directive could thus lead to the finding of "factually protected areas". The same reasoning was then extended to the Habitats Directive. As mentioned, when the case was decided, the Habitats Directive had not been transposed into German law,[21] and the information on the *Wakenitz* low lands had not been transmitted to the Commission according to Art. 4 (1) Habitats Directive. The court held that it was inclined to regard the *Wakenitz* low lands as a "potentially protected area" under Art. 4 (1) Habitats Directive. As a condition for the legal finding of a "potential" Habitats site the court put forward three conditions:

(1) The factual criteria of Art. 4 (1) Habitats Directive are present

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[20] ECJ Decision, Case C-335/90 of 2 August 1993, NuR 1994, p. 521 (Satona) and ECJ Decision, Case C-44/95, NuR 1997, 36 (Lappel).

[21] ECJ Decision, Case C-83/87 of 11 December 1997.

(2) the integration into a coherent network of special areas of conservation imposes itself and

(3) the member state has not yet (fully) transposed the Habitat Directive.

The court found an obligation resulting of Article 5 (2) of the Treaty of a member state not to produce a *fait accompli,* which would later make it impossible to comply with the requirements of the directive. At the same time, the member state was considered not to have political discretion in choosing the protected areas, because Article 4 in connection with the Annexes I to III of the Habitats Directive did not leave room for discretion. Furthermore, the intention of the *Land* to declare the *Wakenitz* low lands as nature protection areas, except for a corridor for the motorway, did support this view of the Court, especially because the Habitats directive proclaims a coherent system of European ecological network of special areas of conservation (Article 3 Habitats Directive). The intended designation would confound a formal act with the protection of an area, obligatory under EU law.

In any case, the authority was precluded to prioritise its economical or infrastructure interests over the nature conservation interests concerned in the stage of identifying the areas according to Art. 4 (2) Habitats Directive.

While these findings represented a precedent from the nature conservation point of view, the outcome of the case was disappointing in two regards. Firstly, the court held that even though the *Wakenitz* low lands were a potential Habitats site, the motorway did not meet insurmountable obstacles. Art. 6 (4) Habitats Directive allows for the realisation of a project if

in spite of the implications for the site and the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those relating of a social or economic nature, the Member States shall take all compensatory measures necessary […].

Comparing it to the Birds Directive, which also allows for exceptions, the “potential” nature conservation site thus represented only a “weaker” protection regime. Secondly, the reasoning of the court did not lead to the planning decision being revoked. All findings of the court regarding the EU nature conservation directives were *obiter dicta*, because it ruled that the planning authority could still build a tunnel to avoid lasting damages in the protected area. Even though the weighing of interests of the authority was flawed, this did not lead to the finding that the whole planning decision was incorrect as well. According to § 17 (6c) first sentence Federal Motorway Act errors in the weighing of the public and private interests concerned by the project are only relevant if they are obvious and have influenced the outcome of the weighing process.

Here, the court concluded that the even if the weighing of interests by the authority was flawed, it did not influence the outcome of the decision. Since the authority had considered in the decision that the crossing of the *Wakenitz* could be problematic,

and had foreseen a detailed plan at a later time, the court found that the authority would not have decided differently if it had realised that the site was a potential nature conservation area. This argument does not seem very convincing. Obliviously, the authority had reached a wrong assessment of the nature conservation aspects at stake and failed to carry out the environmental impact assessment necessary under European law. Although the detailed planning of the next section of the motorway was still ahead, a question of high importance had not been evaluated. The tunnel, which the court claimed could still be constructed, would have entailed major additional costs, and had not been considered by the authority.

Conclusion

From a factual environmental point of view, the decision was lost. The court ruling did not stop the construction of the motorway. Furthermore, the Court decided in 2002 concerning the next section of the motorway that effectively the area in question was not protected under the Habitats directive.

In sum, the case was important for two reasons. Firstly, it established that the Habitats Directive – in spite of it not yet having been fully implemented – manifests a "pre-influence" and in this respect should be taken into consideration in plan approval procedures. Above all the fundamental observations of the "pre-influence" of the Habitats Directive, which had been rejected up until that point, had significant meaning for administrative practice and may have been an important contribution to the Habitats Directive's receiving more consideration when carrying out administrative acts.

Secondly, the case is an important example of the restrictions that NGOs face in public interest actions in Germany. In the case of an action against plan approval decisions, the scope of review is strictly limited to nature conservation aspects. This leads to an artificial division of the arguments, which are generally involved in the overall weighing process. It seems very difficult to analyse a weighing process without taken all aspects that are weighed into account.

4 Further development of the case

The final decision on the section of the motorway, which led through the *Wakenitz* low lands, was issued by the Federal Administrative Court in January 2002.[22] As opposed to the 1998 decision, where the Court had found "significant evidence" that the area would have to be designated as a special area of conservation according to the Habitats Directive, it now concluded that it was neither a factual bird protection area nor an area potentially protected under the Habitats Directive. The Court also held that it was not necessary to build a tunnel through the *Wakenitz* low lands.

The 2002 decision is interesting with regard to two points.

Firstly, concerning access to information by NGOs, the Federal Administrative Court ruled that a statement of the European Commission should have been made available to the NGOs. Even though the NGOs had been given access to relevant information at an earlier stage of the proceedings, the statement represented new factual material, even if it was qualified by the Commission itself not to be an (formal) opinion under Article 6 (4) Habitats directive. As in the earlier decision, however, the mistake was considered not to have influenced the outcome of the plan approval decision. The Court pointed out that it had come to a different evaluation of formal mistakes in actions that were based on the infringement of participation rights of an NGO (action to enforce participation). In this case, the Court held, formal errors should be viewed more strictly.

The final decision on the section of the motorway through the *Wakenitz* low lands also surprisingly reached the conclusion that the area was protected neither under the Birds Directive nor under the Habitats Directive. Since this assessment was based on the own finding of the Court as well as on the Commission's statement, the NGOs claimed it also resulted from the fact that they were unable to present the Commission with their own opinion.

[22] See supra note 2.

5 Costs

The case entailed considerable costs for the NGOs involved and are hard to calculate exactly, since they included not only lawyers' and court fees, but also pro bono work by members of the NGOs, public relation work, expert's opinions etc..

In the A20 decision of 1998 the value of the matter in dispute was fixed at around € 25,500 by the court. In addition to the court fees, fees for the taking of evidence and experts' opinions had to be paid. For the remuneration for the lawyers on the side of the NGOs a flat-rate agreement was reached, since the case involved above-average preparation, which amounted to around € 8.200. Representation by a lawyer in a case in front of the Federal Administrative Court is mandatory and had to be taken over by a specialist in the matter due to the complicated legal questions involved. Since the decision was lost, the defendant's lawyers costs had to be covered by the NGOs as well, because these have to be paid by the loosing side. Additional court's fees resulted from the injunctive interim decision.

Overall, the NGOs estimated the costs for the 1998 decision at € 50.000. The action was funded by the NGOs themselves, who knew beforehand that the costs would be considerable. In addition, donations were raised but contributed only a small part of the funds necessary.

Average costs for public interest law actions in Germany are hard to indicate, since they correspond to the value of matters in dispute. Accordingly, they were considerably in this case, because a major infrastructure project was concerned, but will generally be lower in other cases. However, the cost risks allow only larger NGOs to bring an action against major infrastructure projects. The decision to do so is a strategic one and the NGOs are not able to bring an action in all cases, in which they consider it necessary.

6 Democratic or societal effects

In the Baltic Motorway case, the NGOs considered the decision to be a success, even though the actual decision was not in favour of the NGOs, due to a number of reasons:

(1) The decision led to a new development in nature conservation law – the acceptance in German law of a "potentially" protected Habitats site.

(2) As a consequence of the case, the authorities were compelled to plan more carefully and led to better respect nature conservation law, according to the assessment of the NGOs and lawyers.

(3) The issue of nature conservation law, especially the European Habitats and Birds Directive, which were practically unknown beforehand, received wide public attention.

Therefore, the overall outcome was considered to be positive, although the factual consequences from a nature protection point of view were questionable. One reason the NGOs saw for failing in court was that the project represented a "prestige project" by the government, connecting the old and the new *Länder* in an economically disadvantaged region of Germany. Therefore, the public widely perceived the construction of the motorway as necessary for the economy and the German reunification. The fact that the associations mainly opposed the chosen route was not seen.

The case also illustrates consequences central government planning of infrastructure projects by law entails for public participation. While the original intention was to expedite traffic projects in Eastern Germany and thereby support the economic development in the old *Länder*, it further limited the effectiveness and possibilities of public interest actions.

Annex - Overview of Public Interest Actions in Germany 1996 – 2001

Type of action

A Egoistic public interest action

P Actions to enforce participation and actions that include participatory aspects

N Actions for the review of regulations and statutory ordinances

U Actions on the grounds of administrative inaction

Status

E fast-track procedure

H principal procedure

Subject matter of the action

P Actions against plan approvals

V Actions against regulations

B Actions against dispenses

S Other actions

Courts

VG	Administrative Court
OVG, VGH	Higher Administrative Court
BVerwG	Federal Administrative Court
BVerfG	Federal Constitutional Court

State (*Land*)	Court	Reference number	Date of Decision	Type of action	Subject matter	Result	Source
Baden-Wurttemberg	1. VG Sigmaringen	7 K 980/97	?	N	V	Lost	NuR 5/2000
	2. VGH Mannheim	5 S 1121/99	10/99			Lost	
	3. VGH Mannheim	5 S 134/00		H P	P	Lost	NuR 8/2001
	4. VGH Mannheim	8 S 1961/95	2/96	P	P	Lost	NuR 11/12/1996
	5. VG Freiburg	2 K 750/98	5/98		S	Lost	Not available
	6. VGH Mannheim	10 S 1600/98		E P		Lost	NuR 1999/47-48

State (*Land*)	Court	Reference number	Date of Decision	Type of action	Subject matter	Result	Source
Bavaria	7. VGH München	8 A 01.40004	8/2001	H P	P	Lost	own documents
	8. BVerwG	4 VR 13.00	11/01	E P	P	Won	ZUR 3/2002
	9. VG München	M 1 E 99.1769	6/99	E P	S	Won	Not available
	10. VGH München	1 CE 99.2148	10/99	H		Lost	NuR 1/2001
	11. VGH München	9 N 93.367	3/96	N	V	Lost	NuR 11/12/1996
	12. VG ?	?		H P	P	Lost	Not available
	13. VGH München	8 B 95.1786	8/96	H		Lost	NuR 3/97
	14. BverwG	4 C 19.95	12/96	H P	P	Partial success	NuR 7/97
	15. VG Würzburg	W 6 K 97.1256	10/98	H P	P	Won	NuR 99, 414-416
Berlin	16. VG Berlin	2 A 154.99	10/99	N	V	Lost	Own documents
	17. VG Berlin	13 A 316.98	4/99	E P	S	Partial success	Own documents
	18. VG Berlin	13 A 323.98	1/99	H	S	Lost	Own documents
	19. VG Berlin	13 A 102/98	1/99	H P	B	Won	Own documents
	20. VG Berlin	1 A 472.98	12/98	E P	B	Lost	Own documents
	21. OVG Berlin	2 SN 30.98	2/99			Lost	
	22. VG Berlin	1 A 449/97	?	E	S	Lost	Own documents, (incomplete)
	23. VG Berlin	1 A 54.98	3/98	E (P)	B	Partial success	Own documents
	24. VG Berlin	1 A 54.98	4/98	E		Lost	Own documents, (incomplete)
	25. OVG Berlin	2 SN 10.98	4/98			Lost	

State	Court	Reference number	Date of Decision	Type of action	Subject matter	Result	Source
Berlin	26. VG Berlin	1 A 96.96 changed into 13 A 74.96	?	E	S	Lost	Own documents
	27. VG Berlin	19 A 1477/95	12/97	H	S	Lost	Own documents
	28. VG Berlin	1 A 221.97	6/97	E	S	Lost	
	29. OVG Berlin	1 SN 154.97	7/97			Lost	Own documents
	30. VG Berlin	1 A 69.97	3/97	E	S	Lost	Own documents
	31. VG Berlin	13 A 113.98	5/98	E P	S	Partial success	
	32. VG Berlin	1 A 450/97 then VG 13 A 231.97	?	E	S	Lost	Own documents, incomplete
	33. BverwG	11 VR 38/95	11/95	E	P	Lost	NuR 1996 293-297
	34. BverwG	11 A 86/95	4/96	H		Lost	NVwZ 9/1996, ZUR 4/96
	35. VG Berlin	13 A 24 96	?	E	S	Lost	Not available
	36. OVG Berlin	2 S 14.96	8/96	E		Lost	NuR 11/97
	37. VG Berlin	1 A 293.94	10/96	H	B	Lost	Own documents
Berlin	38. BverwG	4 VR 14.99	2/00	E P	P	Settlement	Own documents
	39. BverwG	4 A 45.99	2/00	H			
Brandenburg	40. VG Frank-furt/Oder	7 L 274/99	3/99	E	B	Lost	Own documents, incomplete
	41. VG Frank-furt/Oder	7 L 575/99	7/99	H		Lost	
	42. VG Cottbus	5 K 482/94	12/98	H P	P	Lost	Own documents
	43. OVG Frankfurt/ Oder	4 A 115/99	6/01	H		lost	
	44. BverwG	7 C 2/02	6/02	H		Lost	NuR 2002, 680-682
	45. VG Cottbus	3 K 1827/98	4/00	H P	P	Won	Own documents
	46. OVG Frankfurt/ Oder	?	7/00	H		Lost	

State	Court	Reference number	Date of Decision	Type of action	Subject matter	Result	Source
	47. VG Cottbus	3 K 1826/98	3/00	H P	P	Discontinued	Own documents
	48. VG Potsdam	1 L 956/94	11/93	E P	B	Won	
	49. VG Potsdam	1 K 1160/93	1/96	H		Won	Own documents incomplete (only judgement of the OVG)
	50. OVG Frankfurt/ Oder	3 A 37/96	8/97	H		Lost	
	51. VG Potsdam	1 K 3417/95	8/97	H	B	Won	Own documents
	52.	?		H		?	
Brandenburg	53. VG Frank- furt/Oder	7 L 806/96	3/97	E P	B	Won	Own documents
	54. VG Frank- furt/Oder	7 K 550/95	3/97	H		Partial success	
	55. OVG Frankfurt	3 A 161/97	8/98	H		Won	
	56. OVG Frankfurt	3 B 80/97 zu 7 L 806/96	2/98	E		Won	
	57. VG Cottbus	2 K 583/93	1/97	H	B	Partial success	Own documents
	58. VG Cottbus	5 K 2140/97	8/99	H	B	Settlement	Own documents (incomplete)
	59. VG Potsdam	5 K 2662/00	?	H	S	Open	Own documents
	60. VG Potsdam	10 K 2512/00	?	H	B	Open	
	61. VG Frankfurt/ Oder	7 L 462/00	8/00	E	S	Discontinued	Own documents

State	Court	Reference number	Date of Decision	Type of action	Subject matter	Result	Source
Brandenburg	62. VG Cottbus	3 L 389/00	?	E	B	lost	Own documents
	63. VG Cottbus	3 K 712/00	?	H		open	
	64. VG Potsdam	5 L 66/00	3/00	E	B	Settlement	Own documents
	65. VG Potsdam	5 K 237/00	3/00	H			
Bremen	66. VG Bremen	1 A 223/93	5/98	H	P	Partial success	Own documents
	67. VG Bremen	1 K 11223/93	5/98	H	P	Partial success	Incomplete
	68. VG Bremen	1 A 18/95	3-97	H	P	Partial success	Written request in the Bremen local council 14/1113 v.5.8.1998
	69. VG Bremen	8 K 1924/99	10/99-1/00	E	P	Settlement	Own documents
	70. VG Bremen	8 V 2300/99	1/00	H			
Hamburg	71. VG Hamburg	9 VG 79/99	9/99	E	P	Lost	Own documents
	72. OVG Hamburg	2 Bs 342/99	11/99			Lost	
	73. VG Hamburg	13 VG 4131/97	8/98	E	S	Lost	Own documents
	74. VG Hamburg	16 VG 5383/96	4/99	N	V	Lost	Own documents
Hamburg	75. VG Hamburg	12 VG 3121/95	3/98		P	Discontinued (measure executed)	Own documents (incomplete)
	76. VG Hamburg	12 VG 3114/95	?				Own documents (incomplete
	77. VG Hamburg	15 VG 2776/2000	8/00	H	P	Jurisdiction declined, referred to the OVG	Own documents
	78. OVG Hamburg	5 E 22/00.P	9/00			Jurisdiction declined, referred back to the VG	
	79. VG Hamburg	15 VG 3912/2000	?	H		open	
	80. VG Hamburg	15 VG 3932/2000	1/01	E		lost	
	81. VG Hamburg	15 VG 4510/2001	12/01	E		lost	
	82. OVG Hamburg	2 Bs 38/01	2/01	E		lost	
	83. BVerfG	1 BvR 481/01 1 BvR 518/01	5/01	E		lost	

State	Court	Reference number	Date of Decision	Type of action	Subject matter	Result	Source
Hesse	84. VG Kassel	4 E 896/99 (1)	4/99	E	P	won	Own documents
	85. VG Kassel	4 G 1137/99 (1)	4/99	E		Lost	
	86. VGH Kassel	11 NG 3290/98	12/98	N	V	Won	Own documents
	87. VGH Kassel	6 N 2349/96	4/97	N	V	Lost	Not available
	88. BverwG	4 BN 10/97	7/97			Lost	NuR 1998, 131-133 Messerschmidt
	89. VG Kassel	7/3 E 1470/91	5/95	H P	P	Won	NuR/4 2000
	90. VGH Kassel	7 UE 2170/95	1998	H		Lost	
	91. VGH Kassel	2 Q 232/96	1/97	E	P	Lost	
	92. VG Darmstadt	?	?	E	B	Not available	
State	**Court**	**Reference number**	**Date of Decision**	**Type of action**	**Subject matter**		**Source**
Mecklenburg-Western Pomerania	93. BverwG	4 A 31/97	3/98	H	P	Lost	Own documents
Lower Saxony	94. VG Oldenburg	4 B 115/99	2/99	E P	S	Partial success	Own documents
	95. VG Oldenburg	4 B 1050/99	4/99	E		Won	
	96. VG Oldenburg	4 A 964/99	6/01	H		Lost	
	97. OVG Lüneburg	1 M 2281/99	7/99	E		Lost	
	98. OVG Lüneburg	1 M 4466/98	12/98	N	S	Lost	Own documents Incomplete
	99. VG Oldenburg	1 B 3334/98	11/98	E	P	Won	Own documents
	100. VG Oldenburg	1 B 3319/99 (BUND,NABU) 1 B 3212/99 (LBU)	10/99	E A/P		Lost	Own documents
	101. OVG Lüneburg	3 M 5512/98	2/99			Lost	Own documents
	102. OVG Lüneburg	3 M 559/00 (LBU) 3 M 561/00 (BUND, NABU)	4/00	E		Lost	Own documents

State	Court	Reference number	Date of Decision	Type of action	Subject matter	Result	Source
Lower Saxony	103. OVG Lüneburg	7 M 914/98	10/98	E	P	Won	Own documents
	104. OVG Lüneburg	7 K 912/98	10/98	H		Partial success	
	105. VG Osnabrück	2 B 59/98	9/98	E P	S	Lost	Own documents
	106. OVG Lüneburg	7 M 1155/97	12/97	E	P	Lost	Own documents
	107. OVG Lüneburg	7 K 1154/97	1/98	H		Discontinued	
	108. VG Osnabrück	2 A 12/96	8/97	H	B	Lost	Own documents
	109. VG Hannover	1 A 1398/96.Hi	3/97	H	B	Partial success	Own documents Incomplete
	110. OVG Lüneburg	7 M 919/97	3/97	E	P	Lost	Own documents
	111. OVG Lüneburg	7 K 921/97	3/97	H		Lost	

