

CLIMATE CHANGE, ENERGY AND
ENVIRONMENT

ACCESS TO JUSTICE OF ENVIRONMENTAL NGOS: A COMPARATIVE PERSPECTIVE (EU, FRANCE, CYPRUS)

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The locus standi of Cypriot ENGOs (Environmental NGOs) to challenge the authorities on environmental issues remains unresolved.



Three EU directives transposed into Cyprus law have addressed the issue in a very limited way.



This publication considers the limitations in the Cyprus system and discusses how the European Court of Justice has dealt with ENGO rights and how the French judiciary has interpreted ENGO rights and developed case law in support of environmental protection.



Various thoughts are put forward for Cypriot society to achieve more effective protection of its environment, in which the judiciary, the state, and NGOs have a role to play.

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I.

EDITOR'S NOTE

This publication, leading to an online presentation in February 2021, arose from a long-standing concern of Cypriot environmental NGOs that they could not confidently take effective legal action to challenge public authorities for acts or omissions affecting the environment.

The Aarhus Convention on Access to Information, Public Participation in Decision-making, and Access to Justice on Environmental Matters of 1998 was enacted into Cyprus law in 2003. Measures were introduced to implement the first two pillars of the Convention, viz. access to information and participation of the public in decision-making; but no initiatives were taken regarding the third pillar, access to Justice. According to the Convention its provisions for access to justice of individuals and NGOs are subject to the domestic law and practice of each state.

A ruling by the Supreme Court in the year 2000, based on the position that the Cyprus Constitution makes no direct provision for environmental protection and that group actions in the public interest amounted to *actio popularis* (which is not part of the Cypriot legal system), discouraged NGOs from pursuing legal action in the years that followed.

During the intervening two decades NGO-led initiatives, often involving members of the judiciary, led to seminars or open discussions on the rights of NGOs. These initiatives however, always led back to the lack of a legal mechanism granting *locus standi* to NGOs (except in those limited cases where EU sectoral legislation had granted such rights after EU accession in 2004). Meanwhile decisions of the CJEU as expressed in judgements concerning European cases and rulings on preliminary issues, as well as guidance notes issued by the EU, have shifted European thinking on this issue.

The three papers comprising this publication whose authors are a judge of the CJEU, a legal advisor with knowledge of the French system and a Cypriot NGO leader, aim to present recent thinking and the consequent evolution in case law, at EU and national level. In the past it has been common to compare the Cypriot judicial approach to that of Greece – a not altogether helpful comparison. Given that the Greek Constitution has provided for a right of environmental protection since 1975, environmental rights have evolved quite differently in each country. The current trilogy of papers has chosen to highlight the evolu-

tion of environmental case law in France, a country which has not historically included protection of the environment in its constitution. This is combined with an analysis of the CJEU approach and philosophy, culminating in an exposition of rights currently afforded to Cypriot NGOs and thoughts on how they could be strengthened.

Public opinion in Cyprus has now generally accepted that a healthy environment is a common benefit to all. It follows that this common good when threatened, cannot be dependent solely on legal measures available through individual rights. Effective protection of the environment recognises the necessity of enabling society to exercise collective rights by groups of concerned citizens.

The aim of this work is to re-ignite the discussion about how best the Cypriot legal system can encompass environmental NGOs as actors with legitimate interests. Hopefully, these presentations will offer encouragement to NGOs, and be of assistance to lawyers representing NGOs in legal recourses and to jurists who will hear their arguments. In light of the fundamental changes which are currently being introduced to the Cyprus Judicial system and legal procedure, this could be the right moment to reflect on NGO rights.

Sincere thanks are due to the Friedrich Ebert Foundation, without which this endeavor could not have been realised; to the Law Department of UCLan University of Cyprus, to the NGO Civil Society Advocates; to former judge of the CJEU George Arestis, for his guidance; to my colleagues at the Lao-na Foundation; and of course, to my fellow contributors.

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II. LOCUS STANDI OF NON-GOVERNMENTAL ORGANIZATIONS IN ENVIRONMENTAL MATTERS UNDER EU LAW

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In the early stages of their existence and action, non-governmental organizations (NGOs) which promoted the protection of the environment had no substantial role in the drafting and implementation of rules of law. They usually operated as bodies applying pressure on governments and international organizations. Gradually, especially following the adoption of the Kyoto Protocol¹ and the Aarhus Convention,² the role of NGOs underwent a significant change. In particular, with the ratification of the Aarhus Convention by the EU and all its Member States, NGOs have, *inter alia*, the opportunity to apply to a court or other independent and impartial body for review of acts and omissions of public authorities and private persons affecting the environment.

The wide scope of the *locus standi* afforded to NGOs by European Union law substantially strengthens their role in safeguarding the rules and principles governing the protection of the environment and renders them important agents for securing substantial implementation of EU environmental policy across Europe. Nevertheless, access of NGOs to the Court of Justice of the European Union (CJEU), as provided by EU law, is, for reasons which are not related to the environmental domain, narrower than that which EU law secures for such organizations before national courts. In this article, these two aspects of access to justice shall be examined, namely, on the one hand, access at the level of the CJEU and on the other, at the level of national courts. But first, a brief presentation shall be made of the provisions of the Aarhus Convention from which, to a large extent, the *locus standi* of NGOs derives.

1. THE IMPACT OF THE AARHUS CONVENTION ON THE RIGHT OF ACCESS TO JUSTICE FOR NGOS IN ENVIRONMENTAL MATTERS

The European Community signed the Aarhus Convention on 25 June 1998 and ratified it on 17 February 2005.³ The provisions of this convention, form, therefore, an integral part of the legal order of the EU.⁴ Although the *locus standi* of NGOs in the European Community chronologically preceded, to a certain extent, the Aarhus Convention, the convention placed significant emphasis on access to justice for such organizations. It provided a broad and solid legal basis for such access which led to the inclusion of provisions governing the matter in a number of secondary EU law acts (regulations and directives).

The Aarhus Convention secures three basic environmental rights in favour of the 'public': the right of access to environmental information, the right of participation in the relevant decision-making procedures and the right of access to justice. Emphasis is placed, in this context, on the role of NGOs. It is worth stressing that, in the definition of the 'public concerned', the convention expressly includes NGOs promoting the protection of the environment, on condition, however, that such organizations comply with potential requirements imposed by the contracting parties' internal law.⁵ Each contracting party can therefore set particular requirements for the recognition of such organizations, such as, for example, a minimum number of members or a minimum period of existence.

Access to justice is governed by Article 9 of the convention, which requires contracting parties to provide, for the purposes specified in that article, access to a court of law or other independent and impartial body established by law. Consequently, the right to file a recourse, which is provided in the convention, may be exercised before a court of law and/or an independent administrative body.

¹ The Kyoto Protocol on Climate Change was adopted in Kyoto, on 11 December 1997. The European Community signed the Protocol on 29 April 1998.

² The Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters was signed on 25 June 1998 and entered into force on 30 October 2001.

³ Council Decision of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision – making and access to justice in environmental matters (2005/370/EC), OJ L 124, of 17.5.2005, p. 1.

⁴ CJEU, C-240/09, *Lesoochránárske zoskupenie*, ECLI:EU:C:2011:125, para. 30.

⁵ Aarhus Convention, Article 2(5).

According to the subject matter of the relevant dispute, article 9 regulates access to justice in different ways, as provided in paragraphs 1, 2 and 3 of the Convention and outlined immediately below.

Paragraph 1 of Article 9 sets out the right to file a recourse before a court of law or an independent administrative body, to challenge a decision regarding a request of access to environmental information. This provision does not include any details vis-à-vis requirements concerning the admissibility of such recourses, other than the fact that the right to file a recourse must be recognised. Indeed, such details are not necessary, given that Article 4 of the Convention establishes the right of the public to request environmental information from public authorities. Consequently, every person who submits an application for such information to a public authority and is not fully satisfied by the answer received, has an obvious legitimate interest to challenge this answer before a court of law or other independent and impartial body, as the case may be.

Paragraph 2 of Article 9 refers to Article 6 and other provisions of the Convention, which provide for the right of the public to participate in decision-making procedures affecting the environment. It secures the right of members of the ‘public concerned’ to have access to a review procedure before a court of law or other independent and impartial body, whereby they can challenge the substantive and procedural legality of any decision, act or omission which is subject to the said provisions of the Convention.

This right of access to a review procedure presupposes that the applicant can show sufficient interest in obtaining the review or that his rights are impaired by the challenged decision, act or omission. Moreover, Article 9(2) expressly clarifies that NGOs promoting the protection of the environment and fulfilling the conditions set out in the law of the relevant contracting party, should such conditions exist, are deemed to have sufficient interest, as well as rights capable of being impaired. Consequently, their standing to apply for review is secured.

Paragraph 3 of Article 9 of the Convention is of particular importance, in that, contrary to the first two paragraphs of this article, it does not limit itself to the right of access to justice for safeguarding the few substantive rights that the Convention itself establishes, but provides for a general right of ‘members of the public’ to have access to administrative and judicial procedures to challenge acts and omissions by public authorities and private persons who contravene provisions of domestic law relating to the environment.

The particularly wide scope of this provision brings with it, however, as a price, a lesser protection for the right it establishes: Firstly, this right is provided to ‘members of the public’ without expressly stating that these include NGOs. As for the definition of the term ‘public’, included in Article 2(4), it refers back to the law and practice of each state, which can prescribe whether associations, organisations and groups of people are included within this concept. Secondly, Article

9(3) itself renders the general right of access to justice subject to terms potentially set out in domestic law. As a consequence and given the wide discretion this provision allows contracting parties, the manner in which this provision has been interpreted and implemented by the EU is particularly important.

