

# **GENERAL REPORT**

Presented by

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Where statutory provisions fail to specify who are to be regarded as rightful Claimant(s), the concept of «legal interest» is used in administrative law as a criterion set up as a condition for contesting the validity of an administrative manifestation; the concept thus serves as an administrative-procedural criterion for delimiting the group of persons who are entitled to contest such validity as against the administrative authorities and/or the courts of law.

Like other legal standards with indistinct contours this concept is difficult to define clearly, and it is impossible -already because of the differences existing between the individual countries within the European Communities as regards the structure of the administration and the judicial system, and as regards traditional legal thinking - to establish comparable guidelines.

It should be remembered i.a. that cases involving the administration in the U.K., Ireland and Denmark generally come under the jurisdiction of the ordinary courts of law, and in the Netherlands administrative dispute may be settled by submitting it to the Crown, whereas the other E.E.C. countries have set up a system of separate administrative tribunals in various guises.

Even within the individual country the concept of «legal interest» is not unambiguous, because it varies from one subject area to the other and from one stage of the matter to the next. The interpretation is also affected by various considerations, not merely of an administrative-procedural nature, but particularly by the substantive rules and the intentions on which they are based, be it legal protection, control of the administration, or a wish to extend the group of rightful Claimants in the interest of democratic influence.

Whether the concept of «legal interest» appears as a criterion laid down in a statute or other legal provision, or is recognised legal maxim within the relevant subject area, the meaning of the concept for the group of claimants must be analysed in more detail, both in the event of complaints and upon so-called intervention on the part of a third party who wishes to enter the action in order to voice opinions in support of a specific administrative solution.

These general problems are accentuated when we are dealing with administrative activity within the environmental sector, which is characterised in all West-European countries by rapid development and intensified interest on the part of the population, reflected in individual applications as well as actions from wider circles - often powerful organisations. The concept of «interest» on which the administrative law has been based has thus been given another dimension than previously.

Referring more specifically to the valuable and comprehensive national reports, an attempt will be made below to set up certain guidelines. Due to the volume of the material the survey can be no more than summary.

## **1. The General Interpretation of the Concept of Interest in the individual E.E.C. Countries as a Condition for Judicial or Quasi-judicial Settlement**

The concept of «legal» or «lawful interest» - as pointed out in the Belgian report - can be defined in various ways. According to its wording it may be regarded more or less as a logical, circular argument pointing out that - by virtue of statutes or legal maxims - there is a creditable access to contest or affect an administrative decision. The problem is: What does the concept contain? and in the distributed questionnaire the attention has been drawn to the sub-concept of «personal interest», «collective interest» and «actio popularis».

It appears from the national reports that it is recognised in most countries that legal interest does not necessarily presuppose the possession of subjective rights (which are generally regarded as a well-defined and delimited concept), but that the holders of rights make up a relevant nucleus within the group of legitimate Claimants. It also appears that «actio popularis» - in the sense of right of action for every citizen - is admissible in its classical form only in quite exceptional cases. Between these two extremes - the holders of rights and the persons who plead a general right of action - there is an important intermediary group whose interests represent a highly diversified spectrum. Even where the set of problems is focused on the access to complain to judicial or quasi judicial authorities, the contests of the concept of interest vary - both as regards principles and details.

In *France*, which has adopted a system of administrative tribunals with the Conseil d'Etat as an instance of appeal, an infringement of rights is a pre-condition for the admission of the so-called recourse of execution which entitles to full testing of an administrative decision. In the case of recourse of acknowledgment, which concerns the legality of a general or specific administrative disposition, the Claimant is required to have a direct and sufficient interest in the annulment of the administrative disposition, but when interpreting the concept of interest there is a tendency towards objectivity in the sense that the Claimant must be in a particularly creditable legal situation where - by virtue of his «capacity» of belonging to a clearly defined and delimited group - he can be referred to the legitimate Claimants recognised via the court's establishment of precedents.

The personal interest is regarded by judicial usage as an individual and direct interest. The typical legitimate plaintiffs include the addressee of an administrative disposition, but the courts of law - who adopt a very pragmatic usage, on the whole - also pay strict attention to financial, social and commercial interests, whereas intangible interests are interpreted restrictively.

The collective interest generally claimed by organisations is not regarded as a merging of individual interests of the organisation's members, but as the members' joint interests safeguarded by the organisation in its own name in its capacity of corporate entity. It is a consequence of this aspect that - apart from cases of attorneyship - an organisation cannot act on behalf of its members with a view to securing individual benefits, but can file complaints only against administrative decisions that infringe upon the joint interests of all or a part of the members - as set out in the objects of the organisation. On the other hand it is recognised that organisations may enter as interveners in support of individual complaints, even where the outcome may be of very indirect interest to them.

In *Belgium* a distinction is made between the so-called subjective proceedings (relating to recognition of subjective rights), which - with a few exceptions - are heard in the ordinary upper and lower courts, and the objective proceedings, where a claimant seeks to have an administrative disposition set aside by the Conseil d'Etat with reference to its illegality. Whereas a right to sue under the subjective proceeding normally presupposes a right as well as an interest, the access to recourse and complaint according to the co-ordinated Conseil d'Etat Acts is open to anyone who can show an infringement or interest. Where the case concerns a general administrative act, it is assumed that anyone to whom it applies can then bring an action for annulment before the Conseil d'Etat, whereas the problem of personal or collective interest becomes relevant in connection with annulment suits in respect of individual administrative acts. Whoever has a personal and indisputable interest in the annulment is regarded as legitimate plaintiff. This does not only include the particularly clear cases where the Claimant is the addressee of the administrative disposition or has been ignored by the same disposition, but the Claimant must be in a special position in connection with the disposition, possibly with geographical limitations.

To the extent that collective interest is viewed as an interest held by several persons in the same actual situation, it is possible for the individual - always provided that the other conditions are fulfilled - to bring an action for annulment, either alone or with others in the same situation. The collective interest, however, can also be reflected in the form of organisations pleading that its members have been affected collectively by an infringement - or that the infringement is contrary to the interests that the organisation safeguards according to its objects. In such cases the organisation may bring an action for annulment of the specific administrative act, provided that - according to its Bye-laws - the organisation is required to counter such administrative acts or to protect its members against the consequences thereof. It is a requirement, however, that the organisation's form and status as a corporate entity has legal validity.

In *Luxembourg* - where there is no subordinate administrative tribunal, except for tax matters - the Supreme Administrative Tribunal is the sole instance of appeal in administrative proceedings for cases referred to the court, whereas for other cases the authority is vested in the ordinary courts of law. Where the Supreme Administrative Tribunal is competent, it may vary administrative decisions both by recourse of execution where - like in France - a complete testing of the substance is performed, or by recourse of approval, which is in the nature of a legality check.

Luxembourg law, however, allows recourse only in respect of injurious, individual decisions, not in respect of general administrative dispositions, and - apart from a requirement for a capacity to sue - the legal interest is interpreted as the direct tangible or intangible interest held by the person who feels the infringement. The interest must be obvious and must affect the Claimant's personal situation, i.e. it must be actual and relevant. The Claimant must be a natural person or a corporate entity in possession of legal capacity. Organisations and associations that fail to fulfil this condition consequently have no access to recourse without special authority, whether or not they are otherwise approved in law.

In *Italy* cases relating to administrative powers come under administrative, regional tribunals and the Consiglio di Stato, which functions essentially as an instance of appeal. With a few exceptions the courts of law cannot test the administrative discretion, but they may exercise a legality check by testing the competence of the administrative authority, the compliance with requisites in form, the correct handling of the matter, and the compatibility of the decision with common sense and accuracy.

The Claimant is deemed to have access to complain when the administrative decision (or the passiveness of the administration) is detrimental to his interests. The interest must be personal, actual and relevant, and the action must aim to achieve an advantage or to avoid injury or inconvenience. However, the requirement for personal interest does not preclude the presence of interest even though many persons are affected by the administrative decision - provided that they can be identified by a specific connection with the decision and not merely belong to a certain category (e.g. as tax-payers or residents of a town) when they are not directly affected.

Collective interest, which is regarded as something between public and private interest, may exist with a (substantial) group of persons who are in a better position to achieve their advantages by acting collectively than by individual action - trade unions being a typical example. In these cases one or several of the members may be regarded as entitled to sue if they claim justice under the law or if the dispute concerns a specific administrative exercise of discretionary powers.

