Introduction

The Court of Justice of the European Union (CJEU) has made two landmark decisions on 14 June 2012 (cases T-338/08 and T-396/09). The two court cases evolved from review procedures that four NGOs (**Stichting Natuur en Milieu, Pesticide Action Network Europe, Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht**) had started.

The cases

In the first case, the applicant NGOs claimed that the definition of maximum residue levels for products covered by Regulation (EC) 396/2005 (on maximum residue levels of pesticides in or on food and fee of plant and animal origin) via a Regulation (EC) 149/2008 by the Commission is unlawful. In the second case the applicant NGOs claimed that the Netherlands has received temporary exemption from the obligations laid down by Directive 2008/50/EC (on ambient air quality and cleaner air for Europe) by a Decision C(2009) 6121 of the Commission in an unlawful manner.

But apart from the differences between the initial facts of the cases, there are a number of similarities.

Firstly, common in the two cases was that both cases were based on the so-called Aarhus Regulation (EC) 1367/2006 and applied a legal instrument called **Request for Internal Review** in order to claim that the Commission revisit its decisions and change its standpoint.

Secondly, a common feature of the two cases was that the Commission eventually refused to take action upon the requests, finding in both cases the Requests for Internal Review inadmissible.

Thirdly, in both cases the reason for refusing the requests of the NGOs was ultimately the same: that the aforementioned Regulation and Decision of the Commission were **not administrative acts** in the meaning of the Aarhus Regulation, not being measures of individual scope.

Fourthly, in both cases the CJEU primarily found that the application of the NGOs to the court is not substantiated, given that the contested acts are truly not measures of individual scope.

Lastly, the ultimate finding of the Court in both cases was to annul the contested Regulation and Decision due to **incompatibility of the Aarhus Regulation with the Aarhus Convention Art. 9.3**.

The findings of the Court

In a nutshell, the Court opined that the method used by the Aarhus Regulation providing for a *quasi* administrative remedy only against measures of individual scope cannot be justified, in light of Art. 9.3 of the Aarhus Convention that speaks about acts or omissions. Therefore **the Aarhus Regulation's remedy should be available also against measures of general scope**, such as the Regulation and the Decision in question.

Relevance for J&E and for the future

How does this affect J&E's pending case before the CJEU?

J&E has a case (T-405/10) before the Court where J&E contests the lawfulness of Commission Decisions permitting the marketing of **GMO products** (amongst others, the famous Amflora potato). There are some similarities between the case of J&E and the foregoing cases, however, J&E's cases still bring up unprecedented questions.

First of all, we started a Request for Internal Review against Commission Decisions that were undoubtedly and admittedly measures of individual scope. Therefore findings of the CJEU in the previous cases are not applicable to our cases.

Second, the reason for refusal of our request was substantive i.e. that allegedly our arguments against the permitting of GMO products were not well substantiated. So we will have to defend our contrary standpoint in Luxembourg.

Finally, the Court has not decided in any of the previous cases whether the four NGOs had legal standing at the Court against acts of the Commission whereas this is the bottom line of our application. This fight is still to be fought at the Court.

Conclusion

Summing up of what the title means: **no, we cannot stop here!**

While J&E welcomes the judgments of the Court and heartily congratulates the four NGOs that have succeeded in challenging the unreasonably limiting interpretation by the Aarhus Regulation of Art. 9.3 of the Aarhus Convention, we know that we still have a long way to go.

J&E still has to prove that the permitting of the Amflora potato was unjustifiable. J&E still has to prove that whenever a Request for Internal Review is refused or not adequately dealt with, the applicant can challenge the legality not only of the answer of the EU institution or body, but of the underlying EU act as well, giving rise to the entire legal dispute.

And J&E still has to demonstrate that NGOs should have legal standing at the CJEU, in line with the recent recommendation of the Aarhus Convention Compliance Committee (ACCC/C/2008/32).

Please support J&E in its fight for a broader access to the CJEU!

Please send us a supporting email!

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