

Constitutional Foundations**Judiciary****Access to Information Cases****Access to Justice in Public Participation****Access to Justice against Acts or Omissions****Other Means of Access to Justice****Legal Standing****Legal Representation****Evidence****Injunctive Relief****Costs****Financial Assistance Mechanisms****Timeliness****Other Issues****Being a Foreigner****Transboundary Cases****I. Constitutional Foundations**

Article 20a of the German Constitution, the „Grundgesetz“ states that the state shall protect the natural foundations of life and animals by legislation and by executive law and judicial action.

But a general right to a clean environment, which citizens can invoke directly in administrative or judicial procedures, is not provided for under this Article.

Article 19 paragraph 4 gives standing for recourse before ordinary courts for everybody whose rights are impaired by a public authority.

Other important regulations of the Grundgesetz affect the responsibilities of the federation (Bund) and the federal states (Länder). Article 72 defines nature protection and regional planning, where the Länder have legislative power as long as the Bund has not regulated the issue. The legislation of general principles governing the protection of nature, laws on protection of species and on the protection of marine life shall be reserved for the Bund.

General rules of international law are an integral part of federal law. International treaties require implementation by enactment of a federal law. European law is under certain conditions directly applicable, when Bund or Länder fail to transpose it into national law^[1]. After about one and a half years, this situation came to an end with the amendment of German legislation on this matter (Umweltrechtsbehelfsgesetz - Environmental Appeals Act) which followed the CJEU's judgment and finally entered into force on January 29, 2013.

II. Judiciary

Germany's courts are independent and have their own administration. Law defines the courts' organization and the reach of jurisdiction. There are courts on the level of the Länder and on the level of the Bund. The Federal constitutional courts and the constitutional courts of the Länder are not part of the regular court system. Their jurisdiction is restricted to matters directly touching questions of the constitution. However, citizens can ask the constitutional courts to check whether their constitutional rights have been violated (so-called Verfassungsbeschwerde, i.e. constitutional complaint) which is an important element of the German legal system as a whole.

The German court system has several branches. The so-called ordinary jurisdiction is dealing with private law cases and criminal cases. Separate and to some extent also following distinct rules are

the administrative courts as well as specialized courts in charge of cases concerning

labor law,

fiscal law and

social law.

For cases involving environmental issues generally administrative courts are in charge. Administrative courts have a three-tier system:

Administrative courts (usually several in each Land)

Higher Administrative courts (usually one responsible for each Land)

Federal Administrative Court (in Leipzig).

In general, administrative courts as the lowest level are courts of first instance, with the possibility of appeal to the higher administrative courts and, subsequently, to the Federal Administrative Court. However, in some environmental matters, especially concerning infrastructure, only the Federal Administrative Court is in charge so that there is only one instance and no appeal possible. This concerns court cases on several plan-approval procedures, e.g. in the fields of

Train infrastructure,

National interurban roads,

National waterways.

In Germany there are no separate courts in charge of environmental issues. However, most courts have chambers specialized on environmental law.

Forum shopping is not common practice in Germany. Moreover, jurisdiction is clearly defined by law beforehand. In case of doubt the courts have to verify whether they have jurisdiction, then excluding the jurisdiction of other courts.

When bringing a case to court, plaintiffs must show that they are "impaired in their own right." "Own right" means, first of all, that in general it is not possible to claim that somebody else's rights (or »the rights of the nature« etc.) were violated. The second aspect of "own right" is the following: it is not enough that a rule of law was not respected, but in order to bring a case to court the plaintiff must show that the rule not respected would also be a rule granting a specific right to him/her.

In environmental matters the concept of "impairment of own rights" may cause high hurdles for plaintiffs. Many legal rules protecting the environment do not grant rights to individuals. So if such a rule of law is violated, there is no individual who could go to court and claim the impairment of his own rights. For a long time this concept meant that nobody could go to court when legislation protecting "just" the environment was disrespected. The situation changed when new legislation created the possibility for formally registered environmental organizations to challenge violations of at least some environmental legislation. In general, courts have cassatory rights against administrative decisions. The system of separation of powers leaves the decisions in administrative matters to the administration. In some cases, when there is only one possible decision, the court's verdict will demand the administration to take a specific decision.