In connection with the submission of cases to the courts of law a distinction is made as to whether or not a superior administrative authority has confirmed or varied an administrative disposition. In the first instance the right to sue accrues to the same party or parties who complained to the administrative authority. Other parties having a

direct interest enjoy a similar access if the time-limits, if any, for an action have not expired. If the administrative disposition has not been confirmed by a superior administrative authority, any party whose direct interest was served better by the original decision is entitled to bring an action for annulment. Generally speaking, a citizen can bring an action only if he has his own particular interest to defend - not the interest he shares with the general public (*interesse diffuso*).

These points of view also apply to associations, whose right to sue is recognised only where the case concerns the safeguarding of a specific interest falling under the association's objects. It is a further requirement that they are in the nature of public (corporate entities).

In Greece a recourse of acknowledgement (apart from damage suits in the ordinary courts of law and private action in criminal cases) can be initiated before the Supreme Administrative Tribunal (and - by way of exception - before other administrative tribunals), claiming annulment of an administrative provision, disposition or omission under a plea of incorrect application of the law (including insufficient explanation and the proper exercise of discretion) and a recourse of execution may be initiated before the administrative tribunals, claiming annulment or variation of an individual decision. The access to recourse of acknowledgement is precluded, however, where the law has determined that a recourse of execution should be initiated against an individual administrative disposition.

The interpretation of the legal interest, which is a precondition for both types of recourse, has developed through the practice exercised by the Supreme Administrative Tribunal as a condition for recourse of acknowledgment and which is based on a separate Act applying to the tribunal, under which recourse belongs to any natural person or corporate entity affected by the administrative disposition or whose legal - even intangible - interests have been infringed upon. In practice the interest is required not to be contrary to the law, to be personal, direct and relevant, and not to be precluded by the Claimant's acceptance of the administrative disposition.

The requirement for personal interest is tantamount to a requirement for close connection between the Claimant and the disposition or caused by the Claimant's special capacity or the situation in which he is - and is thus in contrast to the general interest in the legality principle which an acknowledgment of «*actio popularis*» would reflect.

Similarly, legal interest is a condition for recourse of reversal to the Supreme Administrative Tribunal, intervention in support of the disputed disposition, and for a third party's objection to an annulment decision.

Under the above Act, a corporate entity enjoys access to recourse of acknowledgment on the same terms as a natural person. This rule has caused access to recourse to be acknowledged both in connection with tangible and intangible damage where the disposition prevents a corporate entity from fulfilling the objects under its Bye-laws. It includes associations which are corporate entities, to the extent that the interests of all members or a significant part of them have been injured. In these cases the concept of interest is sometimes given a wider interpretation than in connection with natural persons, and the wording of the Bye-laws can be so broad that the result is something similar to an »*actio popularis*« in the guise of an association.

Under the Administration of Civil Justice Act, organisations that are not corporate entities may bring an action before the ordinary courts of law, and by a decision of the Supreme Administrative Tribunal access has been provided for «collective promoters» to institute recourse of acknowledgment even if they are not corporate entities. This access presumably exists also for political parties as regards acts that are ruinous for their working conditions, but not as regards acts that are contrary to their political opinions and platform.

The *Dutch* system of complaints - as outlined in the introduction - is, in matters of anti-pollution law, dominated by the access to bring administrative decisions before the Crown according to a quasi-judicial procedure, which is described in detail in a separate Council of State Act. The administrative disputes section of the Council of State examines the matter; by virtue of publicity and hearing of the Claimant and the relevant administrative authority - by means of written and in most cases oral proceedings - the examination retains the same characteristics as proceedings before the courts of law. Having completed the examination, the section submits a recommendation to the Crown in the form of a draft decree, in which either the appeal is declared inadmissible or unfounded, or declared founded in which case a new decision is drafted. The recommendation is in principle not binding but is rarely set aside in practice in the Crown's final decision. The supreme court of cassation has held that this arrangement provides sufficient legal guaranties to preclude action before the ordinary courts of law.

Where submission to the Crown is precluded, and where there is no special access to have the matter tested by courts of law acting as administrative courts (*levies*), an action for annulment relative to the lawfulness of administrative decisions may be submitted to the judicial section of the Council of State for judgement, insofar as they do not concern the decrees of the Crown in administrative disputes. In practice, only the ordinary courts of law will then be competent to pass judgment in damage suits against administrative authorities when the administrative acts have been set aside by the Crown or the judicial section of the Council of State.

Where Dutch law requires showing an interest being affected as a condition for access to complain, it is not necessary for the Claimant to have a legal interest infringed, in the sense of a subjective right or an interest protected by the law in general or by the specific Act on which the administrative decision is based. A purely factual interest is sufficient. The personal interest is covered by various legislation, i.a. concerning the judicial section of the

Council of State, under which the right to complain is enjoyed by any natural person or corporate entity whose interest is directly affected by the administrative decision. This includes person(s) to whom the decision is addressed or whose legal situation will be changed by it; any third party must be able to show a specific interest which can to some extent be individualised. Collective interest is regarded as tangible or intangible interest held by a plurality of persons, normally without making any particular distinction between interests peculiar to a group of persons and interests pursued by a group that concern the public at large.

The development has been influenced by new provisions in the Civil Code, concerning associations, which have brought about a lapse of the distinction between associations having and not having legal personality, and who wish to avail themselves of the access to appeal to the Crown and the judicial section of the Council of State. Provided that interest is present, this access applies to all associations, whether or not they have complied with certain legal formalities, always assuming that they were established by a multilateral legal act under which a number of persons aim to create a corporate entity with a view to collaboration according to definite rules or with a view to a specific object. This is likely to be true for groups if they have a membership, an organisation with a definite object and acting as a unity in legal relations with others.

As will be seen from the following paragraph, however, the limitations that follow from a traditional concept of interest lose some of their importance in environmental matters - because of extensive access to raise objections during the preparatory stage of the administrative decision process within the environmental field and special rules for continued access to complain at the subsequent stages of the case for the person(s) who have made use of the access to raise objections.

In the *United Kingdom* the administrative law is characterised by the fact that a number of significant administrative decisions affecting the citizen's rights and interests are made after public inquiries, arranged according to special authority granted by a Ministry, and chaired by a so-called inspector - frequently a judge appointed for that purpose. It is possible to raise objections in writing and an attempt is made to ensure - by means of a public hearing similar to a legal proceeding, where it is possible to make statements, call witnesses and make representations etc. - that all parties (individuals, associations and authorities) whose rights and interests are likely to be affected are given a fair chance to present their views. In certain minor cases the inspector is entitled to make an independent decision, but he will in any event submit a report of the results to the relevant minister, whose decision - under the Tribunals and Inquiries Act - must be motivated.

By special authority, decisions can be brought before the High Court of Justice on a plea that they fall outside the legislation or suffer from defects in that they fail to meet legal requirements. These include pleas of incorrect handling of an insufficient motivation for an administrative disposition.

The right to sue is held by any injured party, but the interpretation of this term has varied - sometimes towards a restrictive interpretation, sometimes in a more liberal direction. Recent practice seems to adopt a sympathetic attitude, so that the right to have an issue tested by the courts of law normally belongs to any person who has reasonable grounds to feel injured. This right also applies to associations - depending on the relevant situation, including the object and geographical attachment. Besides, the «sufficient interest» which is a prescribed condition for a hearing by the courts of law, cannot be regarded as limited to those whose rights have been substantially infringed - it must be viewed in the context of the whole matter.

In *Ireland* there is no separate legal system for administrative matters, and the remedy against administrative dispositions is an action before the ordinary courts of law. As a general rule, the judicial testing concerns only the legal background of the decisions (including excesses as regards the limits of discretion and proper handling of the matter), but in certain cases - by special statutory authority - law as well as facts may be brought before the High Court. Regular tribunals exist only on a limited scale.

It is a consequence of constitutional rights when an aggrieved citizen who contests the legality of an administrative decision is granted access to have the issue tested by the courts of law. The right to sue is held by any person who is in the actual sense of the word interested in the administrative disposition, either because he is affected by the disposition or because an obligation has been directly or indirectly imposed on him. According to the circumstances, a similar right may be held by organisations or groups. A generalised interest shared by everybody used to be insufficient, but three nation-wide organisations, approved under the Planning Act and safeguarding national interests of environmental and cultural importance, have a special right to sue within their special domains - because of the approval.

