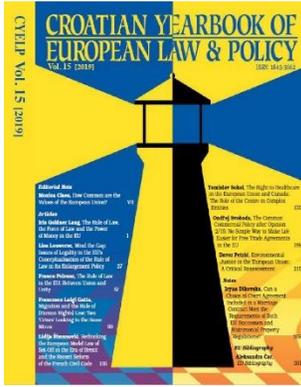




Department of European Public Law
Faculty of Law – University of Zagreb



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ENVIRONMENTAL JUSTICE AND EUROPEAN UNION LAW

Ludwig Krämer*

Abstract: The contribution examines to what extent European Union environmental law has directly or indirectly contributed to environmental injustice in the EU Member States. It examines one by one the different environmental legislative acts which the EU has adopted in order to find out whether minorities have been treated or were allowed to be treated differently from the rest of the population. It concludes that the existing environmental injustice within the EU is not due to the environmental legislation that was adopted by the EU, but rather due to its application in practice. The contribution indicates ways to improve the present situation, but concludes that changes for the better are likely to take time.

Keywords: EU environmental legislation, ethnic minorities, environmental discrimination, citizen rights, better application of laws, Roma people.

1 Minorities in the EU

‘Environmental justice’ is a movement which started in the 1980s in the United States. It originated when people discovered that infrastructure with polluting or other negative environmental effects – such as polluting industrial installations (power plants, refineries), waste landfills or incinerators, motorways, electricity lines, airport runways – were preferably placed in areas with coloured or socially disadvantaged populations.¹ This concern about discrimination because of ‘race or class’ entered the US civil rights movement and gained considerable political influence. Later, the quest for environmental justice was expanded and was combined with worries about the global North-South divide, the question how it could be possible to reconcile continuous economic growth and the limited resources of planet Earth, as well as the general ‘degrowth’ movement.²

* The author is a lawyer. He served for more than 30 years in the environmental department of the European Commission.

¹ See the first publication in this regard: R Bullard, ‘Solid Waste Sites and the Black Houston Community’ (1983) 53 *Sociological Inquiry* 273.

² See F Demaria and others, ‘What Is Degrowth? From an Activist Slogan to a Social Movement’ (2013) 22 *Environmental Values* 191; J Martinez-Alier, ‘Environmental Justice and Economic Degrowth. An Alliance between Two Movements’ (2012) 23(1) *Capitalism, Nature, Socialism* 51.

The present contribution will follow the definition of environmental justice which was developed by the US Environmental Protection Agency, according to which:

environmental justice means the fair and meaningful involvement of all people regardless of race, colour, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies. It will be achieved, when everyone enjoys: the same degree of protection from environmental and health hazards and equal access to the decision-making process to have a healthy environment in which to live, learn and work.³

The contribution will examine, to what extent the European Union (EU), which has significantly influenced the political, economic, social and environmental development of the European continent in the last fifty years, has directly or indirectly contributed, through its environmental legislation, to environmental injustice towards socially discriminated or disadvantaged groups of the population, in particular by placing environmentally relevant infrastructures in places (cities, provinces, etc) which were 'lagging behind';⁴ it will also consider, whether EU environmental legislation and policy has had the effect of imposing a higher burden on ethnic or other minorities or socially disadvantaged populations.⁵ The essential question is, thus, whether parts of the population in the EU are treated worse than other parts or whether the impact of EU environmental law on them is greater than on other parts. The contribution will neither enter into discussions on the merits of the 'degrowth' movement nor will it discuss whether EU environmental law and policy has had a greater negative impact on peripheral than on the core EU Member States.⁶

The situation of minorities in Europe is not easily comparable to that of the United States. The term 'ethnic minority' has not found a common, generally accepted definition in Europe, despite decades-long efforts. A separate language might be one of the criteria to define an ethnic minority, but it is certainly not sufficient. Whether the Kashubs in Poland, the Sorbs in Germany or groups of a population who have a language of their own – often enough, the language of a neighbouring country – should be considered an ethnic minority, is contested; this is strengthened by the designation of Bretons, Corsicans or Alsations as ethnic minorities, or persons who use the Hungarian language, but live in countries other than Hungary. Undoubtedly,

³ US Environmental Protection Agency <www.epa.gov/environmentaljustice> accessed 21 June 2020.

⁴ Expression used in Article 176 TFEU.

⁵ The assumption is that while 'the entrance to the Paris Ritz Hotel is equally possible to everybody', de facto there is some unequal treatment between the haves and the have-nots.

⁶ This is the conclusion of D Petrić, 'Environmental Justice in the European Union: A Critical Reassessment' (2019) *Croatian Yearbook of European Law and Policy* 215.

the Roma people are an ethnic minority. The European Union does not have to the same extent neighbourhoods which correspond to the 'black neighbourhoods' in the United States, though urban districts, particularly, might be in a socially similar situation to the neighbourhoods in the USA. EU immigrants from third countries, especially from Africa, but also from Arabia or Latin America, do not systematically live concentrated in communities, but are often mixed with the general population. There are, though, districts – in the Paris suburbs, in the south of Rome, in some areas of Madrid and Berlin and in numerous other agglomerations – where mainly coloured people or immigrants live.

The ethnic minority of the Roma counts about 10 to 12 million people in Europe,⁷ who live in different Member States and are, even in the twenty-first century, the object of frequent discrimination. Segregated, separate and diffuse housing conditions, and living in slums or shanty towns, continue to be a reality for them in several Member States, despite official policy efforts to avoid Roma citizens living in separate villages or urban districts and to promote intermingling with other parts of the population.⁸

An ethnic minority which lives in a coherent geographical region is the Sami population, with an estimated number of 90,000 to 150,000 persons who live in the North of Finland, Sweden, Norway and Russia. The Sami population complains in particular of extractive industry activities in their region, which affect their lifestyle. As the Sami are less mobile in settling outside the traditional Sami regions, their environmental problems are mainly linked to land use and other decisions concerning their region.