State	Court	Reference number	Date of Decision	Type of action	Subject matter	Result	Source
Lower Saxony	112. VG Oldenburg	1 B 1858/96	5/96	E	P	lost	Own documents
	113. VG Oldenburg	1 B 1858/96	6/96	E		won	Own documents
	114. VG Oldenburg	1 B 3020/96	7/96	E		lost	Own documents
	115. VG Oldenburg	1 A 1855/96	2/97	H		Settlement	Own documents, incomplete
	116. VG Hannover	4 B 1394/00	4/00	E	B	Lost	Own documents
	117. OVG Lüneburg	7 M 3440/00	10/2000	E P	S	Lost	NuR 6/2001
	118. VG Osnabrück	2 B 24/00	6/00	E	B	Lost	Own documents
	119. VG Göttingen	2 A 2163/98	9/00	H	S	Lost	Own documents
	120. VG Stade	1 B 196/01	3/01	E	P	Lost	Own documents
	121. VG Stade	1 A 1014/00	?	H		Open	
	122. OVG Lüneburg	7 MA 1131/01 später 7 MB 1546/01	5/01	E		Lost	

State	Court	Reference number	Date of Decision	Type of action	Subject matter	Result	Source
North Rhine-Westphalia	123. VG Aachen	3 K 2040/96	11/99	H P	P	Lost	Own documents
	124. VG Gelsenkirchen	8 L 1549/93	?	E P	P	Lost	Not available
	125. OVG Münster	21 B 1717/94	7/97	E		Lost	NuR 12/97
Rhineland-Palatinate	126. OVG Koblenz	1 B 10290/01	9/01	E	P	Lost	NVwZ-RR 6/02
	127. VG	2 K2252/97	8/98	H	B		Not available
	128. OVG Koblenz	8 A 10321/99	2/2000	H		Lost	Own documents, NuR 9/2000
	129. VG Trier	6 K 1549/98	2/00	H	P	Lost	Own documents
State	**Court**	**Reference number**	**Date of Decision**	**Type of action**	**Subject matter**	**Result**	**Source**
Rhineland-Palatinate	130. VG Trier	6 K 1050/00	6/01	H P	P	lost	Own documents
	131. OVG Koblenz	1 A 11433/01	?	E		Lost	
Saar	132. OVG Saar	?	9/97	E		lost	Own documents
	133. OVG Saar	2 M 1/97	12/97	H		Lost	
	134. OVG Saar	8 M 2/95	2/98	H	S	Lost	Own documents
	135. OVG Saar	8 M 1/95	2/98	H	S	Lost	Own documents
	136. VG Saar	2 K 60/96	4/99	H	P	Lost	Own documents
	137. OVG Saar	8 M 11/93	9/97	H	P	Lost	AS RP-SL 27, 72-81
	138. OVG Saar	2 M 1/96	4/97	H	P	Partial success	Own documents
Saxony	139. VG Dresden	13 K 236/99 später unter 5 K 3056/96	2/99	H	B	Lost	Own documents
	140. VG Dresden	5 K 1646/96	5/97	H (P)	P	Discontinued	Own documents
	141. VG Dresden	5 K 1869/96	10/96	E		Lost	
	142. OVG Bautzen	1 S 775/96 (Beschwerde gegen obigen Beschluß	5/97			Discontinued	
	143. VG Dresden	1 K 214/98	4/98	E	P	Lost	Own documents

State	Court	Reference number	Date of Decision	Type of action	Subject matter	Result	Source
Saxony	144. BverwG	4 A 16.95	5/96	H (P)	P	lost	Own documents NuR 1/97
	145. BverwG	4 A 38.95	5/96	H	P	lost	Own documents
	146. VG Dresden	A101/96/UM/sz 1 K 2586/96	2000	H	S	Settlement	Own documents

	147. VG Leipzig	5 K 1815/95	12/97	H P	P	Lost	Own documents
Saxony-Anhalt	148. VG Halle	3 B 81/99	9/99	E	B	Won	Own documents
	149. VG Halle	3 A 311/99		H		Partial success	
	150. OVG Magdeburg	C ¼ S 260/97	9/98	E P	P	Partial success	Own documents, NuR 164-167
	151. BverwG	4 A 16/97	11/97	A	P	Lost	Messerschmidt
	152. BverwG	11 A 49/96	11/97	H P	P	Partial success	Messerschmidt
	153. VG Dessau	2 A 254/94	?	E	P	Won	Not available
	154. VG Dessau	2 A 254/94	2/97	H A		Lost	Own documents
	155. OVG Magdeburg	2 M 22/95	3/96	H		lost	Own documents
	156. BverwG	11 VR 14.00	10/2000	E (P)	P	lost	NuR 3/2001 ZUR Special issue/2001
State	**Court**	**Reference number**	**Date of Decision**	**Type of action**	**Subject matter**	**Result**	**Source**
Schleswig-Holstein	157. OVG Schleswig	4 M 48/99	7/99	E P	P	lost	Own documents, Nord ÖR 11/99
	158. OVG Schleswig	1 K 15/95	3/99	N	S	lost	Own documents, See also reasoning M 4466/98 (OVG Lüneburg) in „Die öffentliche Verwaltung“, Issue no 8, April 99, s.346 ff.
	159. BverwG	4 VR 3.97 (Eilantrag des BUND)	1/98	E	P	won	Own documents
	160. BverwG	4 A 9.97 (BUND) 4 A 11.97 (NABU	5/98	H		lost	
	161. BverfG	BvR 1300/98	7/98	E/H		lost	
	162. BverwG	4 A 15.01	½	H		lost	
	163. OVG Schleswig	4 K 21/94 4 M 87/94	9/97	H	P	lost	Own documents
	164. BverwG	11 A 14.96	3/97	H A/P	P	lost	Messerschmidt NuR 8/1997
	165. BverwG	11 A 43.96	5/97	H (P)	P (plan approval)	lost	NuR 10/97
	166. VG Schleswig	12 A 230/95	3/99		P	Lost	NuR 99, 714-717

	167. OVG Schleswig	4 L 92/99	2/01			lost	ZUR 4/2001
	168. OVG Schleswig	2 M 37/00	12/2000	E	S	lost	NuR 4/2001

State	**Court**	**Reference number**	**Date of Decision**	**Type of action**	**Subject matter**	**Result**	**Source**
Schleswig-Holstein	169. VG Schleswig	1 B 61/99	?	E	S	lost	Own documents
	170. VG Schleswig	12 A 162/00	?	H	P	open	
	171. VG Schleswig	12 B 10/01	10/01	E		won	
	172. OVG Schleswig	*4 M 93/01*	*2/02*	*E*		won	
	173. OVG Schleswig	4 M 17/00	4/00	E	S	lost	Own documents
	174. VG Schleswig	12 B 11/96	3/96	E	P	lost	Own documents
	175. OVG Schleswig	4 M 26/96	6/96	H		lost	
	176. OVG Schleswig	4 K 3/95	3/96	H	P	lost	Own documents
	177. OVG Schleswig	4 K 29/95	3/96	H	P	Lost, 4 K 3/95 is quoted	Own documents
Thuringia	178. VG Weimar	7 K 1509/95.WE	3/98	H P	P	lost	Own documents
	179. VG Gera	1 E 2355/98 GE	8/99	E	P	lost	Own documents, ThürVBl. 1999 no. 12
	180. VG Meiningen	5 E 585/97	?	E	P	Partial success	Own documents
	181. VG Meiningen	5 K 869/97	1/01	H (P)		won	NuR 8/2001
	182. OVG Meiningen	1 ZEO 919/97	3/98	E		Lost	
	183. VG Meiningen	5 K 728/96.Me	4/97	H	P	Partial success	Own documents

Access to Justice in Environmental Matters - Country Report Italy

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1 Introduction

1.1 The environment and the Italian legal system

The environment in not formally protected by the Italian Constitution. When the Constitution was approved – in 1949 – the environment was not yet a recognised issue, either in the legal system or in the public opinion at large.

However, The Constitutional Court since the late Seventies has repeatedly qualified the environment as a *"constitutional value"* and has consequently conferred to the right to the environment the rank of a constitutionally protected right, as a result of a logical interpretation of two dispositions of the Constitution: art.9, concerning the preservation of the landscape as a specific task of the State and art.32 concerning the protection of collective and individual health.

Environmental rights of the physical or juridical person (company, agency, association, committee) receive legal protection in the Italian system at two different levels.

Firstly, during the administrative proceeding (*procedimento amministrativo*), from the starting point all the way down to the adoption of the final act or decision of the Public Administration involving environmental effects (see section …). As soon as the proceeding is started, the law recognises to any entitled subject the right to request and receive information concerning the environmental issues.

Secondly, at the judiciary level, when environmental matters are examined by the Administrative Courts (the *Giustizia amministrativa* system) or by Civil and Criminal Courts (together forming the *Giudice Ordinario* system).

1.2 The Italian judiciary system and the Public Administration

The Italian judiciary system recognises to physical or juridical persons two different types of protected position, when the Public Administration is involved; it is a model adopted, with relevant differences, by other European countries, like France and Belgium.

The first position is the full subjective right, called *diritto soggettivo*: it exists mainly when the Public Administrations acts as a private subject, or on a contractual basis; the second is the right to legal and fair activity of the Public Administration when a specific interest of a physical or juridical persons is involved – *interesse legittimo*.

The former is traditionally protected by the Civil Courts (Giudice Ordinario), having at the highest level of jurisdiction the Corte di Cassazione; the latter is protected by the Administrative Courts (Tribunali Amministrativi at the regional level, Consiglio di Stato at the appeal level).

Recently, this model has undergone deep legislative changes (due partly to the increasing difficulty to distinguish between the two above mentioned positions and relevant rights, partly to the reorganisation of the area of private dominion and the area of public interest during the late Nineties).

As a result, the divide between Civil and Administrative Courts is today organised not only in relation to *diritti soggettivi* and *interessi legittimi*, but also in relation to specific topics of conflict, irrespective of the nature of the rights involved: in matters conveyed to his competence, the Administrative Courts have consequently gained jurisdiction also if full subjective rights are involved. Amongst these topics there are all the matters involving environmental conflicts: urban development, land use, and all matters related to grants or tenders of the Public Administration for the planning or implementation of public works.

1.3 The Public Administration, the environment and the Italian judiciary system

When environmental conflicts arise the Public Administration is generally – directly or indirectly – involved: in fact, the conflicts either concern *directly* acts or decision adopted by the Administration at the national, regional or local level, in order to pursue a public interest or to implement a public task, or they concern private activities carried on following those administrative acts or decisions.

In both cases, the Administrative Courts – the Tribunali Amministrativi Regionali at first instance, the Consiglio di Stato at the appeal level - have jurisdiction (following the traditional divide and the new assessment of jurisdiction).

They have the power to void the administrative decision (and to stay the decision, if requested) if for any reason is considered unlawful or exceeding the power of the Administration. However, they may not directly change or modify the decision, as this possibility is reserved only to the Public Administration.

This means that, if the Administrative Court voids the challenged administrative act for formal or procedural reasons, or for lack of motivation, the Public Administration may reproduce the voided parts, complying with the indication of the Courts. The effect is that the projected activity will be realised anyway, only following a better assessment.

Civil Courts have jurisdiction over environmental matters only to the extent that claims for restoration of environmental damages are concerned.

Criminal Courts have jurisdictions over the number of environmental crimes or offences sanctioned by criminal statutes.

Physical or juridical persons can take part to the criminal proceeding as offended party, claiming a restoration of the damage.

2 Environmental Organisations and the administrative courts

2.1 Environmental matters in front of the Administrative Courts: issues, trends, timing and costs

- Frequent issues of judicial conflict are the acts of the Public Administrations regarding:
- planning and transformation of land use (development programs authorised by the competent Public Administration);
- transformation of the land use in protected areas;
- building and location of general infrastructures and public works;
- location of waste sites;
- environmental impact assessments or evaluations;
- hunting issues;
- measures adopted in relation to the protection of the fauna, flora, protected areas.

As shown in the annexed overview, there is a steady increase in the recent years of judicial conflicts on these issues.

As there is no sign of a boost of environmental sensitiveness in the public opinion or of a deep change in socio-cultural conditions, the reasons can be:

1. an increase of the Administration insensitiveness towards environmental issues.
2. the effect of the deregulation and liberalisation introduced in part of the public sectors;
3. the effect of a rational choice adopted by the principal environmental organisations towards the judicial challenge of the administrative acts (three environmental associations alone - Legambiente, WWF, Italia Nostra – started the major part of all claims in the last years).
4. a greater degree of efficiency reached by the Administrative Courts.

On this respect, it must be noted that – differently from the Civil and Criminal Court – the Administrative Court have a fairly good standard of efficiency. At the first instance, in relevant issues the final decision is usually given in 12-18 months time. About 18-24 months are necessary to get to the final decision at the appeal level (provided that there is a request for the decision).

A great role is played by interim stay or injunctive decisions, very frequently request by the claimants and largely used by the Administrative Courts. Interim decisions are given in a very short time – usually two weeks, but even less if there is an evident urgency for the decision.

Of course, in the judiciary organisation, efficiency increases conflicts.

e) the low cost of the claim. Although the general law establishes that the loser pays the costs for the winner, the Administrative Court very seldom make the environmental associations pay the costs. In general, they make an intensive use of the discretionary power to make a compensation of the costs, whoever is the winner (Administration or the environmental association).

That means that environmental association challenging an administrative act into the Administrative Court have to bear the basic effective costs of the proceeding and the lawyers fees. Many lawyers offer to the environmental organisations reduced fees for this type of claims.

Probably, all these factors cooperate towards the result of the increased judicial challenges. Of course, a) and b) on one side, c), d) and e) on the other have a deep interaction one with the other.

Yet, the increase of the judicial review may be in part only apparent, and the effect of the possibility to track all decisions of the Administrative Courts on-line since the year 2000.

It must be remarked that the distribution of judicial challenge is not uniform.

It is concentrated in the North of Italy – specifically North-East (Trentino and Veneto) and Centre-North (Lombardia, where Milano is located) – and in the Central Italy (Emilia-Romagna, Toscana, Marche and Lazio).

That means that the increase in judicial challenges is not connected with the need of environmental protection: for example, in Sicily and in Sardinia, where the environment is under broad and constant attack, are almost absent from the list (summing up one and two cases respectively in the period of time considered).

The reasons of this distributions are of different sort: in some areas (notably Trentino Alto Adige, Emilia and Toscana) greater environmental awareness and a strong tradition of good governance, greater availability of financial mean, and – for Lombardia and Lazio - the presence in these two regions of the headquarters of the principal environmental organisations.

2.2 The traditional approach to standing

The Italian Constitution grants to any entitled person (physical or juridical) the protection against unlawful acts or decisions of the Public Administration. The entitled person has the possibility to challenge the legitimacy of any act in front of the Administrative Courts, alleging the reasons why such decision should be voided. To be entitled to obtain the judicial review, it is necessary to be – at least potentially – materially affected by and legally connected with the act of the Public Administration. The existence of damaging effects caused by the administrative act

on the position of the claimant – the standing (*legittimazione ad agire)* - is subject to strict scrutiny by the Administrative Court[1].

As an effect of this strict scrutiny about standing, claims alleging damages caused by the administrative act, if not related to the position of a specific physical or juridical person but to the general – national or local - interest (e.g., to avoid the unsustainable use of natural resources) or to the interests of a specific community (e.g., pollution of a certain territory) do not receive protection in front of the Administrative Courts.

This strict scrutiny concerning standing leads to two main consequences:

1. a physical or juridical person asserting to file a claim for the protection of an interest non specifically damaging his position has no standing, although he is part of a damaged community or has been appointed by such community as a representative (the so called *actio popoularis* is admitted only when expressly provided by a statute).
2. an association, a committee, an organisation representing and defending environmental interests at any level, national or local, has no standing.

2.3 The evolution of standing in environmental matters

Since the late Seventies this strict approach to the standing in environmental matters has been subjected to intensive challenge before the Administrative Courts. The arising of environmental concerns and the support received by the environmental organisations in order to protect the environment made this traditional approach increasingly unfit to the demands of public opinion regarding these issues.

In several occasions, the Administrative Courts at the regional level started to recognise the standing to environmental associations or organisations representing the environmental interests of specific local communities whose conditions of living was menaced by acts, plans or decisions of the Public Administration (realisation of public works, development programs, location of infrastructures like airports, highways, waste sites), or representing specific environmental interests (for example, the association of bird watchers of Lake Como, anti-hunting groups of the Po Delta, and so on). Although at the appeal level these decisions were normally squashed by the Consiglio di Stato, the growing pressure of environmentalism lead to a legislative reform.

[1] A less strict scrutiny is conducted by the Court if a person takes part to the proceeding as a supporter or "amicus" of the claimant (*intervento in giudizio).* having the requested standing or of the resistant party (Public Administration or other private parties affected). In this case, only a moral or indirect interest is sufficient to enable the participation. This aspect, not properly included in the concept of access to justice, will not be examined in this relation.

2.4 The expansion of the standing of environmental organisations the Law 8-7-1986 n.349

The Law 8-7-1986 n.349 formally instituted the Ministry of Environment.

At the same time, the law (art.13) introduced a procedure to grant (by a decree of the Ministry of the Environment) official recognition to environmental associations, provided that certain conditions were met (presence on a significant part of the national territory for a relevant period of time, democratic internal organisation, environmental goals defined in the statutory documents). Following such provisions, in the subsequent years more than twenty environmental organisations were granted full public recognition[2].

The recognised environmental organisations have a general standing in front of the Administrative Courts: consequently, they are entitled to challenge the administrative acts or decisions concerning environment, and seek a decision of the Court to void them.

The environmental organisations – some of them more than others (Legambiente and WWF lead the list) - have widely used the new legal possibility granted by the law.

Many decisions or acts of the Public Administration at any level (central government, regional government, local authority) have been - often successfully - challenged in front of the Administrative Courts.

2.5 The emerging issues with respect to the standing

Yet, the legal reform of 1986, far from solving all the problems, as expected, has generated an increasing number of new issues and conflicting jurisprudence on both sides of the judicial spectrum: on one side, widening the concept of standing, the legal recognition being only the first step, and on the opposite side reaffirming the strict concept of standing, and thus restricting whenever possible the space of action of the organisations legally recognised.

Three issues in particular have polarised the judicial conflict and still wait for a definitive resolution. In all of them, there is a divide between first instance and appeal Court, the former tending to adopt a wider concept of standing, the latter frequently squashing the decisions in appeal.

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[2] d.m. 20 February 1987 (Official Gazette 27 February 1987, n. 48): Amici della Terra, Associazione Cronos 1991, Club Alpino Italiano, Federnatura, Fondo ambiente Italiano, Gruppi Ricerca Ecologica, Italia Nostra, Legambiente, Lega Italiana Protezione Uccelli (LIPU), Mare Vivo, Touring Club Italiano (TCI) ,World Wildlife Fund (WWF), Greenpeace; d.m. 26 May 1987 (Official Gazette 2 June 1987, n. 126): Agriturist; Lega Italiana per i Diritti dell'Animale, Pronatura (cancelled in 1995); d.m. 1 March 1988 (Official Gazette 19 May 1988, n. 161): Ambiente e Lavoro.

2.6 First: is the official recognition preclusive of the standing of non recognised organisations?

Is the new regulation of 1986 to be intended as limiting the standing only to the environmental organisations officially recognised, with the consequent exclusion of standing of all other subjects acting within the same field (if not directly damaged by the administrative act), or has the new regulation simply settled the problem of standing of the main environmental associations, leaving thus free the Administrative Courts to ascertain the existence of standing of other non recognised environmental associations?

With respect to this issue, the Administrative Courts still have fragmented and different opinions.

