



Protection of Species in Environmental Decision-making PROSPEC

**An interdisciplinary research project on
the integration of scientific evidence in
administrative and judicial procedures**

***Presentation at the 5th Annual EELF Conference in
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”Standards” & ”proxies” in environmental law

Criteria in law (EIA, WFD, HD)

- **Significant impact on the environment...**
- **Good ecological status/potential...**
- **Likely to have a significant effect on the conservation objectives...**

Proxies

- **Key habitats...**
- **Red list, indicator species, etc...**





“Favourable conservation status”

(i) conservation status of a species means the **sum of the influences** acting on the species concerned that may affect the **long-term distribution and abundance of its populations within the territory** referred to in Article 2;

FCS when:

- population dynamics data on the species concerned indicate that it is **maintaining itself** on a **long-term basis** as a viable component of its **natural habitats**, and



“Procedural legality”

- **Requirements for permit application / Notification...**
- **Transparency and participation in the procedure...**
- **Precautionary principle...**
- **Burden of proof...**
- **EIA, AIA, etc...**

“*Substantive legality*”



C-127/02 *Waddenzee* (2004), p. 59

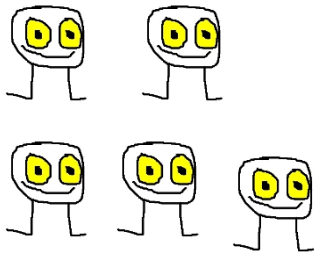
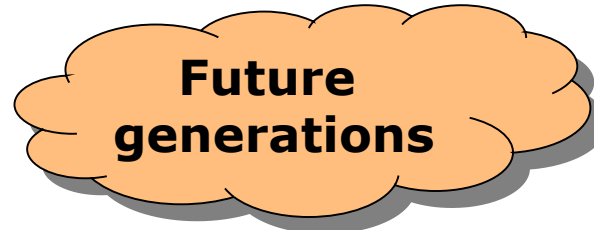
...are to **authorise such activity only** if they have made **certain** that it will not adversely affect the integrity of that site. **That is the case where no reasonable scientific doubt remains as to the absence of such effects...**

C-71/14 *East Sussex* (2015), p. 58

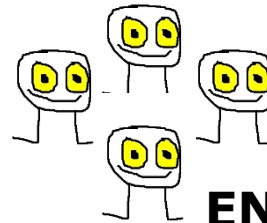
...JR procedure (...) must enable the court or tribunal hearing an application for annulment of such a decision **to apply effectively the relevant principles and rules of EU law when reviewing the lawfulness of the decision (...)**



Environmental “interests”



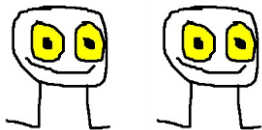
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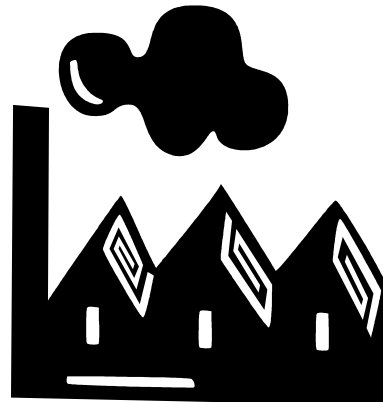
ENGOS



