



European  
Commission

# Access to Justice in Environmental Matters



## What's in for the public?

*Access to justice in environmental matters means people being able to go to court ...*

Citizens must be able to go to court if public authorities do not respect the rights and fulfil the requirements created by EU environmental laws.

*... to protect their health and the natural environment.*

These laws are about protecting people's health and nature.

EU laws on clean water, air quality, waste management and other topics give the public rights to

- receive environmental information,
- participate in decisions and
- have their health safeguarded through limits on pollution.



EU laws on nature protection also give rise to rights. Citizens play an important role in maintaining a good natural environment.

Public authorities must meet certain minimum requirements when answering information requests, consulting the public, checking the state of air and water, preparing plans to safeguard the environment, and restricting potentially harmful activities.

## Why is access to justice important?

When these rights and requirements are not applied consistently across the EU, it can hinder progress in achieving the EU's environmental objectives and prevent citizens from enjoying the full benefits of EU environmental laws.

## What does it involve?

*Access to justice in environmental matters is a package of guarantees that includes ...*

Access to justice in environmental matters provides a package of guarantees that allows citizens, including NGOs, to ask a national court to check whether a public authority has respected the rights and fulfilled the legal requirements mentioned above.



### *...the right to be heard by a national judge*

In most countries, access to courts is restricted. A claimant needs to show that he or she has a right to be heard. This means demonstrating that he or she has a sufficient interest or that his or her rights have been harmed. When it comes to the environment, demonstrating a right to be heard is not always straightforward. It has been observed that 'the fish cannot go to Court'.

One way to make sure that there is access to justice is to recognise that environmental NGOs should be able to put forward claims to protect the environment.



### *... who will examine the case*

The national judge has the job of checking whether the public authority acted correctly. This means examining the facts behind the authority's action or inaction. It also means examining what the authority was required to do under the environmental laws in question.

Access to justice in environmental matters aims at ensuring that the national judge properly examines legitimate issues raised by citizens and NGOs.



### *... and order matters to be put right*

Unlawful actions – or lack of action – by a public authority may cause harm to citizens' health or the natural environment. If the harm caused is serious, the judge may order the public authority to take action.

Access to justice in environmental matters aims at ensuring that national courts can order matters to be put right.



### *... in a process that is affordable.*

Going to court is costly. It involves lawyers' and other expenses. In most countries, the party who loses must pay the other side's costs as well as their own. The risk of paying a lot of money can be a major deterrent in reality.

Access to justice in environmental matters aims at ensuring that the costs of going to court are not prohibitive.

## How does the European Union help?

### *The EU Court of Justice helps national courts...*

National courts are courts of EU law. They are there to uphold rights and requirements. They do this in accordance with their own legal traditions, but they must apply common interpretations of what EU law requires. They are helped in this task by the EU Court of Justice, an institution that works for the whole EU.

National courts sometimes need to ask the EU Court of Justice to clarify important points of law. This helps avoid divergent interpretations – and outcomes – in different Member States.

### *... to deliver these guarantees*

Since the 1990s, national courts have been asking the Court of Justice to clarify how they should deal with the different guarantees mentioned above. This has resulted in an important body of rulings to help them.

#### - EU Court confirmed in 2008 that a Munich resident had the right to be heard on dangerous air pollution

A Munich resident asked a German court to issue an order requiring the Bavarian Government to draw up an air quality plan to reduce air pollution in his neighbourhood. He lived only 900 metres away from an air quality measuring station, which showed that EU air quality limit-values for particulate matter were exceeded more than 35 times in 2005-2006. Initially, he was told by a German court that he had no right to be heard. However, following questions put to it, the EU Court of Justice upheld his right to bring a case. It reasoned that someone affected by health concerns was entitled to file a claim before a national court to ask for action to be taken.

#### - EU Court confirmed in 2014 that matters should be put right on dangerous air pollution in the UK

An environmental NGO asked the UK courts to order the government to improve plans required under EU law to reduce dangerous levels of nitrogen dioxide in 16 urban areas, including Greater London. High nitrogen dioxide levels affect the health of millions of British people, especially vulnerable groups such as children and old people. The first UK court ruled that it was not its business to order the government to improve air quality measures but the UK Supreme Court sought guidance from the EU Court of Justice. The latter ruled that the national court should order any measure necessary to bring the air pollution plan into line with EU air quality legislation.

#### - EU Court confirmed in 2011 that a Slovak NGO has the right to be heard to protect brown bears

An environmental NGO appealed to a Slovak court against an administrative decision refusing it a status that would have allowed it to contest how the Slovak authorities were protecting brown bears. This species benefits from legal safeguards under an EU nature conservation law. Following questions put to it, the Court ruled that national courts should seek as far as possible to grant an NGO a right to be heard in such a situation.



*... and the Commission provides guidance on what the EU Court has said*

The Commission has adopted a Notice that brings together and explains the rulings of the EU Court of Justice in order to help individuals, NGOs, public administrators and national courts and businesses understand access to justice in environmental matters and help Member States and national courts to deliver its guarantees.



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For more information:

<http://ec.europa.eu/environment/aarhus/index.htm>

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