Most EU Member States have workers, who come from other countries. Some examples are Ukrainians in Poland, Syrian and Turkish workers in Germany, Romanian and Bulgarian workers in France and Spain, Serbs and Bosniacs in Croatia, or Brazilians in Portugal. Their integration with the local population varies considerably, as do their economic and social disadvantages. Migrants from Africa, Arabia and South America, who might try not to stay concentrated in separate communities, but mix with the general population, often find themselves more or less forced to live in separate districts, such as in the suburbs of Paris, Rome, Madrid, Berlin, Naples or numerous other urban agglomerations. Their settlements are

⁷ See Commission, 'An EU framework for national Roma integration strategies up to 2020' COM (2011) 173. This communication estimated (p 15) the number of Roma in Bulgaria at 750,000 (10.33% of the total population), Slovakia 500,000 (9.17%), Romania 1,850,000 (8.32%), Hungary 700,000 (7.05%) Spain 725,000 (1.57%) and France 400,000 (0.62%). See also the Commission progress report, COM (2018) 785.

⁸ Limited findings exist on the exact locations of Roma housing, though there are several studies on the poor quality of housing. See, for example, European Union Agency for Fundamental Rights (FRA), 'The Situation of Roma EU Citizens Moving to and Settling in Other EU Member States' (2009); FRA, 'Second EU Minorities and Discrimination Survey: Roma – Selected Findings' (2018).

frequently of lower quality, are close to industrial areas, big roads or other infrastructures which affect the quality of life. The exposure of persons living in such districts or settlements to negative environmental impacts is often greater than that of other parts of the population.⁹

Overall, the EU does not have a repartition of the population similar to the black neighbourhoods of the USA, and neither does it for socially underprivileged persons. This makes it almost impossible to place dangerous, polluting or land-using (infra-)structures more or less systematically in disadvantaged neighbourhoods.

2 EU law and polluting activities

2.1 The location of private dwellings

Under EU law, competence for town and country planning lies with the Member States. This includes the planning and construction of new urban quarters, of social housing, road, water and energy supply, etc. Exceptionally, there may be provisions on town and country planning adopted at the EU level. However, such measures have to be adopted unanimously, so that each Member State has the right of veto.¹⁰ The principle that Member States shall themselves decide where they place infrastructure, such as industrial – including nuclear! – installations, motorways, airports or waterways, is also reflected in Article 172(2) TFEU. According to this provision, projects belonging to the trans-European networks for energy, transport or telecommunication require the approval of the Member State concerned.

Before a larger infrastructure project or a project on an industrial installation is approved, EU law requires an environmental impact assessment, whose objective is to minimise the negative environmental effects of the project. The final decision to permit the project rests with the respective Member State.¹¹ EU legislation on motorways, airports, industrial and nuclear installations¹² does not contain provisions as to the location of the project. When an industrial installation handles dangerous substances, the Member State's land-use policies ensure an appropriate safety distance to residential areas.¹³ The Directive on landfills requires that the Member State's decision

⁹ See European Environment Agency, 'Unequal Exposure and Unequal Impacts: Social Vulnerability to Air Pollution, Noise and Extreme Temperatures in Europe' EEA Report 22/2018.

¹⁰ See Article 192(2) TFEU: '[...] the Council acting unanimously [...] shall adopt [...] measures affecting: town and country planning [...]'].

¹¹ Directive 2011/92 on the assessment of the effects of certain public and private projects on the environment [2012] OJ L26/1.

¹² See Directive 2010/75 on industrial emissions [2010] OJ L334/17; Directive 2015/2193 on medium combustion plants [2015] OJ L313/1; Directive 2009/71/Euratom on nuclear installations [2009] OJ L172/18. There is no specific EU legislation on motorways or airports.

¹³ Directive 2012/18 on the control of major-accident hazards involving dangerous substances [2018] OJ L197/1, art 13. This directive does not apply to nuclear installations and to pipelines.

on the location of a landfill takes into consideration requirements relating to the distance from the boundary of the site to residential and recreation areas.¹⁴ The Directive on flood risks asked Member States to develop flood risk management plans in order to reduce the adverse consequences of flooding for human health or the environment; these plans have to be regularly updated.¹⁵

The conclusion of this short overview is that EU legislation does not impose provisions on Member States as regards the location of infrastructure projects or polluting industrial installations. Decisions in this regard are thus purely national decisions.

Another issue is the implementation and enforcement of EU legislation. This might be illustrated by a specific example. The landfill of Pata Rât is situated on the outskirts of Cluj-Napoca (Romania). It is not authorised and therefore should have been closed down according to Directive 1999/31, in 2009 at the latest. About 1,800 people, mostly Roma, live on the landfill and in its immediate surroundings. In 2014, the Commission started formal proceedings against Romania which led to the rendering of a judgment in 2018 according to which Romania had not complied with EU law by not closing down Pata Rât.¹⁶ However, by end of April 2020, Pata Rât had still not been closed.¹⁷ A procedure by the Commission against Romania threatening it with financial sanctions for non-compliance had not been initiated.¹⁸ And the problem of providing for social housing for the Roma people who live on or close to the landfill is considered¹⁹ the responsibility of the Romanian authorities. One wonders whether this is an appropriate way of enforcing EU environmental law when compliance is still not ensured more than ten years after the relevant date.

