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Locus standi in administrative proceedings concerning environment protection, in the case law of the CJEU and the ECtHR[4]

Abstract

Effective legal protection against the unlawfulness of administrative acts is essentially achieved if the aggrieved party has some form of legal remedy to enforce his/her rights. This remedy may be at the stage of the administrative procedure, however, in some cases it may achieve its real purpose only through judicial means.
The right to a fair hearing is closely linked to the right to remedy, which means the possibility of simultaneously appealing to another body or to a higher forum within the same organization regarding decisions on the merits. An essential element of all remedies is the possibility of remedy, i.e. the remedy conceptually and substantively includes the possibility of reviewing of the violation of law.[5] The aim of the person affected is nothing other than to remedy his or her disadvantage. But who can be affected?
Keywords: administrative procedure, environmental law, environment protection, locus standi, civil organisations.

1. Introductory thoughts

Administrative judication has both a subjective and an objective legal protection role. In the subjective legal protection function, the court protects individual rights and interests, i.e. the right to bring an action is by definition based on the

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4 | *The basis of this study was made in the research of Law Working Paper of the Network of European Law Consultant Judges, which authors are the same than the authors of the present study.*
5 | Patyi & Varga 2019, 37–38.

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violation of law caused by the administration, i.e. the plaintiff shall alleged a violation of a subjective right or legitimate interest. On the contrary, in the context of the objective legal protection function, the court's task is to protect the substantive right, so it is not necessarily possible to link the right of action to the infringement of a subjective right or interest. This could be done by assigning the plaintiff's position to a privileged scope, such as the right of action of the prosecutor or the body exercising judicial oversight, while another possibility is to make access to justice independent of the right infringed.[6]

In the development of both domestic and, even more so, European administrative judication, there is an increasing trend towards the objective legal protection function[7], which is also reflected in the widening of the scope of those entitled to bring court actions, such as collective actions and actions by social organizations. In practice, the primary area of this is environmental protection. And this is also referred to in the uniformity decision no. 1/2004. KJE: *"International case law and, accordingly, Hungarian prevailing law in accordance with the requirements of legal harmonization – recognizing the importance of environmental protection in ensuring the present and future healthy living conditions of mankind – is increasingly extending the boundaries of legal protection and provides action in cases of environmental harm or danger to the public interest, the wider community, beyond the justification of specific individual harm."*

The question is, in environmental litigation, where is the line drawn to determine who is entitled to bring an action for a particular right, and when can we say that the person bringing the action has no locus standi?

We have attempted to answer this question. The main purpose of our paper is to examine the question of locus standi in environmental cases from several aspects.

2. The general context of the right of legal remedy

If we are intended to deal with the right of legal remedy, we have to start from a broader fundamental right at international, EU level, and this fundamental right is none other than the right to access to justice. This is the fundamental right that appears in almost all international instruments, obliging the participating states to guarantee the right to access to justice. It covers several fundamental human rights, such as the right to a fair trial and the right to an effective remedy.[8] The concept of the right to access to justice is reflected in Articles 6 and 13 of the

6 | F. Rozsnyai 2018, 109.
7 | Trócsányi 1991, 41.
8 | European Union Agency for Fundamental Rights/Council of Europe 2016, 16.

European Convention on Human Rights (ECHR)[9] and in Article 47 of the Charter of Fundamental Rights of the European Union (hereinafter referred to as: Charter), guaranteeing, as a partial right, the right to a fair trial and, at the same time, the right to a remedy, as interpreted by the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU). These rights are also guaranteed by Articles 2 (3) and 14 of the International Covenant on Civil and Political Rights of the United Nations (UN) (hereinafter referred to as 'ICCPR') and Articles 8 and 10 of the Universal Declaration of Human Rights of the United Nations (hereinafter referred to as 'UDHR').

If we consider the development of EU law, the Van Gend & Loos judgment is the most relevant, as it 'has defined the history of European integration better than any other policy, European politician or judicial judgment.'[10] The decision gave a special role to the citizens of the Member States as individuals by making the individual responsible for enforcing Community standards before the national courts.[11]

The Treaties of the European Communities, however, did not contain any reference to fundamental rights, those were developed by the practice of the CJEU.

Article 67 (4) of the Treaty on the Functioning of the European Union (TFEU) provides that 'the Union shall facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters'.

The Lisbon Treaty specifically guarantees access to justice, with particular attention to fundamental human rights.[12]

Now Article XXIV of the Fundamental Law of Hungary states that *"everyone shall have the right to have his or her affairs handled impartially, fairly and within a reasonable time by the authorities. Authorities shall be obliged to state the reasons for their decisions, as provided for by an Act. Everyone shall have the right to compensation for any damage unlawfully caused to him or her by the authorities in the performance of their duties, as provided for by an Act."*

As a fundamental right relating to the justice system, Article XXVIII states that *"Everyone shall have the right to have any indictment brought against him or her, or his or her rights and obligations in any court action, adjudicated within a reasonable time in a fair and public trial by an independent and impartial court established by an Act."* And what is most relevant for the present study is that everyone has the right to a remedy at the statutory level against judicial, official and other administrative decisions which violate his or her rights or legitimate interests.