At the regional level, Administrative Court tend to adopt a wider concept of standing. Consequently the official recognition of some environmental organisation is considered not preclusive of the judicial power to ascertain whether an environmental organisation, not officially recognised because of the lack of some of the necessary conditions (for example, the presence at the national level), yet present and active at the local level, can be granted the standing as representative of a local or specific environmental interest in order to challenge an Administrative act affecting the local community.

On the contrary, the Consiglio di Stato, at the appeal (and final) level, tends (with some exceptions) to squash this decisions, and refuse standing to the non recognised environmental association.

The standing is however generally refused also at the first instance level for *ad hoc* environmental associations, i.e. associations established for the specific purpose to file a claim in front of the Court, as this is considered an unproper manoeuvre to bypass the prohibition of the *actio popularis.*

2.7 Second: does the standing only concern decisions on strict environmental matters?

Is the standing of the recognised environmental organisations limited to challenging only the administrative acts directly concerning environmental matters as defined by the law of 1986 instituting the Ministry of Environment, or is extended to any administrative act, provided that there are environmental implications or possible environmental consequences (for example, a new urban development). In other words: can the standing of the recognised environmental organisations extend to matters not strictly included in the concept of environment as defined by the existing dispositions (e.g., preservation of monumental and cultural heritage, preservation of the historic landmarks in the cities, grant of a building permit)?

This is a hot issue: in fact, frequently happens that administrative choices with respect to urban, planning, or conservation of monuments and cultural heritage have indirect and possibly deep effects on environment. On the other side, it looks really not adherent to the intention of the law and to the concept of environment, to restrict the standing of the officially recognised associations only to administrative acts having direct environmental effects, refusing standing in all issues were environment is indirectly involved.

In this issue also there is a conflict amongst first instance and appeal decisions.

The Regional Court tend to grant standing more widely: for example, they tend to admit claim regarding intervention on urban environment, or challenging building permits if there is evidence of and environmental impact.

The Consiglio di Stato is inclined in recent (and still not consolidated) decisions to exclude the standing where the challenged administrative act does not expressly concern environmental matters.

2.8 Third: can only national representatives of the recognised environmental association start a judicial challenge?

Is the decision to challenge the administrative acts before the Courts reserved to the legal representatives of the environmental organisation at the central national level, or can such a decision also be taken by regional or local branches of the same organisation?

This issue has had broad implications.

In fact, the limited time (60 days) granted by the law to file the claim in front of the Administrative Court, the locally limited impact of the environmental issue at the stake, the relations of the local communities only with the local branches of the environmental organisation (and often with the specific subjects representing the association), the consequent possibility of collecting the financial support needed for the legal challenge only if the local branches of the associations are actively involved, the great level of autonomy of the local branches within many environmental association makes often difficult for a local community in the short available time to bypass the local branches of the association and obtain the “sponsorship” of the national representatives, often insensitive to issues not having broad political implications.

The effect is that the restriction of the power to challenge judicially an administrative act only to the central representative of the environmental organisation substantially curbs the quantity of judicial challenges.

On this point also there is a conflict between regional and central level of the Administrative Courts. The Consiglio di Stato is inclined (although with exceptions)

to affirm that only the national representatives of the recognised organisation are entitled to challenge in the Court the administrative act.

3 Environmental matters and civil courts

3.1 Restoration under general tort law

As mentioned, environmental matters in the Civil Courts consist mainly if not exclusively in the request of restoration of damages caused by misconduct or wrongdoing of the defendant.

The suit is regulated by the general tort law.

Therefore, the plaintiff has the burden to give evidence of the misconduct, the relation of causality, the entity and the economic nature of the damages, the violation of a rule of conduct by the offender and, usually, the negligence. Only in case of dangerous industrial activity, the negligence is presumed.

Purely moral damages are not admitted to restoration, if the alleged misconduct does not also constitute a criminal offence.

Environmental organisations could consequently promote a civil case only if they have suffered direct - and not purely moral - environmental damages to request the restoration. But in this case they would act as a private person seeking for restoration for the loss of his assets.

Environmental organisations can however support the suit of other plaintiffs, and take part to the proceedings.

3.2 Restoration under the provision of the art.18 of the Law 8-7-1986 n.349

The L.8-7-1986 n.349 introduces (art.18) an innovative action for the restoration of the environmental damages, entitling the State, the Regions or the Local Authorities to claim restoration of environmental damages caused to the territory or to the natural resources, irrespectively of their ownership of the damaged goods.

The plaintiffs – this is the only case in the Italian system – are also entitled to request the elimination of the damages caused to the affected area with (for example, the cleaning of pollution effects), even if such a reparation may result in much higher costs for the offender than the monetary compensation of the damages.

As in the general case, the environmental organisation can only take part to this proceeding, supporting the requests of the Public Administration.

This action, contrary to what many were expecting, has been rarely used.

In the 15 year period since its introduction, only a handful of decisions are recorded (although the number of proceedings is certainly greater, as many of them have been concluded with agreements or transactions).

The main reason is that the Public Administration is often in some indirect way involved in the causation of the damages (by granting authorisations, or permits to the offender, for instance), and cannot, or may not, claim for the restoration of damages.

3.3 Restoration based on the subsidiary action of the environmental organisations

The above mentioned barrier has finally been removed by the Law 3-8-1999 n.265.

The Law has provided for the possibility, limited to officially recognised environmental organisation, to start the action for the restoration of the environmental damages in substitution of the entitled Public Administration, in case of inactivity or idleness: it is a form of *subsidiary standing*, traditionally used in the Italian legal system for the *actio popularis.*

This solution has apparently opened a new scenario with respect to the action for the restoration of the environmental damages under the provision of the above mentioned art.18, Law 349/1986.

The first decisions have stated that the subsidiary standing does not imply the assent of the substituted Public Administration, and that the restoration, if granted, is to be received by the Public Administration substituted, while the environmental organisation bringing the claim is entitled to the reimbursement of the legal expenses ordered by the Court.

The point is that the environmental organisations availing of the subsidiary standing will be liable to pay for their legal expenses and the expenses of the alleged offender, if the suit is rejected.

The high legal costs of the civil trial (with three possible instances, up to the Corte di Cassazione) undoubtedly constitute a barrier to a wider use of this right.

4 Criminal courts and environmental matters

4.1 In general

Many environmental misconducts are considered criminal offences, either under the criminal code or under specific statutes. In general, the sanctions are not so severe: a fine or a short period of jails, with possibility of suspension if no other similar crimes have been committed.

The Public prosecutor is formally bound to proceed if he deems that a criminal offence has been committed. In fact, the majority of criminal misconducts are simply dropped out or incur in the statute of limitations.

In any case, if the Pre-Court judgment confirms the evaluation of the prosecutor, the offender will be submitted to the judgment of the Court.

Either in pre-court hearings or in front of the Court, the prosecution can be settled with payment of a fine or other agreed measures, as for example partial restoration of the damages.

Pursuant to Law 22-9-1988 n.447 (new dispositions on criminal procedure) environmental organisations can take part to the Criminal trials concerning environmental offences.

In the first years of implementation of such provision, the prevailing opinion of the criminal courts was that the environmental organisations were admitted to participate and submit to the Court their pleadings, but not to claim for the restoration of damages thus transferring the civil action into the criminal proceeding (*costituzione di parte civile)*.

From the mid-Nineties, the prevailing opinion is the opposite one, entitling the environmental organisations to fully participate to the criminal case, and claim for any type of restoration of damages.

4.2 The judicial claim for restoration of moral damages

In the criminal proceedings, the restoration of moral damages is admitted.

As mentioned, the prevailing opinion is that environmental organisations - irrespective of the subsidiary standing (limited to recognised organisations) for restoration of environmental damages provided for under art.18 of the Law 349\1986 – can claim for the restoration of damages caused to the interests institutionally represented.

The damages usually consist of the restoration of the pain of the members of the association due to the environmental offence, and such restoration – to the extent it is deemed existing – may be granted by the Court on a equitable basis.

5 Environmental organisations and administrative procedures

5.1 The general law

The Law 7-8-1990 n.241 provides for the right of access to the administrative procedures. This law has consistently broadened the power of the environmental organisation to take part to the administrative proceedings.

Following the dispositions of the law, any environmental organisation:

- has the right to access to administrative documents;
- has the right to be informed if an administrative procedure is started productive of possible negative effects on their environmental interests;
- has the right to take part to the procedure, by contributing their expertise and suggestions, if there are possible negative effects.

It is important to remark that environmental associations have the right to access and to participate, without any need to proof a qualified interest in the concerned issue.

The statute transferring into the Italian legal system the directive CEE 90\313 extends the right to access to environmental information and the right to be informed to any person, independently of the evidence of a qualified interest.

However, as shown in the annexed overview of the judicial decisions, the right to access to the administrative acts is a frequent matter of conflicts and forms a relevant part of the reported decisions (13 at the first instance level). In fact, the judicial conflicts concerning this issue of access are much more, but are in most cases solved before the decision, being the Administration forced by the Court - often using interim injunctive relief – to admit the requested access.

The principal reason used by the Administration for refusing the access is the privacy or the right to protection of the intellectual property of private parties involved. This refusals are generally squashed by the Courts.

Another reason for the quantity of claims on this issue is that the right to access is the object of a specific procedure, involving low legal costs and fees and offering a very quick decision (generally, not more than one month for the first instance).

5.2 Specific statutes

The foregoing principles have been confirmed and specified in several subsequent statutes. Law 28-12-1993 n.548 concerning the protection of the ozone layer grants to the officially recognised environmental organisation the right to offer advices and suggestions to the Government and the right to suit any Public Administration in case of violation of the right to be informed about the implementation of the law.

Similar disposition are present in the Law 26-10-1995 n.447 concerning the acoustic pollution.

Italy Case Study

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1 The setting in which the case takes place

The Court

Tribunale amministrativo regionale per il Piemonte, sez.II, 6\5\1999 n.240 pres.Montini, est.Caso

1.1 The Parties

Committee “Say No to the waste disposal” and three residents v. Consortium for the collection, the transport and the disposal of urban solid wastes

1.2 The object

Some residents and a committee are fighting against the localisation and realisation of a waste disposal on the area they are living in.

1.3 The reason for the presence of the parties

The parties are living in the area concerned by the localisation of the waste disposal: the residents and the committee have the same objectives, related to the environmental impact on land, health and commercial values of their properties.

1.4 Previous history of the case

The case arises from the administrative decision of the local municipalities, gathered in the Consortium for the transport and disposal of urban solid wastes, to start the proceeding for the localisation of the waste disposal in the concerned area. Similar decisions always provokes rational and irrational fears in the local population, the last ones sometimes really founded.

In these cases, people who want to contest the decision start making local meeting in order to study the steps of the fight: first they collect the official documents regarding the administrative iter, then they prepare a local politic dispute, where the question is treated from politicians and public, and at last, when and if the decision is assumed, they look for a lawyer to start a legal action. In this research residents usually try to carry on common strategies on the basis of local committees or allying with the major non governative environmental organisations.

When the law suite is not sustained from the latter, may be sometimes due to lack of juridical reasons; anyway the presence in the administrative and judicial proceedings only of residents and local committees often affect the strength of the initiatives.

1.5 Implication of the case for public

Not only the localisation of the waste disposal gives to the public a reason to worry about it, but in general all the disputes concerning similar decisions are given much result by the local media and present many implications for groups of the public or the public at large: among the public there are people who think that a waste disposal inside the municipal territory can change for the worst smell, traffic, commercial value of properties, health and living conditions in general. Others, on the contrary, trust in the local politicians skills in order to achieve the best target for what concerns the necessity of the disposal, its localisation and the technical solutions needed to avoid the inconvenient above mentioned.

May be that the prevalence of the first issues is due to the presence, in Italy, of a strong criminal waste traffic which causes illegal and dangerous flows of special wastes to waste disposals not adequate for the kind of waste; this way technical solutions always fail in assuring people the real achieving of the quality standards promised from politicians and public managers.

2 Environmental Effectiveness

2.1 Description of environmental factual issue

The committee specifically created by a group of citizen and personally three residents contests the administrative decision approving the location and the realisation of the waste disposal on the area. The location worries the pursuant parties as in the area there are water sources, agricultural activities, tourism and inhabited centres which may be affected from the waste disposal and cause a loss of value and of resources in general to the land and its inhabitants.

In fact the Consortium decided, in conformity with the local public plan for waste disposal, the specific location of the structure after examining several similar places, excluding the ones not compatible for environmental, health and juridical reason and so coming to the choice of the area.

During this evaluation proceeding the Consortium also examined the observations sent by the committee, and discussed about them before coming to the final decision.

2.2 Description of the relevant legal issue, concerning standing and other procedural issues

The committee and the residents observe that the location will damage the agricultural destination of the surrounding area, that there is risk of pollution of the water system, that the place is particularly known for tourism so that even sustainable economic activities will be damaged. The committee also points out that the waste disposal is placed too much near to the inhabited area.

The Consortium defends the approval, observing that a) the Committee and the residents have no standing; b) discretionary decision of the Administration cannot be checked at the Administrative Court; c) there is no risk and that all necessary precautionary measures have been adopted.

2.3. Description of the substantive principles or rules of law relating to the environmental issues in the case

As it often happen in such a case, the objecting parties affirm the infringement of many rules of law; first of all of D.P.R. (Decree of the President of the Republic) 915/82 regarding waste disposal, in derivation of U.E. rules ; of L. (Law) 431/85 concerning the protection of the environment and in particular the legal limitation about certain place, such as lakes, rivers, mountains, forests; thirdly of L. 241/90, concerning participation at the administrative proceeding.

The dispute also occurs about the reasonableness of the decision, as according Italian law the decision of a public authority can be objected in front of the Court not only if

it's in contrast with specific and written rules of law, but even if it's in contrast with the principles of reasonability, equity, and fairness.

On the procedural point, it is discussed if a temporary committee and the residents of the area have the standing.

2.4 The result of the case from the environmental point of view

From the environmental point of view, of course the sentence underlines that every aspect has been taken in the due consideration on behalf of the public authorities; anyway the case ends with a new consume of land and of natural resource, as it always happen when waste strategy is not developed as it should be.

The principles "not in my backyard" and "out of sight, out of mind", in fact, even at a local level, are leaders in every objection to the location of both industrial structures and waste disposal or treatment system.

Thus acting, at a local level, small committees and groups of residents lose the sense and the meaning of the target of global protection of environment, and show the weakness of their initiatives.

2.5 An assessment of the effects of the decision as regards protection of the environmental matters

The decision statues that no infringement of all the rules of law concerning environment occurred in the case: the law against water pollution doesn't forbid the location of waste disposal at a distance of more than 1 km from a water source; for what it concerns the agricultural destination of the land, the Court points out that such a destination was reported only in old official registration and didn't appeared in the recent regional reports on land use.

Besides the specific objections based on written rules of law, the decision rejects even the objection based on bad use of discretionary power in the choice of the place and in the examination of the project, as it explains that no real argument is given on this side.

3 Consideration of the legal or "democratic" aspects in the case

3.1 An assessment of the decision as regard the correct application of the relevant procedural and substantive law

1) A Committee created ad hoc lacks the standing to contest administrative decision. As we underlined in the report, the decision is in contrast with other (few) sentences that, on the contrary, affirm that the judge can give standing also to NGOs not officially recognised, or to temporary committees, according to the specific case and circumstances, if the committees provide, in their statutes, the aim of the protection of environment.

2) The residents may have standing, provided that they proof the effective danger to their position. Consequently, the standing is recognised to the owners of land close to the area where the disposal will be located and to the residents in nearby areas; other residents not so close to the area have to prove that they will suffer a specific danger or an economic loss in consequence of the realisation of the plant.

3) The choice of the areas is widely discretionary; therefore, the affirmed alteration of social and environmental conditions is not sufficient to void the decision to realise a public plant, even if evidence is offered, unless this conditions are specifically protected by legal or administrative provisions.

3.2 Implication of the case for the future as regards procedural issues concerning standing

NGO's will probably evaluate more carefully the possibility to act in front of the Court but will strengthen the political action and the participation at the administrative proceedings; the sentence, increasing the number of precedents against standing of temporary committees, will discourage this form of aggregation in being more active in the legal arena; will encourage, on the contrary, the request of legal support and of direct participation to the recognised NGO's, such as WWF and others who have legal standing in force of L. 349/86.

Residents will be directly engaged only if in deep and immediate contact with the waste disposal, or if able to prove damages coming from the plant.

3.3 Implications of the case for the future as regards matters of substantive environmental law

None, excepted that discretionary power of public authorities can be easily used to stop every objection about the reason of a specific location; of course law, and not the judge, has to fix the rules to assure that the choice of the location be adequate

from the environmental point of view, with the extension of the procedures of evaluation of impact on environment.

3.4. Impact of the case on the environmental NGO's or citizen grouping involved

Already explained in 3.2.

3.5 Implications of the case for the future for other parties

The sentence affirms that it's not necessary that the decision about the location expressly mention the rejection of the objections of committee and residents, if the technical solutions adopted show that the objections have not been accepted, after some discussions about them.

Thus saying the sentence let the public management free not to indicate adequately, in the final decision, the specific reasons for the denial opposed to the different solutions proposed.

3.6 Whether the case resulted in a reduction or an increase in environmental opposition to any development plan

See point 3.2

4 Socio-economic aspects

4.1 The cost of the parties

The proceeding has a cost itself, which is not high, as the amount provided starts from about € 60 to € 300; the cost depends on the value of the case, that in similar circumstances is indeterminate, so that the plaintiff has to pay € 310.

The legal assistance is often given pro bono from the lawyer involved in the case, often chosen between the ones who have a substantially interest in the question, as they live in the surroundings, or between the few lawyers operating in the field of environmental law - on the side of NGO's - who accept to reduce their fees.

It's not possible to discover in the case the fee of the lawyer, as Italian law provide minimum fares, so that no lawyer will ever admit to have been paid less than these fares; Italian rules provides also that in such cases the lawyer can be submitted to disciplinary judgements.

It is important to underline that the Court, even if rejected the opposition of the Committee, decided non to condemn it to pay the legal expenses of the other party; such decision is often adopted from the Courts on the basis of equitable reasons, especially when the loosing party is a NGO.

4.2 The source of funding

Local temporary committees also raise funds ad hoc for the legal and judiciary proceeding, collecting money from the residents in the affected area who gather in the committee or who approve its initiatives.

4.3 Public legal assistance

In the case it's not given. Temporary committees hasn't even got fiscal facilities. Recognised NGO's can benefit of public legal assistance because of a recent law. If the NGO's is a Onlus - non lucrative organisation, a fiscal definition - it mustn't also pay the fees of the process.

4.4 Average cost

€ 2500.

4.5 Other economic barriers:

The fear to pay damages to the company interested in placing the plants or the waste disposal in case the interim injunction is not confirmed at the end of the process.

4.6 Overview

It is not possible.

Annex - Statistics about the decisions

A. Decisions of the Administrative Courts

The decisions are organised following three criteria: time and location (boxes n.1); the acting environmentalist organisations (box n.2); the principal issues discussed.

1. Time and location

Anno	Consiglio di Stato	T.A.R.
2003	2	1
2002	18	42
2001	13	37
2000	4	23
1999	2	13
1998	1	7
1997	2	4
1996	2	9
1995	2	8
1994	-	3
totale	46	147

Regione	T.A.R.
Trentino Alto Adige	29
Lombardia	14
Veneto	13
Emilia Romagna	12
Lazio	13
Marche	11
Toscana	10
Campania	8
Abruzzo	6
Piemonte	5
Umbria	5
Valle d'Aosta	5
Liguria	4
Friuli Venezia Giulia	3
Puglia	2
Basilicata	2
Sardegna	2
Sicilia	1
Calabria	1
Molise	1

2. Environmental activism

Case	Consiglio di Stato	T.A.R.
Won	8	48
partially won[1]	5	12
Lost	29	62

Associazioni ambientaliste più attive	Consiglio di Stato	T.A.R.
WWF	14	58
Legambiente	10	32
Italia Nostra	10	24
Codacons (coordinamento delle associazioni per la difesa dell'ambiente e dei diritti degli utenti e dei consumatori)	8	19

3. Principal issues

Oggetto della causa	Consiglio di Stato	T.A.R.
VIA	3	4
Access to documents	3	13
Hunting regulations	2	16
Waste regulation	2	5
Electro-magnetic pollution	3	4
Cultural preservation	4	12
Official recognition of environmental association	2	3
Limits to development	4	28
Water pollution	0	3
Urban and building regulations	10	30
Infrastructure and public works	11	13
Other	2	17

[1] Sono ricompresi i casi di riunione di procedimenti in cui la sentenza ha accolto i ricorsi di alcune delle associazioni parte in causa e ha rigettato quelli delle altre.