It is well known that disadvantaged groups of the population sometimes settle close to landfills, waste incinerators, flood-risk areas or close to dangerous industrial installations, where prices for dwellings are lower.

¹⁴ Directive 1999/31 on landfills of waste [1999] OJ L182/1, annex I.1.

¹⁵ Directive 2007/60 on the assessment and management of flood risks [2007] OJ L288/27, art 7(2).

¹⁶ Case C-301/17 *Commission v Romania* ECLI:EU:C:2018:846. The case concerned 68 landfills in Romania. In contrast to other cases which the CJEU decided, these 68 landfills were not individually mentioned, so that the public concerned in Romania was not informed whether a landfill in its neighbourhood comes under the judgment. Pata Rât belongs to the 68 landfills in question. See European Environmental Bureau (EEB), 'Pushed to the Wastelands: Environmental Racism against Roma Communities in Central and Eastern Europe', 2020, 29. In the past, the Commission also undertook court action with regard to one single landfill. See, for example, Case C-626/16 *Commission v Slovakia* ECLI:EU:C:2018:525.

¹⁷ See E Vincze and M Stoica, 'The Suspension of Human Rights during Covid-19: To Roma in Pata Rât They Have Been Suspended for a Very Long Time' (2020, 27 April) LeftEast.

¹⁸ Such a procedure, on the initiative of the EU Commission, is possible under art 260(2) TFEU.

¹⁹ This wording is chosen, because there is now consensus that EU waste law requires an unauthorised landfill to be closed *and* to be cleaned up. See, for example, Case C-378/13 *Commission v Greece* ECLI:EU:C:2014:2405. In this author's opinion, the 'clean up' of a landfill also includes the establishing of adequate housing for the people who live on such a landfill.

Consequently, one could expect the Commission to pay particular attention to ensure that people do not live in areas with a high risk of floods, that an adequate distance is kept to industrial installations which handle dangerous substances, or that an environmental impact assessment, for example on industrial and nuclear installations or mining activities, ensures that the necessary distance is maintained between the installation and residential areas. However, the Commission does not orient its implementation policy in this regard. The report on the Floods Directive does not mention people who live in high-risk areas;²⁰ the report on the directive concerning the prevention of accidents indicates that Member States had not been asked to inform the Commission on the distance between an installation and residential areas.²¹ And while the Commission has sometimes taken court action when the environmental impact assessment in a specific case had not been made,²² it has never taken action when an assessment did not consider the appropriate distance between the project and residential areas. This is understandable, because an environmental impact assessment must help to avoid significant negative effects of a project on protected natural habitats;²³ but EU law does not explicitly require an impact assessment to avoid significant negative effects of a project on human beings. And permits, whether or not preceded by an environmental impact assessment, are granted by the Member States, not by the Commission.

Pleas for a more considerate and hence more intervening implementation policy of the Commission when an infrastructure or industrial project is to be installed in the neighbourhood of residential areas therefore appear justified. This would include the Commission, whether on its own initiative or following a complaint, making a fact-finding visit to the location in question. Such fact-finding visits are under the competence of the Commission and have been made, in the past, to protect animal species or protected natural habitats.²⁴ If the EEB report on Roma is taken as an example²⁵ and the facts mentioned there are taken to be correct, such fact-finding visits and possible subsequent legal action by the Commission would be necessary for: Vel'ka Ida and Krompachy in Slovakia, where Roma people were forced to settle close to industrial plants which appear to fall under Directive 2012/18; Fakulteta, a suburb of Sofia (Bulgaria), where people were forced to live on or close to an

²⁰ Commission, COM (2019) 95 and SWD (2019) 58 to 84.

²¹ Commission, COM (2017) 665; the report concerned the directive preceding Directive 2012/18 (n 13).

²² See, for example, Case C-141/14 *Commission v Bulgaria* ECLI:EU:C:2016:8; Case C-261/18 *Commission v Ireland* ECLI:EU:C:2019:955.

²³ Directive 92/43 on the conservation of natural habitats and of wild fauna and flora [1992] OJ L206/7, art 6.

²⁴ See Case C-103/00 *Commission v Greece* ECLI:EU:C:2002:60, para 8; Case C-504/14 *Commission v Greece* ECLI:EU:C:2016:847, para 15. In both cases, the protection of the sea turtle caretta was at stake.

²⁵ EEB (n 16) 24.

(authorised or non-authorised) landfill;²⁶ Asparuhova (Varna, Bulgaria), where people live in a flood-risk area;²⁷ and Turda and Trepca (Romania), where people again are forced to live on or very close to landfills or contaminated sites.²⁸

These examples, taken from one single publication, illustrate the problem: the Commission has repeatedly pleaded for an active policy to protect Roma people.²⁹ However, the devil of environmental and human health protection is in the detail: unless the Commission is prepared to use its existing means to find out about the reality and enforce EU environmental law also in specific, individual cases – as it does to protect biodiversity – the big words of general proclamations will not change much of the reality. This reasoning does not overlook the fact that civil society in Member States has also neglected and continues to neglect its role: it does not bring cases of bad application to the knowledge of the Commission, and does not make them transparent. A good example is that of the European Roma Rights Centre (ERRC). The ERRC concentrates on human rights infringements of Roma and pursues numerous actions before the European Court of Human Rights, frequently also as third-party intervenor. However, it apparently does not consider taking the European Commission at its word to ensure Roma integration within the EU and its obligation to enforce EU environmental legislation also with regard to EU Roma citizens. Numerous facts denounced by the ERRC also constitute breaches of EU (environmental) law, in particular complaints concerning access to water, sanitation and electricity or the obligation to live close to a waste landfill; yet, such facts are not even known by the EU Commission, which does not have environmental inspectors of its own.