III. Access to Information Cases

In case of disputes under Umweltinformationsgesetz (UIG) (and similar Länder acts) recourse under administrative law is open. Every decision on information requests delivered by an administrative body is considered to be an administrative act which firstly has to be appealed in an **objection proceeding** pursuant Articles 68-73 of the Administrative Court Procedures Code (Verwaltungsgerichtsordnung VwGO), unless this administrative review is excluded by Länder legislation. If the reply is not in favor of the applicant he can appeal it at the Administrative court. In cases where a request for information is not answered at all, proceedings for failure to act (omission) can be started directly at the administrative court. In some Länder the Ombudspersons for Freedom of Information Acts are mediating interests also with regard to Environmental information but there is no legal obligation or assigned duties to these bodies. Pursuant to Article 5 paragraph 4 of the UIG in case of a partial or complete refusal the person requesting information has to be informed about the remedies against the decision and about the body to which an appeal has to be addressed as well as the time limit in which it can be appealed. Procedural rules for requesting information are as follows: Requests can be made in oral or written form. Objection proceedings have to be made in written form or for record in the authority, addressing the body denying information in the course of one month after the decision was delivered. The superior administrative body files the decision concerning the objection. The appeal before court has to be made within one month after the decision about the objection was delivered to the applicant.

Courts can order information to be partially or fully disclosed. There are several judgments on the definition of environmental information, reasons for refusal, the definition of the bodies that have duties pursuant to UIG and rights of the applicants of German courts. (See <http://www.umweltinformationsrecht.de/urteile.html> (German only)).

Generally the administrative bodies are obliged to provide all material to courts pursuant to § 99 paragraph 1, sentence 1 VwGO (Verwaltungsgerichtsordnung- Administrative Court Procedures Code). But these materials would also be disclosed to the plaintiff and in procedures concerning the accessibility of documents this is not generally desirable. So the administration can deny providing materials pursuant to § 99 paragraph 1 sentence 2 VwGO. Since 2001 it is possible for German Courts to review contested information in an "In-Camera-Procedure".

IV. Access to Justice in Public Participation

The law provides for public participation for certain administrative proceedings on plans or projects of major importance.

Permitting procedures

After informal proceedings between the permitting authority and the investor, the investor submits an application. The public participation is opened with a public notice. The law requires notice in the official journal of a community affected and the Internet or a regional daily newspaper. More and more German authorities post the public notice on the Internet. After the notice the documents are accessible for at least one month in the location where the project is likely to have an effect on the environment. The documents are often also accessible in the next bigger town or city. Citizens can bring objections, during the two weeks period after display, against the project while the documents are publicly displayed. All objections after the timeframe of six weeks starting with public notice are precluded, that means that the permitting authority is not bound to consider them in their decision. The objections may be arguments against the project or suggestions for optimization. In most cases it is up to the authorities to decide whether there will be an event where the public is invited to bring their objections and arguments and discuss them in public. In fact authorities often decide in favor of a public discussion. If the parties objecting to a project observe a violation of environmental law in the decision of the authority and personal rights of the party are infringed, they can take legal action against the decision. For several permitting decisions no objection proceeding with a superior administrative body is foreseen – the objecting party can file a lawsuit at the administrative court once the decision is taken.

The administrative court reviews the admissibility of the lawsuit (i.e. infringement of environmental law, in case of an individual's action also third parties rights, and preclusion). If the case is admissible than all tangible violations of environmental law and procedural rights are reviewed.

Legally binding Urban land use plans (Bebauungspläne) can be reviewed by courts in two ways:

If somebody is directly affected by a building permit decision (when demanding a building permit, as a neighbour etc.), the person can have the underlying land use plan reviewed at the same time if this is relevant for the case and if there are signs that the zoning plan may be unlawful. If the court finds that the land use plan suffers from major errors, it is declared invalid, but only as far as the parties of the case are concerned (inter parties), i.e. not in respect of the general public. This procedure does not very often have genuine environmental implications but rather deals with specific imbalances on the spot concerning the neighbours of a project.

