

From the Editors

In the absence of a general code of EU administrative law, the influence of Union law on general administrative law in the Member States is, in the first place, exercised by means of the case law of the Court of Justice and, in particular, a number of principles that that Court applies. The second line of influence goes through European legislation. By its very nature, the regulatory standards which apply are usually limited to a certain area of EU law. Are these 'area specific provisions' less important or less interesting? Should we leave them to specialists of custom law, environmental law, social law or migration law? We would not say so. Let us take EU environmental law. In this area there has been important case law on the standing of NGO's. Under the influence of the Aarhus convention and the so called 'Aarhus directive' implementing it (Directive 2003/35), the standing requirements for NGOs has been relaxed considerably, not least because under this convention environmental NGOs must have wide access to justice (cf. cases like *Djurgården*, C-263/08, and *Trianel*, C-115/09). Meanwhile, this basic requirement of wide access to justice for NGOs has been extended to areas which are not covered by the Aarhus directive. A combination of Article 9 of the Aarhus convention and Article 47 of the Charter of Fundamental Rights has led to, in a recent judgment of the Court (*Lesoochránárske zoskupenie II*, C-243/15), an enhanced right to effective judicial protection of environmental NGOs in areas of law which are as such not covered by the Aarhus directive. This is important, because the rights of NGOs under Article 47 of the Charter alone are disputable.

Another area of significant changes in the legislation is EU migration law. The requirement of an effective remedy introduced by the Dublin III Regulation (Regulation No 604/2013) with respect to transfer decisions of asylum seekers resulted in an important reorientation of the Court's case law. While under the regime of Dublin II (Regulation No 343/2003) an asylum seeker could only rely on very limited grounds to challenge the responsibility of a Member State for examining his or her asylum application, this has now changed profoundly. According to the Court, under Dublin III, on the basis of the requirement of an effective legal remedy, that must cover questions of both fact and law, an asylum seeker is now entitled to plead, in an appeal against a decision to transfer him or her, the incorrect application of one or more of the criteria for determining responsibility laid down in that regulation (cf. *Ghezelbash*, C-63/15). Another important reinforcement of judicial protection of asylum seekers in the new Directive on common procedures in asylum cases (Directive 2013/32) has led a national court to change its approach to the intensity of review of administrative decisions in asylum cases. Since Article 46 (3) of this directive requires the Member States to ensure that an effective remedy provides for a full and *ex nunc* examination of both facts and points of law, the Dutch Council of State reconsidered its approach to the control of decisions in which an assessment is made as to the credibility of the account of an asylum seeker and choose

for more strict judicial scrutiny of these decisions (cf. Raad van State 13 April 2016, ECLI:NL:RVS: 2016:891).

Whilst these types of processes can be likened to a ping-pong style back-and-forth with the courts on one side and legislators on the other, they also give rise to broader questions. One of them being in how far do the effects of these processes reach beyond the specific area of law in which they take place? Is it, for instance, conceivable that constructs similar to that of 'Aarhus + Article 47 CFR' may work for other, non-environmental NGOs such as those for consumer protection or anti-discrimination? What are the broader implications of the evolving case law on judicial scrutiny? And what may the developments in migration law contribute to comparable questions in other areas?

In the present issue of REALaw these questions are not addressed. Yet the reader will find a fresh perspective on the *Köbler* case law by Zsófia Varga, addressing, *inter alia*, the thorny question of whether the violation of the duty to make a reference for a preliminary ruling by the last instance court can lead, as such, to liability. In the second contribution, Katri Havu deals with the scope of the obligation of the European Commission to state reasons in the context of competition investigations, as clarified in the Court's recent 'Cement Judgments'.

The Editors, Groningen, Utrecht, Luxemburg