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Commentary on Strasbourg Principle no. 14: victim status of eNGOs

Principle 14 of the Strasbourg Principles stresses that NGOs are entitled to procedural environmental rights, and they can assert these rights in their own name before international human rights courts. Three generic types of rights form the canon of procedural environmental rights, *viz* the right to information, to participation and the right to a judicial remedy (Birgit Peters). Procedural environmental rights ensure that the interests of those likely to be affected by the activities that may cause environmental harm are taken into account in national or international procedures of environmental decision-making (ibid).

Although not binding, Principle 10 of the Rio Declaration on Environment and Development has served as an international benchmark, guiding the development of a new range of procedural rights which may be granted by international law (Elsa Tsioumani). Many international environmental treaties mention certain procedural rights in a specific context (Preamble, 2015 Paris Agreement; Montreal Protocol on Substances that Deplete the Ozone Layer, Article 9(2)). However, a unique codification of procedural environmental rights for Europe, which now has 47 parties, including the European Union (EU), is the Aarhus Convention. The Escazú Agreement is the counterpart to the Aarhus Convention for Latin America and the Caribbean. These conventions have emphasised that procedural environmental rights belong both to individuals and to groups, including NGOs (see, in this regard, the commentary on Principles 26-28). Specifically, the Aarhus Convention requires States to introduce measures to guarantee NGOs procedural rights, for example, wide access to justice to ensure compliance with access to information and public participation in decision-making rights as well as with provisions of national environmental law (Article 9, Aarhus Convention; Audrey Danthinne - Mariolina Eliantonio - Marjan Peeters). Likewise, groups are recognised as procedural environmental rights holders in the Escazú Agreement.

The international conventions guaranteeing procedural environmental rights has prompted the recognition of NGOs' capacity to assert these rights in their own name on the national level. For example, the European Court of Justice (ECJ), in Deutsche Umwelthilfe v. Bundesrepublik Deutschland , considerably expanded the right of an NGO to bring environmental claims against the EU. The right of environmental organizations to bring actions against EU type-approvals had been restricted by German national law, but the ECJ ruled that, following from Article 9(3) of the Aarhus Convention in conjunction with Article 47 of the EU Charter of Fundamental Rights, it must be possible for an environmental association which is entitled to bring an action under national law to challenge an EU type-approval in the domestic courts (ibid, § 71).

Principle 14 emphasises the need to interpret international human rights in the light of the provisions of the Aarhus and Escazú conventions with regards to the recognition of NGOs' procedural environmental rights (see, in this regard, the commentary on Principles 26-28). In line with this approach is the recent case law of the ECtHR allowing NGOs to directly bring claims under Articles 6 and 10 ECHR. The applicability of Article 6 § 1 ECHR to environmental litigation primarily depends on whether the right to a healthy environment or some of its substantive or procedural components are justiciable under domestic law (Natalia Kobylarz). In Collectif Stop Melox et Mox v. France, the ECtHR has supported the applicability of Article 6 § 1 ECHR to the proceedings brought by an environmental NGO. Having made explicit references to the Aarhus Convention, the ECtHR defined the association to be a legal entity with a right to information and to participate in the decision-making. Furthermore, the ECtHR allowed NGOs standing based on their own civil rights in Association Burestop 55 and Others v. France. Examining the applicability of Article 6 § 1 ECHR in its civil aspect, the ECtHR has noted that as civil society actors, non-governmental organizations with legal personality undoubtedly participate in the composition of 'public' within the meaning of the Aarhus Convention (ratified by France; ibid, § 54). The ECtHR inferred from this that, whereas the subject-matter of the proceedings in question was essentially the defence of the public interest, the 'challenge' raised by the applicant company also had a sufficient connection with a 'right' which it could claim to hold as a legal person (ibid). Furthermore, developments in the ECtHR's case law suggest that the role of environmental NGOs as 'public watchdogs' in the field of environmental protection puts them in a privileged position concerning the exercise of the right of access to public information under Article 10 ECHR (Vides Aizsardzības Klubs v. Latvia, §§ 40-49; Sdružení Jihočeské Matky v. Czech Republic; Cangı v. Turkey, §§ 30-45; Association Burestop 55 and Others v. France, § 88).

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