Even though a collective interest normally is not sufficient - unless it represents a merging of separate interests - it may also be possible to admit so-called «class actions» where numerous persons hold the same interest and where one or some of these are granted access to sue for the benefit of all interested parties.

In *Denmark*, where no administrative tribunals have been established - though they are authorised in the Constitution - the testing of administrative dispositions of a general or concrete nature comes under the ordinary courts of law with the Supreme Court as the uppermost instance of appeal. Under the Constitution the courts of law have been authorised to perform legality checks, which are traditionally far-reaching and which include legal defects, excesses of discretion, and questions of correct handling of the matter. On the other hand, without having been

specifically authorised to do so, the courts will not consider the suitability of the dispositions, such questions being to a certain extent referred to special tribunals, sometimes having judges as chairmen. The tribunals often function according to quasi-judicial principles, but they are not bound by the negotiation maxim laid down for court hearings.

The right to sue - where nothing to the contrary has been prescribed - presupposes that the Claimant has a material and individual interest in the outcome of the case, in the sense that the relevant person must be protected by the rules on which the decision is based and, furthermore, that he is affected in such a way that it appears different compared with others. In principle the issue must be of a certain, greater significance to the Claimant, and there must be a closer relationship between him and the administrative disposition.

As a general rule it is reasonable to assume that the body of persons who are entitled to complain during the administrative stage also has the right to sue in the courts of law, and - conversely - that exclusion from administrative complaint precludes a right to sue, but - like in England and France - legal usage tends to adopt a pragmatic interpretation with due regard to the whole context of the relevant case. Owing to the close affinity with the legal systems of the other Scandinavian countries, legal criteria followed by the supreme courts in those countries will also be significant.

Legal interest is not only held by individuals but also by associations and organisations if their structure is a permanent one. It will normally be a condition for acknowledgment of legal interest that the objects of the association are safeguarded by legislation and relevant in the concrete case so that the action is of direct significance to the association and/or the tangible or intangible interests of the members. This is the case where a loss or an infringement has been inflicted in a way which is comparable to an infringement of individuals. The normal conditions may be relaxed, according to the circumstances, where there is a need for judicial control of the administration and the connection with a legal claim is such that the association has reasonable cause to bring the action. Conversely, in court practice the right to sue has been refused in case of an injunction against an administrative authority because the organisation involved had an undefined membership and a structure so loose that it was impossible to identify specific agencies that could bind the organisation as such.

Legal interest is also required for intervention in support of one of the parties in a lawsuit. In practice this does not present serious problems due to the liberal attitude towards associations and organisations, so long as the dispute falls within their objects - which are often vaguely worded and far-reaching.

In *Germany* the testing of administrative dispositions comes under separate administrative tribunals designed according to a hierarchical system with local tribunals, appeals tribunals and a Supreme Administrative Tribunal as court of cassation.

German administrative law differs from the legal systems of other West-European countries in that the concepts of personal, legal and collective interest, and «*actio popularis*» do not exist as relevant concepts, and instead the problems of the right to sue are focussed on the protection of subjective rights.

Under the Constitution any person who feels his rights infringed upon by the public authorities is entitled to complain to the courts. The access to complain may be utilised - through the wording of the procedural rules - to initiate a recourse of acknowledgment under a plea of annulment of an individual administrative disposition or pleading an obligation on the part of the administrative authority to perform an act required by the Claimant. With some rare exceptions this sort of recourse serves exclusively to protect subjective rights - it does not assume any objective nature.

In addition, it is possible to initiate recourse with a view to establishing a subjective legal relationship or the absence of such relationship, insofar as the Claimant has a justifiable interest in having the relationship established within a brief timespan.

The legality of general administrative directives (in the sense of general and impersonal decisions which are not in the form of statutes) may be contested via a recourse of acknowledgment with a special procedure that is open to any natural person or corporate entity whose rights have recently been infringed upon according to the legal standard, and the administrative authority who is charged with the administration of the standard or to whom it applies. Recourse of acknowledgment concerning individual acts only cannot be instituted against general directives, but their legality may be tested as a primary or alternative issue.

The infringement of rights which is a precondition for the above types of recourse has been interpreted by the Supreme Administrative Tribunal as tantamount to an encroachment on the Claimant's legal position and on his interests - provided that they are suitable for legal protection. Whereas this formula presents no problems where the Claimant is the addressee of the disposition, it may be more difficult in other cases to determine which rules are intended solely for the protection of the public and which are exclusively or at least concurrently or partly designed to safeguard individual interests. Only in the latter category of cases can there exist a right in favour of those who benefit from the standard, whereas neither an indirect personal interest nor the objective legal position is *per se* sufficient. The more detailed determination of the concept of right has therefore been established by extensive legal usage.

Recourse with a view to ascertaining a subjective legal relationship depends upon a »justifiable interest«, which is regarded as a broader concept than »legal interest«, including any public law or civil law interest suitable for acknowledgment in view of the facts of the individual case - whether the interest is of a judicial, financial or artistic nature.

Institution of proceedings to test the legal standards presupposes that the Claimant can show that his rights (in the broad sense previously defined) have been infringed upon by a loss or that there is a risk of such loss.

German administrative law adopts the fundamental attitude that the collective interest held by an association or an organisation is an accumulation of individual interests which should legally be safeguarded by the person to whom the subjective right belongs. Therefore the organisation can seek recourse only in respect of an administrative disposition that infringes upon its own rights, whereas the members' consent is required in order to defend their rights or interests and, if so, the organisation merely represents the member.

The Administration of Justice (Administrative Cases) Act allows departures from this rule, however. By a Federal Act or an Act passed by a »Land« it is possible to grant an association access to recourse of acknowledgment with a view to guaranteeing the interests of the general public or limited to the objects of the association and the interests of the members, but this facility is rarely used.

## **2. The Application of the Concept of Interest within the Environmental Field**

By means of the distributed questionnaire an attempt has been made to obtain information in broad outline on the administrative structure in the individual countries and the normal access to contest administrative decisions which is open during the administrative handling of the matter. Such information is significant because of the intrinsic relationship existing between the access to contest dispositions in the administrative sphere and the previously described access to contest dispositions by action before a court or a quasi-judicial agency. The need to view the concept of interest in this wider context is particularly pressing in environmental matters because we are dealing here, typically, with a protracted decision process with possibilities of protest at various stages of the process, differing from the type of handling which is customary in administrative law.

As will be seen from the national reports, there are differences also in this respect between the various E.E.C. countries, and the details are so comprehensive that a minute description would be out of the question. It should also be noted that Germany is a federal state and that Belgium is divided into Flemish and Walloon regions, and that the regions and provinces of Italy are invested with special powers. Generally speaking, the administration will often be divided into a central apparatus and a municipal (local) exercise of authority, each with its own hierarchic system - sometimes with the relevant ministry at the top.

Where no provisions to the contrary exist, it is reasonable to assume that it is a general rule recognised by West-European administrative law that - sometimes within certain timelimits - an administrative disposition may be contested as regards its legality and timeliness, partly by an application to the authority that made the disposition - with a view to reconsideration (the so-called remonstrance), partly by being submitted to the authority that is regarded as the superior authority within the relevant subject area, with a view to invalidation or variation (hierarchical recourse). In Belgium and Greece the right of recourse is even safeguarded by the Constitution. In other countries, on the other hand - e.g. in the Netherlands - the absence of a uniform organisation to consider recourse may present problems, particularly as regards the local administration.

Sometimes the administrative complaints procedure is mandatory before it is possible to bring an action before the courts of law - especially in the case of formal recourse to special tribunals or other agencies outside the normal hierarchy that are characterised by independence and expertise. Mandatory administrative recourse is thus a permanent ingredient of the German complaints system. Apart from that, it is reasonable to assume that it is an accepted general rule that the Claimant is not obliged to file a complaint in the matter to an administrative authority but is entitled to take out a summons directly in the competent courts of law or quasi-judicial agencies, which corresponds to the historical evolution which has been seen in France - with the abandonment of the so-called Judge/Minister theory. This is particularly called for in cases where administrative recourse has no suspensive effect on the administrative act.