A review directed against a binding land use plan itself is also possible, but only within one year after the official publication. Not all flaws and irregularities of a land use plan do lead to its invalidity. A binding land use plan will only be declared invalid if the court identifies at least one of the "major" irregularities listed by law or recognized by jurisdiction. If the land use plan is finally declared invalid in this general review, it is legally "invalid with a retrospective effect" (ex tunc) and concerning everybody (inter omnes) which means that the area in question is legally seen as unplanned area and thus the legal rules for unplanned areas apply.

Preparatory land use plans (Flächennutzungspläne) and other more general, normative planning decisions cannot be reviewed directly in the way it is possible for legally binding land use plans. Here only an indirect review is possible, if the land use plan is relevant for a concrete project permit.

Courts review the procedural and substantive legality of EIA [2]-based decisions, but neither EIA procedures as such, nor separate steps of EIA procedures such as screening decisions or scoping decisions. The reason for this is that the EIA was incorporated into a system of existing legal permit procedures and was not established as a separate form of procedure in German law.

As a general rule, the infringement of a procedural rule only results in the setting aside of a decision where that infringement may have affected the decision. Rather, the project planning has to undergo some changes that will remedy the infringements. Only if so-called 'fundamental errors of procedure' occurred, that is, errors which regardless of the outcome of the procedure are regarded as substantial by law this will result in the reversal of the decision.

To have standing in court proceedings it is necessary to participate in the consultation phase with the arguments later brought before court (principle of preclusion). That is true for individuals and NGOs – participation is a mandatory precondition for a court procedure.

As the EIA cannot be litigated separately in German courts, see above – injunctive relief against the EIA itself is not possible in Germany.

In theory, courts can review final IPPC[3]-decisions. In practice this is rarely happening, because the investor has a right to a permit, if he fulfils all legally prescribed preconditions, especially those listed by the Bundes-Immissionsschutz-Gesetz (BImSchG - Federal Emissions – Control Act) – he could also take legal action to enforce a decision. Individuals and accredited environmental NGOs can file a suit against IPPC-decisions.

If the plaintiff claims there was a violation of procedural rights, the court reviews the procedure and decides whether the violation is so severe that it leads to an annulment of the decision.

The participation in the public consultation process in the IPPC decision is also a mandatory precondition for a lawsuit (principle of preclusion). Injunctive relief in IPPC procedures is available. If the administrative authority or a court granted immediate execution of the IPPC decision, the action against the decision does not have suspensive effect. In order to put a temporary halt to the IPPC decision's execution, plaintiffs then must additionally claim restitution of the suspensive effect.

V. Access to Justice against Acts or Omissions

Only indemnity claims can be submitted directly to court against private individuals according to § 1004 in conjunction with § 906 BGB (Bürgerliches Gesetzbuch - civil code). Neighbours can submit claims (owners, tenants or beneficial owners). There is no general definition for the distance to the emitting source – it depends on the impact of the emissions in the individual case. Up to a litigation value of 5000 EUR, the district court is responsible and the land court is responsible for all higher litigation values. All proof in indemnity claims has to be provided by the plaintiff. There are few cases in environmental matters that rely on indemnity claims, because usually the plaintiff seeks termination of the emission or disturbance, seldom only monetary indemnity is requested.

All other claims have to be treated in accordance with criminal law or liability law. Anybody can file a charge according to criminal law in oral or written form to the police, to administrative bodies or the prosecution department. A stronger instrument is the request for prosecution. It has to be dealt with in the public prosecution department.