2 . LOCUS STANDI FOR CHALLENGING ACTS OF EU LAW BEFORE THE COURT OF JUSTICE OF THE EU

The right to institute proceedings before the CJEU for the purpose of reviewing the legality of acts of the institutions, bodies and agencies of the EU intended to produce legal effects vis-à-vis third parties, is provided for in Article 263 of the Treaty on the Functioning of the EU (TFEU). For non-privileged litigants, i.e., for litigants other than Member States and EU institutions, this article (as was the case for Article 230 EC that preceded it), provides that they may institute proceedings against acts either addressed to them or of direct and individual concern to them.

On this basis, there is no difficulty for NGOs to challenge individual acts of which they are the addressees. Recent examples include cases of environmental NGOs which succeeded in annulling acts through which institutions and agencies of the EU refused them access to documents.⁶

On the other hand, instituting such proceedings against legislative or regulatory acts or, more generally, against acts of which the NGOs are not the addressees, is particularly difficult. This is due to the settled case law of the Court, which while not relating to the environmental sector, is of general application. According to the CJEU jurisprudence, natural or legal persons satisfy the condition of ‘individual concern’ only if the contested act affects them by reason of certain attributes that are peculiar to them; or by reason of circumstances in which they are differentiated from all other persons, and by virtue of these factors distinguishes them individually, just as in the case of the addressee.⁷ Hence, save for rare exceptions, a measure may not be challenged when the legal effects it produces concern categories of persons defined in a general and abstract manner.

It is worth mentioning that the effort made by Greenpeace to obtain a less restrictive interpretation of the requirement for ‘individual concern’ in environmental matters has failed.⁸

⁶ CJEU, C-57/16 P, *ClientEarth v. Commission*, ECLI:EU:C:2018:660; CJEU, C-615/13 P, *ClientEarth and Pesticide Action Network Europe (PAN Europe) v EFSA*, ECLI:EU:C:2015:489.

⁷ CJEU, 25/62, *Plaumann*, ECLI:EU:C:1963:17; For a recent example of application of this jurisprudence, in an action concerning the protection of the environment, see GCEU, T-330/18, *Carvalho*, ECLI:EU:T:2019:324.

⁸ See order of the Court of First Instance of the European Communities (First Chamber) of 9 August 1995, *Stichting Greenpeace Council (Greenpeace International) and others v. Commission*, T-585/93, ECLI:EU:T:1995:147 and judgment of the Court of Justice of 2 April 1998, *Stichting Greenpeace Council (Greenpeace International) and others v. Commission*, C-321/95 P, ECLI:EU:C:1998:153.

With the Treaty of Lisbon, the fourth paragraph of Article 263 TFEU was amended so as to widen the circle of persons eligible to institute proceedings for judicial review before the CJEU. Based on this provision, besides the acts addressed to the applicant and those which are of direct and individual concern to him, proceedings can be instituted against regulatory acts which are of direct concern to the applicant and do not entail implementing measures. Thus, in the case of regulatory acts which do not entail implementing measures, the *locus standi* of natural and legal persons (non-privileged litigants) no longer requires that the targeted act be of 'individual concern' to the applicant. It suffices that the act be of 'direct concern'. It must, however, be noted that, even though this amended provision, as interpreted by the CJEU,⁹ has widened the possibility to institute proceedings before the CJEU for judicial review of acts by EU institutions, such possibility remains quite limited for non-privileged litigants such as NGOs.¹⁰

In 2006, without altering this general framework, regulation 1367/2006¹¹ was put in place, which lays down rules applying the provisions of the Aarhus Convention to the institutions and bodies of the EU. This regulation provides, *inter alia*, that NGOs are entitled to request an internal review by an EU institution or body that either adopted an administrative act under environmental law or should have adopted such act but omitted to do so. This entitlement applies if the NGOs in question meet the following conditions: they are independent non-profit-making legal persons in accordance with a Member State's national law or practice; the 'promotion of environmental protection in the context of environmental law' is stated as their primary objective; they are actively pursuing this objective and have existed for more than two years. Such NGOs are subsequently entitled to institute proceedings before the CJEU against decisions issued in relation to their applications for internal review.

In the context of a recent assessment of the situation, the European Commission found that the scope of implementation of the internal review procedure provided for in regulation 1367/2006 remains limited, in that it only concerns administrative acts of individual scope adopted 'under' environmental law, a fact that, in the view of the Commission, creates uncertainties regarding compliance with Article 9(3) of the Aarhus Convention.¹² The European Commission

submitted, as a result, a proposal for amending regulation 1367/2006, through which the definition of an administrative act in respect of which NGOs may request an internal (administrative) review and, subsequently, institute proceedings before the CJEU is broadened. Specifically, if this amending regulation is adopted, the term 'administrative act' may apply to any non-legislative act adopted by EU institutions or bodies which contains provisions that may, because of their effects, contravene environmental law. However, the provisions of such act for which EU law expressly requires the implementation of measures would be excepted¹³.

With this proposal, the European Commission aims at adjusting regulation 1367/2006 to meet both the requirements of Article 9(3) of the Aarhus Convention and of the fourth paragraph of Article 263 TFEU, through which the *locus standi* of non-privileged applicants wishing to challenge acts of EU law has been widened. It is, however, possible to ask oneself whether this proposal will not result in bypassing certain requirements still included in Article 263 TFEU in relation to the filing of direct actions before the CJEU. Indeed, with the proposed amendment, NGOs will have the right, with regard to regulatory acts which do not entail implementing measures, to request an internal review by the EU institution which has adopted the contested act. Where the said institution refuses to withdraw or amend the act, they will have the right to challenge this decision, of which they will be the addressees, before the CJEU. This might indirectly allow a judicial review of such regulatory acts by the CJEU without requiring, as is provided by Article 263 TFEU, that the contested act be of direct concern to the applicant NGO.

Having said this, as things stand today, and considering the limited possibilities for NGOs to file direct actions before the CJEU, it is mainly before the national courts that these organizations may institute proceedings aiming at securing the implementation of EU environmental law. This is in line with the overall system of effective judicial protection in the EU, given that national courts are the ones that, par excellence, apply EU law,¹⁴ in cooperation, where necessary, with the CJEU, through the procedure of preliminary reference under Article 267 TFEU.

3. LOCUS STANDI FOR SECURING THE IMPLEMENTATION OF EU ENVIRONMENTAL LAW BEFORE NATIONAL COURTS

As already mentioned, the provisions of the Aarhus Convention form part of the legal order of the EU. Consequently, the obligation to recognise the *locus standi* of NGOs pursuant to Article 9 of this convention, is, for Member States, an obligation arising under EU law.

to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies, COM (2020) 642 final, 14.10.2020, Explanatory memorandum, part III.

¹³ *Ibidem*, article 1, paragraph 1.

¹⁴ The CJEU identifies them as the 'ordinary' courts within the EU legal order [see CJEU (Full Court), opinion 1/09 of 8 March 2011 on the creation of a unified patent litigation system, ECLI:EU:C:2011:123, para. 80].

⁹ CJEU, C-583/11 P, *Inuit Tapiriit Kanatami and others v. European Parliament and Council*, ECLI:EU:C:2013:625; CJEU, C-274/12 P, *Telefónica v. Commission*, ECLI:EU:C:2013:852; CJEU, C-456/13 P, *T & L Sugars and others v. Commission*, ECLI:EU:C:2015:284.

¹⁰ See, *inter alia*, A. Pliakos, 'The law of the European Union: Institutional & Substantive Law (2018)', 321 – 327, (A. Πλιάκος, *Το Δίκαιο της Ευρωπαϊκής Ένωσης: Θεσμικό & Ουσιαστικό Δίκαιο* (2018), 321-327).

¹¹ Regulation (EC) 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters to Community institutions and bodies, OJ L 264, 25.9.2006, p. 13-19.

¹² See, Proposal for a Regulation of the European Parliament and of the Council on amending Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access

For securing the implementation of the provisions of paragraphs 1, 2 and 3 of Article 9, which provide for a right of access to justice of members of the public and especially NGOs, the Union has introduced provisions governing access to justice in a number of environmental law directives.¹⁵

However, there is no general ‘procedural’ directive for access to justice in environmental law cases governing issues of a procedural nature such as the definition of ‘legitimate interest’, the available judicial remedies or the extent and form of judicial control. An attempt to adopt such a directive was perceived by Member States as violating the principle of subsidiarity. The general principle of procedural autonomy of Member States, as it appears in the Court’s established case law, is therefore applicable. According to this principle, in the absence of EU procedural rules, it is for the legal system of each Member State to establish such rules, on the condition, on the one hand, that such rules are not less favourable than those governing similar domestic actions (principle of equivalence), and on the other, that they do not make it in practice impossible or excessively difficult to exercise rights conferred by EU law (principle of effectiveness).¹⁶

In the absence of relevant binding EU law, the European Commission has issued communications for improving access to justice in environmental matters,¹⁷ where it clarifies what it deems compatible with EU law, thus guiding Member States towards the adoption of appropriate procedural rules. These communications, however, have no binding legal effect. Under such circumstances, the case law of the CJEU is of decisive importance.

The first ruling by the CJEU that should be mentioned here is *Trianel*,¹⁸ whereby the Court interpreted the provision on access to justice included in the directive on the assessment of the effects of certain public and private projects on the environment. The said provision falls within the scope of Article 9(2) of the Aarhus Convention. In its ruling, the CJEU stresses that national authorities must not deprive NGOs of the ‘*possibility of verifying compliance with the rules of [environmental] law, which, for the most part, address the public interest*

and not merely the protection of the interests of individuals as such’ (para. 46). Therefore, when Member States set out the conditions for the admissibility of an action and, more specifically, when they determine what rights can give rise, when infringed, to an action concerning the environment, they may not confine to individual rights the rights whose infringement may be relied on. Indeed, by doing so they would deprive environmental protection organisations, which protect not individual rights but collective interests, of the opportunity of playing the role granted to them both by the directive and the Aarhus Convention. In particular, the Court stresses that the admissibility of an action may not depend ‘*on conditions which only other physical or legal persons [and not NGOs] can fulfil, such as the condition of being a more or less close neighbour of an installation or of suffering in one way or another the effects of the installation’s operation*’ (para. 47).