Disregarding the environmental sector, it is reasonable to assume - as a starting point - that the circle of persons who enjoy a right to complain to the administration is delimited formally according to essentially the same criteria as those followed in the individual countries as regards the right to sue in the courts of law - although with a more flexible interpretation.

The problem has a certain connection with the access to intervene *ex officio* enjoyed according to hierarchical principles by superior authorities in relation to subordinate agencies, whether or not such intervention is due to the authority's own reflections or inspired by applications from others than those entitled to complain - perhaps an »ombudsman« agency. As may be seen from the Italian, Greek, Danish and German reports, the possibilities of exercising this right may be subject to a number of conditions and limitations. As a minimum there must exist a regular superior/subordinate relationship within the relevant subject area, which precludes the invalidation of

decisions made by tribunals or other independent agencies and disavowal of local autonomy. In Ireland special authority is required and in the Netherlands - where these powers are vested in the Crown - it is applicable only if there has been an infringement of the law, or the administrative disposition is contrary to public policy.

Historically speaking, the development of the concept of interest in recourse under administrative law is likely to have been based - in a number of countries - on the concept of »parties« known in civil law. Originally, this has hardly given rise to major problems inasmuch as it has not been difficult to identify the parties who were actually and reasonably interested in the decisions. Where an application has been declined, an exemption granted, an injunction issued, physical measures adopted, appointments or other typical administrative decisions made, it has been an easy task to define the group of persons affected by the decision and to determine the presence of a legal interest. With the technological and economic development, the ever-increasing population, the rise in consumption of resources and the concurrent expansion of the administrative apparatus of the individual countries, this situation has changed. Administrative decisions may affect large numbers of people, who may sometimes feel overpowered by the evolution and encouraged to adopt some sort of joint action.

One typical example of that development is found in the environmental sector, which was originally focused on relations between neighbours and - at least in a number of countries - influenced by considerations from the law of property. It is therefore characteristic that a building permit issued pursuant to the English Planning Act is still regarded as a licence for the owner to go ahead with projects that he was already entitled to in respect of his real property, and consequently no complaint can be filed against the permit unless there has been an infringement of somebody's legal rights, e.g. by nuisances such as noise or deprivation of light.

Especially after the 2nd World War it has proved necessary on an increasing scale, through comprehensive legislation, to establish legal foundation for environmental measures, and awkward conflicts of interest arise between the various considerations behind the restrictions, the possibilities of social development, and employment.

An accurate definition of the concept of environment is difficult to provide. It is generally regarded as something more restricted than ecology, which suggests human qualities of life in a very broad sense. Linguistically speaking, the environment is interpreted as the surrounding physical world, *but* in a legal sense - as outlined in the Greek report - it may be regarded as any natural or cultural element connected with Man's conditions of existence or (more restrictively) as that part of Nature which is threatened by pollution or destruction emanating from contemporary technology. In addition - as stressed i.a. in the German report - there may be a requirement for protection of the man-made environment. The Belgian Conseil d'Etat has characterised environmental protection as the arrangement of human activities by proper lay-out of human installations and by introduction of the requisite equilibrium with the natural environment - with the aim of granting all people better prospects of material as well as spiritual welfare.

The delimitation of the subject, however, is most easily performed by that illustration by examples of the most important Acts which is quoted in the national reports. They refer to numerous sectors that are governed by general as well as specific provisions - sometimes in the form of outline Acts granting the administration wide powers and can therefore complicate the courts' legality check. The environmental area includes the important aspects of town and country planning and building restrictions.

Compared with traditional administrative law, part of the legislation contains two significant novelties: (1) the incorporation of the general public in the consideration of matters during the administrative decision process, and (2) more extensive access to complain to the administration and the courts of law, which may be relevant particularly for associations and organisations. Violations of the environmental legislation may entail criminal prosecution where individuals or associations may intervene, according to the circumstances, as civil interveners. Violations may give rise to damage suits in the ordinary courts of law.

In *France* a comprehensive and complicated environmental legislation has been adopted, under which the multitude of administrative dispositions practically all give access to recourse of acknowledgment.

A considerable proportion of the cases that are brought before the administrative tribunals concerns building permits and building plans, raised on an increasing scale by associations and organisations with special authority in the legislation. Associations that are recognised as non-profit institutions or have obtained approval by administrative agencies have been granted access within several sectors of environmental protection to intervene as parties in respect of matters that violate - directly or indirectly - the collective interests they aim to safeguard. Legislative acknowledgment of the associations' interest can be explained by the fact that the associations - as Claimants or interveners in civil or criminal cases - are deemed to be able to make a valuable contribution to better elucidation of the complicated legal problems of environmental legislation.

Apart from these cases, the concept of interest - as is the case in other administrative matters - has evolved via legal usage. In principle, legal interest within the environmental sector does not differ from the *locus standi* outlined in Part 1; it is construed very broadly, however - particularly when the Claimant is an association or an environment group. In cases concerning building permits the legal interest is assumed to be vested in other neighbours than the adjacent ones, and in associations and committees for the protection of quarters and regions - restricted, however, by a requirement for proximity according to the circumstances. In cases concerning town planning, the nature and geographical application of such plans cause an even wider circle of interested parties to be accepted - viz. the

population of the municipality, environment groups, and public institutions. This broad interpretation is also adopted as regards the interests of the individual groups and associations, always provided that their objects clause is related to the decision at issue - here also with possible local restrictions.

The background of the legal usage is a wish to safeguard the principle of legality through the most liberal access possible to the legal remedies - weighed against the concern for the efficiency of the administrative process, which is threatened by an ever-increasing number of cases.

In *Belgium*, where environmental protection has become a national concern, a significant order was issued as early as 1946, under which order undertakings that are dangerous, harmful to society, or inconvenient to the neighbours may be established, changed, or moved only with administrative permission, which must not be injurious to the rights of a third party. The arrangement aims to ensure that the inconveniences are no more pronounced than the ordinary disturbances of neighbourhood.

Before such a permission can be granted, a public hearing is arranged in each particular case by the competent - provincial or municipal - authority to investigate the possibility of granting the permission. The investigations, according to their scope, correspond to the English inquiries described in Part 1: they are intended to ensure - via the greatest possible publicity - that plot owners and occupants of properties within a specific radius, and the relevant authorities are given a chance to present all valid arguments.

Then, within a certain time-limit, a motivated administrative decision must be made; the decision is not in the nature of a judgment and administrative recourse can be sought against it - although without suspensive effect. The recourse agency may - but is not obliged to - order a new survey.

The right of recourse is held not only by the party to whom the administrative disposition is addressed, but by anyone who risks being exposed to inconvenience due to the operation allowed. This interest group includes owners and occupants of adjacent lots (also those who - according to the provisions - were entitled to notice in writing on the matter), public authorities and environment protection associations.

Whereas the order primarily serves traditional considerations within the law of adjacent properties, an Act on town and country planning holds a key position in environmental protection proper. The Act, which aims to preserve the natural beauty of the country in an economic, social and esthetical sense, includes rules on planning for regions, sectors, and municipalities, building supervision, issue of general regulations for building and development, and the conditions for individual building and development permits.

Any applicant who is refused permission has a right under the Planning Act to seek recourse of the decision with the Provincial Council's permanent popular assembly and from there to the regional executive authority as the final administrative instance. The Act also contains provisions governing the authorities' right to voice opinions and seek recourse. An injured third party, on the other hand, cannot plead these rules of recourse.

Besides the above legislation a number of sector Acts have been adopted, La. for the protection of surface and subsoil water and to fight air pollution and noise, partly containing outline provisions that have provided the foundation for regulations. Also significant is a Preservation of Nature Act, which allows implementation of a number of measures (i.a. concerning flora, wildlife, and forests) and the establishment of national parks and reservations.

It is an accepted rule in Belgian law that unilateral administrative dispositions - subject to certain exceptions - may be submitted to administrative retesting with a view to legality as well as timeliness. Besides the remonstrations there is also - depending on the subject matter - ordinary hierarchical recourse, submission to Government agencies, and formal recourse with testing before an independent agency. In the latter case only, the decision cannot be submitted to the Conseil d'Etat until after the possibilities of administrative recourse have been exhausted. This particular procedure is prescribed for the above-mentioned administrative dispositions regarding dangerous, socially harmful and annoying undertakings, and within the planning sector.