Against state bodies a writ of mandamus (court order to the administrative body to carry out a specific action) can be issued to courts directly only in rare cases. For example residents of highly polluted streets can force the road traffic department to take action against noise and exhaust gases. But the residents have to prove, that the administrative body contravenes current environmental legislation or did not implement effective legislation. In the case of road traffic § 35 StVO (Straßenverkehrs-Ordnung – Traffic Code) offers a cause of action. The causes for such actions are rare in German legislation. The liability directive^[4] is implemented in the German USchadG (Umweltschadensgesetz – environmental damages Act). In environmental liability issues the federal state level (Länder) competent authorities are responsible. The Länder determine the responsibility in an ordinance. Common standard is that federal state environmental agencies are in charge of environmental damages.

A request to take action can be issued by any affected person and environmental NGOs. Affected persons are those who are harmed in their rights especially their property or their health by the effect of the environmental damage. Environmental NGOs have to be registered according to § 3 of the environmental appeals act (UmwRG - Umweltrechtsbehelfsgesetz). There is no special format required for the request to take action. A request should contain the following parts:

Sender

Description of the environmental damage

- i. What has happened?
- ii. Where has it happened?
- iii. How did it happen?
- iv. Who is probably responsible?

Request to take action

Explanation

There is no need for full evidence – the plausible description of the damage is sufficient.

If the administration does not take action or takes action with a delay, when environmental damages are detected, they can be sued by environmental NGOs. § 2 of the environmental appeals act is applicable for the requirements that NGOs have to fulfill, when they want to file a lawsuit. If a procedure was carried out to determine the actions for redevelopment of the damaged area, NGOs have to participate and voice their objection.

VI. Other Means of Access to Justice

There are no further means of remedies available in environmental matters.

Ombudspersons are only available in a private context – for instance in daily papers etc. and are not specialized on environmental matters. Some commissioners for data protection are also responsible for access to information under the Freedom of Information Acts (Informationsfreiheitsgesetze - federal and federal state level). Usually they are quite familiar with the Environmental Information Act, because access is much broader in environmental matters. They act as mediators between the holders of the information and the claimants. There are specialized prosecutors for environmental matters. They closely cooperate with police departments for environmental matters. These departments monitor compliance with environmental criminal law as well as environmental norms in general.

VII. Legal Standing

Legal Standing	Administrative Procedure	Judicial Procedure
Individuals	impairment of own rights concept	impairment of own rights concept
NGOs	in general: like individuals in special environmental cases set by law: additional position of legal standing as advocates of the environmental interest, several requirements must be met	in general: like individuals in special environmental cases set by law: additional position of legal standing as advocates of the environmental interest, several requirements must be met
Other legal entities	impairment of own rights concept	impairment of own rights concept
Ad hoc groups	impairment of own rights concept	impairment of own rights concept
foreign NGOs	in general: like individuals in special environmental cases set by law: additional position of legal standing as advocates of the environmental interest, several requirements must be met	in general: like individuals in special environmental cases set by law: additional position of legal standing as advocates of the environmental interest, several requirements must be met
Any other ^[5]	impairment of own rights concept	Preclusion, impairment of own rights concept

State institutions other than authorities directly involved in a case do not have standing in environmental cases.

VIII. Legal Representation

In the first instance court it is not mandatory to be represented by a lawyer. In all higher instances representation is compulsory. Nevertheless, nearly all law suits in the first instance are supervised by a lawyer, because environmental procedures are so complex, that laypeople cannot oversee all legal consequences. Specialised environmental lawyers give advice in all stages of the procedure, beginning from the public consultation, to avoid preclusion of

the individual or the organization before court. That means that legal representation in Germany plays a crucial role. The service of environmental lawyers often goes far beyond the usual legal counseling. They work very closely with the plaintiffs; often responses are co-authored by environmental lawyers and other experts on the issues concerned.

One way to get in touch with a lawyer is to contact an NGO and ask. Nearly all lawyers have a webpage that provides information about their specialization, references, services and costs. Some lawyers cooperatively operate a [portal](#) where contact details and links to their respective web pages can be found. Some environmental lawyers are cooperating in the network [IDUR – Informationsdienst Umweltrecht](#) (information service environmental law). For member organizations they provide a newsletter and seminars about current jurisdiction and new legislation and initial counseling.