Of greater importance, however, is the case law concerning access to justice in relation to general issues of environmental protection, namely, in relation to matters not related to substantial provisions of the Aarhus Convention. Indeed, given that access to justice in relation to such matters falls under Article 9(3) of the Convention, the protection that the Convention itself provides to such access is relatively limited,¹⁹ thus leaving a wider margin to the Convention’s contracting parties.

The CJEU clarified that Article 9(3) of the Aarhus Convention lacks direct effect, noting that ‘*[s]ince only members of the public who meet the criteria, if any, laid down by national law are entitled to exercise the rights provided for in Article 9(3), that provision is subject, in its implementation or effects, to the adoption of a subsequent measure*’.²⁰ Consequently, members of the public and, particularly, environmental NGOs, cannot invoke Article 9(3) in itself to secure access to justice.

A decisive development in the Court’s case law, however, resulted from case C-243/15, *Lesoochranárske zoskupenie* (LZ II).²¹ The facts of this case fell within the scope of Article 9(2) of the Aarhus Convention. Nevertheless, they provided the CJEU with the opportunity to examine the implementation of the Charter of Fundamental Rights of the EU (the ‘Charter’) in a way that has a wider significance. In its ruling, the Court, having repeated that the Aarhus Convention forms an integral part of the EU legal order, held that, when a Member State establishes procedural rules in relation to judicial remedies which are provided for the exercise of rights that an NGO derives from this Convention, the said Member State is considered to be implementing EU law. This leads to the application of the Charter and, more specifically, of Article 47 thereof, which, *inter alia*, secures the right to an effective remedy before a court of law.

¹⁵ In relation to the implementation of Article 9(1), see article 6 of Directive 2003/4/EC on the access of the public to environmental information, OJ L 41 of 14.2.2003, p. 26–32. In relation to the implementation of Article 9(2), see article 11 of Directive 2011/92/EE on the assessment of the effects of certain public and private projects on the environment, OJ L 26 of 28.1.2012, p. 1–21. In relation to the implementation of Article 9(3) see, amongst others, articles 12 and 13 of Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage, OJ L 143 of 30.4.2004 p. 56–75, as well as article 25 of Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control), OJ L 334 of 17.12.2010, p. 17–119.

¹⁶ See, *inter alia*, CJEU, C-429/15, *Danqua*, ECLI:EU:C:2016:789, para. 29, as well as CJEU, C-115/09, *Trianel*, ECLI:EU:C:2011:289, para. 43.

¹⁷ The most recent such announcement was published on 14.10.2020: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Improving access to justice in environmental matters in the EU and its Members States, COM/2020/643 final. It is available here: [IMMC.COM%282020%29643%20final.ENG.xhtml#_EN_ACT_part1_v3.docx](https://ec.europa.eu/imm/COMMUNICATIONS/2020/20200643_COM_COMMUNICATION_ENG.xhtml#_EN_ACT_part1_v3.docx) (europa.eu)

¹⁸ CJEU, C-115/09, *Trianel*, ECLI:EU:C:2011:289.

¹⁹ See, part I above.

²⁰ See cases, CJEU, C-240/09, *Lesoochranárske zoskupenie* (LZ I), ECLI:EU:C:2011:125, para. 45, as well as CJEU, C-664/15, *Protect*, ECLI:EU:C:2017:987, para. 45.

²¹ CJEU, C-243/15, *Lesoochranárske zoskupenie* (LZ II), ECLI:EU:C:2016:838.

Thus, the CJEU's ruling in LZ II marks two important developments. First, while the Aarhus Convention is an act of international law in a field – the environment – of shared competence of the EU and its Member States, the implementation of this Convention, where it concerns issues in relation to which the Union has exercised its competence,²² is an obligation deriving from EU law. Second, the combined implementation of the provisions of this Convention and of Article 47 of the Charter has resulted in establishing that the right of access to justice must necessarily entail the right to an effective remedy before a court of law.

In *Protect*,²³ the CJEU drew, in relation to Article 9(3) of the Aarhus Convention, the conclusions from its LZ II case law. The fact that Article 9(3), in itself, lacks direct effect according to EU law, leaving it to domestic law to establish the criteria for the access of the 'public' to administrative or judicial review procedures, has come to be of limited importance, given that this article must be applied in combination with Article 47 of the Charter. Article 47 has direct effect²⁴ and imposes on Member States an obligation to secure the effective judicial protection of the rights derived from EU law, including the provisions of EU environmental law. The Court consequently held, that the words '*criteria, if any, laid down in its national law*', used in Article 9(3), '*[a]lthough they imply that contracting states retain discretion as to the implementation of that provision*', they '*cannot allow those states to impose criteria so strict that it would be effectively impossible for environmental organisations to contest the actions or omissions that are the subject of that provision*' (para. 48).

Thus, even though the procedural rules to be applied in the Member States are not set by EU law, an obligation exists for the said States to establish such rules that are capable of allowing environmental NGOs access to national courts, so that they can challenge acts or omissions they consider to be violating provisions of EU environmental law or national law provisions transposing the latter.

CONCLUSION

The *locus standi* of NGOs in matters of EU environmental law remains limited before the CJEU, due to the wider restrictions applicable to the filing of actions for judicial review by non-privileged litigants. Yet, taking into account that environmental NGOs (unmotivated by financial, commercial or other private interests), promote environmental protection for the public benefit, the CJEU has, by relying on the Aarhus Convention, which forms part of EU law, strengthened the standing of environmental NGOs before their national courts in disputes governed by EU environmental law.

By instituting proceedings before national courts and, where deemed necessary by the said courts, through preliminary references made to the CJEU under Article 267 TFEU,²⁵ NGOs have acquired the necessary tools to significantly contribute to the enforcement of environmental law under conditions of effective judicial protection.

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²³ CJEU, C-664/15, *Protect*, ECLI:EU:C:2017:987.

²⁴ See CJEU, C-556/17, *Torubarov*, ECLI:EU:C:2019:626, para. 56, as well as CJEU, C-414/16, *Egenberger*, ECLI:EU:C:2018:257, para. 78.

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III. ACCESS TO JUSTICE FOR ENVIRONMENTAL ORGANIZATIONS IN FRANCE: AN EVOLVING PROCESS TOWARDS THE CHARTER FOR THE ENVIRONMENT

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The purpose of this study is to present how the French courts have treated the issue of *locus standi* of environmental organizations, in accordance with the particularities and historical evolution of French administrative law. Special reference will be made to proceedings before the Council of State, viz. the Supreme Administrative Court (hereafter: Council or CoS). It will be useful at this stage, before examining the subject matter of the study, to refer to two elements which will help understand what follows.

Firstly, it should be noted that in France any organization (having the legal status of a trade union, an association, or any other form) can demand the annulment of an administrative act which interferes with the core objective of the organisation, as declared in its statutes. In principle, environmental organizations fall under the same regime, though with certain nuances. So, in effect this means that the right to defend common goods, such as the environment, through collective action is recognized. Secondly, France has put in force, since 2005, a Charter for the Environment, which enjoys constitutional status. In fact, the Preamble to the Constitution of 1958 was so amended as to include reference to the Charter. According to the directions of the then Minister for the Environment to Professor Coppens, President of the Commission (which carries his name), and which drafted the Charter, its goal was to accord constitutional status to fundamental principles of environmental protection; thereby securing the coherence of environmental law and reflecting the quest for justice and solidarity among peoples and generations²⁶. Based on the view of the Commission itself, adoption of the Charter reflected a “necessity of our times”²⁷.

Within this context, the right of access to justice for protection of the environment is a right recognized by French case-law since several decades ago, extending to both natural and legal persons. This has been so, well before the adoption of the Charter for the Environment, but, more importantly, even before the ratification by France of the Aarhus Convention (1998) in 2002. In order therefore, to achieve a clearer understanding

of the evolution of this right, it is principally worth studying the period of the 1980's and 90's (stretching up to the beginning of the 00's), during which the right of access to justice for environmental matters was shaped and took the form that in broad terms it still has today. Hence, unless otherwise noted, what follows covers mainly this specific period.

In order to evaluate the degree of judicial protection accorded by the French legal system in matters of environmental protection we must initially look at how the notion of standing is applied to legal persons, particularly within the context of an action to secure an annulment procedure. Thus the main question to be answered is under which conditions would environmental organizations have the right to stand before administrative tribunals to challenge the legality of individual or regulatory acts affecting the environment²⁸.

1. RULES OF STANDING REGARDING ACTIONS FOR ANNULMENT

The action for an annulment procedure in France (*recours pour excès de pouvoir*) oscillates traditionally between two conflicting objectives. On the one hand, is the need to enlarge the conditions of admissibility, so as to enforce the principle of effective judicial protection against administrative acts vitiated by errors of law (*principe de légalité*)²⁹. On the other hand, there is always the risk of admitting an *actio popularis*³⁰, the prevention of which often mobilizes the creativity of French judges³¹. Administrative judges and especially the CoS have provided for a middle ground in order to bridge the gap between these two opposite poles. Thus, the concept of legal standing (*intérêt à agir – qualité pour agir*) functions as a mediator and moderates the right of access to justice. That said, it should be noted that this effort results in a reasonable moderation and not in a “strangulation” of the

²⁶ Lettre de mission adressée au Professeur Coppens par la Ministre de l'Ecologie et du Développement Durable, Roselyne Bachelot Narquin, Paris, 8 Juillet 2002.

