

Public interest litigation in EU law: a light at the end of the tunnel?

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Abstract

The European integration project is facing a challenging moment. The spreading Euroscepticism and the lack of democratic participation in many Member States require the EU institutions to once more question how civil society should be involved in shaping and enforcing EU law.

So far, the EU and its institutions – in particular the CJEU – have considered the public good to be their exclusive property, making the role of civil society in the protection of public interests extremely marginal. This is particularly relevant in the environmental protection domain, where NGOs for decades have fought to bring cases before the CJEU with discouraging results. In this regard, the '*Aarhus saga*', which has seen the EU not in compliance *vis-à-vis* the most important piece of European environmental democracy legislation, the Aarhus Convention, clearly shows the way the EU conceives access to justice in environmental matters: as a fundamental right when access to national courts is concerned, and as an 'impossible request' when access to the EU courts is concerned. This is displayed in a number of rulings, namely *Greenpeace*, *UPA*, *Jégo Quéré*, *Stichting Natuur en Milieu* and *Slovak bear*.

However, the recent positive involvement of civil society organisations in the enforcement of the right to privacy and data protection might pave the way to a change of direction in European public interest litigation. An essential role is played by the new General Data Protection Regulation (GDPR) that introduces a new framework for the protection of the right to privacy in the European Union. In fact, the GDPR allows individuals to mandate an NGO to lodge a complaint on their behalf if certain conditions are fulfilled. From the entry into force of the GDPR on 25 May 2018, NGOs will strengthen their role as diligent watchdogs, and potentially provide a greater contribution in the protection of public goods.

Our research seeks to analyse the relevant European case law and legislation in these two legal domains, by highlighting analogies and differences in these areas. Our paper argues for a better consideration of the fundamental right to access to justice as an efficient 'governance tool'. This would aim at improving the enforcement of EU law in all the Member States and the legitimacy of the EU institutions in the eyes of the European citizens. Enhancing the role of the civil society in the enforcement of the public interest is needed more than ever in the environmental and privacy field, where the consequences of climate change and the development of disruptive innovative technologies call on the EU policy makers to ensure balance in often conflicting interests.