Courts



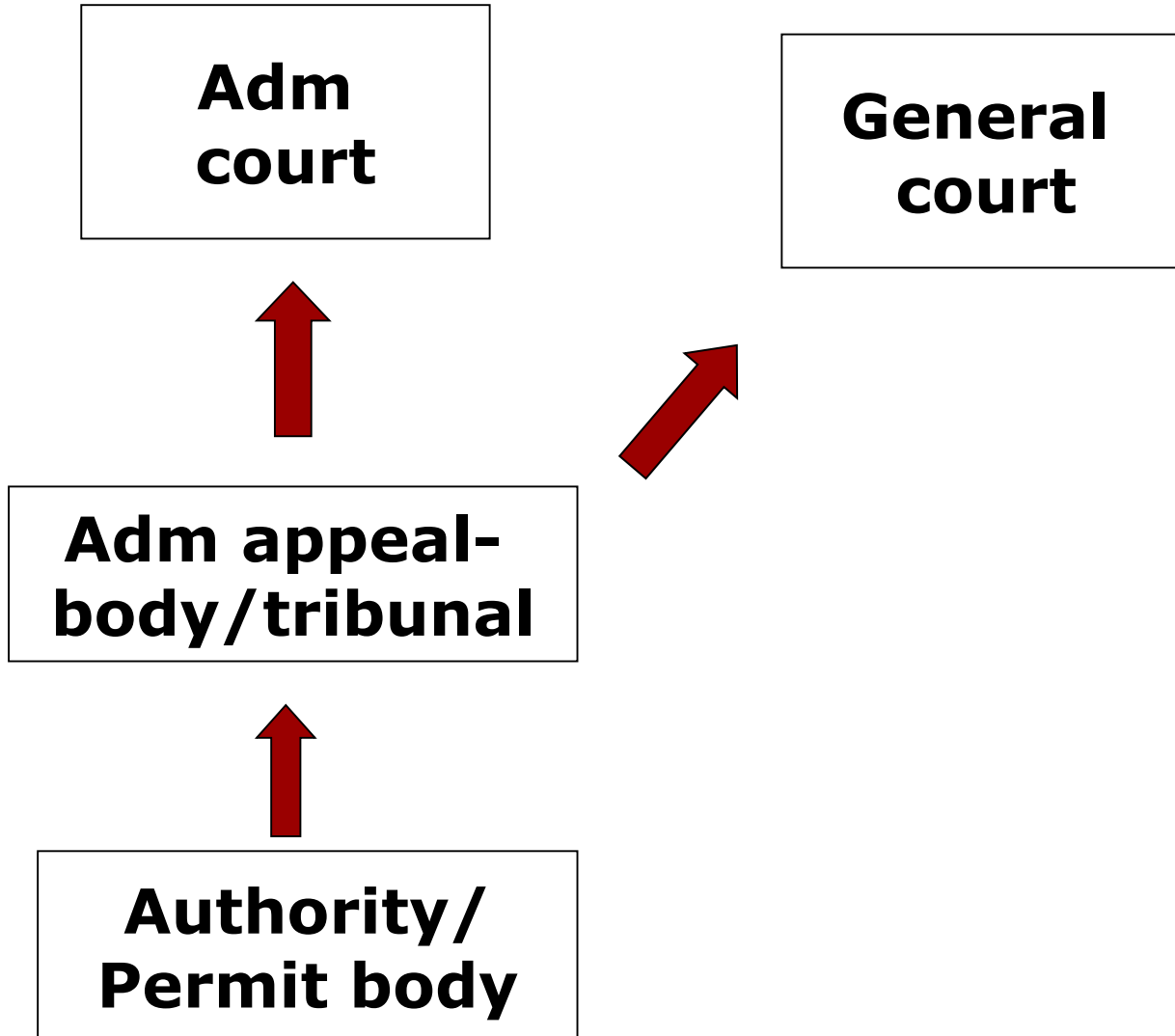
**Public
concerned**



**Supervisory
authority**



Different procedural system





In court...

- **Administrative discretion/Trust...**
- **Reformatory – cassatory procedure...**
- **Administrative – civil procedure (Vermont EC), ex officio principle, site visits...**
- **Environmental Benches/Courts, Tribunals...**
- **In-house experts, technical judges...**
- **Remits, boards of experts, etc...**



In court...

- Independence of the experts...
- Conflicting expertise (eutrophication; N or P)...
- **The role of the Public Concerned (ENGOS)...**
- **Loser Pays Principle...**

PROSPEC



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Research questions

- **What criteria are used in in environmental decision-making procedures..?**
- **What role have the different actors in providing information in the processes leading up to the decisions..?**
- **How does the nature scientific evidence develop through the procedure..?**
- **How can we – legal scholars and ecologists in cooperation – evaluate the quality of the decision-making processes...?**





....and finally...

THANK YOU FOR LISTENING..!



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