²⁷ Rapport de la Commission Coppens de la préparation de la Charte de l'environnement, 2004, p. 9.

²⁸ This also now includes demanding the annulment of laws by referring the question to the Constitutional Council for a preliminary ruling (*question prioritaire de constitutionnalité – QPC*).

²⁹ René Chapus, *Droit du contentieux administratif*, 12^e édition, Montchrestien, 2006, p. 459.

³⁰ Camille Broyelle, *Contentieux administratif*, 5^e édition, LGDJ, 2017-2018, p. 73.

³¹ Bertrand Seiller, *Droit administratif 1. Les sources et le juge*, 2^e édition, Champs Université – Flammarion, 2004, p. 164.

right. The concept of legal standing is shaped, according to the judge's discretion, in a loose and liberal way, so that the right of access to justice can be fully enjoyed in practice, without excluding the setting of targeted limits³².

In light of the above, it becomes obvious that the concept of legal standing has been largely invented and shaped by case-law. With regard to actions for annulment, it has been generally held both for natural and legal persons, that to exercise such a right, a real, personal, and legitimate interest of the claimant must be affected in a direct and indisputable way. Throughout the 20th century, the Council has shown a tendency to extend the concept of standing so as to include legal persons³³. As early as 1909 (in *Syndicat des patrons-coiffeurs de Limoges*) the CoS interpreted in a broad sense the concept of standing, as it did for users of public services³⁴. It has constantly held that ordinary citizens, provided that they have formed an association, can challenge administrative acts by claiming the application of the principle of legality and thereby defend their interests. By means of its case-law, which has been enriched over the course of time, the CoS has stressed the need for collective interests to be defended through appropriate means and by the most appropriate actors. This tendency could only be extended, at a later period, to matters of environmental protection. Mobilization of members is a special characteristic of organisations in this field, hence it constitutes a particularly relevant ground for implementing a broader strategy vis-à-vis legal standing.

2. RULES OF STANDING CONCERNING ENVIRONMENTAL ORGANIZATIONS

As a general remark, France holds, since the 90's, a prominent position among European countries with regard to access to justice for environmental protection issues. France belongs to those countries which have adopted an "intermediate approach" on this matter, meaning that the courts do not recognise an *actio popularis*, but require that a legitimate interest in the case be demonstrated. Nevertheless, French courts have established and guaranteed, both in theory and in practice the right of access to justice for ENGOs. As for the restrictions thereto, they have always been interpreted flexibly and under no circumstance in a way that could form a hindrance. This is well illustrated by the fact that environmental organisations from other countries (notably Dutch and Swiss NGOs) have been allowed to pursue their claims before French courts³⁵.

In light of the above remarks, it should be noted that it is a general principle of French administrative law, that in order for legal entities, to demonstrate a legitimate interest in a case, which their members would lack on an individual basis, the entity would need to present claims pertaining to issues linked to their objective, as declared in their statutes. This is the so-called principle of speciality (*principe de spécialité*). This general principle is also applied to environmental organizations, provided that protection of the environment or a particular aspect thereof, is one of the principal objectives in their statutes. This way, it becomes possible to collectively check, through group action the legality of acts which their members could not challenge individually – always on condition that a core purpose of the collective entity is affected.

Since 1987 the CoS has ruled (in *Association pour la défense des sites et des paysages*) that an organization has the right "in accordance with its statutes to challenge the legality of acts which are bound to affect its social objective, as determined therein". In order to demonstrate the dynamic evolution of the Court's interpretation of the concept of standing, suffice it to note the extremely important decision in the *Clemenceau* case of 2006. The Suspension Committee of the CoS ordered the stay of a ministerial decision allowing the aircraft carrier *Clemenceau* to sail to India in order to be dismantled. In its rather bold decision, the Court ruled that, because of the risks arising from the quantities of asbestos within the ship, and despite the fact that these imminent risks affected a place outside of France, the plaintiffs (i.e. the NGOs Greenpeace and other groups against the use of asbestos) had standing to ask for judicial protection, since "the protection of the environment on a global scale" was stated as its objective in the statutes of Greenpeace, and "protection from asbestos at a national and international level" was the stated objective of the other organizations.

Let us now examine in more detail how the right of access to justice for environmental organizations has been (a) enshrined in legislation and (b) shaped by case-law.

2a. Legislative safeguards for access to justice of environmental organizations

Before examining the conditions developed by case law for environmental organizations to demonstrate their legitimate interest in a case, it is worth noting that, especially during the decade preceding the adoption of the Charter for the Environment, the legislature had intervened and adopted rules for granting legal standing to NGOs. These rules function mainly as complementary to the general framework already established, particularly by the CoS, through its case-law of the previous period.

The regime of legislative approval was first created by the law of 10 July 1976 (art.40) and developed into its current form by a law of 1995 regarding the enhancement of environmental protection (*loi Barnier*). This law established a procedure of administrative approval of environmental organizations, which in general terms still remains in place, though modified and completed in the meantime, providing a legal presumption of standing under certain conditions. The granting of the administrative approval or

³² Bernard Pacteau, *Contentieux administratif*, 7^e édition refondue, PUF, 2005, pp. 157-158.

³³ Maxime Mignon, «Une évolution inachevée : la notion d'intérêt ouvrant le recours pour excès de pouvoir», D., *Chronique*, 1953, p. 122.

³⁴ *Syndicat des propriétaires et contribuables du quartier Croix-de-Seguey-Tivoli*, 21 décembre 1906, Rec. 962 (Marceau Long/Prosper Weil/ Guy Braibant/Pierre Delvolvé/Bruno Genevois, *Les grands arrêts de la jurisprudence administrative*, 18^e édition, Dalloz, 2011, p. 98).

³⁵ Michel Prieur et al., *Droit de l'environnement*, 7^e édition, Dalloz, 2016, p. 171.

its rejection are open to review by the court. This helps move the issue of judicial protection to a more 'established' field of administrative adjudication, definitely more favourable for NGOs, i.e., judicial review of the ground for rejecting NGO approval and/or whether there has been abuse of power in so doing.

Article 5 of this law provided specifically that lawfully established organizations whose activities, according to their statutes, are related to environmental protection and other similar objectives, and which have been in operation for at least three years, can demand from the competent authorities that they be recognized as "approved organizations" (*associations agréées*). Under this status, they can claim compensation in civil or criminal courts for prejudice to collective interests which they defend, if such prejudice arises from a violation of criminal law provisions protecting nature and the environment³⁶.

Furthermore, according to article 7 of the same law, every officially approved organization enjoys a presumption of legitimate interest when an administrative act is directly related to its objective and core activities according to its statutes and when such act produces injurious effects for the environment either to the entire territory of the country or part of it. Depending on the geographical range of the approval granted, as determined by the relevant act, the organization has the right to demand the annulment of an administrative act or to claim compensation for an illegal act or omission by the competent authorities. An example is the decision *F.A.P.E.N.* (1999), in which the CoS set aside a decision by the Court of Appeals of Nantes, in so far as the latter had ruled that the approval of an organization of itself, did not mean that it automatically enjoyed standing and that finally, after its objective was examined, it could not challenge the legality of the act in question (granting a construction license).

Having said that, administrative approval must always precede the adoption of the act concerned. The above presumption has also been extended to urban planning cases (*ordonnance* 2013-638 of 18 July 2013), where, as a general principle the concept of standing is strictly interpreted³⁷. The only condition to be respected is that the organization has deposited its statutes with the district authority (prefecture) before the adoption of the act concerned (articles 600-1-1 and 600-1-2 of the Urban Planning Code)³⁸.

³⁶ Worth noting is the fact that even non approved organizations are allowed to claim compensation in civil courts, if interests defended by them are affected. Regarding criminal courts, it is much more difficult for an organization to appear as plaintiff (*partie civile*). This can only happen under the strict conditions determined by the law. Equally, according to the law of 1995, approved organizations can claim compensation as representatives of natural persons that have suffered prejudice in common by the same person, if at least two of them give their consent. See Michel Prieur et al., *Droit de l'environnement*, 7e édition, Dalloz, 2016, p. 172.

³⁷ Michel Prieur et al., *Droit de l'environnement*, 7e édition, Dalloz, 2016, p. 171.

³⁸ See decision *Association Garches est à vous* (2017).

2b. The evolution of legal standing of environmental organizations as a judge-made concept

The creation of a special legislative regime of approval for environmental organizations, mainly thanks to the law of 1995, has not excluded judicial intervention in this field. Through its case-law the CoS had already regulated the matter in a global way so that every organization, approved or otherwise, would have the right to challenge the legality of acts putting the environment at risk. This case-law existed long before the legislative provisions mentioned; it inspired their enactment and continued to govern cases even subsequently. This has been reinforced by the fact that the CoS has affirmed that on certain occasions the approval is not enough of itself to create a sufficient interest within the context of an action for annulment (*ASSAUPAMAR*, 1997)³⁹.

The cornerstone of this case law is the fulfillment of a double condition which rests on the observation of two principles: a) the principle of the 'speciality of the objective' and b) the principle of locality. So, we shall now examine what exactly is the content of each condition, by offering concrete and illustrative examples from the relevant case law. We should also bear in mind that when the Council accepts that an organization has standing before it, it does not make a special reference to standing in its ruling, as long as the administration does not invoke its lack⁴⁰. On the contrary, it is the lack of standing which gives rise to an exposition of the issue in case law and which shapes a *contrario* the content of the conditions.