The legal problem is different when the infrastructure or the polluting industrial installations are in place and subsequently people settle in the neighbourhood because the price of dwellings or the land is lower than elsewhere. In such a case, the Commission – provided it learns of the local problems – might, under Directive 2012/18³⁰ or the other pieces of legislation mentioned, invite the Member State in question to respect the necessary safety distance between the polluting installation and the (new) residential dwellings and, in the last instance, enforce this requirement. Apart from that, though, competence for acting lies entirely with the Member State in question, which would have to avoid such a close proximity of residents and the polluting activity. The EU Commission has practically no possibility to intervene.

²⁶ *ibid*, 22.

²⁷ *ibid*.

²⁸ *ibid*, 24.

²⁹ See the references in n 7.

³⁰ Directive 2012/18 (n 13).

Overall, the environmental and human rights problems linked to the location of polluting projects and the socially disadvantaged population have not yet raised adequate concern in the EU, either from the EU institutions or from academic researchers, NGOs or other parts of civil society – including the concerned groups of the population themselves. There is no doubt that city districts such as Paris-Neuilly, Bruxelles-Uccle, Hamburg-Blankenese or Zagreb-Jarun, which do not host polluting industries or infrastructures, are found in practically every European urban agglomeration, and that, in contrast, districts of the less privileged parts of the population host more of such environmentally damaging installations and infrastructures in concentrations that truly affect the quality of life.

2.2 Access to water and to waste water systems

Directive 98/83 deals with the public supply of drinking water.³¹ It obliged public authorities to supply drinking water of quality, the detailed requirements of which were laid down in the directive. Member States were allowed to exempt from the quality requirements of the water small supplies of less than 10m³ water per day or water serving fewer than 50 persons. The directive was silent on the question whether individual persons had the right of access to drinking water that complied with the requirements of the directive. This was never tested in court, but a large majority of authorities at EU and Member State level were of the opinion that such a right did not exist.

In 2018, the Commission proposed a review of Directive 98/83.³² It suggested a number of amendments and proposed that Member States should take ‘all measures necessary to improve access for all’ to drinking water. While the European Parliament³³ and the Committee of the Regions³⁴ more or less agreed to that proposal, the European Economic and Social Committee requested the unrestricted right of access to drinking water.³⁵ The Council found political agreement on a text which provided that Member States ‘shall take the necessary measures to improve or maintain access to water intended for human consumption to all, in particular for vulnerable and marginalised groups’.³⁶

The directive is likely to be adopted in 2020, but without explicitly giving individual citizens the right of access to drinking water. Several Member States, such as Sweden and the Netherlands, argued that access to drinking water was under the competence of the Member States, a position which is

³¹ Directive 98/83 on the quality of water for human consumption [1998] OJ L330/32.

³² Commission COM (2017) 753 of 1 February 2018.

³³ European Parliament, Resolution of 28 March 2019, document C8-0019/2018-2017/0332.

³⁴ Committee of the Regions [2018] OJ C361/46.

³⁵ European Economic and Social Committee [2018] OJ C 367/107.

³⁶ Council, Document 6060/1/20, Rev 1 of 24 February 2020, art 16.

difficult to reconcile with the concept that access to water is a fundamental right. At the end of the day, it will be up to the CJEU to decide if there is a human right of access to drinking water under the reformulated Drinking Water Directive. In my opinion, there is such a right at least in those cases where public authorities have incited or urged persons to settle in places where no public drinking water supply is available or where they tolerate the living of people in areas without access to drinking water for a significant time.³⁷ It is certain, though, that any right of access to drinking water will only be obtained by court action – that of the CJEU and the European Court of Human Rights.

As regards waste water, Directive 91/271 required all agglomerations with more than 2,000 people to be equipped with systems for the collection of waste water and for waste water treatment.³⁸ No exception was made as regards the composition of the affected population, including the question whether people have identity cards, passports, work permits or other documentation. When the costs for installing waste water collection and treatment are considered to be too high, a solution which ensures an equivalent result must be adopted by the Member States.

The directive provided that all agglomerations with more than 2,000 people should comply with its requirements by 2005; some countries which adhered afterwards had obtained specific transposition delays, which have, in the meantime, all elapsed. As Member States were slow in implementing the directive, the Commission brought numerous actions against them before the CJEU, under Article 258 and 260 TFEU.³⁹ Apart from one case against Cyprus,⁴⁰ no case has ever been brought against any of the Member States which acceded to the EU since 2004.

Compliance with this directive requires that the Roma settlement of Sofia-Stolipinovo (Bulgaria) where, according to the EEB report mentioned above, some 60,000 Roma people live, be equipped with drainage and a waste-water treatment system. So far, it has not been tested with this directive whether individual persons can rely on it before public authorities and the courts, also in the absence of national legislation which gives them such a right. In my opinion, individual persons or groups of persons in the whole of the EU are

³⁷ Following the EEB Report (n 16) 22-24, these criteria would give the right of access to drinking water to people living in the Roma settlements of Sajkoza (Hungary), Prasnik (Slovakia), Plovdiv-Stolipinovo (Bulgaria), Sofia-Fakulteta (Bulgaria) and Constanta (Romania).

³⁸ Directive 91/271 concerning urban waste water treatment [1991] OJ L135/40.

³⁹ If my counting is correct, there were overall 51 actions, among them against Greece (9 actions), Spain (7), Portugal (6), and Italy (6). The cases do not allow any conclusion as to the question whether in poor or otherwise disadvantaged agglomerations the installation of waste water treatment systems was more frequently delayed than in other agglomerations.