The principles applying generally to annulment suits before the Conseil d'Etat (described in Part 1 above) also apply within the environmental sector. Because of the wide access to raise objections during the administrative consideration of the above cases involving dangerous, harmful, and annoying undertakings, however, it is clear that the requirement for personal and obvious interest which is a condition for an annulment suit in respect of individual administrative acts, will be fulfilled - if only the Claimant is resident in the zone where the relevant survey was made. The Conseil d'Etat has also adopted a liberal approach as regards associations (that have a legally valid form and status as corporate entities) when such associations work for the protection of the environment and are motivated by interests based on specific attitudes of a collective nature. Presumably, however, only associations defending interests within a specific region possess the requisite authority to commence administrative recourse against measures affecting that region, and a federation of associations cannot intervene on behalf of the local association.

Actions before the Conseil d'Etat have no suspensive effect, but Claimants who are entitled to bring the action may initially submit an urgency summons to the court, which summons may cause the president of the court to order a

postponement of the matter when the implementation of the administrative disposition is likely to bring about irreparable losses.

*Luxembourg* has adopted a number of special Acts concerning the protection of nature, anti-pollution measures in various forms, country planning, building regulation etc. It is intended to compile the legislation in a new Act aiming to preserve and protect the overall natural environment and having a wider scope than previously.

According to customary administrative law principles in Luxembourg the right to initiate recourse of acknowledgment and execution before the Conseil d'Etat belongs - also in environmental matters - to any citizen who has a personal, direct, actual, relevant, and obvious interest of a tangible or intangible nature in the matter. In principle, a right of recourse also exists for public law corporate entities and for private law corporate entities which have been established as associations or organisations with a view to safeguarding specific interests - always provided that the collective complaint is dictated by obvious association interests and aims to benefit the membership at large.

An environmental protection Act of 1978 also allows a special position for nation-wide associations whose Bye-laws have been published in a specified manner, when they have pursued the objects of their Bye-laws for not less than three years within natural and environmental protection and have achieved ministerial approbation. Associations thus approved may (1) participate in the natural and environmental protection activities of public institutions and (2) intervene as civil parties in matters constituting an infringement under the Environmental Protection Act and damaging - directly or indirectly - the collective interests that the association aims to safeguard.

It is assumed that a civil, private party who is competent and has the requisite interest (in the general sense previously referred to) can intervene in criminal as well as in civil cases in a capacity of intervener for the protection of his legal interests, but a ruling by the Court of Appeal has refused one of the above-mentioned approved associations access to intervene in a criminal environment case because its interest was held to be covered by the social interest represented by the Prosecution.

Because many environmental matters are settled in connection with criminal proceedings, the effect of the statutory provision has been curtailed by the ruling of the Court of Appeal, and legal usage has not yet determined whether or not the approved associations - when they claim to be acting in a strictly collective interest - can submit on their own to the Conseil d'Etat a permission granted to a citizen which the association finds unjustified, or enter as intervener in support of a citizen whose application has been turned down. A condition for an affirmative answer is presumably that the association can at least show a capacity of corporate entity.

In *Italy* a proportion of the environmental legislation has been entrusted to the country's regions and provinces. Besides various anti-pollution regulations and provisions to protect forests and other natural scenery, wildlife and flora, recent years have seen the adoption of Acts affecting health and wellbeing more indirectly - or preserving cultural values, e.g. concerning town planning, building, historical relics and locations.

The possibility of administrative recourse depends on the structure of the administration within the individual subject areas, which contain a number of differences. It is a general rule, however, *that* appeal lies to a higher authority within the hierarchical system, *that* this right to complain belongs to any person whose interests - according to the general principles of Italian administrative law - allow him to sue before the courts of law, *and that* the use of the right to administrative recourse does not preclude the Claimant from the ordinary testing of administrative dispositions by the courts. On the other hand only one complaint to the supreme administrative authority is allowed.

The requirements for personal, relevant, concrete and specific interest which is a traditional condition for a right to sue before the courts of law (cf. Part 1 above) has been retained by legal usage in environmental matters - both as regards individuals and organisations. Where no express permission to the contrary exists, an organisation will be refused access to the courts of law even if it has the form of a corporate entity and its objects clause comprises environmental protection. That is because the interest is similar to the public interest in the protection of the surroundings.

On the other hand it is possible for an association - regardless of its structure - to bring an action in the courts of law for infringement of its individual interests, e.g. in respect of measures affecting its property. It is also accepted that an association which has become a public body and which aims to defend a particular interest can institute proceedings to fulfil those objects.

The *Greek* Constitution contains a provision under which the Government is responsible for the protection of the natural and cultural environment and for taking special preventive and penal steps to ensure the preservation of the environment. Under the Constitution it is also a national duty to regulate and supervise country planning, town planning, and town extensions with a view to ensuring the proper development of urban areas and the best possible living conditions. Finally, there are various constitutional provisions on legal control of the ownership and concession rights in e.g. running water, subsoil water, underground resources and archaeological find locations, and the possibilities of mandatory amalgamation of plots in urban zones, the implementation of town development plans with zonal break-downs, protection of forests and historical relics etc.

Pursuant to those provisions a basic Act has been adopted concerning country planning and environment, and a large number of special Acts relating to forests, countrysides, hunting, fishing, urban and industrial districts, and anti-pollution measures relative to the sea, lakes and streams, drinking water, soil, air, noise, industrial and other activities etc.

Under Greek administrative law, any person whose rights or legal interest have been infringed by an administrative disposition may (1) seek remonstrance and (2) commence hierarchical recourse. This access to contest is allowed already in a constitutional provision according to which everybody has a right to present his views in writing to the public authorities, who are obliged to reply in writing, stating the grounds. In some cases, however, the right to recourse may be restricted by law, sometimes to the effect that the suitability of the disposition cannot be tested. Where certain time-limits have been prescribed for annulment, a lawful disposition cannot be revoked or amended after the expiry of such time-limit if the disposition has created rights or situations for the benefit of others.

The legal interest which is a precondition for remonstrance and ordinary hierarchical recourse corresponds - according to its contents - to the requirements set up by usage for commencing acknowledgment recourse before the Supreme Administrative Tribunal (referred to in Part 1 above), although perhaps with a more liberal interpretation. The Claimant need not make use of the general access to recourse before the matter is brought before a court of law, but he is entitled to do so. If he does, the administrative recourse interrupts any time-limits fixed for the commencement of recourse of acknowledgment.

In certain cases a formal administrative recourse is prescribed by law. Such recourse may be subject to special conditions, procedures and time-limits and may occur as an action before a special authority. This quasi-judicial form of contesting precludes ordinary non-formal recourse. The body of persons who are entitled to recourse will be determined in the relevant Act and most often includes such persons as are deemed to possess a legal interest on the same scale as in the case of acknowledgment recourse.

The interpretation of «legal interest» in environmental matters that are brought before the courts of law does not differ markedly from the basic conditions employed by the Supreme Administrative Tribunal in other administrative cases through a requirement for personal, direct and relevant interest, but the nature and scope of the individual environment Acts may lead to slight differences and there may be a tendency towards acceptance of personal interest in certain fields on a larger scale than previously - particularly as regards associations that are corporate entities and aim to protect one or several environmental aspects. In most instances, however, the cases which have been considered by the Supreme Administrative Tribunal have turned on infringement of ownership interests, where the right to sue presents no problems. In some cases concerning collective interests, a right to complain has been accepted essentially only for local associations whose objects have been affected by the administrative disposition.

In urban planning and building cases legal interest is accepted for persons resident near the sources of inconvenience; for local authorities under whom the district belongs; and for corporate entities that pursue aims relating to environmental protection.

The right to acknowledgment recourse as regards general regulations to aquatic pollution is vested according to legal usage in the affected typical undertakings whose activities are curtailed and in organisations whose membership interests are infringed. The individual citizen's right to sue depends on the presence or absence of a separate interest in the anti-pollution measures on his part - owing to his residence near the relevant coastal area. In the case of individual administrative dispositions, the general interest in environmental protection of a third party is not sufficient: a certain specific connection between him and the relevant disposition is required, particularly of a local nature (e.g. neighbourhood). Legal interest is accepted for local authorities and associations and, as the case may be, for nonlocal organisations of a special nature. In addition, according to special rules, any citizen may institute criminal proceedings for infringements (including omissions) before the ordinary criminal courts, which may consider the legality of the administrative disposition prejudicially.