2B (1). THE PRINCIPLE OF THE 'SPECIALITY OF THE OBJECTIVE'

The implementation of the principle of 'speciality' is directly related to the character of the interest affected. The crucial question is if there is a violation of an objective that constitutes the *raison d'être* of an organization and not a secondary interest, as derived clearly from its statutes. Already in 1976, the Council ruled that the organization "Amis de l'Île de Groix" had standing to ask for the annulment of a construction license on the island of Groix in Brittany (*Amis de l'Île de Groix*, 1976). In its decision *Communauté des communes du Pays Loudunais* (2004), the CoS set aside a decision of the Court of Appeal of Bordeaux, because, *inter alia*, the latter did not limit itself to examining the objective defended by the organization, but considered additionally the fact that its members were local taxpayers and that its seat was located in a community near the site where the construction in question was envisaged. Thus, the Court made it plain that only the relevant objective, and no other element, need be taken into account in order to establish standing.

The limits of the principle of speciality as delineated by case law, are illustrated by the CoS decision in the *Segustero* (1988) case. The CoS, when analyzing the objectives of the organization, found that its basic object was the protection

³⁹ See however above decision *F.A.P.E.N.* (1999).

⁴⁰ Camille Broyelle, *Contentieux administratif*, 5^e édition, LGDJ, 2017-2018, p. 73.

of the flora and fauna and of the natural environment in general. The protection of the environment and of sites was only mentioned in article II of the statutes and only as a means of achieving the above-mentioned purpose. Hence it was considered that the main objective of the organisation was the protection of the **natural** environment. Consequently, the organization did not have standing to challenge a decision by the regional prefect granting a license to construct a building of 16 apartments in the center of Sisteron⁴¹. Equally, the name of the organization is not enough of itself to offer standing, if it does not correspond to its core objective as defined by its statutes. It was held that an organization against the declassification of the open-air public space of Saint-Germain-du-Bois does not have standing to ask for the annulment of a construction license of a supermarket on the site, since its objective, according to its statutes, was the protection of the community's real estate (*Association contre le déclassement et la vente du champ de foire de Saint-Germain-du-Bois*, 1990).

2B (2). THE PRINCIPLE OF LOCALITY

The principle of locality could be described as the implementation at a procedural level of the principle of subsidiarity: a remedy must be sought by the geographically closest organization. In this sense, it is an extension in space of the principle of speciality of the objective. The objective of the organization and the act challenged must belong to the same circle, according to the expression by the *Commissaire du Gouvernement Chenot*⁴². An organization whose object is to deal with the consequences of the creation of a high-speed train line (TGV) in the Department of Indre-et-Loire can challenge the legality of the act which qualifies the necessary construction work as a public work of general interest and thus activates the process for the subsequent expropriation of land plots (*Association de défense des intérêts agricoles et fonciers concernés par l'implantation du train à grande vitesse en Indre-et-Loire*, 1986). Correspondingly, such is the large number of decisions granting legal standing to an NGO because of the locality of the organization, that it would be pointless to mention them one by one⁴³.

As for the limits of the principle of locality, an organization involved in the protection of the environment, nature, life and quality of life in the region Franche-Comté, does not have standing to seek the annulment of a construction license concerning a housing and commercial development in the city of Luxeuil-les-Bains (*U.R.D.E.N.*, 1985). On the other hand, if an organization includes no geographical limitation in its statutes, then it is considered, despite its misleading name, a nation-wide organization and cannot, as a consequence, challenge the legality of

a construction license in a community (*Association Bretagne littoral environnement urbanisme bleu*, 2004).

Furthermore, according to well-established case law, which is also applied in the field of environment, federations composed of organizations cannot challenge acts which have only local effects. As a result, only their member-organizations can demand their annulment since they have more proximity with the place where the effects of the act are manifested. Thus, the French Federation of Societies for the Protection of Nature cannot substitute a member-organization and seek judicial protection in a case concerning essentially the latter (*Fédération française des sociétés de protection de la nature*, 1986)⁴⁴. Inversely, an organization activated exclusively in the Department of Oise cannot ask for the annulment of a series of regulatory decrees modifying and completing the Urban Planning Code, whose scope of application extends to the whole national territory. (*Association «regroupement des organismes de sauvegarde de l'Oise»*, 1989). This could be done only by an organization whose objective would be nation-wide.

Nevertheless, without further clarifying its ruling (see note 18), the Council has held that the organizations "Friends of the Earth" and "Nature and Progress", whose objectives are to protect the environment, have standing to seek the annulment of the construction of a nuclear reactor in the community of Nogent-sur-Seine (*Amis de la Terre*, 1984)⁴⁵. We can therefore draw the conclusion from this case that the concept of locality is relative to the extent of the nefarious consequences on the environment. If a local activity is bound to harm more regions or the whole of the country, then the circle of those who have standing to seek its annulment is naturally extended.

3. LESSONS FROM THE FRENCH LEGAL ORDER

It has been explained so far that the right of access to justice for environmental organizations, although accompanied by certain restrictions, was already well-established by case law, long before the Charter for the Environment was adopted in 2004. We should bear in mind that the constitutional status of the Charter was also recognized explicitly following decisions of the CoS (*Commune d'Annecy*, 2006), as well as of the Constitutional Council (décision n° 2011-116-QPC, 8 April, 2011). It should finally be noted that even after the adoption of the Charter, no general and unconditional right of access to justice on matters of environmental protection has been granted to every citizen⁴⁶.

⁴¹ For a similar case see decision *Comité de l'Aude* (1990).

⁴² Conclusions sous CE, 10 février 1950, Gicquel, Rec, p. 100.

⁴³ See among others *Association de défense de l'environnement et des sites de Bar et autres* (1985), *Comité de défense du plateau des Soudanes et de son environnement* (1988), *Comité de défense des espaces verts c/ S.A. Lama* (1987) and *Fédération des sociétés pour l'étude, la protection, l'aménagement de la nature dans le Sud-Ouest* (1989). Jean Raymond, «En matière de défense de l'environnement : la qualité pour agir des associations et le recours pour excès de pouvoir», *Revue Juridique de l'Environnement*, n°4, 1991, p. 460-462.

⁴⁴ See also *Fédération des associations du Sud-Est pour l'environnement* (1989).

⁴⁵ See subsequent decision *Collectif antinucléaire 13 et autres* (2012), where the object and the locality of the organization are properly analyzed and, despite the lack of geographical limitation in its statute, the action for annulment of a decree regarding the termination of the function and the dismantling of a nuclear reactor is ruled admissible.

⁴⁶ Bertrand Mathieu, «La constitutionnalisation du droit de l'environnement. La Charte adossée à la Constitution française», Xèmes Journées juridiques franco-chinoises, 11-19 octobre 2006, pp. 6-7.

After taking these points into account, it would be useful to try to summarize the lessons drawn from the French experience and its understanding of the content and the function of the concept of *locus standi* for environmental organizations.

Firstly, it would not be an exaggeration to say that the notion of standing has given rise to a rich and almost exhaustive case-law, despite being nuanced, and even contradictory on some occasions⁴⁷. The practical reasons justifying the continuous pre-occupation of the French judiciary with the concept of standing (such as avoiding at all costs the admission of an *actio popularis* and the subsequent overloading of the courts' agenda, often leads judges to *ad hoc* pragmatic decisions⁴⁸, which make any theoretical effort to achieve coherence quite difficult. Nevertheless, the concept of standing is in all cases shaped with the aim of serving and reinforcing the right of access to justice. Thus, the goal of defending the 'collective interest' in environmental protection is also effectively served.

Secondly, we can easily draw the conclusion that the development of the concept is included in what could be called the "judge's discretion". In France, the Council did not wait for the intervention of the legislature to introduce or amend its procedure in order to safeguard the self-evident right of environmental organizations to challenge the legality of administrative acts, especially within the context of the annulment process. In many cases, the Council has in fact retained the last word on this matter, reserving to itself the power of having the final say on the content of the concept. By way of illustration, the Council has argued that article 2 of the Charter⁴⁹ does not *per se* establish an *actio popularis* (*Mme Bouguet*, 2011). Thus, its case law can be described not only as a precursor to the approach followed by the Aarhus Convention (see art. 9 in connection with art. 2(5) of the Convention⁵⁰) [but also as preparing the way for the adoption of the Charter for the Environment⁵¹. This is why, the basic tenets of the relevant case law have remained essentially unchanged, in the face of both the aforementioned events, and have taken a quite autonomous path always remaining faithful however, to actual needs.

Thirdly, the French approach highlights the particularities of the issue and its complexity. Though generally moving in favor of a liberal approach towards organizations fighting in courts for the protection of the environment, the Council has not hesitated to impose the necessary restrictions. It explicitly safeguards the right, but also sets limits. I believe that this attempt at striking the right balance could be judged as quite successful and sufficiently realistic as to become a model for other legal systems. It cannot be a coincidence that whenever the legislature intervenes it has ended up adopting the Council's directions as reflected in its case law.

As a conclusion, the French example can guide and inspire us, because it has shown, early enough, that collective interests, as represented *par excellence* by environmental protection, cannot be effectively defended individually, but require common and collective action. Recognizing legal standing, through judicial interpretation, to organizations fighting for the environment, is a primordial need and a basic means for achieving the substantive goals of environmental protection adopted at an increasing rate since the 90's, at an international, regional and national level. It would not be too much to argue that all these environmental goals might essentially have remained a dead letter, if the right of access to justice for all those organizations which have dedicated themselves to serving them, were not re-enforced in parallel.

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⁴⁹ «Toute personne a le devoir de prendre part à la préservation et à l'amélioration de l'environnement.»

⁵⁰ Art 2 (5): "5. "The public concerned" means the public affected or likely to be affected by, or having an interest in, the environmental decision-making; 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." Art 9 (2): "What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention. To this end, the interest of any non-governmental organization meeting the requirements referred to in article 2, paragraph 5, shall be deemed sufficient for the purpose of subparagraph (a) above. Such organizations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above."