⁴⁰ Case C-248/19 *Commission v Cyprus* ECLI:EU:C:2020:171.

entitled to claim in court that they have the right to be connected to drainage and waste-water treatment systems.⁴¹

2.3 Waste issues

The collection of municipal waste is not explicitly regulated by EU legislation, but is the responsibility of Member States. EU law only imposes the separate collection of certain materials – paper, metal, plastic and glass, under specific waste stream directives – of packaging material, batteries and electrical and electronic equipment. It also provides that Member States should reach a rate of recyclable municipal waste⁴² of 50 per cent by 2020.⁴³ This obligation implies some sort of waste collection, though it appears doubtful that a Member State could be found in breach of its obligations when it does not collect municipal waste in a specific district or area of a municipality. As regards the separate collection of waste materials, no exception is made in the directive for certain municipalities or parts thereof; whether the people living in a settlement belong to an ethnic minority or a ‘vulnerable or marginalised’ (socially disadvantaged) group, whether they have valid documentation or not, is irrelevant, as the objective of the obligation for separate collection is the protection of the environment. Individual citizens may thus use EU waste law and oblige municipalities to instal a system of separate collection of waste streams.

The Directive on the landfill of waste⁴⁴ clarified that the existence of an unauthorised landfill constitutes a breach of EU environmental law; such landfills must be closed *and* be cleaned up. There are several court judgments in this regard, initiated by the EU Commission, which sometimes became active also concerning the existence of a single unauthorised landfill.⁴⁵ The Commission would thus have the possibility to take action against Member States where unauthorised landfills exist, in particular when people live on or close to such landfills, as this also increases the risk for human health; the observations made above concerning fact-finding missions by the Commission would be particularly appropriate in such cases. Until now,

⁴¹ This ‘direct effect-doctrine’ was developed by the CJEU. It allows private persons to rely against public authorities on a provision of an EU directive, which is unconditional and sufficiently precise, even in cases where the national legislation had not or not correctly transposed that provision into national law. See in particular Case C-194/18 *Wasserleitungsverband* ECLI:EU:C:2019:824 on the direct effect of Directive 91/676 concerning water pollution from nitrates [1991] OJ L375/1. In Case C-395/13 *Commission v Belgium* ECLI:EU:C:2014:347, para 31, the CJEU declared that Directive 91/271 contained a clear and unequivocal obligation for the Member States to reach a certain result, which points to direct effect.

⁴² Directive 2008/98 on waste [2008] OJ L312/3. The directive does not use the term ‘municipal waste’, but refers to ‘household waste’. See Article 11 and Recital 41.

⁴³ *ibid*, art 11.

⁴⁴ Directive 1999/31 (n 14).

⁴⁵ Case C-323/13 *Commission v Italy* ECLI:EU:C:2014:2290; Case C-140/14 *Commission v Slovenia* ECLI:EU:C:2015:501; Case C-331/11 *Commission v Slovakia* ECLI:EU:C:2013:271.

though, no such action by the Commission has reached the CJEU or become known otherwise.

Following a number of accidents, the EU adopted a Directive on waste from extractive industries.⁴⁶ This directive did not contain specific provisions on the distance of waste facilities from residential areas. It requested the use of the best available techniques for the management of the extracted waste, but implicitly also authorised the technique of using tailing ponds,⁴⁷ where extracted waste is stored under water and where this pond is surrounded by a protective dam. In 2010, a tailing pond from the Ajka alumina plant close to Kolontár (Hungary), which contained liquid waste from the plant's activities, broke and a wave of sludge poured into the environment, killing ten and injuring some 150 people and causing considerable environmental damage. Though tailing ponds are thus a possible technique under EU law, several EU Member States – for example the Netherlands and Germany – no longer allow this technique, because they consider that the risk, including the long-term risk, of the breaking of a dam is too high. It is clear that the risk for the population living next to an industrial installation which extracts minerals (the mining, aluminium, copper, gold industries, etc) is greater in Member States which accept tailing ponds as a technique. The majority of EU Member States are not yet prepared to renounce this technique.

2.4 Air pollution

Air emissions from large industrial installations are regulated by Directive 2010/75,⁴⁸ which provides that installations which are covered by the directive shall use the best available technique. Expert groups determine for each industrial sector what constitutes the best available technique. Their conclusions are taken over by the EU Commission, which determines by binding legislation what the best available technique for each industrial sector is. National authorities, which are competent to grant or renew permits to the different installations, then base the permit conditions on such best available techniques.

Directive 2010/75 thus allows the specific permit conditions to be different from one installation to another, even if it is of the same type, and from one Member State to another, according to different economic and social considerations, the proximity of the installation to residential areas, the size of the installation, the quantities of emissions, and the proximity of other polluting installations or other sources. It therefore gives a very large amount

⁴⁶ Directive 2006/21 on the management of waste from extractive industries [2006] OJ L102/15.

⁴⁷ For a definition of tailing ponds, see *ibid*, art 3(9) and (12). Tailing ponds are mentioned in Recital 24, Article 13 and Annex III of Directive 2006/21.

⁴⁸ Directive 2010/75 on industrial emissions (integrated pollution prevention and control) [2010] OJ L334/17.

of discretion to the authorities of the Member States. The directive also provides for extensive public participation possibilities during the permit granting or permit renewal procedure.

Directive 2010/75 only covers large industrial installations which are listed in an annex to the directive. For all other installations, the Member States are responsible for granting permits, deciding on the location of the installations, limiting their polluting and noise emissions, their discharges into waters and their land use. Air emissions from private households and public buildings come under the competence of EU Member States and are not regulated by EU measures.