Therefore, when talking about legal remedies, the starting point at national level shall be the provisions of the Fundamental Law, since the fundamental right

9 | The Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November, 1950, was promulgated in Hungary by Act XXXI of 1993.
10 | Pernice 2013, 55.
11 | De Witte 2013, 96.
12 | Carrera, De Somer & Petkova 2012

to be assessed as a requirement of the principle of fair trial, which is part of the principle of fair trial, and which can be limited, and which covers not only judicial proceedings but all official proceedings, is one of the most important guarantees of the enforcement of the rights of the client.[13] Although this fundamental right does not apply only to administrative proceedings or other administrative court proceedings, the provision is the 'mother law' of judicial review of administrative decisions and thus has a direct impact on the way in which the administrative procedure is regulated.[14]

„Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being […]"- said the Stockholm Declaration in 1972.[15] This Declaration stipulated the duty of man to protect and improve the environment for future generations. The above quote verifies the statement that the right to healthy environment stems from the connection of human rights and the environment protection.[16]

The constitutional basis of the right to a healthy environment and the protection of the environment, namely the right to a healthy environment and the right to the highest attainable standard of physical and mental health, was provided for by Articles 18 and 70/D of the former Constitution as amended in 1989. But the relationship between the right to a healthy environment, environmental protection and the Constitutional Court did not end with the Constitutional Court's interpretation of the relevant paragraphs of the Constitution.[17]

The right to access to justice in environmental matters derives from EU environmental law. It draws on the principles of EU law as reflected in the provisions of the EU Treaties, the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, adopted in Aarhus on 25 June 1998 (hereinafter 'the Aarhus Convention') and secondary legislation interpreted in accordance with the case law of the CJEU.[18] Since its ratification by the European Union and its entry into force, the Aarhus Convention has become an integral part of the EU legislation and is binding on the Member States within the meaning of Article 216(2) TFEU.[19] The CJEU therefore has, generally, jurisdiction to make preliminary decisions on the interpretation of such agreements.[20] Important, the Convention aims to protect the right of all individuals in present and future generations to live in an environment adequate

13 | Turkovics 2011, 333.
14 | Patyi & Varga 2019, 35.
15 | Stockholm Declaration (16 June 1972), Principle 1.
16 | Marinkás 2020, 133–151.
17 | Szilágyi 2021, 130–144.
18 | Commission Communication on access to justice in environmental matters, 4.
19 | Case C-243/15 Lesoochranarske zoskupenie VLK II (LZ II), paragraph 45.
20 | Case C-240/09 Lesoochranarske zoskupenie VLK I (LZ I), paragraph 30, on the interpretation of Article 9(3) of the Aarhus Convention.

for their health and well-being.[21] This obliges Member States to guarantee citizens the right to access to information, to participate in decision-making and to have access to justice in environmental matters.

The right to access to justice in environmental matters means supportive rights that enable individuals and their associations to exercise the rights conferred on them under EU law, but also help to ensure that the objectives and obligations of EU environmental law are met.[22]

3. The practice of ECtHR on the right to access to justice

3.1. Conditions for admissibility in ECtHR proceedings

If a legal entity intends to seek remedy in Strasbourg for a violation of its rights under the ECHR or its Additional Protocols, it may launch the supervisory mechanism by means of an individual application. The mandatory content of the application is set out in Article 47 of the Rules of Procedure of the Court of Justice. An application may be made to the Court by any individual or legal person within the jurisdiction of a State party to the Convention, so the potential applicants are wide-ranging: in addition to the 800 million inhabitants of Europe and the individuals of third-country nationals living in or passing through Europe, there are millions of associations, foundations, political parties, and companies.[23] For a long time, the Court has been inundated with individual applications, so that compliance with Rule 47 is a major filter in the admissibility test. The admissibility test is an important element of effective justice and access to the Court, whereby the Court examines whether the application complies with Articles 34 and 35 of the ECHR. Among the admissibility criteria, the closest to the legal legitimacy and locus standi is the concept of 'victim status', which shall be interpreted independently of the concept of victim as used in national law.[24] Article 34 of the ECHR provides that any natural person, non-governmental organization or group of persons claiming to be the victim of a violation by a High Contracting Party of the rights guaranteed by the Convention or its Protocols may apply to the ECtHR.

In the ECHR and in the Rules of Procedure of the ECtHR, the necessary legitimate interest is thus referred to as 'victim status' as one of the conditions for admissibility. The term refers, in the context of Article 34 of the Convention, to a person or persons directly or indirectly affected by an alleged violation. Consequently, the scope of Article 34 covers not only the direct victim or victims of the

21 | Aarhus Convention, Article 1.
22 | Case C-71/14 East Sussex, paragraph 52 and Case C-72/95 Kraaijeveld, paragraph 56
23 | European Court of Human Rights 2011, 14–20.
24 | Cabral-Barreto 2002, 9.

alleged violation, but also any indirect victim who is harmed by the violation or who has a real and personal interest in seeing the violation brought to an end.[25]

The concept of 'victim' is to be interpreted autonomously and independently of the domestic rules on the existence of an interest in bringing proceedings or on capacity to be a party[26], although the Court of Justice should take into account the fact that the applicant has been a party to the domestic proceedings.[27] Victim status does not presuppose that a disadvantage has occurred[28] and acts which have only a temporary legal effect may also give rise to victim status.[29]

The term 'victim' must be interpreted in an evolutive manner in the light of conditions in contemporary society, and an excessively formalistic interpretation shall be avoided.[30] According to the Court of Justice the question of victim status may also be linked to the merits of the case.[31]

In order to be able to submit an application under Article 34, the applicant shall claim that he/she has been 'directly affected' by the measure complained of.[32] This is indispensable for the Convention's protection mechanism to be put in motion[33], however the Court stated that this criterion cannot be applied in a rigid, mechanical and inflexible way throughout the proceedings.

