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**Case Summary posted by the Task Force on Access to Justice**

**EUROPEAN UNION: T-91/07 and C-355/08, WWF-UK v. Council of the European Union**

1. Key issue	NGO Standing before the Court of First Instance and the European Court of Justice (art. 2.5, 9.3) – The ECJ did not allow an environmental NGO to challenge a EU Regulation on cod fishing, as the NGO was not “individually concerned” by the contested decision.
2. Country/Region	European
3. Court/body	CFI and ECJ
4. Date of judgment /decision	2 <sup>nd</sup> June 2008 and 5 <sup>th</sup> May 2009 respectively
5. Internal reference	T-91/07 and C-355/08 (Celex 62008J0355)
6. Articles of the Aarhus Convention	Articles 9(2) and (3), with links to Articles 2(4) and (5)
7. Key words	Standing, individual concern, <i>Locus standi</i>
8. Case summary	<p>WWF-UK is a member of the Executive Committee of the North Sea Regional Advisory Committee (RAC), a body established under EC Regulation No. 2372/2002 of 20<sup>th</sup> December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy. The role of the RACs are defined in Articles 31(1), (4) and (5) of that Regulation as “ ... to contribute to the achievement of the objectives of Article 2(1) and in particular to advise the Commission on matters of fisheries management in respect of certain sea areas or fishing zones”.</p> <p>On 12<sup>th</sup> December 2006, the RAC sent a report to the Council and the Commission on the proposal for a Council regulation fixing for 2007 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required (COM(2006) 774 final).</p> <p>The report made reference to a minority viewpoint held by three environmental organizations (including WWF-UK) to the effect that they were unable to support the proposal in view of the fact that, for the fifth year in a row, the International Council for the Exploration of the Seas (ICES) had recommended a zero catch for North Sea cod.</p>

By way of application to the CFI on 19<sup>th</sup> March 2007, WWF-UK the sought to challenge the Regulation fixing the Total Allowable Catches (TACs) for cod for 2007 at approximately 30,000 tonnes for all of the areas defined by EC Regulation No. 423/2004. WWF asked the Court to: (1) annul in part the contested regulation in so far as it fixes the TACs for cod for the year 2007; (2) rule that the provisions in question are nevertheless to continue to have effect until replaced by a new measure; and (3) order the Council to pay the costs. The Council and the Commission (the latter having been granted permission to intervene in support of the Council) raised an objection of inadmissibility.

By order dated 2<sup>nd</sup> June 2008, the CFI dismissed the action as inadmissible without initiating the oral procedure on the basis that the regulation was not of individual concern to WWF-UK. The CFI held that a person is involved in the procedure leading up to the adoption of a Community measure is capable of distinguishing that person individually in relation to the measure in question only if the applicable Community legislation grants him certain procedural guarantees in his own right. Any possible procedural guarantees accorded by EC Regulation No. 2371/2004 and Decision 2004/585 would exist solely for the RACs and not for their members.

WWF appealed the order of the CFI to the ECJ in August 2008, seeking that the Court should: (1) set aside the order under appeal; (2) declare its action before the Court of First Instance admissible; and (3) order the Council and the Commission to pay the costs. By order dated 5<sup>th</sup> May 2009, the ECJ held that WWF-UK was not individually concerned by the contested decision. In addition, it was not clear from the Order whether even the RAC itself would be held to be individually concerned:

*"43. ...Where such procedural rights are conferred on an entity composed of a number of members, only the entity expressly named in the Community provision conferring those rights may be regarded as individually concerned for the purposes of the fourth paragraph of Article 230 EC, and not its members taken individually (see the order in Schmoldt and Others v Commission, paragraphs 41 and 42)."* (own emphasis added)

<p>9. <i>Link addresses</i></p>	<p>Order of the Court of Justice on appeal  <a href="http://curia.europa.eu/juris/liste.jsf?num=C-355/08&amp;language=en">http://curia.europa.eu/juris/liste.jsf?num=C-355/08&amp;language=en</a> ;  <a href="http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence_prj/EUROPEAN_UNION/ECJ_CFI_WWFvCouncil/EU_ECJ_C355-08P_WWFvCouncil.pdf">http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence_prj/EUROPEAN_UNION/ECJ_CFI_WWFvCouncil/EU_ECJ_C355-08P_WWFvCouncil.pdf</a>            Order of the Court of First Instance  <a href="http://curia.europa.eu/juris/celex.jsf?celex=62007TO0091&amp;lang1=en&amp;type=NOT&amp;ancre=">http://curia.europa.eu/juris/celex.jsf?celex=62007TO0091&amp;lang1=en&amp;type=NOT&amp;ancre=</a>  <a href="http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence_prj/EUROPEAN_UNION/ECJ_CFI_WWFvCouncil/EU_CFI_T91-07_WWFvCouncil.pdf">http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence_prj/EUROPEAN_UNION/ECJ_CFI_WWFvCouncil/EU_CFI_T91-07_WWFvCouncil.pdf</a></p>
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