Traffic-related air emissions are subject to uniform EU measures⁴⁹ in order to ensure the free circulation of cars and trucks, one of the essential elements of the internal EU market. However, these EU uniform emission limits do not prevent Member States from leading an active air pollution policy. They might limit the traffic in urban agglomerations, provide for speed limitations, put into reality the principle that the construction of more roads increases traffic, create green spaces, pedestrian areas, bypass lanes for transitional traffic, bicycle lanes, and take other measures to protect residential areas – including those of economically and socially disadvantaged people – from air pollution or noise. The policies of some cities in the EU – Copenhagen, Amsterdam, Delft, Freiburg, Münster, Montpellier, etc – are examples of active urban policies to fight air pollution and other environmental impairments. Again, the EU has no possibility to intervene in such urban policies of agglomerations.

Directive 2008/50 established levels of concentration of several pollutants – sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter, benzene, carbon monoxide and tropospheric ozone – in the ambient air, which are not to be exceeded from 2010, and for PM_{2,5} from 2015.⁵⁰ Member States are obliged to fix sampling points which have to be established where concentrations are thought to be highest.⁵¹ Individual persons have the right to participate in the decisions where such sampling points are to be established.⁵²

Petrić⁵³ sees a form of environmental (in)justice in the fact that air pollution is worse in the Member States of Central and Eastern Europe as well as in Southeast Europe than in core EU Member States. This assessment is not shared here. Supposing that Petrić's factual statement is correct and air quality is really worse in those parts of the EU, the conclusion from different

⁴⁹ Directive 2007/46 [2007] OJ L263/1.

⁵⁰ Directive 2008/50 on ambient air quality and cleaner air for Europe [2008] OJ L152/1.

⁵¹ *ibid*, art 7 and annex III.

⁵² Case C-733/17 *Craeynest* ECLI:EU:C:2019:533.

⁵³ Petrić (n 6) 234ff.

levels of air pollution to environmental injustice is not convincing. EU legislation on air pollution is the same for all Member States. The kind of measures that are then taken to comply with the legal requirements and even go beyond them⁵⁴ depends on the policy decisions of each Member State. These may include measures on town and country planning, the planning and lining of motorways and other roads, traffic-related measures, instruments to limit the use of fossil fuels, the planning of green areas, the promotion of pedestrian areas, bicycle lanes, and numerous other measures. It is not possible to conclude from differences in the degree of environmental or human health protection within the Member States on cases of environmental injustice – unless the term is used as being equivalent to a statement such as: ‘Inequalities between Member States are a form of injustice’, which is not helpful and, in any case, lies outside the scope of examination of the present contribution.

The CJEU had the opportunity to examine, between 2017 and 2020, the air pollution measures in three Eastern Member States, namely Bulgaria, Poland and Romania.⁵⁵ It found in all three cases a systematic and continuous exceedance of the limit values of Directive 2008/50 and did not accept the argument that people in Bulgaria were poorer than people in other Member States and had to heat their homes with wood or coal,⁵⁶ or the ‘precarious nature’ of the Polish population.⁵⁷

2.5 Greenhouse gas emissions

EU measures to fight climate change aim in particular at the reduction of greenhouse gas emissions. The present legislation has the objective of reaching a 40% reduction of such emissions by 2030 compared to the emissions of 1990. A form of effort sharing among Member States, based mainly on the Gross Domestic Product (GDP) of each Member State, attempted to balance the different socio-economic situations.⁵⁸ The legislation was accompanied by a very significant number of legislative acts which dealt with energy consumption, the substitution of fossil fuels, and greater energy efficiency. As the relevant legislation took as a level of comparison the Member State, the question whether some Member States had to carry a greater burden than others will not be examined here, since this contribution

⁵⁴ Directive 2008/50 is based on Article 192 TFEU and thus allows Member States to maintain or introduce more stringent environment protection measures. See Article 193 TFEU.

⁵⁵ Case C-488/15 *Commission v Bulgaria* ECLI:EU:C:2017:267; Case C-336/16 *Commission v Poland* ECLI:EU:C:2018:94; Case C-638/18 *Commission v Romania* ECLI:EU:C:2020:334.

⁵⁶ *Commission v Bulgaria* (n 55) para 64.

⁵⁷ *Commission v Poland* (n 55) para 89. In none of the three cases was there any differentiation made by the Member State concerned as to ‘rich’ and less well-off regions or areas.

⁵⁸ Regulation 2018/842 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 [2018] OJ L156/26.

examines differences in the treatment of specific groups of the population.⁵⁹ It is clear, though, that a Member State, which in the past relied heavily on fossil fuels as a source of energy, will have to make greater efforts to reduce greenhouse gas emissions than a Member State which has relied more on renewable sources of energy or on nuclear energy.

2.6 Access to environmental information

The Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters was ratified by the EU and is thus part of EU law.⁶⁰ A directive on access to environmental information imposed the Convention's information obligations on Member States and went partly beyond the Convention's requirements.⁶¹ As regards access to environmental information held by EU institutions, two EU regulations give information rights to citizens against EU institutions and bodies.⁶²

Neither Directive 2003/4 nor the two regulations differentiate in any way between different groups of the population. The right of access to environmental information is the same for everyone. In practice, though, there are differences. First, citizens in the different Member States are differently interested in environmental information. Anglo-Saxon citizens have shown, in the past, the greatest intellectual curiosity in the EU by placing requests for access to information, probably because they are educated in the conviction that the more open the discussions and decision-making procedures are, the better a democratic society fares. These considerations of an open society, which go back to the Austrian-British philosopher Karl Popper,⁶³ are differently spread in the EU Member States and there are, even in the 21st century, Member States where the public authorities believe that as little information as possible should be disclosed to the public.