Another illustrative example is the legislation on various forms of anti-pollution measures in the case of individual activity. This legislation recognises legal interest for all those who pursue the activity; for local authorities, and for anyone who is exposed to direct inconvenience - owing to a local connection. That a Claimant living in a big city is affected by the air pollution emanating generally from the factories of the city is not sufficient. Legal interest accrues to associations of a local nature whose objects are related to the environment (and - possibly - embellishment). This legislative field also recognises associations pursuing broader aims such as protection or improvement of the environment in general - regardless of the domicile of the association.

In *the Netherlands* environmental protection has been safeguarded by a repeatedly amended Act designed to reduce dangers, damage and nuisances emanating from undertakings within the industry, agriculture and trade. Administrative permission is required under the Act in order to start, pursue, expand or change a classified undertaking, which may be closed down if an infringement of the stipulated terms occurs. Special Acts have also been adopted, e.g. on nuclear energy, prevention of marine and fresh-water pollution, noise prevention, and waste. Recently a general environmental protection Act was adopted, aiming i.a. to co-ordinate the treatment of cases in various fields where permits are required.

The possibilities of administrative complaint within the different subject areas are governed by legislation or other regulations, but the system is marked by the access to submit matters to the Crown according to a quasi-judicial procedure which is available under the conditions outlined in Part 1 above. The right of recourse in environmental matters according to those rules accrues not only to the addressee of the administrative disposition but also to a third party whose interests have been directly affected by it. The legal position is liberal as regards organisations (in the broad sense described in Part 1 above), whose interests are held to have been directly affected when - upon submission of a complaint in keeping with their objects and activities - they promote an interest which is directly involved in the decision at issue. On the other hand, the absence of a specified object and geographical limitations may present a hindrance for the organisation.

The Environmental Protection Act lays down a far-reaching statutory extension of the traditional concept of interest where there is a separate procedure when considering applications and amending (or revoking) decisions.

In the former case the treatment of the matter is divided into three stages where, during the first stage, the application is published and lodged (if not outright refused) so that the public is free to acquaint themselves with the contents and the accompanying schedules. Thereafter anyone is entitled to raise verbal or written objections within a certain timelimit; likewise, officials are entitled to an opportunity - within their portfolio - to voice their opinion. During the second stage of the treatment (which may be omitted in the case of simple applications), a draft administrative decision is published where the officials may once again voice opinions and where - besides the applicant - those who have raised objections during the first stage, and those who can show that they have had no reasonable access to do so, may present their objections in writing. During the third stage the relevant administrative authority will then make the final decision.

Administrative acts that have come into being pursuant to this procedure may be submitted to the Crown by the applicant according to the rules outlined in Part 1; furthermore by the said officials, by those who have raised objections during previous stages, and by any other interested party who can show that he has had inadequate opportunity to do so.

In the event of amendment or revocation of previous decisions the competent administrative authority must notify its intention to the addressee of the contemplated decision and the administrative branches which - according to the relevant Act - are to be incorporated into the decision process in a capacity of consultants or other capacity. The officials may announce their opinion and - as the case may be - those who have applied for a decision. Where an administrative authority adheres to a contemplated amendment of a previous decision, such intention must be made public (except in the case of a revocation) and, if so, anybody is free to present his objections before the decision is made.

The final decision according to that procedure may also be submitted to the Crown subject to the usual conditions. The right belongs to the addressee, to persons who have applied for an amendment (or revocation), and to any other interested party who can show that he has not had a reasonable opportunity to raise objections during the earlier stages of the treatment of the matter.

As emphasised in the Dutch report, the arrangement may be regarded - within the area indicated - as a sort of *actio popularis* covering parties who raise objections during the initial stages.

In the *United Kingdom* a substantial proportion of the environmental sector is governed by legislation on town and country planning, which has undergone various changes in recent years. In order to ensure the best possible administrative decisions, publicly accessible - sometimes mandatory - inquiries are used on a considerable scale. An Act on local government makes the county councils and the district councils responsible for the local planning within their respective areas.

The county councils draw up structural plans which lay down an overall planning policy and which must be made public in order to give everybody an opportunity to raise objections in accordance with the rules on the general public's right to participate. The objections must be submitted to the relevant minister, who is - according to the most recent legislation - no longer obliged to arrange a hearing of all Claimants under the general rules for inquiries (described in Part 1 above). Instead - prior to a possible approbation - he must arrange a public «examination» with a possible limitation of the subjects and the group of persons to be questioned. The treatment of the case is subject to the control of the Council of Tribunals.

Based on the decisions made by the county councils - via development plans - in respect of local planning areas, the individual district council draws up detailed local planning proposals, which must also be published with a view to objections from the general public. In point of fact these plans do not come under the minister's jurisdiction, but a copy must nevertheless be sent in for ministerial approbation and the minister is empowered to call them in for his consideration. The formal decision on the final wording of the local plan is made by the district council, but before this can happen, a public inquiry must be held as outlined in Part 1 and chaired by an inspector appointed by the minister on behalf of the local authority. As is customary when applying this legal institution, any party who has an interest in the subjects covered by the plan have a chance to be heard. The inspector's final report is only intended as a guide, and the local authority can thus confirm, modify, or set aside the proposal. This procedure, too, is subject to the control of the Council of Tribunals.

Where the matter does not concern general plans but a concrete application for a permit under the planning legislation, its treatment depends on the nature of the matter. Applications are recorded so that everybody who feels that his interests have been infringed may submit objections in writing, and sometimes the local planning authority will notify the owners of adjacent plots directly.

Whereas - as already mentioned - it is not possible to contest a concrete permission under the Planning Act (unless the rights of a third party have been infringed), it is possible to complain against the refusal of an application and against a permission whose terms the Claimant finds unacceptable. In these cases the treatment also takes the form of a hearing held by an appointed inspector and open to the general public. In minor cases the decision is then made by the inspector, whereas in other cases he submits a recommendation to the minister, whose decision can be brought before the High Court of Justice under a plea of lack of statutory authority or non-compliance with legal requirements, cf. Part 1 above.

Similar provisions may be found in other fields of environmental law. In practice, the system is important i.a. in the event of major decisions on the use of a piece of land for a specific purpose. The interested parties who have a chance to make statements during the hearings include not merely individuals but also associations for the protection of the environment.

In all environmental cases, the body of persons who are entitled to sue before the courts of law is delimited in accordance with the principles described in Part 1 above. Even when, at a hearing or an examination, a considerable group has been given a chance to make statements, this does not necessarily mean - unlike the Dutch arrangement described above - that those who have raised objections during the treatment of the matter possess a creditable interest in appealing to the courts. The tendency to accept all persons who have reasonable grounds to feel their interest violated and the sympathetic attitude in legal usage to associations that defend a relevant aim according to the nature of the matter, seems to contain a wide margin, however.

In *Ireland*, too, environmental law is dominated by a planning legislation where the administrative authority has been entrusted to the county councils and the district councils, which (1) draw up development plans and (2) determine and supervise their concrete application. The aim is to develop towns and other areas for the common good and to protect i.a. countrysides, forests, flora and wildlife. After an amendment to the Act a special tribunal has been set up as recourse agency with a judge as chairman and not less than four and not more than ten other members appointed by the Minister of the Environment - sometimes from amongst the Ministry's civil servants. The principal duty of the tribunal is to arrange hearings and settle complaints in respect of the legality as well as the suitability of administrative dispositions.

The right to complain is enjoyed by any party who has been refused a permission or who declines to accept the stipulated terms. In these cases the hearing also includes the authority that made the decision and any interested party who wishes to support it. Where a permission has been granted, recourse may be commenced by a third party under a plea that the decision encroaches upon the benefits accruing to the local population and, if so, the addressee and the authorities may act as his opponents.

Depending on the case, the right to complain is also held by one or several of the nationwide organisations referred to in Part 1 above, which safeguard environmental and cultural, national interests and whose views seems to carry considerable weight.

The treatment of the matter can take place in writing, but the person entitled to sue may request oral hearing and thus obtain the same procedural advantages as in a proper court hearing - including the access to cross-examine. The tribunal has a discretionary right to allow or decline oral hearing, but the Minister of the Environment may order oral procedure.