In environmental cases, the guidance of the ECtHR where the alleged victim of a violation dies before the application is submitted, it is possible to be replaced by a person who has the necessary legitimate interest as a close relative.[34] Such an interpretation allowing indirect victim status is justified by the special situation arising from the nature of the infringement. In cases where the alleged violation of the Convention is not closely connected with the death of the direct victim, the Court will not normally accept the subjective capacity to be a party of a person other than the direct victim unless the person concerned can, exceptionally, demonstrate an interest of his/her own.[35]

25 | ECtHR, Vallianatos and others v Greece, 29381/09 and 32684/09, 7 November 2013, para 47.
26 | ECtHR, Gorraiz Lizarraga and others v Spain, 62543/00, 27 April 2004, para 35.
27 | ECtHR, Aksu v Turkey, 4149/04 and 41029/04, 15 March 2012, para 52; ECtHR, Micallef v Malta 17056/06, 15 October 2009, para 48.
28 | ECtHR, Brumărescu v. Romania, 28342/95, 28 October 1999, para. 50.
29 | ECtHR, Monnat v. Switzerland, 73604/01, 21 September 2006, para. 33.
30 | ECtHR, Gorraiz Lizarraga and Others v. Spain, 62543/00, 27 April 2004, para. 38; ECtHR, Stukus and Others v. Poland, 12534/03, 1 April 2008, para. 35; ECtHR, Ziętal v. Poland 64972/01, 12 May 2009, paras. 54-59.
31 | ECtHR, Siliadin v France, 73316/01, 26 July 2005, para 63; ECtHR, Hirsi Jamaa and Others v Italy, 27765/09, 23 February 2012, para 111.
32 | ECtHR, Tănase v Moldova, 7/08, 27 April 2010, para 104; ECtHR, Burden v United Kingdom 13378/05, 29 April 2008, para 33.
33 | ECtHR, Hristozov and Others v Bulgaria, 47039/11 and 358/12, 23 November, 2012, para 73.
34 | ECtHR, Varnava and others v Turkey 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/9, 18 September 2009, para 112.
35 | ECtHR, Nassau Verzekering Maatschappij N.V. v. the Netherlands (dec.), 57602/09, 4 October 2011, para. 2.

The Court will concern the applicant's participation in the domestic proceedings only as one of the relevant criteria. In the absence of a moral interest in the outcome of the proceedings or any other convincing argument, merely on the ground, for example, that he could have intervened in the proceedings as heir of the original applicant under domestic law, he cannot be considered a victim.[36]

In certain specific cases, the Court has also accepted that the applicant may be a potential victim. This was the case, for example, where the expulsion of a foreign national was ordered, but was not carried out, if the expulsion had been carried out, the applicant would have been subjected to treatment within the meaning of Article 3 of the Convention in the host country, or the expulsion would have led to a violation of the rights under Article 8 of the Convention.[37] Although the ECtHR applied this principle in an immigration case, the concept of potential victim may also arise in environmental cases. However, for someone to be qualified as a potential victim, he or she must have reasonable and convincing evidence that makes it likely that an infringement affecting him or her personally will occur; mere suspicion or assumption is not sufficient in this respect.[38]

The 14th Additional Protocol, which entered into force on 1 June 2010, added a new admissibility criterion to the criteria set out in Article 35 of the Convention, which is linked to the seriousness of the disadvantage suffered by the applicant.[39] Under this new criterion, the Court will declare an individual application inadmissible even if, with certain exceptions, the applicant has not suffered any significant disadvantage. The official reason for its establishment was to enable the Court to be more selective than before and to devote more time to the really important, more fundamental questions of principle among the cases brought before it.[40] The Court therefore requires, in addition to the existence of a violation of rights, that the new criterion be sufficiently serious. This gives the Court an additional tool to concentrate on those cases which really deserve to be examined on their merits (*de minimis non curat praetor*). At the same time, the introduction of the absence of significant disadvantage as a ground for inadmissibility has not escaped international criticism. Indeed, applicants cannot be sure that their application will be admitted even if their Convention rights have in fact been violated. Some argue that the introduction of the criterion of significant disadvantage has 'traded' the possibility of enforcing human rights.[41]

36 | ECtHR, Nölkenbockhoff v Germany, 10300/83, 25 August 1987, para 33; ECtHR, Micallef v Malta 17056/06, 15 October 2009, paras 48-49; ECtHR, Polanco Torres and Movilla Polanco v Spain, 34147/06, 2010, para 34. 21 September 2008, para. 31; ECtHR, Grădinar v. Moldova, 7170/02, 8 April 2008, paras 98-99; see also ECtHR, Kaburov v. Bulgaria (dec.), 9035/06, 19 June 2012, paras 57-58.
37 | ECtHR, Soering v United Kingdom 14038/88, 7 July 1989.
38 | ECtHR, Senator Lines GmbH v. 15 Member States of the European Union (dec.), 56672/00.
39 | European Court of Human Rights 2011
40 | Szemesi 2011, 134.
41 | Blay-Grabarczyk 2013

3.2. The right to bring a court action in environmental matters in ECtHR practice

International environmental law has evolved considerably in response to the current global environmental challenges. However, the ECHR, as the basis for the protection of human rights in the European region, does not contain explicit provisions on the right to a healthy environment or on the protection of the human environment. The Convention contributes to environmental protection only indirectly through the practice of the ECtHR. The greatest advance in the protection of environmental procedural rights is the Aarhus Convention, which is referred to several times in this study and which also provides the highest standard of protection for the European system of environmental procedural rights.