This approach is also reflected in the effective application of Article 4 of Regulation 1367/2006 – which is the same as Article 7 of Directive 2003/4 with regard to the public authorities of Member States – that public authorities should proceed to an ‘active and systematic’ dissemination of environmental information. All public authorities, including municipalities, agencies, regional bodies, police authorities and courts, are thus under the

⁵⁹ However, see also L Krämer, *EU Environmental Law* (8th edn, Sweet and Maxwell 2015) 337ff, which detailed the 2020 greenhouse gas emissions per capita of the EU Member States.

⁶⁰ Decision 2005/370 [2005] OJ L124/1.

⁶¹ Directive 2003/4 on public access to environmental information [2003] OJ L41/26.

⁶² Regulation 1367/2006 on the application of the provisions of the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters to Community institutions and bodies [2006] OJ L264/13; Regulation 1049/2001 on public access to European Parliament, Council and Commission documents [2001] OJ L145/43.

⁶³ K Popper, *The Open Society and Its Enemies* (Routledge 1943).

continuous obligation to make environmental information, of which they dispose, available to citizens; in the age of the internet, this is no longer difficult. Such information concerns, for example, reports on inspections, emissions from industrial installations, the number of households without access to clean tap water, sanitation, or heating, the results of water and air quality in the different districts of a municipality, noise levels, actions which the police have taken to prevent environmental crime and their results, and large amounts of other information.

It is clear that within the EU, all Member States – perhaps with the exception of Sweden – are far from this state of affairs. In general, public authorities at local or national level still believe that knowledge gives power, and that sharing information means sharing their power. They do not see the democratic element of transparency, and certainly do not follow either the letter or the spirit of Recital 17 of the Aarhus Convention, according to which ‘public authorities hold environmental information in the public interest’, thus not in the interest of the public authorities.

These more general comments on access to environmental information have a strong impact on the question of environmental justice. Transparency of data and of information can reveal where individuals or groups of disadvantaged or marginalised people are treated worse than other groups of the population, where pollution is greater in some parts of an agglomeration than in others, where the measures taken are ineffective, or where otherwise cases of environmental injustice occur.

An example of this kind is the initiative of Ms Nikolova, a resident of the city of Dupnitsa (Bulgaria), who lived in a district that was inhabited mainly by Roma people. Ms Nikolova complained that the responsible electricity company had fixed her electricity metre at a height of 6 to 7 metres, making it thus impossible for her to monitor her electricity consumption and check whether she had to pay too much for her consumption of electricity. She indicated that in districts of the city where the majority of inhabitants were not Roma people, the metres were fixed at a height of about 1.70 m. The CJEU found that such a practice constituted a practice of discrimination for ethnic reasons.⁶⁴ The decisive point here is that Ms Nikolova had the courage to denounce the practice in question as discriminating; although apparently that practice had been used for a long time in Dupnitsa, nobody else was bold enough to question it or to persist in bringing it to an end. In the same way, the practice of the City of Houston (USA) to place landfills in or close to black districts of the city was denounced and progressively stopped through the

⁶⁴ Case C-83/14 *Nikolova* ECLI:EU:C:2015:480.

initiative of an individual person, R Bullard, who made this practice public.⁶⁵ As regards EU law, there are numerous examples where requests for access to (environmental) information made by individuals have led to court judgments, resulting in a change in the public authority's readiness to disclose information.⁶⁶

It is, of course, not to be overlooked that numerous public authorities at local, regional, national and EU level prefer not to disclose environmental information and not to answer requests, hoping that applicants will be afraid to seek judicial decisions. However, such practice is not the consequence of EU legislation or the Aarhus Convention, but is in contradiction with existing law.

2.7 Public participation in environmental decision-making

The second right established by the Aarhus Convention and elaborated in more detail by EU law is the participation of the public in environmental decision-making procedures. EU environmental law contains such a right against public authorities which decide on projects⁶⁷ or plans and programmes⁶⁸ – though not for authorisations concerning cars, chemicals, pesticides or biocides. Some details are laid down in the different EU legal acts which refer to such a right of the ‘public concerned’, leaving the specification of who is concerned in a given case to the competent national authorities.⁶⁹

In practice, many public authorities, including the EU Commission, pay lip service to the requirement to make the population concerned participate in the decision-making process, and the CJEU has had to decide in numerous cases of this kind.⁷⁰ The practice of the authorities which normally do not even differentiate between ‘consultation’ and ‘participation’ cannot be retraced

⁶⁵ Bullard (n 1).

⁶⁶ Case C-321/96 *Mecklenburg* ECLI:EU:C:1998:300; Case C-1186/04 *Housieaux* ECLI:EU:C:2005:248; Case C-39/05P *Sweden and Turco v Council* ECLI:EU:C:2008:374; Case T-84/03 *Turco v Council* ECLI:EU:T:2004:339; Case T-402/12 *Schlyter v Commission* ECLI:EU:T:2015:209; Case T-329/17 *Hautala v EFSA* ECLI:EU:T:2019:142.

⁶⁷ Directive 2003/35 [2003] OJ L156/17 and scattered in numerous other directives. See, for example, Directive 2001/92 (n 11) art 6; Directive 2010/75 (n 48) art 24; and Directive 2006/21 (n 46) art 8. As the EU institutions do not authorise projects, there is no legislation on projects concerning them.

⁶⁸ Directive 2001/42 on the assessment of certain plans and programmes on the environment [2001] OJ L197/17; Regulation 1367/2006 (n 62) art 9.