IX. Evidence

When administrative courts decide cases in environmental matters, they are not restricted to the information the parties bring. Courts can (and must, if necessary) examine the facts on their own behalf and also introduce evidence themselves (ex officio investigation). However, in practice it is especially up to the plaintiffs to prove that their allegations are justified. To do so, it is often necessary to rely on expert opinions. Thus, environmental organizations cooperate with and pay for experts in the specific fields of nature protection to provide evidence.

New evidence can only be introduced under very restricted circumstances. In general, there are very strict rules demanding that any evidence relevant to the case must be brought forward as soon as possible, i.e. often during the time when the authorities decide whether a project can be permitted. If individuals or organizations do not disclose their concerns at this early stage of the project's development, they cannot bring these arguments in a later court case. It must be underlined, however, that despite of provisions for lodging objections in the administrative procedure within a time limit, new evidence may be presented at every stage of the proceedings, even in the final court hearing.

The courts are independent and free to review the evidence, to judge whether there is a breach of law and to evaluate how severe the infringement is.

X. Injunctive Relief

As a general rule, an appeal or action submitted to the court against an administrative decision has a suspensive effect. However, there are several exemptions to this rule. There is no suspensive effect in several cases set by law, especially if specific legislation excludes the suspensive effect - which is the case in most environmental matters.

If there is no suspensive effect, the administration's decision is in force and can be immediately executed, irrespective of an appeal or court action, unless the plaintiff asks the court to expressly grant suspensive effect and the court agrees.

Injunctive relief is possible in judicial procedures in general. In environmental matters it plays an important role, e.g. when irreversible damage to natural resources is at stake. The injunctive relief is directed against the administrative decision.

When requesting an injunctive relief, the plaintiff must show that the claim would also be acceptable as a regular, non-injunctive action. Additional to that the plaintiff must show that the court's preliminary decision is necessary, i.e. that some element of the case is so urgent that the decision in a regular judicial procedure would come too late, to gain injunctive relief. This urgency can root in different circumstances. For example, urgency can be based on the fact that if a project was not stopped before the court's decision, irreversible damage would occur (i.e. trees cut down, natural landscape destroyed etc.). As an injunctive relief can only be asked for when the matter is urgent, there is no fixed deadline.

Appeals against injunctive decisions are possible. However, it is up to the court in charge to decide whether they grant the right to appeal and the case must be of extraordinary importance.

XI. Costs

Cost categories

When seeking access to justice in environmental matters, an applicant typically faces costs in the following cost categories:

Costs for administrative procedures (Widerspruchsverfahren)

In some environmental matters applicants seeking justice must start an administrative procedure as a first step. For instance, cases where residents try to make municipal authorities take measures against excessive noise caused by traffic or industrial sites. To do so, applicants have to send a written complaint (Widerspruch) to the authority in charge where they explain why the authority's decision or action is violating their rights. Costs for this procedure are relatively low.

However, in the vast majority of environmental matters, e.g. when an EIA is in question, a complaint via an administrative review procedure is not possible. Instead, applicants have to take the responsible authority to court right away.

Court fees

When applicants have to go to court in environmental matters, different court fees apply depending on which level the case is decided finally. There are

Fees for the start of a procedure

Fees for an appeal

Fees for interim measures: If a case is so urgent that the time a regular court case would take would result in major harm, applicants can seek interim measures, also called injunctive relief (Einstweiliger Rechtsschutz). Court fees also apply in these cases.

Lawyers' fees

When lawyers are needed for legal representation in court, lawyers' fees add a decisive part to a case's costs. If the case is lost finally, applicants may have to pay not only for their own lawyers' costs, but can be charged with the defendant's lawyers costs to a certain extent. Usually, the public authority to avoid lawyers' fees is represented by its employees, but private parties, such as investors may be represented by lawyers that may result in costs to be covered by the losing party.