The right to access to justice in environmental matters includes the enforceability of the right to information and the right to participate in decision-making, i.e. the right of access to administrative and judicial procedures. The person subject to the right to access to justice (as an independent procedural right) may appeal acts and omissions by individuals and public authorities which violate the obligations arising from a healthy environment.[42] The ECtHR has also protected the proper enforcement of these rights, stating in relation to the right to access to justice that where a right to a healthy environment is enshrined in the national legal system of a State, the State is obliged to ensure access to justice in the event of a violation of that right. For this to be the case, the dispute must be real and serious, and the outcome of the proceedings shall directly affect this right or obligation.

The right to access to justice protected by the Convention is linked only to the rights protected by the Convention, so that in the event of a violation of other elements of the right to a healthy environment, the individual is entitled to justice only if it has been recognized in the national legal system.

The ECtHR's inadmissibility criteria narrow the scope of admissible applications. In relation to a healthy environment, the most relevant admissibility criteria are victim status and the existence of a significant disadvantage. A natural person is very likely to apply to the Strasbourg Court only if he or she claims a violation of his or her rights as a victim. For example, the ECtHR granted an association access to justice when it complained of a concrete and direct threat to its personal property and the way of life of its members.[43]

However, civil organizations, which can also submit applications alongside individuals under Article 34 of the Convention, typically serve a public interest. Nonetheless, the protection of collective interests faces already an obstacle at the admissibility stage because the Court requires civil organizations to have victim status. Moreover, they must suffer a significant disadvantage for the application to be admissible.

42 | Hermann 2016, 141.
43 | ECtHR, Gorraiz Lizarraga and Others v Spain, 62543/00, 27 April 2004.

Attempts at actio popularis in the public interest are declared inadmissible by the Court. In environmental matters, only those specifically concerned have the right to participate in the decision-making process. In the context of an *actio popularis* for the protection of the environment, the Court of Justice has declared that there is no provision for legal proceedings (public interest litigation) for the protection or enforcement of an environmental right enjoyed by the public.[44]

There is also a right to bring a court action in the event of a violation of right to participate in a decision protected under Article 2. This does not require that the decision in question is decisive for the rights of the applicant or that there is a serious risk. The State shall ensure the right to an effective remedy for all individuals whose right to life has been violated in environmental matters.

Although the ECtHR protects several procedural elements of the right to a healthy environment and the right to the protection of the environment, there is no comprehensive protection. The enforcement of procedural rights is linked to a direct interest, and there is a complete absence of a higher level of environmental obligation on the part of the state.[45] At the same time, the Court also makes frequent reference to sources of law which were not adopted under the auspices of the Council of Europe, but which have been implemented by a large number of parties to the Convention, such as the Aarhus Convention, to which the Court has already referred on several occasions in relation to the protection of environmental procedural rights. Moreover, its unique interpretative practice adapts the Convention to current requirements through dynamic interpretation, thus maintaining its up-to-date character.[46]

4. The case-law of the CJEU regarding the definition of the concept of 'person concerned' in the context of the right to remedy

The CJEU deals with locus standi in connection with the right to remedy in two aspects. On the one hand, in interpreting Article 47 of the Charter of Fundamental Rights and the related provisions of sector-specific EU legislation on the exercise of the right to remedy, and on the other hand, when deciding on direct actions submitted to the CJEU, it also examines the direct and individual involvement of the applicant in the admissibility of the action, i.e. his or her locus standi, in accordance with Article 263(4) of the TFEU. The present study focuses on the case law on the interpretation of the former, i.e. the EU legislation establishing an obligation for

44 | ECtHR, Ilhan v. Turkey, 22277/93, 27 June 2000, paragraphs 52-53.
45 | Hermann 2016, 16.
46 | ECtHR, Tyer v United Kingdom, 5856/72, 25 April 1978.

Member States to provide effective judicial remedies, as it is of practical importance for the application of law by the national courts.

4.1. The locus standi for civil organizations in environmental matters – the right to a remedy under the Aarhus Convention

The starting point for the right to remedy against decisions of public authorities in environmental matters is the right to remedy established by Article 9 of the Aarhus Convention, as mentioned above, which was approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005. The Aarhus Convention set out the principles of access to environmental information and public participation as a kind of minimum requirement, according to which the Aarhus Convention has three pillars: access to environmental information (Articles 4 and 5), public participation in environmental decision-making (Articles 6, 7 and 8) and, finally, the right to access to justice (Article 9).[47]

In accordance with Article 9(2) of the Aarhus Convention, each Party, consistently with the objective of giving the 'public concerned' wide access to justice, shall ensure to members of the public concerned who have a sufficient interest or who claim a violation of rights, where national law requires this as a precondition, have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, where so provided for under national law, subject to the provisions of article 6, and, of other relevant provisions of this Convention.

The 'public concerned' referred to in Article 9(2) of the Aarhus Convention is defined in Article 2(5) as the public affected or likely to be affected by, or having an interest in, the environmental decision-making. Furthermore, this provision also specifies that for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest. In accordance with Article 9 and without prejudice to the review procedures referred to in paragraphs (1) and (2) above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.