B. Criminal cases: the standing of the environmental association

Court	Only on support	Claim for restoration permitted
Corte di cassazione	1	9
First instance and appeal	1	6

The Netherlands Country Report

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1 Description of proceedings in the Netherlands

1.1 Characteristics of the country

One of the main sources of Dutch law is statutory law. This does not only include formal legislation (legislation by government and parliament), but also regulation by decentralized bodies (provinces, municipalities) and delegated legislation at the level of the central government (ministerial ordinances). The law is largely influenced by EC law. Apart from this statutory law, self-regulation has become more important over the last decade. This means that instruments like covenants have become rather important as 'sources of law', while operations have gained more freedom and responsibility in obeying environmental rules when voluntary environmental management systems are in place. A great deal of environmental matters fall within the scope of administrative law, for which the General Administrative Law Act gives procedural rules. However, NGOs and citizens also have the possibility to initiate court proceedings under civil law and under criminal law.

The General Administrative Law Act (GALA) distinguishes three 'preparation procedures', i.e. procedures that have to be applied when drafting a decision, such as an environmental permit. The three procedures are: the normal preparation procedure (Title 4.1), the public preparation procedure (Section 3.4) and the extensive public preparation procedure (Section 3.5). The relevant procedure determines who can participate in the decision-making process and who can address the courts. As a consequence of a strong call for deregulation, in 2002, the public preparation procedure and the extensive public preparation procedure have been integrated (into a new Section 3.4),[1] thus limiting the number of people that can address the courts. In Parliament the Minister of Housing, Spatial Planning and the Environment has promised to adapt the environmental legislation to the new procedure in order to not reduce the number of people that have access to justice in environmental matters. However, this has not yet taken place. Until that time the three former procedures will remain available for decision-making in practice.

Meanwhile, the newly installed Cabinet in the spring of 2003 called for further deregulation by abolishing the so called 'actio popularis' in environmental law. Below, the current discussions will be further elaborated.

There are administrative sectors within the District Courts, with the possibility of appeal to the Administrative Law Division of the Council of State. However, in almost all environmental cases, legislation provides for immediate appeal with the Administrative Law Division of the Council of State (i.e. appeal in one instance). Civil and criminal law cases can be addressed in three instances. Decisions of the District Courts (civil sector, criminal sector) can be reviewed by Courts of Appeal.

[1] Stb. 2002, 54.

The Supreme Court can be addressed for a cassation procedure (only in civil law and criminal law cases).

1.2 Procedures before administrative courts

In this section procedures before administrative courts are discussed. We make a distinction between procedures with regard to environmental permits and procedures regarding other decisions, such as ordinances, plans etc. This distinction is necessary as a consequence of differences in the preparation procedure.

Environmental permits, i.e. the integrated permit on the basis of the Environmental Management Act (EMA), as well as other permits, such as the permit on the basis of the Pollution of Surface Waters Act (PSWA), are granted applying the extensive public preparation procedure (Section 3.5 of GALA). Other decisions are usually taken applying the public preparation procedure (Section 3.4 GALA).

1.2.1 Procedures against permits: 'anyone'

Decision-making processes on applications for all environmental licences are regulated by the extensive public preparation procedure. According to Article 8.1 of the Environmental Management Act (EMA) it is forbidden to set up, operate or change the set up or operation of an installation unless one has a permit to do so (IPPC-installations and all other installations that might have adverse impacts on the environment). A party has to apply for such a permit with the competent authority. The extensive public preparation procedure applies as well in these cases, as on several other decisions (e.g. licences to discharge waste into surfaces). After the application and the draft-decision have been published *anyone*, as well as advising bodies, such as the Inspectorate for the Environment, can bring forward written objections. Besides that, anyone can ask the administrative authority to organise an 'exchange of thoughts' (hearing) at which oral objections may be put forward. The term 'anyone' implies that all groups of citizens and environmental NGOs, as well as non-interested individuals have a right to participation in environmental decision-making with regard to permits. There is no need to show special interest in this procedure. The final decision has to show that the objections have been taken into consideration.

If the extensive public preparation procedure has been attended, there is no need to object to the same administrative authority, but instead one can address an appeal to the Administrative Law Division of the Council of State directly. This is called the *indirect actio popularis*. Anyone has a right to be involved in decision-making. Once a person or a group of people or NGO have entered the decision-making process, they have a right to go to court as well, as long as they object on the grounds put

forward by them in the decision-making process.[2] They are not allowed to introduce new arguments in court. Anyone who has objections against alterations of the draft decision, as well as interested parties who cannot reasonably be blamed for not making objections against the draft decision, have a right to address the Administrative Law Division of the Council of State as well. In all of these cases there is a direct appeal to the Administrative Law Division of the Council of State.

The Council of State has very extensive powers, since it can, besides squashing a decision to grant a permit, also take a new decision if it decides the case is clear enough to do so. Otherwise it can rule that the administrative body has to take a new decision. It can also change some of the conditions attached to the licence, or draw up new ones. In some cases compensation for damages can be awarded. However, it must be noted that usually the Administrative Law Division of the Council of State only tests government decisions in a rather marginal way. Allegations by administrative bodies that administrative courts sometimes show 'legal activism' are taken seriously, both by the legislator (deregulation!) and by the courts. This means that the Administrative Law Division of the Council of State usually annihilates a decision on formal grounds, leaving the administrative authorities the possibility to adopt a new decision, but only after having gather more or better information concerning the relevant facts and interests to be weighed.

Appeal does not suspend the decision. However, an applicant may ask for suspension in a special procedure before the president of the Administrative Law Division of the Council of State. There is no higher appeal possibility afterwards.

These procedures are characterised by low costs. Although parties can be held liable for procedural costs, they do not have to provide for financial security. The final decision, including judicial review, can take up to 1 or 1,5 years. Judicial assistance is not obligatory and there are no strict formal rules for the formulation of complaints or letters of appeal. There are government financed bureaus of legal aid, some of which are specialized in environmental matters. They especially assist local and regional environmental organisations.

There are two important additional procedures that are open for anyone. First, anyone can request the competent authority to *update of withdraw the permit*, when this is necessary to protect the environment (Art. 8.22vv EMA). Second, any person has the right to ask an administrative body to take *enforcing measures* when they feel the authority is in default of doing so (Art. 18.14 EMA). The decision upon such requests can be reviewed by the judiciary. In these cases the persons (or groups/NGOs) that ask for and update of the permit, or for enforcing measures, are seen as applicants for a decision, and therefore always considered to be interested parties.

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[2] In June 2003 it was announced that the actio popularis, both in planning and environmental law, will be abolished soon. This means that for all decisions (just) interested parties can go to court. See further below, Chapter 3, section b.

1.2.2 Procedures against other environmental decisions: 'interested parties'

The normal or the public participation procedure apply to most other decision-making processes, such as permits on the basis of nature protection law, environmental ordinances, or decisions on administrative enforcement. Sometimes there are specific processes, not included in the GALA. There are many differences between the procedures leading to the various decisions, depending on which Act has to be applied, but in almost all of these cases 'interested parties' have a right to participate in the decision-making.

After an environmental decision has been taken, one has the right to lodge a notice of objection against this decision. When the *normal preparation procedure* has been followed, this applies to the applicant, if: 1. the denial is related to information on facts and interests that involve the applicant, 2. this information deviates from those that the applicant has submitted himself, and to any other interested party, if: 1. the decision is based on facts and interests that involve this party, 2. the information is forwarded by the interested party himself. When the competent authority intends to apply administrative pressure or to impose a penalty, the permit holder concerned will be informed of this intention. He must be given the opportunity to express his views if: #Miriam1. the decision is based on information or facts and interests that involve this party, 2. the concerned information hasn't been forwarded by the interested party himself. This opportunity doesn't have to be given if the party has failed to give information (although that was legally mandatory), if this would be in conflict with the urgency of the decision, if the interested party has been heard before, or if the object of the decision can only be obtained if the interested party isn't aware of the content of the decision (in advance).

When the *public preparation procedure* has been followed, any interested party has a right to raise objections. That is any party whose interest is directly involved with the environmental decision. Legal personalities have an interest if they protect the interest concerned on the basis of their aims and actual activities. Art. 1:2(3) GALA states: 'As regard legal persons, their interests are deemed to include the general and collective interests which they specially represent in accordance with their objectives and as evidenced by their actual activities.' In general, case-law shows that courts are rather lenient towards NGOs when applying this clause.

The objection has to be made to the same administrative authority that took the original decision. After the notice of objection is received, the issuer of the notice and possible other parties concerned get the opportunity to be heard. The administrative authority determines whether or not the complaints are well-founded. If the administrative body agrees with the raised objections, they can overrule the original decision and take a new decision which gives (partly) in to the objections. In both *participation* and *objection* procedures, no fee may be asked by the administration. And although judicial assistance is highly recommended, it is not

compulsory. That means that in most cases the expected costs do not stand in the way of the participation in or the start of a procedure. See also above (under A).

An appeal against the decision on this objection must be addressed to the Administrative Law Division of the Council of State in case of decisions on the basis of the EMA and Acts mentioned in Art. 20.1 EMA.[3] Appeal against other decisions, for instance on the basis of the Nature Protection Act or the Flora and Fauna Act, must be addressed to the administrative sector of the competent District Court. In these cases, after appealing to the District Court, higher appeal -usually- is possible with the Administrative Law Division of the Council of State. The administrative Courts and the Council of State can decide to annul the administrative decision and order the competent authority to take a new one. In some cases compensation for damages can be awarded. When the case is very clear, the judge can take a decision instead of referring the dispute back to the administrative body.

However, there are various decisions against which no appeal is possible. These include all forms of legislation, including orders in council, ministerial orders and also national environmental policy plans. Since in many cases environmental licences are now being replaced by general rules for certain categories of installations, laid down in orders in council, this can be criticized from the point of view of access to justice.

In the cases where a District Court or the Council of State has no legal jurisdiction, the civil sector of the District Court can function as ‘a way out’. When factual acts, juridical acts under private law or from appeal excluded decisions (such as regulations from decentralised authorities, orders in council, etc.) are in question, one can go to the civil sector of the District Court if it is a matter of tort. An individual or an organization has to prove that the administrative authority has committed a wrongful act against them by the action concerned (see below).

1.3 Procedures before civil courts

Activities causing environmental harm can be unlawful under the general law of torts. Any individual who claims to be the victim of a wrongful act has access to justice in civil cases: his or her specific interest is injured. The Dutch Civil Code contains an Article that deals with group actions. The legal requirements for admissibility of organizations in civil law proceedings are being a legal person, having relevant objectives under the articles of association and whose members have similarity of interests (Art. 3: 305a). Environmental NGOs explicitly fall under the scope of this article. The State has access when a private party commits a wrongful act against the State, and if the civil action against that private party doesn’t violate the rules for compliance as laid down in basic public law. As mentioned above, any

[3] I.e., Nuclear Energy Act, Noise Abatement Act, Groundwater Act, Air Pollution Act, Pollution of Surface Waters Act, Pollution of the Sea Act, Chemical Substances Act, Soil Protection Act, Antarctic Protection Act.

individual citizen as well as environmental organizations can request the competent authority to enforce environmental legislation.

The Dutch Civil Code contains two kinds of foundation for the requisition of environmental damage: personal liability on the basis of a wrongful act and qualitative liability. Whether or not there is a matter of personal liability is being determined by applying the general law of torts. The essential requirements for the successful application of the Article concerned are unlawfulness, accountability, damage and a causal connection between unlawful actions and the damage. There is unlawfulness in case of a breach of (subjective) rights, when the action or omission violates legal duties or when there is a violation of unwritten law or failure to take due care. The qualitative liabilities in the Dutch Civil Code are the liability for dangerous substances, the liability of the owner of a dump site and of the operator of a drill hole. In cases of environmental damage it is very often hard to point out exactly who caused the damage. In those cases the case law assumes the most likely to be the responsible party and it is up to him to prove someone else caused the damage. When there are more responsible parties, each of them is liable for a proportionate part of the damage and they may be held jointly and severally liable for the damage.

Individuals, NGOs and the State can ask for a judicial injunction or prohibition. This is possible in the situation of an (impending) breach of right or of law. Individuals and the State can also ask for compensation of the damage they suffered. NGOs cannot ask for (financial) compensation for damage to the environment in general, i.e. *res nullius* or *res communes omnium*. The costs made to restore or to prevent damage can be eligible for compensation if the claimant can show an interest (this may be an environmental organization as well). These are costs the claimants made themselves to restore or prevent damage to the environment (e.g. clean-up costs). This is mostly damage to persons or objects and thus ‘easy’ to establish. But in the situation where restoration in the old situation, or the creation of an equal situation isn’t possible, suchlike *pure ecological damage* won’t be eligible for legal compensation, at least it has not been awarded till this moment. In Art. 3:305a(3) of the Civil Code this explicitly has been laid down for tort actions initiated by NGOs.

The above also applies to governmental decisions. NGO’s sometimes start a tort procedure when they feel that a governmental body violates legal duties, for instance international or EC-law.

The costs of proceeding before a civil court are rather high in the Netherlands. In civil procedures parties are obliged to get legal representation before the court: they cannot be their own attorney. These costs are usually rather high. Moreover, the risk is that if a party loses the case, it also has to pay for the costs of the counter-party. This risk keeps a lot of people from proceeding in -rather insecure- environmental liability procedures, especially the not so rich environmental organizations will think twice before going to court. Besides that, a procedure can take very long as it goes

before three instances. So it can take from a few months up to a few years to get a final judgement.

Apart form the costs, another practical obstacle is the fact that NGOs mostly do not have the necessary legal knowledge to start a procedure. Therefore, a special project has been set up in the Netherlands in 1992. Legal Aid Service Centres have been armed with environmental lawyers to give individual citizens and NGOs that cannot afford legal assistance legal advice. They can even represent them in court, if it should come to that.

1.4 Procedures before criminal courts

The Dutch legal system is fairly familiar with dealing with environmental matters by transaction, settlement and dismissal. In exchange for renounce from penal prosecution the public prosecutor can make several conditions, the fulfilment of which can prevent penal prosecution. These so-called transactions generally result in the offender paying a certain amount of money that the prosecutor fixes. Other important transaction conditions are the taking away of the unlawful obtained benefit, the payment of the costs of the damage as caused by the criminal offence, the repair in the old situation and the publication of the environmental offence. A settlement has the objective to prevent the suspect or the convicted to become part of a legal procedure that deprives him of his unlawful obtained, or to prevent that a court ruling concerning that will be left out. A settlement does not terminate the prosecution in a possible law suit. A dismissal is an official announcement by a legal authority to a suspect that he will no(t) (longer) be prosecuted. Once a case is dismissed prosecution is only possible if new facts occur.

The public prosecutor has the competence to decide whether to prosecute or to renounce from prosecution. There is in principle no control by any other authority whether or not this decision is right. An important legal right in this respect is given to directly interested parties. A directly interested party is defined as someone whose interest will be affected if a prosecution should be left out (Art. 12(2) of the Criminal Prosecution Act). An NGO that according to its objectives and as appears from its factual activities looks after a certain interest, and that particular interest is directly affected by the decision not to prosecute, has that same right to complain to the Court. It needs to be stressed that nature and environmental organizations are considered to be promoters of the interest of victims of environmental crimes. ‘Victims’ needs to be read as those that experience disadvantage of the environmental degradation, but also the environment itself.

NGO thus have the possibility to provoke a prosecution if the public prosecutor decides to renounce from prosecution by complaining to the Court (Art. 12(1) of the Criminal Prosecution Act). If the Court considers the complaint to be reasonable, it can order the public prosecutor to start the prosecution. A reason to turn down the

complaint is if the Court decides that the refusal is in the interest of the common interest.

1.5 Non-judicial procedures

Anyone (this includes NGOs) has the right to request the Dutch *National Ombudsman* to investigate acts of national administrative authorities, as well as acts of decentralized public authorities, in so far the latter authorities explicitly have declared the National Ombudsman competent to deal with compliants against them. The National Ombudsman has the responsibility to investigate complaints that are forwarded to him concerning governmental bodies that allegedly have not acted properly towards a natural or legal person. The Ombudsman isn't entitled to act if an other way of legal protection is available, or has been available but not been used. Before going to the Ombudsman, the plaintiff must have tried to get things settled with the administrative authority that is involved. If mediation between the Ombudsman and the authority fails, an inquiry will be started which will result in a written report. This report will be made public and available to all. Although only in a few environmental cases parties turned to the Ombudsman, this procedure has an important complementary role. The influence of the Ombudsman reaches even further than particular cases because his findings may be confirmed by the Minister him/herself.

Currently, a proposal to include a chapter on complaint procedures in the GALA is being discussed in Parliament.[4] The new Chapter 9 will give citizens the right to submit complaints against all acts by any public authority. It will also introduce procedural provisions as to how these complaints have to be dealt with. Decentralized authorities can either institute their own ombudsman, or accede to the National Ombudsman.

[4] Parl.Doc. 2002-2003, 28 747, nos. 1-3. Proposal submitted to Parliament on 24 December 2002.

2 Data

2.1 Methodology in collecting the relevant data

Since almost all administrative environmental law cases are decided in first and only instance by the Administrative Law Division of the Council of State, data collection will be focussed on this court, although other courts will be included in the project as well.

Data have been compiled from following sources:

- existing sources
  - annual reports of the Administrative Law Division of the Council of State 1998-2002
  - the 1999 research report by A.A.J. de Gier, J. Robbe, Ch.W. Backes and P.J.J. van Buuren on 'The actio popularis in planning and environmental law. A research into the functioning of the actio popularis in practice and into the pros and cons of maintaining the actio popularis'
- new sources
  - All important cases by Dutch district courts since 2000 have been made available through the internet (at http://www.rechtspraak.nl). Case-law by the Administrative Law Division of the Council of State has only been made available since April 2002. This database has been used to run the searches necessary to find the data on numbers of cases. Since only cases of the years 2000-2002 are published here, and since the database does not cover all decisions, additional sources will be necessary.
  - In addition, cases published in the various traditional sources (for instance the environmental law reviews), as well as on CD-ROMs have been studied, covering the entire five year period (1998-2002).
  - interviews with key persons

Instead of sending out questionnaires, I have had several face-to-face interviews with key persons within the Administrative Law Davison of the Council of State. I found out that the data asked for are not systematically registered for the period 1998-2002. Therefore, it is more useful to try to make safe estimates by interviewing relevant key persons, both in the judiciary and with NGO's. Most valuable information has been provided by the President of the Environmental Law Chamber of Administrative Law Davison of the Council of State, mr. Th.G. Drupsteen.

2.2 Sharp decline in the number of environmental and planning cases since 1997

Since 1997 the number of cases before the Administrative Law Division of the Council of State has been in decline. The figures below are quite clear:[5]

Table 2

1997	4834 (1243)
1998	4698 (1684)
1999	4046 (1502)
2000	3565 (1701)
2001	2846 (1917)

number of cases on 1 January. These are cases in which the Administrative Law Division of the Council of State decides in first and only instance. It is estimated that about 80% of these cases are related to environmental law and planning law in a 2:1 ratio. The number in brackets is the number of cases of that year in which a formal session in court took place (other cases were dealt with without formal session, or were withdrawn before a formal hearing took place).