Cost of evidence, expert fees

In environmental matters many facts that are important for the decision of the case (evidence) need to be analyzed and presented by specialists. The more skills and time that have to be invested in analyzing and presenting the relevant facts, the higher the costs are for scientific analyses and experts.

Calculation of costs according to the system of the amount in dispute (Streitwert)

According to the Court Fees Act (Gerichtskostengesetz/GKG) the court fees depend on the so-called amount in dispute (Streitwert) which is determined by the court. This means that the court is estimating how the interest of the case could be expressed in terms of money. The higher the amount in dispute set by the court, the higher the court fees and also other costs related (like lawyers' fees) which, to a certain extent, are calculated accordingly.

Between 2002 and 2006, in environmental matters the amount in dispute was set between 2000 EUR and 260.000 (!) EUR in extreme cases. Statistically, the amount ranges between 20.000 and 25.000 EUR, however, the amounts vary significantly. About 8% of nature protection related claims had amounts in dispute of up to 2000 EUR, 24% between 2000 and 10.000 EUR and another 21% between 10.000 and 15.000 EUR. This means that in the majority of these cases, an amount of maximum 15.000 EUR was the basis of the calculation of costs. However, in about 32% of the cases during this period the amount in dispute was set between 15.000 and 40.000 EUR and in about 15% over 75.000 EUR.

Thus, the costs of lawsuits in environmental matters vary considerably. It is very difficult, to have a sound estimation of costs in advance.

Calculating costs for the start of a procedure

Concerning the court of first instance, an amount of about 5000 EUR applies, if there is a value of 25.000 EUR at stake.

This amount consists of 933 EUR of procedural fees plus about 1700 EUR lawyer's fees for each of the two parties' lawyers according to reimbursement rates prescribed by law, plus VAT, i.e. $933+(2 \times 1700)+\text{VAT}$. Costs for the own lawyer can be considerably higher as most experts do not work on the lawyers' fee scheme set by law, but on individual contracts and charge five figure amounts. This amount does not include any costs for evidence/expert opinions, which may exceed this sum by far.

As seen above, the amount in dispute can be lower, but also considerably higher than 25.000 EUR, which lowers and heightens the costs accordingly: For an amount in dispute of 2000 EUR procedural costs and lawyers' costs without costs for evidence would be about 1000 EUR, for an amount in dispute set at 15.000 EUR about 4000 EUR have to be calculated. This rises to 6.800 if the amount in dispute is set at 40.000, and to 9.500 EUR, if the amount in dispute is set at 75.000 EUR.

Calculating costs for an appeal

For the second instance (Berufung), if applicable, procedural costs and lawyers' costs without costs for evidence would be about 5.800 EUR, but may also rise up to 7700 EUR.

For the third instance (Revision), if applicable, about the same amount applies.

These numbers relate to an estimated amount in dispute of 25.000 EUR, the actual costs can be lower or considerably lower or higher if the court in charge sets another amount in dispute.

Calculating costs for injunctive relief (Vorläufiger Rechtsschutz/Einstweilige Verfügung)

The amounts in dispute as well as the court fees are about 50% of the amount to be paid in an ordinary court procedure. However, a case is not decided at that stage, so that the costs for injunctive relief are extra costs, usually followed by the costs of the following instance(s).

Winning or losing a case - who will pay what in the end?

In environmental matters the general rules for administrative court proceedings apply. Part of these rules is the "loser pays principle" in § 154 of the Code of Administrative Procedure (Verwaltungsgerichtsordnung, VwGO). This means that the defeated party has to pay for all the court fees, pay their own lawyer and also reimburse the winning party's lawyer. However, laws set a cap on the winning party's amount for reimbursement if the lawyer's fees go beyond the general rules. It varies in relation to the amount in dispute. Estimations name an amount between 700 EUR and 2500 EUR for the first instance, 900 EUR up to 3000 EUR for the second and between 900 EUR and 2000 EUR for the third instance, if applicable, all figures related to an amount in dispute of 25.000 EUR.