The definition of the locus standi under Article 9(2) is in the scope of the Parties, i.e. they shall determine, within the framework of their national legal systems, the content of the concept of 'sufficient interest' or 'alleging a violation of their rights' in cases where the administrative procedure requires it as a precondition for members of the public. While the Convention gives further guidance to civil society organizations on the interpretation of the concept of 'sufficient interest',

47 | Bögös 2018, 2.

it stipulates for private persons as 'individuals' the concepts of 'sufficient interest' and 'violation of rights' shall be defined in accordance with the requirements of national law. The discretion of the parties is limited in that the definition of locus standi shall be consistent with the objective of 'giving the public concerned wide access to justice'. This means that the Parties shall not apply an interpretation that would significantly narrow the scope of the locus standi.[48]

The case law of the recent years is well summarized by the judgment of 14 January 2021 in Case C-826/18 LB, Stichting Varkens in Nood, Stichting Dierenrecht, Stichting Leefbaar Buitengebied (hereinafter referred to as: 'Case C-826/18'), which interpreted the content and conditions of public concerned and the right of access to justice for the members of the public, both in relation to environmental associations and private individuals.

The CJEU has pointed out that Article 9(2) of the Aarhus Convention is not intended to confer on the public in general a locus standi against decisions and other acts of the public which are subject to Article 6 of that Convention and which concern projects which are the subject of public participation in decision-making but is intended to confer that right only on members of the 'public concerned' who satisfy certain conditions. This is because it explicitly distinguishes between the 'public' in general and the 'public concerned' by an act or activity. The members of the public concerned have specific procedural rights and are the only ones involved in the decision-making process, since they are covered by the objective of ensuring that the public concerned enjoys a broad right of access to justice in respect of all those who are or may be affected by the proposed act or measure.[49]

The Aarhus Convention aims precisely to ensure that the right to bring a court action to challenge acts and decisions covered by Article 6 is restricted to the 'public concerned' who satisfy certain conditions. Consequently, a person who is not a member of the 'public concerned' within the meaning of the Aarhus Convention cannot refer to the violation of Article 9(2). The right of that person to access to justice may be based on other rules if the law of the Member State provides for a wider right of public participation in decision-making which are more favorable than those of the Convention, such as those which allow for a wider public participation in decision-making. In that case, judicial remedies submitted under these measures fall within Article 9(3) of the Aarhus Convention.[50] According to paragraph 86 of the judgment of 20 December 2017 in Case C-664/15 Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation, the remedies referred to in Article 9(3) of the Aarhus Convention may be subject to certain 'criteria', which implies that the Member States, it consequently follows that the Member States may, within the limits of the discretion which they retain in that regard, lay down

48 | Ibid. 8-9.
49 | LB, a Stichting Varkens in Nood, a Stichting Dierenrecht, a Stichting Leefbaar Buitengebied, C-826/18., para 36-38.
50 | Ibid. para 45-48.

procedural rules concerning the conditions which must be satisfied for the exercise of those rights of remedy. In the same judgment, the Court also stated that the right of remedy would be deprived of its real effect if such criteria could be used to deny certain categories of 'members of the public' the right to bring an action.

Judgment C-826/18 has come to the conclusion that Article 9(3) of the Aarhus Convention precluded a 'member of the public' within the meaning of that Convention from not being able to have any access to justice for the purposes of relying on more extensive rights to participate in the decision-making procedure which may be conferred by the national environmental law of a Member State.[51]

The second part of the judgment ruled on the lawfulness of making the locus standi subject to the condition that a person who has not taken part in the prior administrative procedure, that is to say, the procedure for the preparation of the decision, does not have a locus standi.

The CJEU, referring back to its judgment of 15 October 2009 in Djurgården-Lilla Värtans Miljöskyddsförening C-263/08, also set out that members of the 'public concerned' shall be guaranteed a right of remedy against acts within the meaning of Article 9(2) of the Aarhus Convention and that Member States may not make the admissibility of an appeal conditional on the applicant's participation in the decision-making on the contested decision and the opportunity to express his views in that context. Participation in decision-making procedures in environmental matters is distinct from judicial remedy and has a different purpose. Regarding environmental associations, it is important to remember that non-governmental organizations within the meaning of the provisions of the Aarhus Convention are to be considered as either having a sufficient interest or as being the rightholders of the infringed right. The objective of Article 9(2) of the Aarhus Convention and its effective implementation, that the public should have 'a wide access to justice', is hindered if the admissibility of an civil organization's remedy is made conditional on the role that the civil organization may have played in participating in the decision-making process, even though that participation has a different purpose from judicial remedy. In addition, the way in which such an organization assesses a draft may vary depending on the outcome of the decision-making process.

In judgment C-826/18, the CJEU therefore concluded that Article 9(2) of the Aarhus Convention precludes the admissibility of a judicial remedy brought under that Convention by a non-governmental organization which is part of the 'public concerned' within the meaning of the Aarhus Convention from being subject to its participation in the decision-making process leading to the adoption of the contested decision.[52]

The solution would, however, be different if those proceedings were brought by a member of the 'public' on the basis of more extensive rights to participate in

51 | Ibid. para 51.
52 | Ibid. para 59-60.

the decision-making procedure conferred solely by the national environmental law of a Member State. In such a case, Article 9(3) of the Aarhus Convention, which provides more flexibility for Member States, would be applied. Thus, that provision does not, in principle, preclude the admissibility of the actions to which it refers from being made subject to the condition that the applicant has submitted his or her objections in good time following the opening of the administrative procedure, since such a rule may allow areas for dispute to be identified as quickly as possible and, where appropriate, resolved during the administrative procedure so that judicial proceedings are no longer necessary.