Points of law arising before and determined by the tribunal may be submitted to the High Court of Justice, but this facility has not been used in practice.

Outside the planning legislation there is no uniform recourse system, but within a ministry complaints can be made from a civil servant to a higher-ranking one or, as the case may be, to the minister as the top authority.

The right to bring an action before the courts of law follows the same principles in environmental matters as outlined in Part 1 above. The testing is thus limited to cases where the plaintiff claims that he has been wronged by a violation of the law. Those entitled to sue - in addition to the three national organisations referred to above - include, as the case may be, associations, organisations and groups whose objects are environmental protection when, for instance, they are domiciled in the particular area affected by the administrative disposition.

On the other hand, environmental protection can hardly be explained adequately on the basis of isolated administrative law aspects. As in many other countries, a number of provisions carry enforcement in the form of punishment, but in Ireland this is particularly significant because criminal prosecution can be commenced not only by the State but also by public authorities and by any individual.

In Denmark the concern for the environment has been given consideration in a comprehensive legislation which is characterised by outline and skeleton rules for administration. Among the most important Acts is an Environment Protection Act, which imposes the principal responsibility for the local administrative environmental protection on the county and municipal councils (district councils), whereas the central administration consisting of a Ministry of the Environment with appurtenant agencies (directorates) ensure central co-ordination and supervision and the treatment of complaints for affected private interests.

Another significant area is the planning legislation, which is based on the local government and the general public's access to influence the decision process. Regional plans are drawn up by the county councils, municipal and local plans by the municipal councils, but the final decision cannot be made by these bodies until a draft has been made public according to a special procedure and everybody has had a chance to raise objections. In principle the arrangement corresponds to English and Irish law, except that no public hearing or examination is held by an inspector. The drawn-up plans are complemented by a Town and Country Zone Act intended to ensure a socially proper development with due regard to the recreational interests of the population and the preservation of rural amenities.

In addition to a number of special Acts concerning streams, water supply, forests, raw materials, underground, hunting and fishing, etc., Denmark has also adopted i.a. an Act on nature conservation according to which regional conservation plans may be drawn up when a proposal to that effect has gone through a publicity phase according to the same principles as laid down in the planning Acts and the Ministry of the Environment has granted its approbation. The Act allows a number of specified authorities and an nationwide association for nature conservation to bring actions for conservations of specific areas, so that a decision to that effect and an award of compensation for expropriation are made by special tribunals with judges as chairmen.

It is a generally accepted rule in Danish administrative law that any person who has an individual and material interest in an administrative decision is entitled to complain about its legality and suitability to a higher authority -except where other provisions apply. In case of doubt, regard is had for the question whether the Claimant is deemed to be protected by substantive rules on the subject area, and whether his interest in contesting the decision is stronger than the private and/or public interest in the promptness of the disposition's legal effect. Unlike the special Dutch arrangement, the group of claimants is not extended because there has been an access to object for everyone during the decision process before the disputed decision was made. The problem of access to complain is irrelevant where an administrative recourse agency on its own may set aside an administrative disposition by virtue of its capacity of superior authority.

The above-mentioned directorates under the Ministry of the Environment function within the environmental sector on a considerable scale as recourse agencies according to special authority. Normally the testing covers legality as well as suitability, although not in the case of decisions under the planning Acts where they are limited to legal questions as a consequence of the local government. Where the matters turn on major, fundamental decisions within the framework of the Environment Protection Act, the Town and Country Zone Act and certain other areas (though not the Planning Acts), further recourse lies to a third authority consisting of a special tribunal with a judicial chairman and some experts appointed by him (according to principles of parity), who will also undertake a complete testing of the legality and suitability. The decisions made by the said tribunal on conservation may be appealed to a higher tribunal of a.o. three judicial members (two of them Supreme Court judges) with similar powers.

The powers of associations and organisations to seek recourse at another administrative level vary according to the Bye-laws of the association as compared with the objects of the Act. Sometimes support can be found in the notes accompanying the Bill upon its introduction in Parliament. The problem is a minor one because it is accepted that an association may seek recourse within the scope of its objects under a letter of attorney from a member who would have had an independent access to recourse according to the general rules. In the administration of the Environment Protection Act access to recourse has been granted to associations whose membership interests are directly affected by the decision, whereas it is not sufficient that the organisation safeguards interests in the sense of taking initiatives and forming opinions. Within the purview of the Town and Country Zone Act, private local organisations are accepted when the complaints have reasonable grounds in material considerations for the safeguarding of the objects of the organisation. The Nature Conservation Act has invested the abovementioned nation-wide nature conservation society with express powers of recourse, whereas the *locus standi* of the local societies depends on their objects and their relation to the administrative disposition. It is reasonable to assume that access to recourse generally exists where a group of members is materially affected, without the individual members - viewed in isolation - necessarily having the required individual interest. The more detailed delimitation may depend - as the case may be - on a complaints system within the statutory field being primarily based on a wish for legal protection, supervision of the administration, or democratic co-influence. A special need for legality check might favour a recognition of non-organised groups which would otherwise be excluded.

Due to the comprehensive recourse system and the independent tribunals with full testing rights, the number of environmental cases before the courts of law has so far been modest, and the problem of legal interest has seldom become relevant. The Nature Conservation Act has invested the said nation-wide nature conservation society with an express right to sue within the purview of the Act, whilst there are no other statutory provisions delimiting the body of legally interested persons. By and large, the legal position presumably corresponds to what was stated in Part 1 as regards administrative dispositions in general. Accepted rights of recourse within the administrative

complaints system will normally have a contagious effect on the judicial treatment - also in respect of associations and organisations - but exceptions may occur, particularly as regards groups and organisations having a loose structure, involving special problems in terms of administration of justice.

Germany has a federal Act for the prevention of environmental nuisances. This Act holds a central position in that it encompasses the aggregate legislation on various forms of anti-pollution activity. The Act lays down a system of prior administrative permissions which may be amended or revoked at all times and which covers most polluting and inconvenient facilities, works and machinery. It also includes provisions concerning anti-pollution planning. A series of federal Acts with special purviews have been adopted, e.g., for the protection of nature and preservation of the rural amenities (with outline provisions that are relevant to the general principles of the »Land« legislation), forests, water supply, waste, noise, and peaceful application of nuclear energy.

In Germany, too, many environmental Acts contain provisions concerning the influence of the general public on the administrative decision process, which is divided into several phases. The treatment of the matter is initiated by submission of a project to a competent agency according to the »land« legislation, which agency is responsible for supervising a consultation which is prescribed before the final decision. During the second phase of the treatment the said agency will send the project to the relevant authorities and ensure - via public notice in accordance with local usage - that everybody has a chance to examine it and submit comments within a certain timelimit. During the third phase the agency will arrange a so-called consultation meeting, which is held according to a formal oral and contradictory but - unlike English law - non-public procedure. The right to be present and make statements there is held by the sender of the project, the relevant administrative authorities, and the persons who have submitted comments. During the fourth phase the said agency will announce its own and the affected authorities' position on the result of the consultation meeting and unclarified problems, if any, to the resolving authority. The latter's decision, which must be in writing and accompanied by reasons, must be communicated to those who are responsible for the project; to those who are affected by the decision; and to those whose objections have been considered.

Under the federal Nature Protection Act the approved organisations have a right to be consulted prior to the adoption of landscape plans, whilst the legislation has not otherwise ensured a corresponding legal position for associations and organisations.

Unlike for instance French law, it is generally accepted that a person who wishes to submit an administrative disposition to the courts of law (in the form of the acknowledgment recourse outlined in Part 1 above) must first initiate administrative recourse. This procedure aims to give the administration a chance to test the decision as regards legality as well as suitability; to render the complaints procedure less costly for the citizen than is the case with a court hearing; and to relieve the judicial system by sorting out cases. The contesting has the form of remonstrance where there is no higher recourse authority or where the law so requires.

