Article 9(3) Aarhus Convention - ECJ judgment C-826/18 (Stichting Varkens in nood) - Access to Justice in Environmental Matters - Principle of relativity

(Appellants against the Municipal Council of Hoogeveen)

According to article 8:1 of the Dutch General Administrative Act (GALA), an action before an administrative court against administrative decisions can be brought by “interested parties” only. In this case, the Administrative Jurisdiction Division of the Council of State (Division) has, however, ruled that article 9(3) of the Aarhus Convention (Convention) requires that also non-interested parties must have access to an administrative court in case they have used broader participation rights granted to them on the basis of national law in decisions on environmental matters. The Division has therefore ruled that article 8:1 GALA requires legislative amendment.

The ruling is a direct result of the ECJ judgment of 14 January 2021 in case C-826/18 ‘Stichting Varkens in nood’, in which it ruled amongst other things that also non-interested parties (in terms of the Convention: “members of the public”) should have access to a court on the basis of article 9(3) of the Convention if they have previously used broader participation rights granted to them on the basis of national law in decisions on environmental matters.

According to the Division, the ECJ has not unambiguously determined whether a non-interested party can complain to the administrative court only about its rights in the participation procedure or also about the substance of the decision. The Division is of the opinion that an interpretation that is too limited is not consistent with the background of the judgment of the ECJ. Moreover, the distinction between procedural and substantive objections is not always easy to make. The Division therefore rules that a non-interested party who has previously submitted an opinion, may submit objections about the contested decision regarding both its rights in the participation procedure and the substance of the decision.

The Division clarifies that non-interested parties may nonetheless often encounter the so-called principle of relativity when it comes to these arguments of substance. The principle of relativity is laid down in article 8:69a of the GALA and states:

“The administrative judge shall not annul a decision on the grounds that it is contrary to a written or unwritten legal rule or a general legal principle, if this rule or this principle clearly does not have as its purpose the protection of the interests of the person(s) invoking it.”

Non-interested parties will therefore often find the principle of relativity on their way; this limits their chances of a successful appeal to the administrative court.

The ruling of 4 May 2021 is the second ruling in which the Division has outlined the implications of the Stichting Varkens in Nood judgment of the ECJ in the Netherlands. Its first ruling dates from 14 April 2021, ECLI:NL:RVS:2021:786, 201908374/1/R3 [http://www.aca-europe.eu/index.php/en/jurifast-en?ID=4103]. The Division clarified in that judgment that the requirement as laid down in article 6:13 GALA, which requires “interested parties” to have submitted observations during the preparatory procedure against the draft environmental decision in order to be admissible before an administrative court, violates article 9(2) of the Convention.