Notwithstanding the fact that it constitutes a limitation on the right to an effective remedy before a court within the meaning of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), the CJEU has found that such a condition may be justified, in accordance with Article 52(1) of the Charter. The condition in question fulfilled the criteria of justifiable restriction, since it was imposed by law; it respected the essential content of the fundamental right to effective judicial protection, given that it provided for only one additional procedural stage for the exercise of that right and did not call it into question in its entirety; and it met the general interest objective of increasing the effectiveness of the reviewing procedure and there did not appear to be a manifest disproportionality between that objective and any disadvantages caused by the obligation to participate in the procedure for the preparation of the contested decision.[53]

It is worth mentioning that the CJEU deals with environmental issues not only by applying the Aarhus Convention, but also by applying Community environmental legislation. Direct actions against Commission decisions in environmental matters may be brought before the CJEU under Article 263(4) TFEU. The CJEU interprets the 'direct concern' presumption of locus standi in these cases strictly in relation to both EU and non-EU third country actors.[54] A detailed analysis of the jurisprudence on the admissibility of direct actions brought before the CJEU in environmental cases is beyond the scope of this paper and will not be addressed here.

5. The case-law of the Curia on the locus standi – the right to sue versus the locus standi in environmental cases[55]

The general rules on capacity to bring legal proceedings are set out in Act CXXX of 2016 on the Code of Civil Procedure (hereinafter: the 'Civil Procedure Code'). Pursuant to Article 33, a party to a lawsuit is anyone who is entitled to rights and subject to obligations under the rules of civil law. At the same time, according to Article 16

53 | Ibid. para 61-68.
54 | Hadjiyianni 2019, 155.
55 | To read more about the practice of f the Deputy Ombudsman for Future Generations: Olajos & Mercz 2022, 79–97.

(1) of the Administrative Procedure Code, a party to a lawsuit may also be a person who may be subject to rights and obligations under civil law or administrative law, as well as an administrative body which has independent administrative functions and powers.

In administrative proceedings, the right to bring an action is subject to the condition that the party has legal capacity to bring the action (procedural legitimacy) and that the matter on which the proceedings are based directly affects the party's right or legitimate interest. The party's involvement is embodied in the locus standi (substantive legitimacy), i.e. capacity to bring an administrative action means that the party has legal capacity and if a right or legitimate interest is directly affected by the administrative action, is entitled to bring an administrative action.

This direct involvement presupposes, according to established case-law, a specific relationship of interest between the party and the administrative activity. This implies that the party to the dispute has a legal right jeopardized, his/her interest is of a legal nature, i.e. the lawsuit has a direct impact on his legal position. In administrative litigation, the relationship of interest must therefore be direct, and this is only the case if the administrative legal relationship directly alters the scope of the plaintiff's rights and obligations, without the interposition of any other legal relationships. It is therefore essentially a question of substantive law, relating to the party's substantive legal interest in the dispute, and can therefore be assessed on the merits of the dispute, the absence of which results in the dismissal of the action with prejudice. The scope of the judicial review is also in line with the applicant's locus standi, the court being entitled and obliged to review the decision challenged in the action only to the extent that the plaintiff has locus standi.

How does this manifest itself in environmental cases? As it is a specialized area of law, so is the scope of those entitled to bring proceedings. The case of the Bős-Nagymaros hydroelectric power plant could be a starting point for this topic, in which the water authority of first instance denied right of status of client of the Duna Kör, to which the civil organization responded by turning to the public prosecutor's office. The Prosecutor General's protest submits as a matter of principle on the issue, stating that environmental associations are entitled to the status of clients in the above cases, given that their statutory functions are affected by the case.[56] However, this was of significance until 19 December 1995, when Act LIII of 1995 on the General Rules for the Protection of the Environment (hereinafter 'the Protection of Environment Act') entered into force and Article 98(1) of the Act grants status as a party in environmental administrative proceedings to associations operating in the area concerned. Subsequently, the Supreme Court of Justice also expressly recognized the right of these social associations to bring proceedings and locus standi in Administrative Law Judgment No 4/2010 (X.20.).

56 | Kiss 2016, 37.

The Aarhus Convention also emphasizes the need to ensure that the public concerned has wide access to effective, fair, equitable, timely and inexpensive justice. It is for the national court to interpret national law in a way that is as consistent as possible with the objectives of the Convention, in order to ensure effective judicial protection in the areas covered by EU environmental law.[57] The decision of the Supreme Court of Justice, acting as the predecessor of the Curia, in Case No Kfv.II.39.243/2006/5, pointed out that the locus standi of the social organization exists in the context of the provision of the decision imposing the obligation to compensate for the wood. The amount to be paid for the felling of the trees will be used to plant new trees in the district, as the building authority indicated in its decision. There is an obvious environmental interest in the value of the financial compensation, as more trees can be planted with a larger amount of money, and there is therefore an important environmental interest in ensuring that the value of the financial compensation is determined by applying the law correctly. *"The obligation to pay a financial contribution is not a sanction imposed for a violating and unlawful conduct, which the plaintiff would not be entitled to challenge, but an obligation to pay money to reduce the environmental impact of lawful and authorized conduct, the amount of which the plaintiff may legitimately challenge because of the strict purpose limitation of the amount to be paid."*

