

National Legal Requirements and Experiences with Transboundary Access to Justice – The Netherlands

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Content

- Access to court: 1975-2010 and further
- Access for foreign NGOs
- Expected changes
- Practice (German NGOs in NI v.v.)
- Consequences ECJ 14-10-2010

1975-2005: the “golden years”

- Broad access
 - for “everyone”
 - access for NGOs before civil courts and administrative courts
 - no (until ca. 1990) or low costs (297,-)
 - no cost risks

NGOs: Art. 1.2 III GALA

As regards legal persons, their interests are considered to include the general... interests which they **particularly** promote by virtue of their **objectives** and as shown by their **factual activities**

2005 – 2010 Limiting access

- Since 2005: access only for “interested parties” (individually, directly and personally concerned)
- Case law since 1-10-2008: NGOs must not only act before court and in procedures, but in “real”
- “Crisis- and recovery act”: introduction of “Schutznorm”-requirement (not limiting access, but scope of review)
- All financial support for environmental NGOs stopped

Access for foreign NGOs

- Non-discrimination principle applying
- Reciprocity not required
 - Neither legal, nor factual discrimination
 - Broadest access for foreign NGOs until 2005, broad access until 2008
 - Still quite broad access at the moment

2010 - ?: the ice age



Coalition agreement (tolerance agreement)

“All extra national requirements not obliged by EU law shall be repealed”

Limitations discussed

- Higher costs
- Introduction cost risks
- Introduction of strict(er) *Schutznorm*-requirement
- Limiting access for NGOs to what Aarhus strictly requires

Consequences of recent and proposed changes for foreign NGOs

- Still no direct discrimination
- Indirect discrimination possible:
 - if “particularly” is interpreted strictly
 - if Schutznorm-requirement is interpreted strictly (→ (former?) German discussion)
 - combination of above

Practice (German NGOs in NI)

Absent!

Practice II (German NGOs in NL)

- Possible reasons
 - Language
 - Not so many controversial projects
 - German NGOs not that "strong"
 - German NGOs not that "litigation-minded"
 - German NGOs trust in Dutch NGOs

Practice III (Dutch NGOs in Germany)



Practice IV (Dutch NGOs in Germany)

Experience:

- Limited access
- Difficult (procedural) rules
- High costs
- High cost risks

- **formally no discrimination**
- **factual discrimination?**