⁵¹ It has been widely accepted that the Charter mainly gave constitutional status to principles already guaranteed by legislative and regulatory texts and established by case-law (see Conclusions du Commissaire du Gouvernement Aguila sous CE, *Commune d'Annecy*, 2008).

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IV. CYPRUS IN SEARCH OF ENVIRONMENTAL JUSTICE⁵²: ENVIRONMENTAL JUSTICE AND IMPLEMENTATION OF THE 1998 AARHUS CONVENTION⁵³ UNDER CYPRUS LAW

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Cyprus respondent to a 2020 survey by DG Justice on the legal standing of NGOs

This presentation is made from the standpoint of a Cypriot environmental NGO that wishes to challenge administrative measures, but finds the road strewn with obstacles. As a trained lawyer who has spent the last 30 years managing two environmental NGOs, I have had a vested interest in following the evolution in case law regarding the rights of Cypriot NGOs. Especially their right to challenge the legality of administrative measures that affect our environment and quality of life, as well as possibly contravening our EU obligations. This leads to a considerable feeling of frustration, if you are an NGO like the *Laona Foundation for the Conservation and Regeneration of the Cypriot Countryside*, which secured European and private grants to the tune of eu0.5m in the 1990s (at the time when millions meant something), and invested it in providing plans, restoring buildings, training of locals and developing agro-tourism for the Laona communities of the Akamas peninsula. It is quite depressing when the possibility of consultation concerning the future of Akamas as a protected area is restricted or ineffective, while access to the courts remains very questionable.

My presentation is based on the experiences of NGOs, but also on the result of my recent research for the EU Directorate General for Justice concerning the legal standing and access to justice of ENGOs (Environmental NGOs – in this text the terms NGO and ENGO are used interchangeably). This survey is conducted every three to four years in all member states and published on the website of DG Justice as a guide to citizens and NGOs regarding their environmental rights. A parallel objective of this survey is to identify the extent to which member states comply with the provisions of the Aarhus Convention⁵⁴ and whether they have made suitable arrangements in their domestic legal systems enabling citizens and ENGOs to seek judicial review concerning environmental issues. A private legally trained individual, in each member state was appointed to conduct the survey in their country, and before publication (expected sometime in 2021), their

conclusions were submitted to an unnamed national assessor who is a high-ranking legal practitioner or academic,

At this point, and by way of reminder, I would like to refer to some important provisions regarding the Cyprus and the Greek Constitutions, and also to related environmental concepts more generally.

The Cyprus Constitution⁵⁵ which came into force with the establishment of the Republic in 1960, was understandably a product of legal thinking deriving from the 1950s and reflects the concerns of those times, such as the right to strike, the provision of social security benefits for all workers and rights over one's property. Environmental consciousness had not yet been stirred, and consequently the document contains no provisions regarding environmental rights or obligations. However, in the 25-30 years that followed, the concept of environment as a common good in need of protection, gained considerable ground internationally -- even as early as 1972, as evidenced in the UN Conference on the Environment at Stockholm⁵⁶. Also evidenced in the new Constitution of the Republic of Greece in 1975, which was elaborated after the fall of the Junta, and was reinforced in 1986. Article 24 of the Greek Constitution⁵⁷ provides that: "Protection of the natural and cultural environment is an obligation of the state and a right of each individual. The state is required to take special precautionary or restraining measures for its protection, in accordance with the principles of sustainable development..." A statement such as this, obviously reinforces citizen rights whether acting collectively or individually.

Environmental interest reached an important peak internationally with the Earth Summit at Rio⁵⁸ in 1992, possibly the first occasion when heads of state and NGOs from all over the world converged to express their concern about planet

⁵² The title is partly borrowed from the title of Polyvios G. Polyviou's work, *Cyprus in Search of a Constitution*, Nicosia, 1976.

⁵³ Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. Denmark, 25.6.1998. UNECE: UN Economic Commission.

⁵⁴ Ibid

⁵⁵ The Constitution of the Republic of Cyprus, 1960, Government Printing Office

⁵⁶ United Nations Conference on the Human Environment (Stockholm, 1972). See European Environment Agency "The Road to Global Sustainability" 4.6.2012

⁵⁷ Constitution of Greece, 1986 (as revised in 2001), Part Two, 'Individual and Social Rights', Article 24

⁵⁸ United Nations Conference on Environment and Development (Earth Summit) (3-14 June 1992, Rio de Janeiro, Brazil)

Earth, the way development was heading, its effects on the environment and the increasing threat to biodiversity. It is worth noting that the initiative for Rio belongs to a retiree, Maurice Strong (1929-2015), a Canadian oil tycoon turned 'green', who was the founding father of UNEP (UN Environment Programme) in the 1970s, and its first director. As we shall meet the term 'biodiversity'⁵⁹ again further on, I take this opportunity to define it very roughly as the totality of living organisms which together support life on this planet. Current thinking is that biodiversity resembles a jig-saw puzzle. Take away one piece and you inevitably affect the whole, like using chemical spray to control weeds in a field, which ends up killing the bees that perform the essential task of pollination⁶⁰; or killing the worms that aerate the soil.

Greece's response to the Rio spirit was to restructure in the 1990s a branch of its Supreme Administrative Court (Συμβούλιο της Επικρατείας), referred to in Greek as Council of State (in the French tradition - Conseil d'Etat). This Fifth Branch⁶¹ was entrusted with adjudication of all sustainability and environmental recourses against the state, presided over by a distinguished constitutional expert and deputy President of the Council, Michael Decleris. During his term, a wealth of case law was developed, establishing the framework of principles within which citizens, as individuals or as groups, could claim environmental rights⁶² not only in their own interests, but for the community at large.

Reference to the Greek experience is made merely by way of reminder, with no intention of making comparisons, since the constitutional provisions of Cyprus and Greece on the subject are strikingly dissimilar and so, by extension, is the evolution of each country's case law. Nevertheless, the broader discussions around environmental issues and citizen rights during the 1980s and 1990s were not without their effects on the Cypriot legal practitioners and judiciary. I suggest it is more than coincidence that in 1991 the then Justice Pikiş, who later became President of our Supreme Court, delivered his now classic decision in the *Pyrga Case*, no.671/91,

concerning the right of the residents of Pyrga community⁶³ to seek protection for their health and their environment from the proposed operation of a nearby quarry. Drawing on the right to life enshrined in Article 7(1) of the Cyprus Constitution⁶⁴, Justice Pikiş took the position that a right to life encompasses the right to a healthy existence through the maintenance of appropriate conditions in the area where one lives, and consequently a resident had a legitimate right under Article 146 of the Constitution to seek judicial intervention.

Two interesting aspects of his decision are the position that the term 'life' contains a biological dimension, which refers to man as part of the natural environment⁶⁵. In other words, although not using the term itself, Mr. Pikiş recognised man as forming a part of the broader concept of biodiversity. The other interesting aspect is his position that the local authority of Pyrga had every right to take measures to protect the health of its residents, but he rejected the applications of the local NGOs.

In 1996, Justice Frixos Nicolaides, sitting as a review court of first instance, extended the concept of environmental rights in two equally famous decisions: *the Technical Chamber of Cyprus v. the Republic*⁶⁶ and *Friends of Akamas v. the Republic*⁶⁷. He held that the Technical Chamber, as a statutory body enacted by law to, *inter alia*, advise the government on scientific and technological matters, had a legitimate interest in protecting the environment, based on its constituting legislation. He further held, in the second case, that a similar legitimate interest could be recognised for organisations whose main objective, according to their statutes, was the protection of the environment. Nevertheless, on appeal, the Supreme Court sitting in plenary, in the year 2000⁶⁸ rejected this line of reasoning. The main cause of rejection in the Friends of Akamas case was the lack of proximity, i.e., the NGO had no geographical connection to the area against which the complaint was made, so to allow this recourse would have amounted to an *actio popularis*⁶⁹. Regarding the Technical Chamber⁷⁰ the grounds of rejection are more tenuous. It was held, *inter alia*, that the statutory duties of the Chamber were limited to the profession of engineering (in its various specialisations), and that it had no remit concerning environmental issues or the submission of such issues to judicial control⁷¹. Nowadays, that environmental engineering is a well-established branch of engineering, this position seems less plausible. Nevertheless, it resulted in discouraging NGOs for the next 20 years from challenging environmental mat-

59 According to Article 2 of the Convention on Biological Diversity, 1992 'Biodiversity/Biological Diversity' consists of the variability among living organisms from all sources including, *inter alia*, terrestrial, marine and other aquatic systems and the ecological complexes of which they are part; this includes diversity within species (genetic), between species and ecosystems. Biodiversity is a term describing variability, whereas 'ecosystem' describes a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit.

60 Babinotiş G. "The transfer of pollen from the stamens to the stem for the plant to reproduce". See also European Parliament "What's behind the decline in bees and other pollinators?" europarl.europa.eu/news/society, 3.12.2019

61 The Fifth Branch was restructured in 1991. See Sarigianniş G. "The Role of the CoE in shaping the space in Athens", 2008.

62 See preface by Jacques Santer to Decleris M., "The Law of Sustainable Development: General Principles" Publications Office of The European Union, 2007, pp. 5. This publication is based in part on "The Twelve Tablets of the Environment: A Handbook of Sustainable Development" by Decleris, N. Sakkoulas, Athens-Komotini, 1996. For a more up-to-date commentary, see Paraskevopoulos Y., "Bypassing Environmental Guarantees for Good: Constitutional Reform in Greece" *Green European Journal*, 19.12.2017

63 *Community of Pyrga v. the Republic of Cyprus*, case no. 671/91, pp. 10-12. See also Oxford Public International Law, ILDC 1790 (CY1991), opil.uplaw.com

64 Constitution of the Republic of Cyprus, 1960, pp. 7, Article 7 (1) "Everyone has the right to life and corporal integrity".