The same goes for preliminary (suspension) procedures:

Table 3

1997	605
1998	631
1999	484
2000	468
2001	363

number of cases on 1 January. These are cases in which the Administrative Law Division of the Council of State decides in first and only instance. It is estimated that about 80-90% of these cases are related to environmental law and planning law in a 2:1 ratio.

The sharp decline can be largely explained by a series of changes in legislation to reduce legal procedures. The most important change is that about 75% of all installations that originally needed an environmental permit have been brought under national regulations. These installations have to comply with environmental rules laid down in an administrative order. They no longer have to apply for a permit to local or regional authorities. Since for these installations, there no longer are individual decisions, there no longer exists a possibility for appeal.

2.3 Dramatic further decline in 2002 and 2003

In 2002 a dramatic further decline took place as a consequence of a political assassination. On 6 May 2002, the leader of a new right wing political party, Pim Fortuyn, was killed by a person who was working for an environmental NGO, *Vereniging Milieuoffensief*. This particular NGO mainly operated through court procedures against environmental permits that were issued for cattle raising installations. Vereniging Milieuoffensief accounted for about 50% of all cases in this

[5] Figures taken from the annual reports of the Council of State, available at the Council's website: http://www.raadvanstate.nl

field of environmental law that were brought before the Administrative Law Division of the Council of State. The legal activities of this NGO practically came to a halt after the assassination. Other NGOs have kept quiet since the assassination as well.

At the same time, the political climate in the Netherlands has turned against environmental policy. This amplifies the decline of the number of cases brought before the Council of State. People seem to be reluctant to start court procedures on environmental issues.

A third reason for the decline in 2002 is a discussion on the effect of court procedures. NGOs feel that they often win cases on legal issues, but that the effect of a court case won is very limited. Usually, the competent authority takes a new decision, this time without making formal mistakes, and then the plan or project goes ahead anyway. This is a consequence of the rather formal approach the Administrative Law Davison usually takes. The Administrative Law Division tends to annihilate decisions because of they have not been carefully prepared (egg. without a thorough research into environmental effects), or because they are ill-motivated. When a decision has been well prepared and well motivated, administrative courts usually test it in a very marginal way.

2.4 Number of cases brought before a court by NGOs and other parties

In 1999 research has been carried out to find out how many environmental and planning cases were initiated under the *actio popularis* provisions of the Environmental Management Act, i.e. by persons that were not considered to be interested parties or NGOs. In the project the share of cases brought before a court by interested parties and NGOs has been studied as well. We can assume that these figures are still relevant today, since the legal situation has not changed since 1999. Here are the most important findings of the 1999 research:[6]

A. The number of cases brought before the Administrative Law Division of the Council of State by non-interested parties, NGOs and interested parties (selected environmental cases)

interested parties	34
NGOs	2
non-interested parties	0

[6] A.A.J. de Gier, J. Robbe, Ch.W. Backes, P.J.J. van Buuren, De actio popularis in het ruimtelijke ordenings- en het milieurecht, Centrum voor omgevingsrecht en -beleid, Universiteit Utrecht, maart 1999.

B. The number of cases brought before the Administrative Law Division of the Council of State by non-interested parties, NGOs and interested parties (selected planning law cases)

interested parties	11
NGOs	0
non-interested parties	0

C. The number of cases brought before a court by non-interested parties, NGOs and interested parties according to local and provincial authorities (survey environmental law cases)

	local authorities	provincial authorities
interested parties	108 (93%)	171 (93%)
NGOs	6 (5%)	14 (8%)
non-interested parties	6 (5%)	5 (3%)

D. The number of cases brought before a court by non-interested parties, NGOs and interested parties according to local and provincial authorities (survey planning law cases)

	local authorities	provincial authorities
interested parties	952 (96%)	308 (94%)
NGOs	63 (6%)	34 (10%)
non-interested parties	9 (1%)	9 (3%)

These data were compiled in a limited number of case studies and through a survey. In addition, my own research (following the method outlined above) gives following up-to-date results.

E. Estimated number of environmental and planning law cases brought before the Administrative Law Division:[7]

NGOs	25%
operators	20%
local groups/residents	55%
non-interested parties	<1%

F. Estimated total number of environmental and planning cases brought before the Administrative Law Division of the Council of State:[8]

[7] From interviews and research in the database of http://www.rechtspraak.nl, see Annex I.

[8] Combining the first table under II and table E above.

1997	966 (248)
1998	939 (336)
1999	809 (300)
2000	713 (340)
2001	569 (383)

25% (see table E) of all planning and environmental law cases (80% of the number of cases in the first table under II above). The number in brackets is the number of cases of that year in which a formal session in court took place (other cases were dealt with without formal session, or were withdrawn before a formal hearing took place).

G. Issues addressed in these cases (estimates):[9]

	NGOs	operators	local residents
water	45%	45%	<5%
IPC, installations	25%	20%	55%
nature	45%	25%	30%
waste	25%	20%	55%
air/soil/noise	10%	60%	30%
planning	25%	20%	55%

H. Civil law cases

To get an estimate of the number of civil law cases, I have used the research through the database of http://www.rechtspraak.nl, included in Annex I. From the 199 cases found in the database, only four are civil law cases. Since civil law cases are very expensive, they often are not very successful for the NGOs, and there exists a good system of administrative (see Chapter 1), NGOs only very rarely address the civil court. This means that about 2% of all cases brought before courts by NGOs are civil law cases. This seems to be an accurate estimate. The number is more or less constant for many years now. However, according to the lawyer of the *Stichting Natuur en Milieu*, a co-ordinating organization for all environmental NGOs in the Netherlands, NGOs often send a summons, threatening to start a civil law suit. Usually this leads to negotiations with the company involved, without a law suit being pursued in the end.

2.5 Number of cases won and lost by NGOs and local citizen groups

The 1999 research project on the actio popularis mentioned above, also provides some insight in the number of cases won by interested parties, NGOs and non-interested parties. Because this was not the main topic of the project, these results

[9] Ibidem.

can only be used as a first impression. From the survey and the selected case studies, the researchers find that non-interested parties, interested parties and NGOs usually put forward the same arguments against a decision by the authorities. In the majority of cases these arguments are declared not valid. It seems that interested parties and NGOs win a slightly larger number of the cases than non-interested parties.[10] Unfortunately, the 1999 research project did not produce figures to underpin this conclusion.

Jongma and Michiels in 2002 researched the same question in a case study on one specific environmental NGO, *Vereniging Milieuoffensief*, already mentioned above[11] This particular NGO is a non-typical NGO because it almost exclusively uses court procedures to achieve its goals. This is non-typical, because most NGOs use court procedures only as a last resort. In addition, this NGO only deals with environmental and animal welfare problems relating to bio-industry. Jongma and Michiels found out that this NGO between 1992 and 2002 initiated 2200 procedures. According to the NGO's own records, they won 80% of these cases. When looking at the cases initiated by the *Vereniging Milieuoffensief* and decided by the Administrative Law Division of the Council of State between April and November 2002, the NGO won 52% of the 50 cases that were decided. The authors conclude that the quality of decisions regarding livestock farms taken by public authorities is poor.

According to the president of the environmental law chamber of the Administrative Law Division of the Council of State this figure is not entirely representative for all NGOs. His estimate is that NGOs win between 30% and 40% of all cases, which is about the same for individual citizens or groups of local residents.

Research through the internet database http://www.rechtspraak.nl (see Annex I) shows a slightly better result for NGOs, i.e. 50%. It was, however, pointed out that the number of cases won does not necessarily imply that the environment is better of as a consequence of the case. Very often, NGOs (like individuals or other interested parties) win a case on a formal legal aspect. The competent authority usually corrects this aspect in a new decision, and then the project goes ahead anyway. This especially is true for cases that were only partially won. Therefore, cases partially won (20) were not included in the table below. The figures derived from the internet database illustrate this. Of the 199 cases studied, 192 were initiated by national or regional NGOs.

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[10] Idem, p. 35 and 38.

[11] M.P. Jongma, F.C.M.A. Michiels, Het beroepsrecht van milieu-organisaties moet blijven! NJB 2002/45-46, p. 2238.

Cases won by NGOs	Cases lost	Cases won on formal grounds	Cases won on substantive grounds
87	82	67	20

It is remarkable that some NGOs are more successful than other NGOs. For instance, of the 68 cases by the Vereniging Milieuoffensief in 2002, this NGO won 34 plus an additional 6 partly won cases. They lost 26 cases, and were declared 2 times inadmissible. This is a success ratio of 40:28. In other words, they won more than 60%. Greenpeace, on the other hand, lost 5 of its 6 cases.

For local citizen groups, the situation is radically different. Of the 199 cases studied, 37 cases were initiated by local groups. In only 7 cases these groups acted by themselves, i.e. without a regional or national NGO being a plaintiff as well. Local groups won only 30% of the cases.

Cases won by local citizen groups	Cases lost	Cases won on formal grounds	Cases won on substantive grounds
12	25	10	2

Both tables make it very clear that administrative courts in the Netherlands usually only test government decisions in a very marginal way. The figures above underpin this. Of the 96 cases won by NGOs and local citizen groups, a staggering 70 were won on formal grounds. This is almost 70%!

Conclusion

NGOs win about 40-50% of the cases. This is higher than groups of local residents, that win about 30% of the cases. The latter amount goes for individually interested citizens as well. From the cases won, only 30% was won on substantive grounds. However, the quality of appeals by NGOs is much higher than the quality of appeals by individually interested parties. According to the president of the Environmental Law Chamber of the Administrative Law Division, legal claims by NGOs usually obliges the court to go into the matter more profoundly, and therefore enhances the quality of case-law.

The Netherlands Case Study

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1 Introduction

The case selected here is a civil law case. The case is selected because of its great environmental relevance. However, it is a rather exceptional case. Because of the effective system of (administrative) judicial review, and because of the fact that civil procedures are very costly, the number of cases brought before a civil court by NGOs is extremely low (probably fewer than 5% of all cases brought before a court by NGOs). Nevertheless, we have decided to select this civil law case because of the impact on environmental law. Civil environmental law cases decided by the Dutch Supreme Court, sometimes change environmental law in the Netherlands substantially, because of the fact that usually fundamental issues are at stake, and because of the authority of Supreme Court decisions.

2 Setting of the case

2.1 District Court of The Hague 24 November 1999

On 10 July 1995, the European Commission sent a formal notice to the Netherlands for not having implemented Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources. On 13 July 1997, the Commission sent an additional formal notice. On 15 December 1997, the Netherlands submitted, pursuant to Article 5 of the Directive, an action programme in respect of designated vulnerable zones for the purpose of realizing the objectives specified in Article 1.[1] Several NGOs, most importantly the *Stichting Waterpakt* (Waterpact Foundation), the *Stichting Natuur en Milieu* (Nature and Environment Foundation), and the *Consumentenbond* (Consumers' Association), on 22 December 1997 requested the national government to take all measures necessary to implement Directive 91/676/EEC. On 5 February 1998, the government informed the NGOs that the action programme was a sufficient implementation of the Directive. However, on 29 December 1998, the European Commission again sent a formal notice to the Netherlands because of poor implementation of the Directive. On 3 August 1999, the Netherlands received a reasoned opinion.

In 1999 the NGOs filed a lawsuit against the Netherlands State for not having implemented Directive 91/676/EEC. They had three claims. The NGOs requested the court to

1. declare that the State has acted unlawful towards the NGOs by not having implemented Directive 91/676/EEC;
2. sentence the State to develop a new action programme according to which measures have to be taken to make sure that there will be no more than 50mg of nitrates in groundwaters and surfacewaters, and that on 18 December 1999 not more than 210kg, and on 18 December 2003 not more than 170kg nitrogen from animal manure will be applied to the land;
3. sentence the State for the costs of the procedure.

The District Court of The Hague issued its decision on 24 November 1999.[2]

Admissibility of the NGOs

The Court first dealt with the question whether the NGOs have the power to address this issue to the Court. The State had argued for inadmissibility of the NGOs. However, according to the Court, the claims of the NGOs are admissible. The NGOs fall under the scope of Article 3:305a(2) of the Dutch Civil Code. They are legal associations that have as their objective the protection of the environment. The fact

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1 The Netherlands had already done so on 18 December 1995, but this action programme was withdrawn by the Netherlands on 12 November 1996.

2 District Court The Hague 24 November 1999, *Milieu en Recht* 2000/3, No. 24.

that the NGOs have been discussing the implementation of Directive 91/676/EEC with the government for many years, shows that these NGOs also have a specific interest in the implementation of Directive 91/676/EEC. Both their statutory objectives and their actions in practice show that they have an interest as defined under Article 3:305a of the Civil Code.

Relationship between this procedure and infraction procedure

Secondly, the Court rejects the State's argument that the Court is not competent to address this case because the European Commission has initiated an infraction procedure under Article 230 EC. According to the State, the District Court has to wait until the European Court of Justice has rendered its decision in this case to prevent contradictory decisions on the same case. However, the Dutch District Court finds that the Commission did no (yet) refer the case to the ECJ.

Direct effect of the Directive

The third question dealt with, is the question whether Directive 91/676/EEC has direct effect. According to the Court this is the case. The obligation to reach a limit value of 50mg of nitrate (per liter) in groundwater, and the maximum quantities of nitrates from manure to be applied to farming lands (210kg for the first four year period, 170kg thereafter), are very specific and clear obligations. The objective of 210kg N has to be met between 18 December 1998 and 18 December 2002. The Court also finds that the Netherlands for this period did not apply for derogation of these objectives.[3] Since the State admitted that it cannot guarantee that this objective has been/will be met in the period between 18 December 1998 and 18 December 1999, the Court concludes that the Directive has taken direct effect and that the State did not comply with the provisions of the Directive.

The State acts unlawful vis-à-vis the NGOs

Thus, the Court established that the Netherlands State acts unlawful against the NGOs by not guaranteeing that the objectives of Directive 91/676/EEC are met between 18 December 1998 and 18 December 1999. The NGOs had brought forward other arguments as well (such as the argument that failure to implement Directive 91/676/EEC also is contrary to the precautionary principle and the principle of sustainable development), but these arguments were rejected by the Court.

Can the Court order the implementation of an EC-Directive? Separation of powers

The final question dealt with by the Court is whether the Court can order the State to implement Directive 91/676/EEC since this *de facto* implicates that it orders the legislature to establish acts and regulations. The State argued that such an order infringes the separation of powers. The Court rejects this argument. According to the

[3] Annex II, under 2(b) opens up this possibility.

Court, the State will only be ordered to end the unlawful act. The State can choose its own means to do so.

Decision of the District Court

Therefore, the Court:

1. declares that the State has acted unlawful towards the NGOs by not having guaranteed that no more than 210kg N will be applied to farmlands in the period of 18 December 1998 and 18 December 1999;
2. sentences the State to take the measures necessary to ascertain that in the period between 1 January 2002 and 31 December 2002 no more than 210kg N will be applied, or a higher level in case the European Commission agrees to such a higher level;
3. sentence the State for the costs of the procedure.

2.2 Court of Appeal of The Hague 2 August 2001

The Netherlands State appealed this decision with the Court of Appeal. In its decision of 2 August 2001, the higher court overturned the decision of the District Court.[4] The Court of Appeal has two arguments to overturn the decision.

A national court cannot interfere with an infraction procedure

On 28 August 2000, the European Commission has referred the nitrates case against the Netherlands to the ECJ (case C-322/00). The Court of Appeal thinks it is undesirable for national courts to interfere with similar cases during an infraction case that is pending before the ECJ. This may lead to conflicting judgements. National courts should abstain from giving a decision until the ECJ has given its judgement.

Courts cannot order the legislature to implement a Directive

The Court of Appeal agrees with the State's argument that the order to ascertain that no more than 210kg N will be applied, implies that the current Animal Manure Act has to be amended or that new legislation has to be established. However, in the Netherlands the legislature decides whether or not, and within what timeframe, new legislation is to be established. Courts do not have the power to interfere with the legislature as a consequence of the principle of the division of powers.

Judgement of the Court of Appeal

The Court of Appeal

1. reverses the decision of the District Court of 29 November 1999 as far as the sentencing to take measures to ascertain that in the period between 1 January

[4] Court of Appeal The Hague 2 August 2001, *Milieu en Recht* 2001/10, No. 95.

2002 and 31 December 2002 no more than 210kg N will be applied, is concerned;

2. postpones a decision on the District Court's declaration that the State has acted unlawful towards the NGOs by not having guaranteed that no more than 210kg N will be applied to farmlands in the period of 18 December 1998 and 18 December 1999 until the ECJ has rendered its judgement in case C-322/00.

3 Supreme Court 21 March 2003

The NGOs referred the case to the Dutch Supreme Court. The Dutch Supreme Court gave its view on the case on 21 March 2003.[5] In its judgment, the Supreme Court follows the Court op Appeal's decision. According to the Supreme Court, national courts indeed are not allowed to force the State to enact legislation implementing EC-law. It is a political decision whether or not to implement an EC-Directive, in which the (national) judiciary cannot interfere. The Supreme Court does not refer to Art. 10 of the EC-Treaty, although the NGOs argued that this Article does not allow a Member State to decide *not* to implement a Directive. The Supreme Court argues that this point of view does not limit the rights of citizens, because individual citizens still can, in administrative procedures, invoke provisions that have direct effect. Also the opportunity to apply for damages under the *Francovich*[6] judgment remains intact, according to the Supreme Court. The Supreme Court ends its judgment by stating that the European Court of Justice, in a procedure under Article 228 EC-Treaty, *can* force the State to enact legislation. Since this has been regulated in the EC-Treaty, there is no need for national courts to do the same. As a matter of fact, an infringement procedure against the Netherlands for not having implemented Directive 91/676/EEC is in a well advanced stage. In November 2002, AG Léger concluded to condemn the Netherlands in this case.[7] Currently, a judgment by the ECJ is anxiously awaited.

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5 Supreme Court 21 March 2003, not yet published (available through http://www.rechtspraak.nl).

6 Joined cases C-6/90 and C-9/90 *Francovich* [1991] ECR I-535.

7 Case C-322/00 *Commission v. The Netherlands* (pending case).

4 Environmental effectiveness

So far, the environmental effectiveness of this case has been limited because of the judgement of the Court of Appeal. However, should the Supreme Court take the same position as the District Court, NGOs have a powerful new weapon to force authorities to implement EC-Directives. Under Dutch law NGOs already can invoke provisions of Directives that have taken direct effect in administrative law cases (i.e. in case a decision was taken on the basis of national legislation that is not considered to be a correct implementation of a provision of a Directive). In the District Court's view, NGOs should also have the possibility to initiate a procedure under civil law to generally order the State to implement a Directive. Obviously, the threat of such civil law procedures will force the authorities to seriously and timely take EC law obligations into account.

5 Legal and "democratic" aspects

The Court of Appeal's judgement has been heavily critized on both its arguments, not only by the NGOs, but also in legal literature. Jans and De Jong, for instance, point out that under EC law, national courts have the obligation to apply provisions of Directives that take direct effect. They cannot ignore EC law simply because the European Commission has started an infraction procedure against the member state in question.[8] Tort procedures under national law have a totally different nature than infraction procedures under Article 230 EC. Moreover, adopting the view that courts cannot interfere with the legislative process, not only implies that the State is allowed to act unlawful vis-à-vis these NGOs, but also that Directive 91/676/EEC has no *effet utile*. It is clear that these questions are important ones. They deal with fundamental issues concerning the division of powers and concerning the role of EC law. Like in many other cases before, both in administrative and in civil law, NGOs often bring forward such fundamental legal issues.