The requirement for prior administrative recourse, however, has been relaxed to some extent within the environmental sector in view of the above formalised procedure, e.g. in matters concerning waste and nuclear energy. Where administrative recourse is necessary, the legal position differs from the Dutch system in that persons who have had a chance to make statements during the consultation procedure have no automatic right to complain but the group is limited to the persons whose rights are deemed to have been infringed in the sense referred to in Part 1 above. This may be explained by the fact that the sole purpose of the consultation procedure is to provide as broad an informational basis as possible for the decisions of the administration, and that participation *per se* is no evidence of the possession of subjective rights which (with certain exceptions) are the fundamental condition for the right to contest. Absence during the consultation procedure, on the other hand, has a preclusive effect in that such persons - whether or not they possess rights affected by the issue - are subsequently prevented from pleading such rights against the administrative authorities as well as before the courts of law (by acknowledgment recourse).

In environmental matters the conditions for submitting administrative dispositions to the courts correspond largely to the legal position applying generally to administrative cases - also in respect of associations and organisations which are refused access to judicial testing according to usage. The question of collective recourse presents special problems in environmental matters where the decisions affect major groups, but legal usage has presumably been determined by a resolution made by the Supreme Administrative Tribunal in a case turning on a permission to construct a nuclear power station and where no grounds were found for admitting a complaint from an association which pleaded - i.a. - its altruistic activities including protection of Life, the provisions of the Constitution on freedom of association, and that the right of the members to health and physical immunity as a whole constituted an association right.

### 3. Concluding Remarks

As will be seen from the above, the concept of legal interest in administrative law has been created to a large extent by legal usage in the individual countries based on their legal tradition, the administrative and judicial structure, the dissimilarity of subject areas, and a legislation where broadly worded procedural and substantive rules give considerable scope for different interpretations.

Although garbed in various legal guises, the concept of interest nevertheless contains a core that is common to the judicial systems of the E.E.C. countries and according to which a right to sue is accepted for individuals who have a real and loyal interest in a judicial testing of the legality of an administrative disposition in the sense of its legal foundation and its compliance with the rules governing the treatment of the matter. Certain differences in the legal position exist between the countries (e.g. Germany) which emphasise the concept of subjective rights but the interpretation in that respect seems to be made in such a manner as to yield largely the same results in a large number of typical cases. The protection of life, welfare, and ownership etc., which is sometimes specifically mentioned in the Constitutions of the countries, serve as valuable contributions to the understanding of the concept of interest.

It is also a common feature that - with a few exceptions - no testing of the suitability of administrative dispositions can be undertaken by the courts of law owing (1) to the (often constitutional) division between the executive and the judicial power and (2) to the fact that the courts would lack the necessary expertise within the numerous specialised fields of administration. The line between a legality and a suitability check may be difficult to draw, however, and vague statutory provisions and comprehensive powers conferred on the administration by the legislative power have created additional problems as to the extent of the testing rights of the courts. Where there is a definite need for control of the administration within a specific subject area or because of the special nature of a single case, the courts may be inclined to regard borderline cases as legal matters.

Outside the above-mentioned »core« the legal positions in the individual countries reflect different tendencies. In the Netherlands the legal extension of the group in the case of complaints under the environment protection legislation is very far-reaching, and the development in a number of other countries is also influenced by a more liberal interpretation of the concept of interest than previously.

The comprehensive access to file complaints which has been adopted during the administrative decision process for certain subject areas in the United Kingdom, Ireland, Denmark and Germany is formally based on the concern for supplying the administration with the best possible basis for decisions, and although these new rules - unlike the Netherlands - have not brought about an extension of the group that is entitled to sue in the case of judicial hearing of the matter, they may be regarded - in real terms - as a concession to the requirement for greater citizen influence on important administrative dispositions.

Furthermore, the evolution of technology and activities has by necessity caused the group of persons affected by administrative decisions to be extended geographically. The traditional law of neighbouring properties, which emphasised the immediate proximity, may still serve as guidance when treating certain types of cases, but it is no longer valid in the case of e.g. a permission to build a nuclear power station, an air-pollution undertaking, or to dump toxic waste in the ocean.

However, the cases where the concept of interest creates the greatest problems turn on the recognition of a collective right to sue for associations, organisations, or groups. In these cases the need to consider an extension is particularly obvious within environmental law because of the considerable importance that a number of administrative decisions may have for large groups of people that are sometimes difficult to delimit. The solution to the problem might be found in a legislative initiative, but it is reasonable to assume that in a number of countries the matter will be left to the courts, who will then be faced with a difficult dilemma. In most countries it has been part of the judicial heritage that judicial testing should be reserved for those whose special interests have been violated individually, whereas litigation in the interest of the general public has not been admitted, and - out of regard for precedents - the courts will frequently feel bound to adhere to an already established practice.

As pointed out particularly in the Italian and German national reports, a number of weighty reasons may be invoked against a material extension of the right to sue. Besides constitutional problems relative to the division of powers between the administration and the courts there is the risk of abuse of the associations etc. as a sort of public prosecution and judicial pressure, and of the judges being involved in conflicts with political overtones whose proper forum is elsewhere. To the extent that institution of proceedings before the courts have a suspensive effect on administrative decisions, a protraction may also be the result - to the detriment of important public or private interests. This side of the problem is particularly serious because, in several countries - as was discussed at the 7th Colloquium in London in 1980 - the courts have been swamped with administrative cases, which has given rise to considerable arrears and a long wait for the parties.

Besides these principal arguments it should also be noted *that* the professed association interests are not necessarily identical with the interests of the aggregate membership but may conceal a voting down of minorities; *that* the principle of procedural negotiations increases the reluctance; *that* recognition of environmental societies must involve similar consequences for associations with conflicting interests; *and that* environmental considerations are already covered by a broad interpretation of individuals' right to sue and the safeguarding of common interests which is reflected in the efforts of the Prosecution in criminal cases.

On the other hand it has become a preponderant feature of public life that efforts are made - founded on a basic democratic view - to counteract a polycratic exercise of administrative power - not only via citizen influence during the administrative decision process, but also by means of acknowledgment of collective powers in connection with

complaints to the administration and litigation before a court of law. As expressed in the Belgian report, the development may be regarded as a modification of liberal individualism based on personal rights and obligations, and in a sense it agrees with the concern for efficient administration of justice where collective litigation is supported by an expertise that it would be difficult for an individual to provide, or where such lawsuits may replace uniform cases concerning individual interests - and thus contribute towards increased efficiency and a reduction of the number of cases. The desire for increased supervision of the legality of the administration, which is a special motivation, is important e.g. in matters where considerable environmental interests are likely to be present with an unspecified group of people, which cannot be adapted to a traditional concept of personal interest.

The problem - as stated in the Dutch report - is how to avoid abuse of the collective right to sue? It would certainly carry us too far if we were to recognise the organisations of political parties and other organisations having the general object of forming opinions - even if the safeguarding of environmental considerations has been included in their platform. Similar misgivings attach to non-organised groups attempting to exert general pressure.

When disregarding those cases, the national reports show that the uniform problems facing the courts of the individual countries have found their preliminary solution in different ways.

The French report emphasises that a balancing is sought by means of pragmatic solutions where regard is had for the most liberal access to the legal remedies, on the one hand, and for the maximum efficiency of the administrative procedure, on the other, which efficiency is threatened by a sharp rise in the number of cases. The legal position in Belgium and Luxembourg seems to correspond largely to French law in that environment societies are held to be entitled to exercise the rights granted to civil parties when the cases turn on matters that are tantamount to an infringement of the legislation governing natural protection and which violate - directly or indirectly - the collective interests that these societies aim to protect. In Greece, too, there is a tendency towards an extended acknowledgment of the interests of associations and organisations in environmental cases, whereas it is reasonable to expect that English, Irish, and Danish courts will tend - in accordance with their judicial tradition - to make concrete decisions in cases where it is deemed to be crucial whether - after an overall evaluation of procedural and substantive rules and the interests protected by such rules - it is legally justified to admit a collective lawsuit. Among the other countries an exceptional position in an expansive sense is held by the special («*actio popularis*»-like) access to contest found in the Dutch environmental protection Act, whilst - conversely - Italian legal usage is characterised by a generally hesitant and cautious attitude. Current German law generally rejects acknowledgment recourse before the administrative tribunals for associations and organisations even where their objects include preservation of the environment, and it will depend on the legislative work in the Bundestag whether special authority will be provided to ensure exception for approved environmental societies.

With this general report, the sole aim of which is to summarise certain principal problems, I hereby submit the interesting and significant subject to unbiased discussion among the participants at the conference.