65 Pyrga, 1991, pp.9

66 Case 358/96

67 Case 359/96

68 *Thanos Club Hotels v. Republic of Cyprus* appeal no. 2710/2000

69 *Ibid.* pp. 8, 9, 14

70 Law no. 224/90, establishing the Cyprus Technical Chamber, art. 5, responsibilities

71 *Ibid.* review appeal 2710, pp. 14

ters in court. We, at the Laona Foundation, had also initiated a recourse regarding Akamas and the proposals for that area, and we were advised by our lawyer to withdraw it. Regarding the Technical Chamber decision, I am of the view that it was based on an incomplete understanding of the importance of the environment to our lives, namely, that the environment, together with biodiversity, form the protective shell of continuing life on earth. As such it is both a scientific issue, and of direct relevance to the interests of the Technical Chamber. To its credit, however, the Supreme Court recognised the necessity of protecting the environment and indicated that the state should provide for a legally comprehensive resolution of the matter, since our Constitution contained no provision similar to Article 24 of the Greek Constitution⁷².

A solution, at least in part, to the notion that an ENGO might have *locus standi* to challenge an administrative action, decision or omission was provided from beyond Cyprus. It came in the form of the Aarhus Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters. Very briefly stated, the Convention considers that a prerequisite for effective environmental protection is citizen involvement, and that this could be achieved through a three-fold package of measures encompassing information, participation in the decision-making process, and the right to challenge administrative authorities. In its most simplified form, the measures could be described as follows:

The first pillar of the Convention is the right of any natural or legal person, including NGOs, to access environmental information, **without having to prove any legal interest**. Public authorities are required to publish on their data bases, or to provide specifically, if requested, any information pertaining to environmental actions or decisions which affect:

- Biotic and abiotic elements (e.g., water, soil, landscape, animal species).
- Factors that affect the elements referred to above, such as energy, noise, radiation, etc.
- Human health and cultural sites or structures to such extent as may be affected by these elements or factors.

The second pillar provides the right of the public to participate in the decision-making process concerning the grant of a permit for any operation that might affect the environment. Participation can be effected by notification on official data bases giving the public the opportunity to comment, or by invitation to a specially organised meeting, known as a public deliberation.

The third pillar concerns the right of individuals or groups of individuals (including NGOs) to challenge public authorities either through administrative or through judicial recourse within the provisions of their national legislation.

Cyprus ratified the Convention in the manner it had been used to doing prior to our EU accession. In other words, the

untranslated English text of the Convention was simply enacted into law in 2003⁷³ without providing any mechanism for its implementation. In 2004, upon accession of Cyprus to the EU, the *Acquis Communautaire* became mandatory, and once the EU ratified the Aarhus Convention in 2005⁷⁴, it too, became mandatory for Cyprus. Even before its adoption, the Commission published a directive⁷⁵ in 2003 implementing the first pillar of the Aarhus Convention, viz. access to environmental information, which Cyprus enacted into law⁷⁶. It recognises that any legal or natural person unjustifiably denied environmental information by a public authority has a legitimate interest to seek an administrative recourse. If still unsatisfied, the complainant may challenge the omission through judicial measures. With respect to the second Aarhus pillar, Cyprus did not adopt the relevant EU directive⁷⁷ as a specific piece of legislation. Instead, Cyprus ensured that any legislation involving the issue of a permit to a developer or operator of an activity with environmental impacts, should provide for the permit application to be publicised and that the public, including NGOs, should be enabled to comment thereon. This provision is now included in a number of laws.

Cyprus took no initiatives concerning the third Aarhus pillar on access of individuals or NGOs to environmental justice, until the Commission published directives on certain environmental issues which provided specifically for access to justice of ENGOs. Thus, arrangements had to be enacted that would make it possible to implement this EU legislation in Cyprus. Given that there was no suitable provision in our Constitution, the government chose to address the *locus standi* of ENGOs with relevant measures within the text of each of those sectoral laws, namely,

- The Law on Integrated Pollution Prevention Control of 2003 (revoked and replaced by the Industrial Emissions Law of 2013⁷⁸);
- The Law on Assessment of Environmental Impacts from Projects of 2005⁷⁹ (replaced by Law 127(I)/2018);
- The Law on Environmental Responsibility of 2007⁸⁰

In each of these pieces of legislation there is a provision stating that any legal person whose statutes include the protection of the environment as a main objective, will be recognised as having a legitimate interest in accordance with Article 146 of the Constitution in so far as particular provisions in these laws are concerned.

⁷³ Law no. 33 (11/2003)

⁷⁴ Decision 2005/370/EU

⁷⁵ Directive 2003/4/EC on Public Access to Environmental Information

⁷⁶ Law no. 119(1)/2004

⁷⁷ Directive 2003/35/EC on providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment, which amended earlier directives 85/337/EEC and 96/61/EC

⁷⁸ Law no. 56(1)/2003 as amended by Law no. 184(I)/2013

⁷⁹ Law no. 140(I)/2005 revised by Law no. 127(I)/2018

⁸⁰ Law no. 189(1)/2007

⁷² *Thanos Club Hotels*, appeal no. 2710/2000, p. 11

Thus, was the legitimate interest, and consequently the *locus standi* of ENGOs, introduced to the Cypriot legal system, enabling ENGOs to challenge a decision, act or omission emanating from a government department or other public authority and affecting the environment. But it should be noted that this right was, and is, very strictly prescribed with specific limitations. For example, Article 25⁸¹ in the original version of the Law for Assessment of Environmental Impacts from Projects of 2005, recognised a legitimate interest for NGOs to pursue a recourse to justice against the Council of Ministers, the Department of Town Planning, and the Environment Department, all three being sources from which decisions or measures harmful to the environment could emanate. It seemed that at last the door was opening sufficiently to allow a more contemporary approach to environmental protection. It was not however, utilised by NGOs, and when the law was updated and fully revised in 2018, the new Article 48⁸² which replaced the old Article 25, was much restricted. NGO rights to judicial recourse were limited to challenging the Environment Department, and then only in the following situations concerning the granting of an environmental permit or authorisation:

- A decision of the Environment Authority not to require an environmental impact assessment for a particular project.
- A failure of the Environment Authority to implement, or inadequately implement, the mandatory provision enabling the public to be informed and to comment on the proposed project.

So, gone is the provision allowing ENGOs to challenge the Council of Ministers or the Town Planning Department. Were the NGOs caught napping or were we just too doubtful about the results of legal action? Whatever the reason, the outcome is that now we can only initiate recourses against one department, the Environment Department, which is not necessarily the only 'bad guy on the block'. NGOs are defenseless, it would seem, against a decision of the Department of Forests to allow commercial woodcutters to fell more than 200 Black pines in a Natura 2000 site, without having previously stipulated suitable forest management arrangements, as required by the Forests Law⁸³.

As far as the Law on Industrial Emissions are concerned, the ENGO rights envisaged were limited from the very start. The legitimate interest of NGOs was recognised only in cases of failure to involve the public in the decision-making process or failure to invite the interested public. Only the Law on Environmental Liability of 2007⁸⁴ and its subsequent amendments is more generous. This law concerns environmental

loss or damage to species or habitats caused by an operator of a licensed activity in a protected area and introduces the 'polluter pays' principle. An operator may be liable for an administrative fine of up to 200.000eu for failure to take damage-limitation measures, and it is expected by the EU Directive that all such operators will be suitably insured. It is doubtful if they are. The law, which has only once been applied in Cyprus (and without imposing a fine)⁸⁵ recognises the legitimate interest of ENGOs to challenge the Environment Department for failing to take adequate measures against the operator or to restore the damage.

As can be seen, the recognition of NGO rights to access justice has been limited, and there is some question as to the effectiveness of even these limited rights. Take for instance cases when an approval by the Environment Department is only one of many approvals by various authorities before final authorisation by the Town Planning Department. Given that a complainant can only challenge a final authorisation, and that the final say does not belong to the Environment Department, it would seem that an NGO might not have a legitimate interest to challenge the decision, since under Article 48 of the current Impact Assessment Law, such right applies only against the Environment Department. Similar doubts arise concerning the right of recourse for failure to properly involve the public. Since an invitation for public comment is a preparatory act leading to the final authorisation, would an ENGO be allowed to initiate a recourse on this issue alone, and if so, would the complainant have to wait until the authorisation process has been completed? In other words, the process would continue despite a potential error in a preceding stage of the procedure, by which time it could have become irreversible. So, even if an NGO succeeded, it would be like winning a battle while losing the war.

One might justifiably propose that NGOs should take the courage to initiate recourses before the Administrative Court, so as to test how effectively these alleged rights are interpreted and upheld in court. The fact is however, that in addition to the interpretation of their rights, NGOs are beset by various other concerns about issues which are included in the Aarhus Convention, but not yet applied in Cyprus. These include:

- "Access to an expeditious procedure established by law, that is free of charge⁸⁶". The fact that an environmental recourse would take its turn amongst all other recourses in the Administrative Court, is a delaying factor in itself, let alone the general tardiness of Cypriot litigation. There is no provision for a 'fast track' process for environmental recourses, whereas often speed is of the essence in environmental threats. So, NGOs are faced with the dilemma whether judicial review would be at all effective, or whether to raise a complaint to the appropriate authority in Brussels, in the hope that

⁸¹ Law no. 140(1)/2005 pp.4

⁸² Law no. 127(1)/2018 Law that revises the laws on Environmental Impact Assessment by certain projects, art. 48 (a),(b),(c)

⁸³ The Forests Law no. 25(I)/2012, Part V Management Plans

⁸⁴ Law no. 189(1)/2007 on Environmental Liability regarding the Prevention and Remedying of Environmental Damage, articles 14 and 17.