The case also shows the 'democratic' aspects that often can be heard in discussions on access to justice. The State argues that the legislature has the power to put in place a set of rules governing the behaviour of farmers, not the judiciary. It's the legislature that has to transpose the provisions of EC-Directives into national law, not the judiciary. The State argues that NGOs should not have the power to go to a civil court in a tort procedure to force the State to take actions to implement EC-law. Implementing EC-law is up to democratic institutions, such as the legislature; NGOs should interfere in this process through their regular political influence, not through court procedures.

NGOs take the opposite position. In their view, the State acts illegally by not transposing the Directive. The duty to implement this Directive is a legal duty that follows from the EC-Treaty. NGOs simply try to make sure that public authorities observe the law.

In the Netherlands, there currently is a debate going on in literature that focuses on these two positions. A few authors claim that NGOs should not have access to justice, not even in administrative law cases, because NGOs have no direct interest in environmental matters. The decision to grant an environmental permit to an industrial plant is a matter between the competent authority and the company that applied for the permit and, possibly, one or two people living close to the plant. NGOs should only be able to interfere with the political process, for instance by urging the city council to look into the decision of the competent authority. Courts should not be able to annihilate a decision taken by a democratically legitimized public authority following arguments of a not-democratically legitimized NGO.[9] In general, it is often thought that court procedures by NGOs and individual citizens are

[8] Annotation in *Milieu en Recht* 2000/3, No. 24.

[9] For example: Jos Teunissen, annotation under ABRvS 13 November 2002, Gst. 7177 (2003), p. 29.

time and money consuming. The national government that was installed following the May 2002 elections took this view in its 'Strategic Document': 'it has become easier to obstruct decisions than to take a decision; as a consequence, public authorities often cannot solve social problems. The Cabinet will look into proposals to (...) streamline procedures and abolish the so called actio popularis, in order to increase decisiveness of the authorities'.[10] Meanwhile, in June 2003, it was announced that both in planning and environmental law the (indirect) actio popularis will be abolished.

The majority of authors disagree with this position. They state that legal protection applies to NGOs in environmental matters, not only as a consequence of the Aarhus Convention,[11] but also because NGOs, for long, are considered to have an interest in environmental matters under national law. Standing for environmental NGOs is often considered to be a consequence of the constitutional right to environmental protect, laid down in Article 21 of the Dutch Constitution.[12] They argue that the large number of cases that is won by NGOs in environmental cases against public authorities shows that public authorities are not always inclined to apply environmental legislation correctly.[13] Also, abolishing the right for NGOs to go to court in administrative law, will probably lead to the same number of court procedures, this time initiated by directly involved individual citizens that take up positions prepared by NGOs. From a legal point of view, the separation between a group of local citizens that have joined forces in an association and NGOs is not very sharp. Courts, in each and every case, will have to go into the matter of admissibility, which, in turn, leads to delays. Also, the number of tort procedures is expected to increase after decreasing the access to justice in administrative law.

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10 http://www.regering.nl/regeringsbeleid/bronnen/regeerakkoord/

11 And other arguments based on international and EC-law, J.M. Verschuuren, Internationaal milieurecht en de Awb, in: Lurks e.a., De grootste gemene deler. Opstellen aangeboden aan prof.mr. Th.G. Drupsteen, Kluwer 2002, p. 235-244.

12 Jonathan Verschuuren, The Constitutional Right to Protection of the Environment in The Netherlands, RJE 1994/4, p. 340; more elaborately, same author, Het grondrecht op bescherming van het leefmilieu, Zwolle 1993, o.a. p. 296, p. 378-380.

13 M.P. Jongma, F.C.M.A. Michiels, Het beroepsrecht van milieu-organisaties moet blijven! NJB 2002/45-46, p. 2238-2239.

6 Socio-Economic aspects

As discussed above, the main argument against access to justice for a large number of people (including NGOs) is from a socio-economic point of view. It has become too easy to obstruct socially desirable projects by going to court. Relating to the case of Directive 91/676/EEC: the court order to impose the strict objectives of Directive 91/676/EEC has a lot of consequences for agriculture in the Netherlands.

Annex I

Tables with 199 cases researched through http://www.rechtspraak.nl in which national or regional NGOs were a plaintiff, as well as local resident groups.

	Court	Case no.	Date	National/regional environm. NGO	Local citizengroup	Case against
1	HR	C01/119HR	20-12-02	Greenpeace		NL aardoliemaatschappij B.V.
2	Hof Leeuwarden	9900442	10-01-01	Greenpeace		NL aardoliemaatschappij B.V.
3	CBB	AWB 01/625 en 01/626	26-09-01	Greenpeace		Minister Econ. Zaken, Clyde Petroleum Exploratie B.V.
4	Rb Den Haag	99/1493	02-05-01	Greenpeace, Nationale Jongerenraad voor milieu en ontwikkeling		Staat der Nederlanden
5	ABRvS	AA8431 (LJNnr)	16-11-02	Greenpeace		Minister van VROM
6	ABRvS	AA7848 (LJNnr)	24-10-00	Greenpeace		Minister van VROM, staatssecr. Econ. Zaken
7	ABRvS	200003426/1	04-08-00	Greenpeace		Minister van VROM, Econ. Zaken, staatssecr. Soc. Zaken en Werkgelegenheid
8	ABRvS	200101842/2	18-09-02	Stichting Natuur en Milieu		B&W Aalten
9	CBB	AWB 01/722	02-07-02	Stichting Natuur en Milieu, Z-H Milieufederatie		CTB
10	CBB	AWB 02/685	21-06-02	Stichting Natuur en Milieu, Z-H Milieufederatie		CTB e.a. toelatinghouders
11	CBB	AWB 02/569 en 02/570	28-05-02	Stichting Natuur en Milieu		CTB e.a.
12	CBB	AWB 01/832 en 01/834	18-04-02	Stichting Natuur en Milieu, Z-H Milieufederatie, e.a.		CTB
13	ABRvS	200004415/1	17-04-02	Stichting Natuur en Milieu, Z-H Milieufederatie		Zuiveringsschap Hollandse eilanden en waarden
14	ABRvS	200002214/1	17-04-02	Stichting Natuur en Milieu, Z-H Milieufederatie		Dijkgraaf en hoogheemraden van het Hoogheemraadschap van Schieland
15	CBB	AWB 01/832	21-03-02	Stichting Natuur en Milieu, Z-H Milieufederatie		CTB
16	ABRvS	200005629/1	03-10-01	Stichting Natuur en Milieu		Staatssecr. LNV
17	CBB	AWB 00/969	19-07-01	Stichting Natuur en Milieu		CTB
18	CBB	AWB 00/42300/423	10-07-00	Stichting Natuur en Milieu, Z-H Milieufederatie		Minister van VROM, LTO
19	ABRvS	200002907/1	24-12-02	Stichting Brabantse Milieufederatie, Stichting Natuur en Milieu, Vereniging Das en Boom en omwonenden		GS Noord-Brabant

20	CBB	ZG 2018 (LJNnr)	08-09-00	Stichting Natuur en Milieu, Z-H Milieufederatie		CTB e.a.
21	ABRvS	200200050/1	13-11-02	Milieufederatie Limburg, Stichting Natuur en Landschap M-Limburg, Milieudefensie werkgroep A73, Vereniging Natuur- en milieueducatie, Vereniging Das en Boom, Stichting Natuur en Milieu	Milieu en Heemkundevereniging Swalmen, Stichting dassenwerkgroep Limburg, Heemkundevereniging Maas en Swalmdal	GS Limburg
22	CBB	AWB 02/335	27-03-02	Stichting Z-H Milieufederatie, Stichting Natuur en Milieu		CTB
23	CBB	AWB 01/553 en 01/617	30-08-01	Stichting Z-H Milieufederatie, Stichting Natuur en Milieu		CTB e.a.
24	CBB	AWB 01/472 en 01/473 en 01/474	14-08-01	Stichting Z-H Milieufederatie, Stichting Natuur en Milieu		CTB
25	CBB	AWB 01/370	12-06-01	Stichting Z-H Milieufederatie, Stichting Natuur en Milieu		CTB e.a.
26	CBB	AWB 01/591	30-08-01	Stichting Z-H Milieufederatie, Stichting Natuur en Milieu		CTB e.a.
27	Rb Arnhem	70361/KG ZA 01-157	16-03-01	Vereniging stedelijk leefmilieu, Stichting Natuur en Milieu, Stichting Gelderse Milieufederatie	Vereniging dorpsbelang Hees, Stichting Frisse lucht LindenHolt, Stichting werkgroep Weurt, bewoners	Nijmeegsche Ijzergieterij BV
28	ABRvS	199901201/1, 200002212/1	08-08-00	Milieudefensie, Stichting Natuur en Milieu, Milieufederatie N-Holl.	Stichting platform Leefmilieu Regio Schiphol, Vereniging milieudefensie Bulderbos	Minister van Verkeer en Waterstaat en minister van VROM
29	ABRvS	200103329/1	16-10-02	Milieudefensie	Belangenvereniging Drijvend Zwanenburg, Stichting vrienden van het Gein	Minister van Verkeer en Waterstaat
30	ABRvS	200002464/1	29-03-01	Milieudefensie	Groep Landbouw Twente	B&W Lichtenvoorde

	case concerning	**water**	**installation**	**nature**	**waste**	**air soil noise**	**planning**	**inadmiss.**	**won**	**lost**	**partly won**	**material grounds**	**formal grounds**

1	Actie ivm explotatieboring		X							X			X
2	Actie ivm explotatieboring		X							X			X
3	[voorlopige voorziening] vergunning mijnbouwinstallatie, wbr-verg., proefboring, windmolen	X	X	X		X				X			
4	Duurzaamheidsbeginsel, art. 4:6 lid 2 Wmb, beleid aardgasvoorraad		X			X				X		X	X
5	Gentech veldproeven, Wet milieugevaarlijke stoffen		X	X					X				X
6	[voorlopige voorziening], kernenergiewet, vergunningenvervoer				X					X			
7	[voorlopige voorziening] art. 15 Kernenergiewet, art. 20.5 Wmb, vergunning, vervoer, stralingsniveaus		X		X					X			
8	Revisievergunning, art. 8.4, 7.28 Wmb, veehouderij/windmolen, milieueffectenrapport		X						X			X	
9	Bestrijdingsmiddelenwet, procedure verlenging toelating, beleidsnotitie, onvoldoende capaciteit om middelen tijdig te beoordelen, Bmw-verbodsstelsel, art. 5 Bmw	X				X			X			X	
10	[voorlopige voorziening] verzoek schorsing besluit verlenging toelating middelen, art 3, 3a en 5 Bmw, herroepingsgronden, Richtl 91/414/EEG, Besluit regulering grondontsmettingsmiddelen, aanvraagdossier incompleet, ecosysteem	X				X			X			X	
11	[voorlopige voorziening] verlenging toelating bestrijdingsmiddelen, richtlijn 91/414/EEG, meerjarenplan gewasbescherming, uitvoeringsregeling grondontsmettingsmiddelen, Xregeling toelating bXestrijdingsmiddelen	X				X			X			X	
12	Art.3,3a Bmw, milieucriteria, criteria mbt uitspoeling, meetgegevens RIVM	X				X				X			X
13	Wet verontreiniging oppervlaktewater, uitvoeringsbesluit, Lozingenbesluit, richtlijn 76/464/EEG, art. 8.11 lid 3 Wmb, bestuursdwang lozingen in oppervlaktewater	X			X					X			
14	Verzoek om bestuursdwang tov lozingen v bestrijdingsmiddelen en meststoffen i/h oppervlaktewater, lozingenbesluit	X			X					X			
15	BmW, toelating, beschikking ogv 8:29 lid 1 Awb/Wob beperking v/d kennisneming, geheimhouding, evalutierapport, openbaarheid gegevens, concurrentie, gewichtige redenen	X				X				X			
16	Vergunning ex art. 12 Nbw, beschermd natuurmonument			X						X			
17	Art 3 1a sub 10 Bmw, Besluit milieutoelatingseisen bestrijdingsmiddelen, Rumb	X				X			X				X
18	[voorlopige voorziening] Bmw, Besluit Milieutoelatingseisen bestrijdingsmiddelen, Tijdelijke regeling aanwijzing landbouwkundige gewasbeschermingsmiddelen I en II	X				X			X			X	
19	[Kort Geding] art. 28 lid 2 Wet R.O., art. 10:27 Awb, vaststelling bestemmingsplan buitengebied, streekplan, groene hoofdstuctuur, Waterschapswet, Prov. Waterhuisplan	X					X			X		X	

20	[voorlopige voorziening] Bmw, verlenging	X				X				X			X
21	Bestemmingsplan rijksweg 73-zuid, Nbw, Habitatrichtlijn, verdrag v Bern, maatschappelijk belang, compensatie			X			X				X		X
22	[voorlopige voorziening] procedurele verlening toelating bestrijdingsmiddelen, Bmw, regeling toelating bestrijdingsmiddelen	X				X			X			X	
23	[voorlopige voorziening] termijn waarbinnen na beeindiging van toestemming de handel van niet toegelaten middelen toch nog toelaatbaar is	X				X			X			X	
24	[voorlopige voorziening] termijn waarbinnen na beeindiging van toestemming de handel van niet toegelaten middelen toch nog toelaatbaar is	X				X				X			X
25	[voorlopige voorziening] termijn waarbinnen na beeindiging van toestemming de handel van niet toegelaten middelen toch nog toelaatbaar is	X				X			X			X	
26	[voorlopige voorziening] Bmw	X				X			X				X
27	[civiel kortgeding] emissie, Hinderwet, Wet Luchtverontreiniging vergunning, zorgvuldigheidsbeginsel, Nennorm					X				X			X
28	Art. 24, 27 Luchtvaartwet en art. 37 Wet RO					X	X				X	X	
29	Art. 26 Luchtvaartwet, art. 37 Wet RO					X	X				X	X	
30	Wmb, Besluit milieueffectenrapportage 1994		X								X		X

	court	**case no.**	**Date**	**environmental ngo**	**Local citizen group**	**case against**
31	ABRvS	200200606/1	18-12-02	Milieudefensie		B&W Dalfsen
32	Rb Leeuwarden	02/341 WRO	05-07-02	Milieudefensie		B&W Leeuwarden
33	ABRvS	200102155/2, 200104970/2	30-10-02	Milieudefensie		B&W Lichtenvoorde
34	ABRvS	200200624/1	16-10-02	Milieudefensie		B&W Uden
35	ABRvS	200104845/1	09-10-02	Milieudefensie		B&W Uden
36	ABRvS	200201271/1	25-09-02	Milieudefensie		B&W Wierden
37	ABRvS	200105227/1	28-08-02	Milieudefensie		GS N-Brabant

*38	ABRvS	200106268/1	28-08-02	Milieudefensie		B&W Uden
39	ABRvS	200200849/1	21-08-02	Milieudefensie		B&W Didam
40	ABRvS	200200034/1	31-07-02	Milieudefensie		B&W Uden
41	ABRvS	200100753/1	26-06-02	Milieudefensie		GS Overijssel
42	ABRvS	200101869/1	15-05-02	Milieudefensie		B&W Erbergen
43	ABRvS	200105027/1	15-05-02	Milieudefensie		B&W Hof v. Twente
44	ABRvS	200101016/2	15-05-02	Milieudefensie		B&W Haaren
45	ABRvS	200104153/1	01-05-02	Milieudefensie		B&W Hardenberg
46	ABRvS	200105450/1	24-04-02	Milieudefensie		GS N-Brabant
47	ABRvS	200005020/1	17-04-02	Milieudefensie		GS Drenthe
48	ABRvS	200102688/1	03-04-02	Milieudefensie		B&W Twente
49	ABRvS	200004030/1	20-03-02	Milieudefensie		B&W Tubbergen
50	ABRvS	200003912/1	24-07-01	Milieudefensie		B&W Wierden
51	ABRvS	E03.98.0924	16-05-00	Milieudefensie		B&W Eibergen
52	ABRvS	E03.98.1247/1	29-09-00	Milieudefensie		B&W Hardenberg
53	ABRvS	200000907/1	10-08-00	Milieudefensie		Minister van Verkeer en Waterstaat
54	ABRvS	200103687/1	27-11-02	Milieudefensie	Bewonersorganisatie Binnenstad Oost (Gro)	B&W Groningen
55	ABRvS	200104701/2	26-06-02	Milieudefensie		B&W Uden
56	Rb Haarlem	AWB 01-1608 en 01-1614	29-11-01		Milieudefensie Bulderbos	B&W Haarlemmermeer
57	Rb Haarlem	00-738	04-07-01	Milieudefensie	Vereniging behoud landgoed Meer en Berg	B&W Bloemendaal
58	Rb Arnhem	99-501	26-06-01	Milieudefensie	Vereniging Numaga, Bond Heemschut, Cuypersgenootschap, Vereniging Bewonersblok…,	Gemeenteraad Nijmegen

					Bewonersraad binnenstad, Stichting Ad Rem Monumentorum, Titus Brandsma appel	
59	Rb Arnhem	98/932	26-06-01	Milieudefensie	Vereniging Numaga, Bond Heemschut, Cuypersgenootschap, Vereniging Bewonersblok…, Bewonersraad binnenstad, Stichting Ad Rem Monumentorum	B&W Nijmegen
60	ABRvS	200101398/2	03-05-01	Milieudefensie		Minister van Verkeer en Waterstaat

	case concerning	WATER	INSTALLA-TION	NATURE	WASTE	AIR SOIL NOISE	PLAN NING	INADMISS.	WON	LOST	PARTLY WON	MATERIAL GROUNDS	FORMAL GROUNDS
31	Wmb-revisievergunning		X			X			X			X	
32	[voorlopige voorziening] art 19 lid 1 Wet RO, bestemmingsplan, structuurplan						X		X			X	
33	Wmb, revisievergunning, inrichting milieueffectenrapport, Wet verontreiniging oppervlaktewater, geluidsemmissie, lozing	X	X		X						X	X	
34	Art. 8:11 Wmb, revisievergunning, stankhinder		X			X			X				X
35	Wmb, revisievergunning, deskundigenadvies, ammoniakrechten, Richtlijn veehouderij en stankhinder, piekgeluidemissieniveau		X			X			X				X
36	Wmb, vergunningpaardrijmannege, ammoniak		X			X		X					X
37	Milieuvergunning, bezwaar, art 3:41, 6:8, 6:11 Awb, gedogen v/e inrichting		X						X				X
38	Wmb, revisievergunning, geluidsvoorschriften, Handreiking industrielawaai en vergunningverlening		X			X			X			X	X
39	Verzoek toepassing bestuurlijke handhavingsmiddelen varkenshouderij, art 8:14 Wmb		X			X			X				X
40	Vergunning ex art 8:4 Wmb, varkenshouderij, geluid, stank, richtlijn veehouderij en stankhinder 1996		X			X				X		X	
41	Art 8:36 Wmb, vergunning, bewerking aluminiumschroot, afvalstoffen, stofverspreiding		X		X	X		X		X			X