The ex lege right to bring an action provides environmental social organizations with a legal means of taking action to protect the environment, a task which they have undertaken voluntarily, without the need for such action to be preceded by a public authority procedure. The right of social organizations to bring actions in administrative proceedings is governed by the framework of the procedure before the environmental authority or the competent authority. This means that the social organization initiating the administrative action may only challenge the environmental context in the administrative action in question, which is not primarily environmental in nature, and that its locus standi does not extend to issues not directly related to the environment in the public authority proceedings.[58] The Curia pointed out in its decision No Kfv.IV.37.700/2020/5 that the right to participate in environmental matters and, in this context, the right to access to justice is not unconditional and unlimited, and cannot be independent of the applicable legislation, and thus of the framework and the powers conferred by the legislator on associations and social organizations established to represent environmental interests.

Another example of the limitations on the locus standi of civil organizations is the decision of the Curia in building cases, Kfv.VI. 38.150/2010/14, which found that the plaintiff may only challenge the provisions of a final decision which affect its rights or legitimate interests. In the present case, this concerned only the

57 | Case C-240/09 LZ I, paragraph 50
58 | Decision KJE 4/2010, point III.2.

provisions of the environmental protection authority contained in the decision of the building authority.

In another decision[59], the Curia examined whether the plaintiff was entitled to act as an organization specializing in environmental protection or as a person entitled to act under the Building Act, and the weight to be given to environmental considerations when granting a building permit. The decision emphasized the need to ensure, in accordance with the relevant legal provisions, that the siting of a building must ensure the proper and safe use of the building and of neighboring properties and structures, and that the specific requirements and interests of environmental protection and nature conservation are taken into account. In the present case, the plaintiff, as an environmental association, represented the legitimate and equitable interests of natural persons in their residential area and, in so doing, legitimately complained that the impact assessment did not comply with the legislation and did not demonstrate the environmental impact of the construction of the building in the area.

The decision of the Curia No. Kfv.II.37.690/2011/5 concerned the payment of a sewerage fine for discharging waste water into a public sewer with a biochemical oxygen demand and organic solvent extract content exceeding the threshold value. The locus standi was relevant in the case in so far as the court of first instance found only an economic interest in bringing the action, which did not constitute a direct legal interest and thus did not establish a locus standi. However, the Supreme Court took a different view and declared that, although the plaintiff was only indirectly involved in the legal relationship on which the proceedings were based, he was obviously a client. The plaintiff therefore had a right to bring an action. In the view of the Curia, direct interest can also be established in the case of the plaintiff, who suffered direct and individual damage as a result of the conduct of the intervener. The plaintiff was obliged to initiate the administrative procedure, the legal basis of which derives from the fact that the plaintiff is a public service provider and is therefore the operator and responsible for the operation of the sewer, who is the first to detect pollution or any unlawful conduct in connection with the sewer. The plaintiff is obliged to ensure the proper functioning of the public sewer, it can and must take steps to this end, and is therefore entitled to 97% of the amount of the sewer fine as a consequence. The Curia is of the opinion that the court of first instance erred in limiting the plaintiff's complex interest and situation to a mere economic interest and depriving it of its locus standi on that basis.[60]

59 | Kfv.III. 37.816/2012/8.
60 | Varga 2021

6. How can developments in EU law be incorporated into national practice?

As described in the introduction to this study, the subjective and objective legal protection role of administrative judication and the development of European administrative judication have increasingly shifted towards an objective legal protection function. Both national and international EU legislation are giving priority to the protection of the environment, since it is a priority area affecting a broad section of society, if not the whole of society. Societies that are prepared to protect their natural and built environment in order to protect their own and their descendants' health and cultural values cannot avoid involving their communities and environmental civil organizations in environmental decision-making processes and taking action against the decisions taken.[61]

In this area, the domestic legislation is fully in line with EU rules, and in environmental matters the civil organizations concerned have, as a general rule, the locus standi. On the other hand, the right of a member of the public to bring an action is already regulated more flexibly by the CJEU.

However, Hungarian case law also narrows the scope of civil society organizations, as the social organization initiating an administrative action, which is not primarily concerned with environmental protection, may only dispute the environmental issues in those administrative proceedings, and its locus standi may not extend to issues not directly related to the environment.[62] The locus standi of social organizations in administrative proceedings shall be governed by the framework of the proceedings before the environmental authority or the participation of the competent authority. This means that a social organization initiating an administrative action may only challenge the environmental context in a given administrative action, which is not primarily environmental in nature, and its right of action does not extend to issues not directly related to the environment in the public authority proceedings.[63] The right to participate in environmental matters and, in this context, the right to access to justice, is not unconditional and not unlimited, and cannot be independent of the applicable legislation, and thus of the framework and the powers conferred by the legislator on associations and social bodies set up to represent environmental interests. This in turn imposes additional scrutiny criteria on the proceeding court, since the civil organization may not have locus standi in certain actions.

However, it is clear from international examples[64] that it is not acceptable to allow civil organizations to play the role of mere interested parties in environmental

61 | Fülöp 2016, 85.
62 | Decision KJE 4/2010. para III.2.
63 | Decision KJE 4/2010.
64 | See below the example of Slovakia

cases; they must be granted client status and – under certain conditions -locus standi. The practice of the ECtHR is relevant in this context in that civil organizations can also submit public interest applications alongside individuals, however the protection of collective interests is already an obstacle at the admissibility stage, because it requires civil organizations to be victims and to suffer significant disadvantages. It can also be derived from the stricter regulation that only those specifically concerned have the right to participate in decision-making in environmental matters.

