

„self-executing character“ of the Aarhus-Convention from the perspective of Austrian Law

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structure

- the self-executing character of an international treaty
- AC's objective
- the AC as mixed agreement
- criteria of the Austrian constitutional law
- Example: Art 9 (3) AC

„self-executing character“ of an international treaty

- means that it has direct effect with regard to national law
- a treaty can show self executing as well as non-self-executing characteristics
- each provision and its exact wording has to be examined in order to determine their legal impact.

comparison

art. 6 AC

„1. Each Party: (a) Shall apply the provisions of this article with respect to decisions on whether to permit proposed **activities listed in annex I**; [...]. Each Party shall **ensure** that, within the framework of national legislation, the way in which public authorities make environmental information available to the public is transparent and that environmental information is effectively accessible, inter alia, by: (a) Providing sufficient information to the public about the type and scope of environmental information held by the relevant public authorities, the basic terms and conditions under which such information is made available and accessible, and the process by which it can be obtained; [...]“.

art. 8

„Each Party **shall strive to promote** effective public participation at an appropriate stage, and while options are still open, during the preparation by public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment. To this end, the following steps should be taken [...].“.

ACs objective

Art. 1 AC:

„In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.“

the AC as mixed agreement

- contracting parties: EU + member states + third countries
- joint competence in the field of environmental law
- the EU and its member states in their scope meet the provisions of the AC
- provisions which fall into the responsibility of the EU become integral part of the legal order of the EU
→ dual nature

overview of the EU implementation

- **1st pillar**

right of access to environmental information → Directive 2003/4/EC on public access to environmental information

- **2nd pillar**

right of public participation in environmental decision-making

→ Directive 2003/35/EC providing for public participation

● **3rd pillar :**

- to enforce the right on access to information – Art. 9 (1) → Directive 2003/4/EC on public access to environmental information
- to enforce the right on public participation – Art. 9 (2) → Directive 2003/35/EC providing for public participation
- to enforce provisions of the national law relating to the environment – Art. 9 (3) → no implementation

„self-executing“ criteria from the perspective of Austrian Law

- reservation with regard to the implementation
- Art 50 (2) Austrian Federal Constitutional Law:
„At the time of approval of a state treaty, the National Council can resolve to which extent the treaty in question shall be implemented by the issues of laws.“
- no reservation with regard to the implementation does not automatically mean, that the treaty has direct effect.
- it depends on the determinability of the rule

constitutional criteria

- determinability of:
 - the responsible executive body
 - the norm addressee
 - the procedure when enforcing the claim
VfSIg 12.281/1990
- will of the contracting parties
 - general implementation order in
Art. 3 of the AC

AC from the perspective of Austrian Law

- international treaty without a reservation with regard to the implementation
- nevertheless it has no direct effect, because the convention as a mixes agreement partly falls under the responsibility of the EU

National Council explanatory notes
(ErlRV 654 BlgNR XXII. GP, 2)

„[...] each Party shall ensure that, **where they meet the criteria, if any, laid down in its national law**, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment“.

Art. 9 (3) of the AC

self-executing character with regard to the natinal law or rather EU-Law?

declaration by the EU in accordance with Art. 19 AC

„In particular, the European Community also declares that the **legal instruments in force do not cover fully the implementation** of the obligations resulting from Article 9(3) of the Convention as they relate to administrative and judicial procedures to challenge acts and omissions by private persons and public authorities other than the institutions of the European Community as covered by Article 2(2)(d) of the Convention, and that, consequently, **its Member States are responsible for the performance** of these obligations at the time of approval of the Convention by the European Community and will remain so **unless and until the Community, in the exercise of its powers under the EC Treaty, adopts provisions** of Community law covering the implementation of those obligations“.

official journal of the EU L 2005/124, 3.

ECJ, C-240/09, Slovak Brown Bear I

- NGO applied to be a 'party' to the administrative proceedings concerning the grant of a derogation from a system of environmental protection referred to the Habitats Directive
- Is it possible to recognise [...] Art. 9(3) of the AC [...] as having the direct effect of an international treaty in a situation where the European Union [...] has not adopted Community legislation in order to transpose the treaty concerned into Community law?



self-executing character from the perspective of EU-Law

„a provision in an agreement concluded by the European Union with a non-member country must be regarded as being **directly applicable** when, regard being had to its **wording** and to the **purpose** and **nature** of the agreement, the provision contains a **clear and precise obligation** which is not subject, in its implementation or effects, to the adoption of any subsequent measure“.

ECJ12.4.2005, Rs C-265/033, Simutenkov

Analysis of Art. 9 (3) of the AC

- does not contain any clear and precise obligation capable of directly regulating the legal position of individuals.
- Since only members of the public who “*meet the criteria, if any, laid down in its national law*” are entitled to exercise the rights provided for in Art. 9(3) AC, that provision is subject, in its implementation or effects, to the adoption of a subsequent measure.

ECJ Rs C-240/09, *Slovak Brown Bear I*, para 44, 45

Austrian Law

- direct effect of the AC is only possible in a field of environmental law, which is not determined by the EU-law
- except: field of Environmental Impact Assessment-Directive, Habitats-Directive, Birds-Directive, Waterframework-Directive, Waste-Directive etc.

conclusion

- the scope of the national interpretation authority is very small
- for instance: forestry law
- applying constitutional criteria of the Austrian law Art. 9 (3) AC is not precise enough to have direct effect with regard to national law
- **the Aarhus-Convention does not have „self-executing character“**

Thank you for your attention!