42	Wmb, revisievergunning, pluimveebedrijf, mestopslag, IPPCrichtlijn, emissiegrenswaarden		X			X		X			X	X	X
43	Wmb, revisievergunning, geitenhouderij, stankhinder, geluidshinder		X			X	X	X			X	X	X
44	Wmb, revisievergunning, agrarisch bedrijf, ammoniakdepositie op de beek, Wet verontreiniging oppervlaktwater, uitvoeringsbesluit, richtlijn 76/464/EEG	X	X			X			X				X
45	Wmb, vergunning, melkveehouderij, Interimwet ammoniak en veehouderij		X			X			X			X	
46	Wmb, revisievergunning inrichting		X						X			X	
47	Bestemmingsplan, aanleg bedrijventerrein, art 28 lid 2 Wet RO, art 10:27 Awb, plangebied, beoordelingsmarges						X		X				X
48	Hinderwet, vergunning veehouderij, overgang Wmb, Interimwet ammoniak		X			X			X				X
49	Wmb, revisievergunning, vee houderij, richtlijn veehouderij en stankhinder 1996, geluidniveaus		X			X	X		X			X	X
50	WMb, revisievergunning		X							X			X
51	WMb, vergunning veehouderij		X					X		X			X
52	WMb, revisievergunning, stank en trillinghinder, art. 5:18 Inrichting en vergunningenbesluit Ammoniak		X			X		X			X		X
53	Geluidsplan schiphol, Luchtvaartwet, geluidhinder					X		X					X
54	Wmb, vergunning traumahelikopter, geluidhinder, flora en fauna			X		X	X			X			X
55	Wmb, oprichtingsvergunning, milieueffectenrapport, ammoniakreductieplan		X			X			X			X	
56	[voorlopige voorziening] gevraagd tegen besluit bestuursdwang caravans en tent Bulderbos, bestemmingsplan Schiphol West, art 12 Wet RO						X			X			X
57	[voorlopige voorziening] Wob						X		X				X
58	Monumentenlijst, bestemmingsplangebied, monumentenverordening						X	X					X
59	Vergunning slopen kapel						X	X					X
60	[voorlopige voorziening] Art 27 Luchtvaartwet, 4/5 banenstelsel Schiphol, luchtverontreiniging, Pkb's					X					X	X	

	court	case no.	Date	national/regional environ. ngo	Local citizengroup	case against

61	ABRvS	200101399/1 en 200101399/2	03-05-01	Milieudefensie		Minister van Verkeer en Waterstaat
62	Rb Arnhem	AWB 00/1582 t/m AWB 00/1585	07-11-00	Milieudefensie		B&W Arnhem
63	ABRvS	200003197/1	19-10-00	Milieudefensie	Stichting vrienden van het Gein	Minister van Verkeer en Waterstaat
64	ABRvS	200200750/1	18-09-02	Milieu-Offensief		B&W Ermelo
65	ABRvS	200200513/1	02-10-02	Milieu-Offensief		Staatssecr LNV
66	ABRvS	200201119/1	18-12-02	Milieu-Offensief		B&W Nunspeet
67	ABRvS	200106390/1	20-11-02	Milieu-Offensief	Werkgroep Milieubeheer Groesbeek	B&W Groesbeek
68	ABRvS	200200645/1	13-11-02	Milieu-Offensief		B&W Nijkerk
69	ABRvS	200200670/1	13-11-02	Milieu-Offensief		B&W Nijkerk
70	ABRvS	200200578/1	13-11-02	Milieu-Offensief		B&W Epe
71	ABRvS	200201459/1	30-10-02	Milieu-Offensief		B&W Houten
72	ABRvS	200200527/1	23-10-02	Milieu-Offensief		B&W Amersfoort
73	ABRvS	200105110/2	23-10-02	Milieu-Offensief		B&W Elburg
74	ABRvS	200200833/1	23-10-02	Milieu-Offensief		B&W Helden
75	ABRvS	200200277/1	16-10-02	Milieu-Offensief		B&W Ede
76	ABRvS	200201894/1	16-10-02	Milieu-Offensief		B&W Laarbeek
77	ABRvS	200105742/1	09-10-02	Milieu-Offensief		B&W Nijkerk
78	ABRvS	200200950/1	02-10-02	Milieu-Offensief		B&W Putten
79	ABRvS	200200925/1	25-09-02	Milieu-Offensief		B&W Nijmegen
80	ABRvS	200201113/1	18-09-02	Milieu-Offensief		B&W Nunspeet
81	ABRvS	200105175/1	18-09-02	Milieu-Offensief, Stichting Bont voor Dieren		B&W Valkenswaard

82	ABRvS	200200671/1	18-09-02	Milieu-Offensief		B&W Leusden
83	ABRvS	200200780/1	11-09-02	Milieu-Offensief		B&W Ermelo
84	ABRvS	200200480/1	04-09-02	Milieu-Offensief		B&W Nijkerk
85	ABRvS	200201048/1	04-09-02	Milieu-Offensief		B&W Nunspeet
86	ABRvS	200103509/1	28-08-02	Milieu-Offensief, Stichting Wakker Dier		B&W Barnevelt
87	ABRvS	200200412/1	28-08-02	Milieu-Offensief, Stichting Wakker Dier		B&W Barnevelt
88	ABRvS	200200310/1	14-08-02	Milieu-Offensief		B&W Putten
89	ABRvS	200200526/1	07-08-02	Milieu-Offensief		B&W Venray
90	ABRvS	200105376/2	31-07-02	Milieu-Offensief		B&W Meerlo-Wanssum

	case concerning	**water**	**installa-tion**	**nature**	**waste**	**air soil noise**	**plan ning**	**inadmis s.**	**won**	**lost**	**partly won**	**material grounds**	**formal grounds**
61	Schiphol					X			X				X
62	APV kappen esdoorn, bestemmingsplan buitengebied			X			X				X	X	
63	[voorlopige voorziening] Aanwijzigingsbesluit Schiphol, 4/5 banen, geluidszones, milieu-effectenrapport, MMA, NMP3, luchtverontreiniging					X				X			X
64	Wmb, revisievergunning veehouderij, Hinderwet, ammoniak		X			X				X		X	
65	Verzoek bestuursdwang bouw stal, art 29 Nbw, verzuring bodem			X		X			X				X
66	Wmb, vergunning, kalverenhouderij, Interimwet Ammoniak, stankhinder		X			X			X			X	X
67	Wmb, revisievergunning pluimveehouderij, milieueffectenrapport vereist?								X			X	
68	Wmb, revisievergunning, fokzeugenbedrijf, Interimwet Ammoniak, Uitvoeringsregeling		X	X		X				X		X	
69	Wmb, revisievergunning, veehouderij, Interimwet		X			X			X				X

70	Wmb, vergunning, circulaire industrielawaai		X			X			X				X
71	Wmb, revisievergunning, zeugenbedrijf, richtlijn veehouderij en stankhinder, Hinderwet		X			X			X				X
72	Wmb, vergunning, varkenshouderij, ammoniakreductieplan, Interimwet, Wet algemene regels herindeling		X			X			X			X	
73	Wmb, vergunning, rundveehouderij, stankhinder		X			X					X		X
74	Wmb, revisievergunning, konijnenhouderij, ammoniakemissie		X			X			X				X
75	Wmb, revisievergunning, veehouderij, ammoniakdepositie, Hinderwet, oprichtingsverplichting, omgevingsanalyse		X			X				X		X	
76	Wmb, revisievergunning, veehouderij, ammoniakdepositie, richtlijn veehouderij en stankhinder		X		X				X				X
77	Hinderwet, revisievergunning, veehouderij, Interimwet ammoniak, geluidsniveaus, Laeq		X		X				X				X
78	Wmb, revisievergunning, veehouderij, stankhinder		X		X				X				X
79	Wmb, revisievergunning, veehouderij, groentensorteerbedrijf, Interimwet ammoniak en veehouderij, Uitvoeringsregeling verzuring		X		X				X				X
80	Wmb, revisievergunning, veehouderij		X		X				X				X
81	Wmb, revisievergunning, pelsdierhouderij, stankhinder		X		X				X				X
82	Wmb, revisievergunning, veehouderij, geluidhinder, milieueffectenrapport		X		X				X				X
83	Wmb, revisievergunning varkensmesterij, ammoniak		X		X				X				X
84	Wmb, revisievergunning rudnveehouderij, stankemissie		X		X						X		X
85	Hinderwet, revisievergunning vleeskalverenhouderij, overgangsbepaling		X		X				X				X
86	Wmb, revisievergunning veehouderij, stankhinder, Interimwet ammoniak, ARP-AE		X		X			X		X		X	X
87	Wmb, revisievergunning veehouderij, Interimwet ammoniak, stankhinder		X		X					X		X	
88	Wmb, revisievergunning, stankhinder, geluidshinder		X		X				X				X
89	Wmb, revisievergunning, pelsdierhouderij		X					X					X
90	Wmb, vergunning, pluimveehouderij, stankhinder		X		X				X				X

	court	case no.	Date	national/regional environm. ngo	Local citizengroup	case against
91	ABRvS	200200280/1	31-07-02	Milieu-Offensief		B&W Ede
92	ABRvS	200106383/1	24-07-02	Milieu-Offensief		B&W Putten
93	ABRvS	200105655/1	17-07-02	Milieu-Offensief		B&W Woudenberg
94	ABRvS	200105547/1	17-07-02	Milieu-Offensief		B&W Oldebroek
95	ABRvS	200106262/1	17-07-02	Milieu-Offensief		B&W Ermelo
96	ABRvS	200200754/1	17-07-02	Milieu-Offensief		B&W Nunspeet
97	ABRvS	200105543/1	17-07-02	Milieu-Offensief		B&W Elburg
98	ABRvS	200102147/1	10-07-02	Milieu-Offensief		B&W Harderwij
99	ABRvS	200105694/1	10-07-02	Milieu-Offensief		B&W Oldebroek
100	ABRvS	200105546/1	10-07-02	Milieu-Offensief		B&W Oldebroek
101	ABRvS	200105319/1	10-07-02	Milieu-Offensief		B&W Overbetuwe
102	ABRvS	200106143/1	03-07-02	Milieu-Offensief		B&W Houten
103	ABRvS	200104522/1	26-06-02	Milieu-Offensief		B&W Harderwijk
104	ABRvS	200105143/1	26-06-02	Milieu-Offensief		B&W Elburg
105	ABRvS	200103520/1	19-06-02	Milieu-Offensief		B&W Nijkerk
106	ABRvS	200103521/1	19-06-02	Milieu-Offensief		B&W Nijkerk
107	ABRvS	200104909/1	19-06-02	Milieu-Offensief		B&W Putten
108	ABRvS	200104634/1	19-06-02	Milieu-Offensief		B&W Oldenbroek
109	ABRvS	200104245/1	19-06-02	Milieu-Offensief		B&W Putten
110	ABRvS	200104055/1	19-06-02	Milieu-Offensief		B&W Nijkerk

111	ABRvS	200105032/2	12-06-02	Milieu-Offensief		B&W Scherpenzeel
112	ABRvS	200105127/1	12-06-02	Milieu-Offensief		B&W Ermelo
113	ABRvS	200102844/2	05-06-02	Milieu-Offensief		B&W Groesbeek
114	ABRvS	20010557/2	29-05-02	Milieu-Offensief		B&W Oldenbroek
115	ABRvS	200101332/1	22-05-02	Milieu-Offensief		B&W Duiven
116	ABRvS	200001930/1	22-05-02	Milieu-Offensief		B&W Barneveld
117	ABRvS	200003788/1	22-05-02	Milieu-Offensief		B&W Nunspeet
118	ABRvS	200100789/1	15-05-02	Milieu-Offensief, Stichting Wakker Dier		B&W Epe
119	ABRvS	200103704/1	01-05-02	Milieu-Offensief, Stichting Bont voor Dieren		B&W Gennep
120	ABRvS	200104244/1	10-04-02	Milieu-Offensief, Stichting Bont voor Dieren		B&W Putten

	case concerning	water	installa-tion	nature	waste	air soil noise	plan ning	inadmis s.	won	lost	partly won	material grounds	formal grounds
91	Wmb, vergunning, veehouderij, stankhinder		X		X				X				X
92	Wmb, vergunning, veehouderij, Interimwet Ammoniak, geluidsnorm		X		X				X				X
93	Wmb, vergunning, veehouderij, Interimwet Ammoniak, Uitvoeringsregeling		X		X						X	X	
94	Wmb, vergunning, varkenshouderij, stankhinder, Wijzigingswet, Interimwet Ammoniak		X		X				X				X
95	Wmb, revisievergunning, veehouderij, Interimwet ammoniak		X		X			X		X		X	X
96	Wmb, revisievergunning, stankhinder, Interimwet ammoniak		X		X						X	X	
97	Wmb, vergunning, veehouderij, Interimwet ammoniak, stankhinder		X		X					X		X	

98	Wmb, revisievergunning, Interimwet ammoniak		X		X				X				X
99	Wmb, revisievergunning, pluimveehouderij, Hinderwet ammoniak		X		X					X		X	
100	Wmb, vergunning agrarisch bedrijf, Interimwet ammoniak, geluidgrenzen		X		X					X		X	
101	Wmb, revisievergunning, stankhinder, ammoniakuitstoot, piekgeluid		X		X						X		X
102	Wmb, vergunning veehouderij, stankoverlast		X		X				X				X
103	Wmb, Hinderwet, vergunning veehouderij, Interimwet ammoniak		X		X					X		X	
104	Wmb, vergunning, rundveehouderij		X						X			X	
105	Wmb, vergunning, veehouderij, Interimwet ammoniak		X		X					X			X
106	Wmb, vergunning, veehouderij, Interwet ammoniak		X		X					X		X	
107	Wmb, vergunning, veehouderij, Interwet ammoniak		X		X					X		X	
108	Wmb, vergunning, agrarisch bedrijf, Interwet ammoniak		X		X					X		X	
109	Wmb, vergunning, veehouderij, ammoniak		X		X					X		X	
110	Wmb, vergunning, veehouderij, Interwet ammoniak		X		X					X		X	
111	Wmb, revisievergunning, veehouderij, stankhinder, ammoniak, geluidsgrens		X		X				X			X	X
112	Wmb, revisievergunning, verzuring grond, Interimwet ammoniak		X		X			X		X			X
113	Wmb, revisievergunning, veehouderij, Interwet ammoniak		X		X					X		X	
114	Wmb, overlaatstation, vergunning, Interimwet ammoniak		X		X				X				X
115	Wmb, vergunning bedrijf, ammoniakschade		X		X				X				X
116	Wmb, revisievergunning, Interim ammoniakwet		X		X					X		X	
117	Wmb, revisievergunning, kalverenbedrijf, Interimwet ammoniak		X		X					X		X	
118	Wmb, revisievergunning veebedrijf, interimwet ammoniak, stankhinder, geluidhinder		X		X						X		X
119	Wmb, revisievergunning, stankhinder		X		X					X		X	

120	Wmb, revisievergunning, stankhinder		X		X					X		X	

	court	case no.	Date	national/regional environm. ngo	Local citizengroup	case against
121	ABRvS	200104691/1	10-04-02	Milieu-Offensief		B&W Boxmeer
122	ABRvS	200102482/1	10-04-02	Milieu-Offensief, Stichting Bont voor Dieren		B&W Mill& St Hubert
123	ABRvS	200104956/1	03-04-02	Milieu-Offensief, Stichting Wakker Dier		B&W Ermelo
124	ABRvS	200102879/1	03-04-02	Milieu-Offensief		B&W Buren
125	ABRvS	200103574/1	27-03-02	Milieu-Offensief		B&W Amersfoort
126	ABRvS	200101074/1	20-03-02	Milieu-Offensief, Stichting Bont voor Dieren		B&W Overbetuwe
127	ABRvS	200103944/1	20-03-02	Milieu-Offensief		B&W Heumen
128	ABRvS	200200108/1	16-10-02	Milieu-Offensief		B&W Putten
129	ABRvS	200200779/1	11-09-02	Milieu-Offensief, Stichting Bont voor Dieren		B&W Putten
130	ABRvS	200101511/1	10-04-02	Milieu-Offensief		B&W Putten
131	ABRvS	200105571/1	27-03-02	Milieu-Offensief		B&W Ede
132	Rb Den Bosch	AWB 01/854 VV AWB 01/998 VV	23-05-02	Milieu-Offensief		B&W Laarbeek
133	Rb Arnhem	AWB 00/1178 AWB 00/1215	14-07-00	Das en Boom, Gelderse milieufederatie		B&W Rheden
134	ABRvS	200004809/1	25-09-02		Stichting Werkgroep Behoud de Peel	GS Limburg
135	ABRvS	200005022/1	30-10-02		Werkgroep Milieubeheer Groesbeek	GS Gelderland
136	ABRvS	199903036/1	17-07-02	Brabantse Milieufederatie	Stichting behoud de Peel	GS N-Brabant

137	ABRvS	200103530/1	11-12-02		Stichting werkgroep de Peel	Staatssecr. LNV
138	ABRvS	200100177/1	23-10-02		Stichting werkgroep Milieubeheer Nijmegen	GS Gelderland
139	ABRvS	200105931/1	01-05-02		Milieu- en Natuurvereniging gemeente Mill	GS N-Brabant
140	ABRvS	200005394/1	27-11-02		Werkgroep houd de dorpen groen	GS N-Holland
141	ABRvS	200000326/1	11-09-02		Stichting voor behoud van Natuur en Landschap in Nederweert	GS Limburg

	case concerning	water	installa-tion	nature	waste	air soil noise	plan ning	inadmis s.	won	lost	partly won	material grounds	formal grounds
121	Wmb, revisievergunning, pelsdierhouderij, stankhinder		X		X					X		X	
122	Wmb, revisievergunning, pelsdierhouderij, stankhinder		X		X			X		X		X	X
123	Wmb, revisievergunning, veehouderij, stankhinder		X		X				X				X
124	Wmb, revisievergunning, stankhinder, ammoniakemissie		X		X				X				X
125	Wmb, revisievergunning, veehouderij, stankhinder		X		X				X				X
126	Wmb, revisievergunning, stankemissie		X		X					X		X	
127	Hinderwet, vergunning, veehouderij, ammoniakemissierechten		X		X			X					X
128	Wmb, revisievergunning, stankhinder		X		X				X				X
129	Wmb, revisievergunning, veehouderij, Hinderwet, stankhinder		X		X				X				X
130	Wmb, revisievergunning, veehouderij, Interimwet ammoniak, uitvoeringsregeling		X		X					X		X	
131	Wmb, revisievergunning, ammoniakemissierechten, stankhinder		X		X						X	X	
132	Bouwvergunning, uitstoot gassen, Wmb		X		X				X			X	

133	[voorlopige voorziening], art. 17 WRO, bestemmingsplan, art.19 Besluit RO, flora en fauna, natuur en landschap belangen, art. 8:81 Awb			X			X			X		X	
134	Bestemmingsplan buitengebied, landschaps- en natuurwaarden, art. 18 lid 2 WRO, art. 10:27 Awb			X			X		X			X	X
135	Bestemmingsplan buitengebied, uitbreiding, natuurontwikkeling, art. 28 lid 2 WRO, art. 10:27 Awb, ecologische verbindingszones, erosie			X			X				X		X
136	Verweerschrift tegen bestemmingsplan buitengebied, gebiedsbestemming Natuur- en bosgebied, depositie ammoniak			X		X	X			X		X	
137	Natuurbeschermingswet, Interimwet ammoniak			X		X			X				X
138	Bestemmingsplan, ecologische verbindingszones, verdroging			X			X		X			X	X
139	Bestemmingsplan buitengebied WRO, groene hoofdstructuur, ammoniak, bodemonderzoek, militair oefengebied			X		X	X				X	X	X
140	Bestemmingsplan, WRO, bestrijdingsmiddelen					X	X			X		X	
141	Bestemmingsplan buitengebied, WRO, streekplan, Wet geluidhinder			X		X	X				X		X