Cost of evidence, expert fees

Costs related to evidence and expert fees are not included in the above estimations. Here, the loser pays principle does not apply: The party bringing an expert report or other evidence must bear the cost. Even if a party is successful, they are not automatically reimbursed. However, the court can decide that the defeated party must bear the costs of evidence of the other party completely or in part. If the court ordered the evidence to be brought, again, the losing party has to bear it.

The cost of evidence in a typical environmental case is difficult to estimate. Cost of evidence in the form of an expert opinion is hardly available under 5.000 EUR and is likely to range up to 25.000 EUR on average. In extensive cases, when several experts are needed for different matters the amounts may be significantly higher.

XII. Financial Assistance Mechanisms

Exemptions from procedural or related costs in environmental matters

There are no exemptions from procedural or related costs in environmental matters, for environmental organizations, or similar cases.

Financial assistance and legal aid in environmental matters

According to § 116 ZPO (Zivilprozessordnung/Code of Civil Procedure) and § 166 VwGO (Verwaltungsgerichtsordnung/Code of Administrative Procedure) individuals

as well as legal entities (i.e. also environmental organizations)

when they are based in or resident of Germany or in a Member State of the EU or EEA, they can ask for financial assistance when they want to bring a case to court and lack resources to do so.

Individuals must show that they lack the financial resources to participate in a lawsuit without legal aid and that the case they want to bring to court has sufficient prospects of being successful and is also not abusive.

Additionally to that, **legal personalities like environmental organizations** must also show that failing to pursue the action would be contrary to the public interest.

However, in practice the possibility that environmental organizations may claim legal aid in environmental matters has no relevance so far, as up to now there seems to be no example where legal aid has ever been granted in a case brought by an environmental organization. One reason for that may be that the courts in charge to define whether a person or association meets the criterion "lack of resources" set up strict standards.

In 2008, the OVG Muenster (Higher Administrative Court of North Rhine-Westphalia) ruled for example that an application for legal aid launched by an environmental organization was undue because the organization had missed to build up a financial reserve for legal purposes in the past and could also try to raise funds especially for the case it wanted to bring to court.

The organization was declared as not lacking funds unless it spent the whole of its present funds on the court case. Moreover, according to the court also the personal wealth of the organization's members should be taken into consideration before legal aid was to be considered.

Pro bono legal assistance, public interest environmental law organizations or lawyers

Unlike in other fields like migration law, ad hoc or institutionalized charitable legal aid or pro bono actions by lawyers have no tradition in the field of environmental matters, even if some experts in the field do agree on reduced rates in some cases. In general, lawyers specialized on environmental law are rare and therefore expensive.

Most cases in environmental matters are started by environmental organizations. Larger environmental organizations sometimes have staff specialized on the matters relevant in the case. However, it is rare that the organizations' experts are specialized lawyers at the same time.

Legal clinics dealing with environmental cases

So far, the few existing legal clinics in Germany do not deal with environmental cases. Before 2008, operating legal clinics was even illegal in Germany, as the provision of legal aid was the exclusive privilege of lawyers formally exercising this profession. Anyone else, even active legal professionals such as judges, risked prosecution when providing legal aid outside of this narrow legal framework. Since the reform of 2007/2008 legal clinics can operate, however, no environmental clinic was established yet.

XIII. Timeliness

For administrative permit procedures, time limits exist for the delivery of decisions. In permit procedures for general industrial plants there is a time limit of 7 months for large projects and of 3 months for smaller projects. The administration can prolong the limits if they can claim a just cause. In permit procedures

for large-scale projects such as national roads, railways, waterways there are no fixed time limits but the provision that decisions must be taken "in reasonable time" or "efficiently".

In terms of challenging omissions, if authorities do not decide on a project despite the fact that they have been provided with the relevant documents, it is possible to bring the authority to court after three months of inaction.