⁸⁵ Letter by the Environmental Department, 9.12.2020 (translated from the Greek original) "The Law was activated once for the transportation of tires. No fine was applied according to the law".

⁸⁶ Article 9 of the Convention

intervention from the Commission might be speedier and lead to concrete results. Brussels does not usually consider complaints if judicial proceedings are outstanding before national courts.

- There is very limited scope for securing a staying order from the court, both because it is usual to ask the requesting party to deposit a guarantee, and also because injunctive relief is not a ‘stand-alone’ procedure. It can only be applied for as part of a full recourse process, involving considerable legal work.
- The question of cost also looms large for most NGOs. An NGO that takes legal action has little to gain for itself. A favourable decision will benefit an area, a country, or an endangered species, which is part of the public’s natural heritage. Yet, although working in the public interest, the NGO bears all the financial costs, without knowing in advance the extent of further costs it might have to face if the recourse fails. In some countries the state covers the costs of NGOs (even though the recourse is against the state) in recognition of NGO services to society by monitoring the effective implementation of environmental law. In Cyprus, not even securing a *pro bono* lawyer is an option since *pro bono* work is prohibited by the Bar Association.
- A consequence of treating an environmental recourse as any other, means that the Bench will limit its examination to the legality of the procedure as it appears in the relevant administrative files, but will not enter into the substance of the matter, nor be able to receive or examine experts. It may seem extraordinary that the Administrative Court has power to review the substance in a recourse by an individual if it concerns tax matters or political asylum, but cannot do the same in environmental matters that could affect whole populations.

It should be clear from the above that Cypriot ENGOs have many hurdles to overcome, to effectively pursue even the limited rights afforded to them by the previously mentioned specific legislations. And the question remains, if an ENGO challenges an administrative decision not falling within the scope of these restricted sectoral law provisions, what will happen? Say, for example, the Department of Forests is challenged for its intention to irregularly allow the felling of protected *Pinus nigra* pines, without conducting the required assessment. Would the court, proceed to a broadened interpretation of Articles 7 (right to life) and 146 (legitimate interest) of the Constitution, without allowing the concept of *actio popularis* to interfere? It might be worth mentioning that Sakellaropoulos⁸⁷ considers *actio popularis* as the truest form of an actively operating democracy. Be that as it may, it would be fair to say that, compared to other countries, like France, that do not recognise *actio popularis*, the rights and conditions pertaining to Cypriot NGOs’ ability to access justice are limited.

⁸⁷ In Mouzourakis, P. et. al (ed.) ‘Honorary Volume of the Council of the State’, volume II, 1979, pp. 223, 304

CONCLUSION

To conclude on an upbeat note, recent (2019) Administrative Court decisions show an expectation that the administration, viz. the Environment Department, will assiduously carry out its obligations with regard to environmental impact assessments, and the Court has not hesitated to quash authorisations where the assessments were found wanting⁸⁸. The Court has also issued an injunction, without guarantee, in favour of residents, against planning permission for a petrol station⁸⁹. Nevertheless, it must also be noted that these were all recourses made by individuals who, due to living in the area, had a legitimate interest under Article 146 of the Constitution to defend their quality of life and amenities. What is now called for is that the Courts go one step further: to recognise that an ENGO which is not based in an area under threat, but based anywhere in Cyprus, has a legitimate interest to challenge, on behalf of society, a potentially inappropriate authorisation. It might arise from a development in the Akamas Peninsula or a building permit for a skyscraper in town, if the impacts could potentially affect biodiversity or marine life or create wastes that cannot easily be absorbed in our small country, or otherwise threaten that ‘protective shell’ in which we all live. In other words, it should not be a prerequisite to recognise its right of recourse, that an NGO is a local organisation threatened by consequences in its area due to proximity. It should be sufficient that according to its statutes, an NGO has a key interest in environmental protection,

Various possibilities could be considered to overcome the current situation. There could be an amendment to the Constitution introducing an obligation to protect the environment as in Greece; or a legislative accommodation recognising the legitimate interest of ENGOs in a wider set of circumstances; or a more particular solution on the lines of the French Environmental Charter. Coming from a school of thought that believes constitutional arrangements and established conventions are not to be tampered with unless public interest of the highest order demands it, I am, as a matter of principle, against a solution that requires amendment of our Constitution. On the other hand, considering that over the last 60 years we have interfered with constitutional provisions at least 25 times, not always for the best of reasons, surely protection of the environment in which we live, corresponds to a high order of public interest. I am aware that the Green Party has tabled an amendment to Article 7.1, of the Constitution which provides that “Everyone has the right to life and corporal integrity, and to live in conditions that assure protection of one’s health, the environment, and biodiversity”⁹⁰. This phrasing assuredly introduces a healthy environment as a constitutional right,

⁸⁸ Case no. 46/2017 *Taramounta and Stefanou v. Republic of Cyprus* (decision issued in 2019), and case no. 78/2015 *Andreou et al. v. Republic of Cyprus (Halliburton case)* decision also issued in 2019

⁸⁹ Case no. 651/2019 *Church Committee of St. Nicolaos, Pano Defteras v. Republic of Cyprus*

⁹⁰ House of Representatives. Draft Law entitled the Twenty-sixth Amendment of the Constitution Law of 2019. Proposed by the Green Party <http://www.cna.org.cy/pdf/ant/201909261543.pdf>

but does it overcome the issue of proximity in defining legitimate interest to challenge the authorities? I leave it to your judgement with the comment that if we are to amend the Constitution, let us make sure it leads to the desired result. Given that legitimate interest is only one of the difficulties holding back ENGOs from the pursuit of legal measures, might there be an alternative approach: improved implementation of the Aarhus Convention on those issues mentioned which Cyprus has yet to put into effect? If so, this approach would certainly have to go hand in hand with a broader interpretation of NGO rights on the part of the courts, complying within the spirit of Aarhus, since it is already part of the Cypriot legal order.

Coronavirus has demonstrated on a global scale the immense importance of a healthy environment, how much more so in our small island. So far, we have been used to measuring environmental threats mainly in terms of their economic effects and without taking Nature or biodiversity into much consideration. Environmental NGOs offer that alternative perspective. Nowadays, ENGOs are usually composed of people with specialised knowledge on various current concerns, so they are well fitted to act as 'environmental guardians'. I suggest that for everybody's sake, society, government, and the judiciary have a role to play in enabling NGO voices to be heard.

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Church Committee of St. Nicolaos, Pano Deftera v. Republic of Cyprus, case no. 651/2019

V.

FINAL REMARKS AND KEY FINDINGS

- Even though the *locus standi* of NGOs in matters of EU environmental law remains limited before the CJEU (due to the wider restrictions applicable to the filing of actions for judicial review), the CJEU, by relying on the Aarhus Convention which forms part of EU law, has developed a case law that provides legal standing for NGOs. This should enable NGOs to bring actions before their national courts in disputes governed by EU environmental law under conditions of effective judicial protection.
- The example of the French judiciary demonstrates an understanding that collective interests, as represented par excellence by environmental protection, cannot be effectively defended individually, but require common and collective action. Thus, recognizing legal standing, through judicial interpretation, to organizations fighting for the environment, is seen as a must and a basic means for achieving the substantive goals of environmental protection for society. Moreover, despite the fact that the French legal system does not recognise *actio popularis*, the judiciary have succeeded in developing case law that recognises the interests of environmental NGOs. This experience could provide a useful example for other countries.
- In Cyprus, the lack of constitutional protection for the environment led to innovative judicial thinking and case law in the 1990's, which was over-turned in 2000. A lot has changed since then at international, EU and even at Cyprus level. There is now specific EU environmental legislation concerning such matters as environmental impact assessment, which as from its enactment provides certain limited rights of access to environmental NGOs. All these developments should lead to a re-appraisal of judicial thinking and to a broader interpretation of the relevant constitutional rights in relation to NGOs. A number of other matters also need to be addressed to make access to justice on environmental matters truly effective, such as assistance with legal costs, injunctive relief, and speed of adjudication. Nevertheless, developing a judicial approach that is favourable to NGO rights, is a must in order to strengthen environmental protection for society as a whole.

IN CONCLUSION:

This publication and the accompanying on-line presentation, which has been brought to the attention of judges, lawyers, and public attorneys, hopes to provide a stimulus for change; starting with a broader interpretation of the legitimate interest of NGOs, underpinned by suitable regulation, as necessary.

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ACCESS TO JUSTICE OF ENVIRONMENTAL NGOS: A COMPARATIVE PERSPECTIVE (EU, FRANCE, CYPRUS)

The Aarhus Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice on Environmental Matters (1998) led to a new understanding of the role of NGOs in environmental protection. Once the Convention became part of EU Law, member states were required to adopt it within their national legal systems. Perhaps the most contentious provision is article 9 of the Convention, viz the right of NGOs to challenge public authorities for acts or omissions that harm the environment. Implementation of this Article by EU states has not been uniform, depending in each case on whether environmental protection is an acknowledged legal right, and also on judicial interpretation at national level.

The three papers composing this publication, whose authors are a CJEU judge, a legal advisor with knowledge of the French legal system, and Cypriot NGO leader, aim to present recent thinking and the evolution in case law at EU and national level. France has not historically incorporated environmental protection in its constitution, nor has Cyprus. This trilogy of papers combines an analysis of the CJEU approach and philosophy, with an exposition of rights afforded to NGOs in France and Cyprus, providing information that could be useful to NGOs and legal practitioners. It culminates with some thoughts on how the environmental rights of Cypriot NGOs could become more effective.