7. International perspective – Slovakian practice

The Slovakian legal system provides the prosecutor with a number of public law functions beyond the enforcement of the state's criminal claims, however does not give him the right to bring administrative proceedings[65], despite the fact that administrative judication was abolished in Czechoslovakia by the Act 65 of 1952 and the prosecutor's office was the primary body exercising control over the activities of the public administration instead of administrative judication. Only the judicial review of social security decisions remained, in addition to the rules governing civil procedures.[66] This rule prevailed until 1967, when the rules governing civil proceedings were applied to administrative proceedings, until the creation of a separate Code of Administrative Procedure.

Administrative procedure in the Slovak Republic is regulated, inter alia, by Act No 71/1967 on Administrative Procedure. Pursuant to Article 14 of this Act, persons whose rights and legitimate interests are directly affected by administrative proceedings may apply to be recognized as clients. The Slovak Code of Administrative Procedure thus recognizes as a party anyone whose rights, legitimate interests or obligations are the subject of the proceedings, who is directly interested in the proceedings or whose rights, legally protected interests or obligations are affected by the proceedings. However, recognition as a party is conditional on the existence of a direct, personal, legitimate interest and on the fact that the decision or the action of the authority relates to the (own) legal situation of the party.[67]

What is interesting from the point of view of locus standi in their regulation is that, prior to 30 November 2007, the second sentence of Article 83(3) of Act 543/2002 conferred the status of client on associations whose purpose was the protection of the environment. Such status was granted to associations which applied in writing for authorization to participate within a specified period. Under

65 | Varga Zs András 2008
66 | The Czech Supreme Administrative Court: The History of the Czech Supreme Administrative Court Microsoft Word – czech_en_2014.docx (aca-europe.eu) (9 April 2021.)
67 | Article 14(1)-(2) of the Code of Administrative Procedure No 71/1967 (Správny poriadok) (Slovak Republic).

paragraph 6 of this provision, these associations could request to be notified of any procedure likely to affect the environment. Under paragraph 7, the authorities were accordingly required to notify the associations. Such associations also had the possibility to challenge any decision before the courts in accordance with Article 250(2) of the Code of Civil Procedure. However, Act 554/2007 amended the Act 543/2002 with effect from 1 December 2007 and classified environmental associations as 'interested parties' instead of 'clients'. This decision of the Slovak Government excluded the possibility for these associations to directly initiate proceedings to review the legality of the decisions.

One of the best-known cases in this context is the so-called 'brown bear' case.[68] The legal dispute was between an association for environmental protection under Slovak law and the Slovak Ministry for Environmental Protection, in the issue that the association had requested to be allowed to participate as a 'party' in administrative proceedings concerning the authorization of derogations from the rules on the protection of species such as the brown bear, access to protected natural areas or the use of chemicals in such areas. The association's aim was to ensure the full protection of brown bears by prohibiting their hunting. Finally, the CJEU declared that it is for the national court to interpret the procedural rules governing the conditions for exercising the right of administrative or judicial review as fully as possible in a manner that is consistent both with the objectives of the Aarhus Convention and with the aim of effective judicial protection of rights guaranteed by EU law, so that environmental organizations can challenge before the courts decisions taken in administrative proceedings that may be contrary to EU environmental law.

8. Summary

Preserving, protecting and enhancing our environment as our life-support system and our common heritage must be a common European value. EU environmental law establishes a common, interdependent framework of obligations for public authorities and rights for the public.

The Member State legislation is infringing EU law, which does not recognize the locus standi for persons for whom it is granted by EU law. Where national rules and case-law on locus standi are inconsistent with the right of remedy under EU law, EU law is directly applicable and takes precedence over national law. EU law has made it clear that the right to access to justice in the field of the environment must reflect the public interests concerned.[69] Among the EU secondary legislation, national legal provisions on access to justice in environmental matters differ considerably,

68 | Lesoochranárske zoskupenie judgment, C-240/09.
69 | Commission Communication on access to justice in environmental matters, (2017/C 275/01)

however the CJEU has made important decisions clarifying EU requirements for access to justice in environmental matters both within and outside the scope of harmonized secondary legislation.

It can be seen that it is not only a matter for consideration under national procedural law, but that there are a number of means of legal protection available against certain acts of Member State administrations that go beyond that, and that these means also provide effective legal protection. There are areas of harmonized legal areas where the right of remedy is not only at the level of fundamental law, in the light of Article 47 of the Charter, but also in the form of specific EU legislation in the form of regulations or directives.

In environmental, consumer protection and data protection matters, the locus standi for civil organizations is taken into account in the common EU sources of law, in addition to the rights of the entities directly concerned. The Aarhus Convention gives a special role to civil organizations in environmental matters, for which the case-law of the CJEU already provides sufficiently developed guidance.

Finally, it is recalled that locus standi derives from the right to a fair trial as a fundamental right. The principle – which the CJEU has kept in mind in its practice in relation to direct actions – that the right to a fair trial, of which the right of access to a court is a specific aspect, is not an unlimited right and may therefore be subject to implied limitations, such as the examination of the admissibility of the action, is also a guiding principle in the application of national law. This must not, however, restrict the right of access to a court open to legal persons in such a way or to such an extent as to affect the essence of the fundamental right.

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