	COURT	CASE NO.	DATE	AGAINST	ENVIRON.NGO	LOCAL CITIZENGROUP	CASE CONCERNING
142	Abrs	AE1614	17/4/02	Zuiveringsschap Hollandse Eilanden en Waarden	ZH milieufed./stichting natuur en milieu		(eerste aanleg). Gebruik bestrijdingsmiddelen/meststoffen bij fruitteeltbedrijven/verontreiniging oppervlaktewater.
143	Cbb	AE1057	21/3/02	CTB	ZH-MF/stichting natuur en milieu		(eerste aanleg). Besluit afwijzing verzoek om verstrekking Alterra-rapport (Wob)
144	cbb	AE0780	27/3/02	CTB	ZH.MF/St.natuur en milieu		(voorl.voorz.). Ontbrekende, aanvullende gegevens van de toelatingshouders. Verwijtbare nalatigheid?
145	abrs	AD9642	20/2/02	PS Flevoland	MF Flevol./ver. tot behoud v.nat.mon.		(eerste aanleg).de plaatsing van solitaire windmoelns in het open middengebied zou in het omgevingsplan uitsgesloten moeten worden (negatieve effecten vogels en landschap).
146	cbb	AD3468	30/8/01	CTB	ZH.MF/Sticht.N&M		(voorl.voorz.)Besluiten van verweerder tot vaststelling van een aflever- en opgebruiktermijn vanwege het van rechtswege eindigen van de toelatingen van bestrijdingsmiddelen.
147	cbb	AB2983	19/7/01	CTB	ZH.MF/St.N&M		(eerste aanleg) toelatingscriteria bestrijdingsmiddelen. De procedurele verlenging van de toelating van het middel.
148	cbb	AB2068	12/6/01	CTB	ZH.MF/St.M&N		(voorl.voorz). Verlenging toelating bestrijdingsmiddelen
149	abrs	AA7170	10/9/00	PS NH	MF NH		(HB) beroep tegen de beslissing in het streekplan een gebied als glastuinbouwconcentratiegebied aan te wijzen. Een MER ontbreekt.
150	cbb	AE4687	21/6/02	CTB	ZH.MF/St.N&M		(eerste aanleg)toelatingsvoorwaarden gewasbeschermingsproducten.
151	cbb	AD3469	30/8/01	CTB	ZH.MF/St.N&M		(voorl.voorz.). Besluit dat aantal bestrijdingsmiddelen waaarvan de toelating van rechtswege is beeindigd mogen toch nog ter beschikking worden gesteld.
152	cbb	AA6441	10/7/00	Min.Volksh, RO en MB	ZH.MF/St.N&M		(voorl.voorz.). toelaten bestrijdingsmiddelen ongedaan maken.
153	abrs	AF2443	24/12/02	GS NB	BMF		(eerste aanleg). Beroep tegen besluit goedkeuring bestemmingsplan.
154	abrs	AF2504	24/12/02	GS Utrecht	Stichtste MF		(eerste aanleg). Geschil inzake besluit omtrent goedkeuring bestemmingsplan.
155	abrs	AF2101	18/12/02	Waterschap Velt en Vecht	Stichting MF Drenthe		(eerste aanleg). Beorep tegen besluit verlenen van vergunning (voor het op het vuilwaterrioolstelsel brengen van hemelwater etc.).
156	abrs	AF2068	18/12/02	GS NB	BMF		(eerste aanleg). Beroep tegen goedkeuring bestemmingsplan
157	abrs	AF0799	20/11/02	B&W Tilburg	BMF		(eerste aanleg). Beroep tegen besluit verlenen revisievergunning vleesvarkensbedrijf.
158	abrs	AE9525	30/10/02	GS Drenthe	MF Drenthe		(eerste aanleg) beroep tegen besluit goedkeuring bestemminsplan.
159	abrs	AE8384	30/11/01	B&W Wieringermeer	N&Mvereniging Wierhaven/MF NH	Stichting Samen-werkende Vogel-werkgroepen	(kort geding). Beroep tegen besluit vergunningverlening oprichten windturbinepark.
160	abrs	AE8276	2/10/02	B&W Bladel	BMF		(eerste aanleg). Beroep tegen besluit verlenen van een revisievergunning aan vleesvarkenshouderij.
161	abrs	AE8002	25/9/02	GS NB	BMF	Vereniging Madese Natuurvrienden	(eerste aanleg)beroep tegen beslissing goedkeuring bestemmingsplan.
162	abrs	AE7741	19/9/02	GS Limburg	BMF		(eerste aanleg). Beroep tegen besluit verlenen revisievergunning aan NS Railinfrabeheer.
163	abrs	AE7748	18/9/02	GS Limburg	MF Groningen		(eerste aanleg). Beroep tegen goedkeuring wijzigingsplan (waardoor de vestiging van grondgebonden agrarisch bedrijf mogelijk wordt), want i.s.m omgevingsplan waarin nieuwvestiging van agrarische bedrijven is uitgelsoten.
164	Abrs	AE7764	18/9/02	GS Gelderland	Gelderse MF		(eerste aanleg). Beroep tegen besluit revisievergunning verlening voor een inrichting bestemd voor smelten van metalen.
165	Abrs	AE8035	25/9/02	B&W St.Oedenrode	BMF		(eerste aanleg). Beroep tegen vergunningverlening aan vleesvarkenshouderij.
166	Abrs	AE6203	7/8/02	GS NB	BMF		(eerste aanleg).beroep tegen goedkeuring bestemmingsplan. (richt zich tegen de mogelijkheden die het plan biedt een golfterrein aan te leggen. De aanleg hiervan is een activiteit waarvoor de MER-procedure moet worden gevolgd).

167	Abrs	AE5990	31/7/02	GS Limburg	MF Limburg/Stichting het Limburgs landschap	Vereniging tot redding van de St. Pietersberg/Milieugroep Sint Pieter	(eerste aanleg) beroep tegen vergunningverlening voor het onttrekken van grondwater tbv het winnen van kalksteen.
168	Abrs	AE5740	24/7/02	GS Drenthe	MF Drenthe/vereging tot behoud nat.mon.		(eerste aanleg).beroep tegen goedkeuring best.plan.(met het plan wordt beoogd gebruik van gronden en oprichten gebouwen te reguleren met oog op bevorderen van zo goed mogelijk gebruik landelijk gebied).
169	Cbb	AE4823	2/7/02	CBT	ZH.MF/St.N&M		(eerste aanleg). Toelating bestrijdingsmiddelen (een middel mag pas op de markt worden gebracht nadat is vastgesteld dat aan milieu-criteria wordt voldaan).
170	Cbb	AE3388	28/5/02	CTB	St.N&M/ ZH.MF		(voorl.voorzien.). toelatingsvoorwaarden gewasbeschermingsproducten.
171	abrs	AE2830	22/5/02	B&W Son en Breugel	BMF	IVN Nuenen	(eerste aanleg). Beroep tegen vergunningverlening oprichten varkenshouderij. Besluit i.s.m IAV. Gaat niet om zwaarwegende redenen ter behartiging algemeen belang.
172	cbb	AE2364	18/4/02	CTB	ZH.MF/St.N&M		(eerste aanleg). De beoordeling van toelaatbaarheid van bestrijdingsmiddelen. Verlengingsaanvragen.
173	abrs	AE1747	14/4/02	GS NB	BMF		(HB)beroep tegen besluit goedkeuring best.plan.

	WATER	inSTALLATION	NATURE	WASTE	AIR/SOIL/NOISE	PLAN	WON	LOST	MATERIAL	FORMAL	COURT DECISION
142	X	X			X			X	X		De activiteiten met bestrijdingsmiddelen/meststoffen zullen slechts aanleiding geven tot vormen van verontreiniging die zich diffuus in het milieu verspr. en die niet gericht in het opp.water terecht komen→ dus geen lozingen.
143								X		X	De beperking van de kennisneming is gerechtvaardigd.
144	X		X		X		X			X	Het is aan nalatigheid toelatingshouders te wijten dat de verseiste kennis niet tuidig is gelevered.
145			X		X	X		X		X	Het gebied waarvoor de beslissing geldt is niet voldoende concreet begrensd. De aanwijzing van het gebied waar sindturbines toegstaan zijn is dus geen besluit dus de afdeling is onb.kennis te nemen van het beroep.

146			X		X		X			X	De toelatingen zijn niet geeindigd door het verstrijken van de verleende verlengingstermijn. Dus geen sprake van een einndigen van rechtswege. De feitelijke grondslag van de besttredend besluiten is onjuist.
147	X		X		X		X			X	Verweerder bij de beoordeling van risico's de juiste testorgamismen in aanmerking genomen. Inhoudelijk treffen de grieven van appellanten geen doel. Op formele gronden kan het bestreden belsuit echter niet in stand blijven: er is 2 X een bezwaarschriftprocedure gevolgd: i.s.m goede procesorde.
148	X		X		X		X			X	Het stond verweerder niet vrij voor de bestrijdingsmiddelen een aflever-of opgebruiktermijn vast te stellen.
149		X					X			X	Het besluit is o.a.i.s.m WMB: verweerders mochten het streekplan niet vaststellen zonder voorafgaande MER.
150	X		X		X		X			X	De milieutoets heeft niet plaatsgevonden.
151	X		X		X		X			X	De bestreden besluiten worden geschorst. Het stond verweerder niet vrij om alleen vanwege de expiratie van de termijn van de procedurele verlenging voor de bestrijdingsmiddelen een

											aflever- of opgebruiktermijn vast te stellen.
152	X		X		X		X			X	De bevoegdheid tot toelating middelen uitsluitend aan CTB en niet aan verweerder.
153			X			X		X		X	Verweerders hebben de hen toekomende beoordelingsmarges niet overschreden. Plan is dus niet i.s.m goede RO.
154			X			X		X		X	Geen aanleiding te oordelend at het bestreden besluit is voorbereid/genomen i.s.m. het recht.
155	X	X					X			X	Geen sprake van deugdelijke motivering geweest.
156	X		X		X	X		X		X	Verweerders hebben niet i.s.m. goede RO gehandeld.
157	X		X		X		X			X	Verweerders hebben onvoldoende gemotiveerd waarom uit oogpunt van cumulatieve stankhinder vergun-ningverlening is gerechtvaardigd.
158			X			X	X				Besluit verweerders berust niet op deugdelijke motivering.
159		X	X			X		X		X	Verwerders bij het nemen van het bestreden besluit voldoende rekening gehouden met de waarde voor vogels van het gebied.
160		X			X		X			X	Bij de voorbereiding van de onderliggende vergunning is geen gebruik gemaakt van MER.

161			X			X	X			X	Verweerders bij het bestreden belsuit zijn niet ingegaan op de bedenkingen van appellant. Besluit niet deugdelijke motivering.
162		X			X			X		X	Verweerders hebben in redelijkheid kunnen besluiten de in overschrijding van de waarde toe te staan.
163				X		X	X			X	Plan is i.s.m goede ruimtelijke ordening (want ogv het Omgevingsplan worden geen nieuwe bouwlocaties voor nieuwvestiging van agrarische bedrijven toegstaan). Goedkeuring plan verweerders is onrechtmatig.
164		X			X			X		X	Verweeders bij de voorbereiding van het bestreden besluit hebben de nodige kennis vergaard omtrent de relevante feiten.
165		X			X		X			X	Het bestreden besluit is i.s.m 3:2 AWB dat bepaalt dat een b.o bij de voorbereiding besluit de nodige kennis omtrent de relevante feiten dient te vergaren. Ondeugd.motivering
166		X				X	X			X	Verweerders zijn er in het bestreden belsuit ten onrechte vanuit gegaan dat de MER-beoordelingsplicht niet gold.
167	X				X		X			X	Het bestreden belsuit kan niet worden gedragen door de daaraan ten grondslag gelegde motivering (er heeft geen onderzoek plaatsgevonden waarmee is aangetoond dat de

											winning geen nadelige effecten heeft).
168			X		X	X		X		X	Bestreden belsuit is niet i.s.m het recht genomen: goedkeuring is terecht verleend.
169			X		X		X			X	Bij het bestreden belsuit zijn de primaire besluiten tot procudureverlenging van de toelatingen genomen op grond van een motivering die blijk geeft van een onjuiste rechtsopvatting.
170	X		X		X		X			X	De milieu-toets , waarin het gaat om verlenging van de toelating van middelen, heeft niet plaatsgevonden.
171					X		X			X	Verweerders hebben bij het nemen van het bestreden belsuit met het terzijde schuiven van het emissie-stand-still beginsel een onjuiste toepassing aan het ammoniakreductieplan gegeven.
172					X			X		X	Het is niet aan naltigheid van toelatingshouders te wijtend at de in het kader van die beoordeling noodzakelijke gegevens ontbreken. Dus de toelating van de middelen mochten procedureel verlengd worden.
173			X		X	X	X			X	Bestreden besluit i.s.m. 3:2 AWB op grond waarvan bij de voorbereiding van een besluit de nodige kennis omtrent de relevante feiten

											dient te worden vergaard.

	COURT	CASENO.	DATE	AGAINST	ENVIRONM. NGO	LOCAL CITIZENGROUP	CASE CONCERNING
174	Cbb	AB0251	16/2/01	CTB	ZH.MF		(voorl. Voorz.)beroep tegen besluit toelating bestrijdingsmiddelen
175	Abrs	AF2313	24/12/02	GS NB	BMF, vereniging Das en Boom	St. Natuur& Milieu Landerd	(kort geding)beroep tegen besluit bestemmingsplan
176	Abrs	AF2028	4/12/02	S.secr.LNV	Wilde Kokkels		(voorl.voorz).Bezwaar tegen besluit vergunning verlening voor mechanisch vissen van kokkels in het staatsnatuurmonument de waddenzee.
177	Cbb	ZG2018	8/9/02	CTB	ZH.MF/St.N&M		(eerste aanleg). Beroep tegen toelating bestrijdingsmiddelen.
178	Abrs	AE8249	2/10/02	GS NB	BMF	Vereniging nat.behoud&milieubeheer in midden- en NOBrabant	(kg)beroep tegen goedk.bestm.plan
179	Rb Assen	AE7392	3/9/02	College B&W	St. Milieufederatie Drenthe	Werkgroep Bollenboos	(voorl.voorz).verlenen van vrijstelling bestemmingsplanvoorschriften voor het aanleggen bollenspoelinrichting
180	Abrs	AE154	4/9/02	GS NB	BMF		(eerste aanl). Beroep tegen geodk.beste.plan
181	Abrs	AE468	17/07/02	GS NB	BMF	Werkgroep behoud Peel	(hb) goedk.bestemmingsplan
182	Abrs	AE4596	26/6/02	GS NB	BMF	IVN Asten-Someren	(eerste aanleg) goedk.best.pl.
183	Abrs	AD9043	30/1/02	St.secr.LNV	St. hamsterwerkgroep st.dassenwerkgroep	st.Aktiegroep IndustrieterreinLangveld/MF Limb.	(eerste aanleg) ontheffing verbodsbepalingen Nb- wet inzake de hamster
184	Rb Assen	AC3596	22/8/01	Col.B&W	MF Drenthe		(voorl.voorz.). bezwaar tegen vergunningverlening
185	abrs	AE9681	6/11/02	GS NB	BMF	St. Mil.werkgroep Valkensw./st. belangen-werkgr. De Malpie	(kg). Geschil inzake besluit omtrent goed.best.plan
186	abrs	AE9436	30/10/02	GS NB	BMF		(kg) nieuwvest. agr..bedrijven

187	abrs	AE7405	11/9/02	Min. V&W/Min.Volksh, RO, Mb	MF Limburg	vereniging geen uitbreiding vliegveld Beek	(kg) geluidszones luchtvaarttereinen
188	Abrs	AE5721	24/7/02	Min.volkshuisv, RO, Mb	MF Drenthe	Buurtvereniging Eeldenwolde	(eerste aanleg) bestemmingsplan mbt locatie tot stand brengen woongebied
189	abrs	AF2315	24/12/02	GS NB	BMF	Vereniging voor Vogel- en Nat.bescherming Etten-Leur	(kg) besluit goedk.best.plan
190	Absr	AF2092	18/12/02	PS Friesland	Vogelbescherming	St. Gin Romte Foar Wynhannel/st. Windhoek/NUON	Beroep tegen beslissingen genomen o.g.v streekplan.
191	Abrs	AA6942	30/8/00	Staatssecr.LNV	vogelbescherming, Waddenvereniging	nat.&vogelwacht Schiermonnikoog/st.Calidrisl	(voorl voorz). Beroep tegen vergunningverlening w.b kokkelvisserij.
192	Rb Lee.	AE7938	23/9/02	Min.Ec.zaken	Waddenvereniging		Beroep tegen besluit op bezwaar m.b.t toepassing Wet opsporing Delfstoffen
193	Rb Lee.	AA7108	6/9/00	B&W Vlieland	waddenvereniging Stichting duinbehoud		Beroep tegen verlenen aanlegvergunning voor afgraven duin
194	Abrs	AE8384	30/1/01	B&W Wieringer-meer	MF NH	Natuur-en milieuver. Wierhaven-st. samenw. vogelwerkgroepen NH	Beroep tegen vergunning verlening
195	Abrs	200103898/1	18/12/02	GS Gelderland	Gelderse MF		(kg) geschil inzake besluit goedk.best.plan.
196	Abrs	AE6734	21/8/02	GS Gelderland	Gelderse MF	Ver.stadsschoon Arnhem	Beroep tegen goedkeuring MTC
197	Abrs	AE7479	11/9/02	B&W Dronten	MF Flevoland	Ver. Tot behoud Nat.mon. Den Haag	Beroep tegen vrijstelling voor het onder voorwaarden toestaan van perm. bewoning recr.woningen
198	Abrs	AE3613	5/6/02	GS NB	BMF		Beroep tegen besluit goedk.best.plan
199	Cbb	AWB01/682	30/8/02	CTB	ZH MF/St. N&M		(voorl.voorz) toelatingsbesluiten bestrijdingsmiddelen

	WATER	INSTALL.	NATURE	WASTE	AIR/SOIL/NOISE	PLAN	WON	LOST	MATERIAL	FORMAL	COURT DECISION
174					X		X			X	Besluit genomen i.s.m. de Wet.
175			X			X	X	X		X	Het besluit is op 16 punten aangevochten: 3 onderdelen G, en 13 onderdelen V.
176	X		X					X		X	Niet aannemelijk dat vergunde activiteiten de natuurwaarden in het natuurmonumnet onevenredig zullen schaden.
177								X		X	Er zijn geen termen om art.8:75 Awb toe te passen.
178			X			X		X		X	Goede belangenafweging, plan niet i.s.m recht.
179		X	X		X	X	X			X	De rechtvaardigheid/noodzakelijkheid van de verleende vrijstelling zal in rechte niet kunnen worden gehandhaafd.
180		X				X		X		X	Plan niet i.s.m. goede RO
181			X		X	X		X		X	het beroep op 5 onderdelen van het plan allen ongegrond: niet i.s.m goede RO
182			X			X		X		X	Plan niet i.s.g goede RO
183			X					X	X		Het is niet aannemelijk dat in het gebied nog hamsters voorkomen.
184			X			X		X	X	X	Er is voldaan aan de formele vereisten voor kunnen verlenen van vrijstelling (19 lid 1 WRO)./er is geen sprake geweest van wijziging bestemming (inhoud.grond)
185			X		X	X		X		X	Besluiten niet i.s.m. recht genomen.
18			X		X	X		X		X	Bij nemen besluit is niet

6											uitgegaan van onjuiste feiten, noch zijn relevante asp. Buiten besch. gelaten.
187					X	X	X		X		Het
188						X	X			X	Niet aan de wettelijke termijn voor inzage voldaan.
189			X			X		X		X	Niet i.s.m goede RO gehandleld
190					X	X		X		X	
191			X					X		X	afwegingskader was juist (in overeenst.met voorzorgsbeginsel)
192	X							X		X	habitattoets geen weigeringsgrond vergunning/
193					X	X		X		X	Besluit berust op juiste gronden
194		X			X			X	X		Niet aannemelijk dat kwelwater door aaanbrengen van fundereingen voor overlast zorgt
195			X			X		X		X	Plan niet i.s.m. goede RO
196						X	X			X	Door ontbreken toereikend onderzoek ter zake hebben verweerders bij voorbereiding besluit niet de nodige kennis omtrent feiten vergaard.
197						X		X	X		Het maatschapp.belang is niet in het geding
198	X		X		X	X		X	X		Het is niet aannemlijk gemaakt dat voor de bescherming van grondwaterafh.natuurwaarden noodzakelijk buffers in het plan moeten worden opgenomen.
199	X				X			X		X	Het is niet aangetoond dat wat aan de besluiten ten grondslag lag onjuist was