According to data published by the Federal Ministry of Justice in 2011^[6], there is a duration of 10,9 months for proceedings in the first instance on average, with 4,6 months being the shortest on average time in some Länder and 25 months being the longest on average time in other Länder. For proceedings starting at the level of Higher Administrative Courts, there is a duration of 15,7 months for proceedings in the first instance on a national average, with 6,3 months being the shortest on average time in some Länder and 28 months being the longest on average time in other Länder. Thus, even an average trial may take several years when two or more instances are involved.

After Germany has been criticized by the European Court of Human Rights, in November 2011 new legislation was enacted which enables the parties of a court case to warn a court when the procedures are in danger to take excessive time, and to claim special damages if the procedure takes too long.^[7]

XIV. Other Issues

The federal ministry has published a [handbook](#) that gives an overview about rights under the Aarhus Convention including access to justice. NGOs published several handbooks and manuals for their regional chapters and activists.

As an example: [Guide: Rights of the environmental groups to participate and to file suit](#) (PDF in German). More detailed information can be found on the webpage of the department Environmental Law and public participation of the [Independent Institute for Environmental Issues](#).

Alternative dispute resolution is used in Germany more frequently in the last years. In environmental matters it depends on whether the judges in the respective courts are trained for this. In Administrative courts in Schleswig (Schleswig-Holstein) and Greifswald (Mecklenburg-Vorpommern) have special programs for court mediation. Between 2007 and 2010 there were only two mediation procedures in courts registered. Some well-known mediation procedures took place in the course of big infrastructure permit procedures (Airport Berlin, Airport Frankfurt and Main Station Stuttgart). But they couldn't prevent lawsuits after the decision was taken.

XV. Being a Foreigner

One of the main pillars of the German Constitution, the Grundgesetz is the anti-discrimination clause. Since 2006, Germany has also an explicit Equal Treatment Act (Allgemeines Gleichbehandlungsgesetz) that was developed because of the requirements of European anti-discrimination legislation and includes more detailed rules on anti-discrimination, especially in the fields of labor law, civil law, tax law and provides special remedies to fight against discriminatory acts or omissions of the state and also of private persons. However, there are no special anti-discrimination-rules in procedural law so far. According to the law on court procedures German language has to be used in court and court procedures. There is one exception concerning the areas in the Land of Brandenburg, where the Sorbian-speaking minority has the right to use their language.

Germany so far does not regularly provide and pay for translations in court procedures. In administrative court hearings the costs of interpretation may be regarded as court expenses (Auslagen) and would then have to be born by the losing party.

XVI. Transboundary Cases

The public in the countries affected by projects with likely trans-boundary environmental impact have rights granted by the Espoo Convention, the Espoo-related EU legislation, the Aarhus Convention and the Aarhus-related EU legislation, and by bi-lateral agreements. For NGOs there are no special provisions, they enjoy standing as shown under heading VII.

Related Links

National [webportal](#) for legislation

Legislation on access to justice:

[Environmental Appeals Act](#) (Umweltrechtsbehelfsgesetz), English version

http://www.bmu.de/files/english/pdf/application/pdf/umwelt_rechtsbehelfsgesetz_en_bf.pdf

[Environmental Appeals Act](#) (Umweltrechtsbehelfsgesetz), German version

[Environmental lawyers](#)

[Informationsdienst Umweltrecht](#) (IDUR- Information service environmental law)

[1] After the judgment of the CJEU in case C-115/09 (BUND/Trianel) in May 2011 on the German implementation of Directive 2003/35/EC, this was the case for Access to Justice matters for environmental organizations.

[2] Environmental Impact Assessment

[3] Integrated Pollution Prevention and Control

[4] Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability

[5] This category should include all those potential stakeholders that are not covered by the previous lines, e.g. do competent authorities have standing against decisions of other competent authorities, etc.?

[6] http://www.bmj.de/SharedDocs/Pressemitteilungen/DE/2011/20111014_Durchbruch_beim_Schutz_vor_ueberlangen_Gerichtsverfahren.html (German only)

[7] http://www.bmj.de/SharedDocs/Pressemitteilungen/DE/2011/20111014_Durchbruch_beim_Schutz_vor_ueberlangen_Gerichtsverfahren.html (German only).

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