⁶⁹ The population who lives in a perimeter of about one kilometre of a waste incinerator might be considered to be ‘concerned’; in contrast, the population concerned by a motorway of 100 km in length might be the population living within some 1500 metres of both sides of the motorway. The competent authorities must necessarily have some amount of discretion to decide who is concerned.

⁷⁰ See Case C-399/14 *Waldschlösschen* ECLI:EU:C:2016:10; Case C-290/15 *D'Oultremont* ECLI:EU:C:2016:816; Case C-671/16 *Inter-Environnement Bruxelles* ECLI:EU:C:2018:403; Case C-329/17 *Prenninger* ECLI:EU:C:2018:640; Case C-305/18 *Verdi Ambiente* ECLI:EU:C:2019:384; Case C-280/18 *Flausch* ECLI:EU:C:2019:928.

here in detail.⁷¹ What is essential is that no differentiation is made in EU legislation between different parts of the population according to their ethnic or social status.

2.8 Access to justice

The third right granted by the Aarhus Convention, the right of access to justice, will not be discussed in detail, as the legal situation is relatively clear: access to EU courts is regulated by Article 263(4) TFEU. The provision is very restrictively interpreted by the CJEU, which saw no reason to be less restrictive because of the Aarhus Convention.⁷² As regards access to the national courts, there is no general EU legislation, so that the matter is regulated by the provisions of the different EU Member States. For the purposes of this contribution, it is again to be underlined that EU law does not differentiate between groups of the population, their ethnic or social status, or similar criteria of this kind.

3 Environmental justice: three paths ahead

This short overview of EU environmental legislation clarifies that the intentional or unintentional placing of polluting installations or infrastructures in socially disadvantaged, marginalised or ethnic minority groups does not repose on EU environmental law provisions. As EU environmental law explicitly provides that Member States may maintain or introduce provisions which give greater protection to citizens than the EU provisions,⁷³ it is difficult to blame EU environmental legislation of environmental injustice.

Rather, the core of the problem of environmental justice, as defined in the introduction, lies in the application of environmental law, the biggest problem which (national, EU or international) environmental law faces. The application of EU environmental law is first of all under the competence of the EU Member States.⁷⁴ This includes the location of installations or infrastructures, town

⁷¹ See, for example, the contributions on participation rights in Spain (Bolano Pineiro and Lasagabaster 143), the Arctic region (Poto 159), Poland and Ukraine (Rachynska 171; Sobieray 193) and the EU (Krämer 121) in J Jendroska and M Bar (eds), *Procedural Environmental Rights: Principle X in Theory and Practice* (Intersentia 2017).

⁷² The CJEU argues that broader access to the EU courts would require an amendment of the TFEU and that the Aarhus Convention does not prevail over the TFEU which is EU primary law. However, according to Article 216(2) TFEU, the Aarhus Convention, which was ratified by the EU, binds all the EU institutions, thus also the CJEU. Nothing would therefore prevent the CJEU from amending its restrictive interpretation of Article 263(4) TFEU and grant greater access to the EU courts in environmental matters – should it have the political will to do so.

⁷³ Article 193 TFEU: 'The protective measures adopted pursuant to Article 192 shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with the Treaties. They shall be notified to the Commission'.

⁷⁴ See Article 19(1) TEU: 'Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law'. Article 192(4) TFEU: 'Without prejudice to certain

and country planning, the limitation of air, water and soil pollution and the monitoring of the polluting activities of traffic, industry or agriculture.

For historic, economic, political and other reasons, EU Member States have a very different approach to the protection of the environment. While environmental questions rank high on the political agenda, for example in Sweden, Denmark, the Netherlands or Germany, they play a much less prominent role in countries such as Spain, Slovakia, Cyprus or Bulgaria. The presence of environmental political parties, the interest of communication media, the education system which includes environmental topics, specialised agencies and laboratories which deal with environmental research, data collection and publication, the practical application of findings, and numerous other aspects contribute to the different relevance of the environment in different Member States. The rule of the law and its perception by the population must not be forgotten. A proverb such as 'Fatto la legge, si trova l'inganno' (once a law is made, one finds a way to bypass it), which exists in Italy and in a similar form in Spain, would not have the status of a proverb in Denmark, Sweden or Luxemburg: general respect of the law and its enforcement by the public authorities is simply different in different Member States. Other aspects of a similar kind are the transparency of decision-making, the presence or absence of corruption, attempts to follow the lines of good governance, and the deliberate attempt to give a voice to the environment by strengthening environmental organisations, by establishing an environmental ministry and equipping it with powers also to impose environmental aspects in energy, transport, agricultural, industry or other policy questions.

All these puzzle stones lead to the result that EU environmental law is differently applied in different EU Member States. The concentration of polluting installations or infrastructures in specific areas of a country or region might make sense because the area may be less densely populated, or it might for other reasons offer itself to host such projects (because of its geography, the wind direction, its proximity to waterways, for example). The price of land in such areas might be cheap and this might in turn become attractive for low-income persons to settle in the neighbourhood. Such actions and reactions might continue – and did continue in the past, leading to the current situation in practically all Member States that districts which are close to polluting sources are inhabited by socially disadvantaged groups of the population.

measures adopted by the Union, the Member States shall finance and implement the environment policy'.

In order to get out of such a vicious environmental circle, three processes might be promoted. The first is the possibility for EU Member States – including cities, villages, provinces and regions – to redirect their environmental strategy or policy. Environmental policy should no longer be subordinated to economic considerations of growth, but should be oriented more towards the quality of life of citizens. Some paths were already briefly mentioned above. It is clear, though, that such a reorientation requires taking a deep breath, also since it goes against many vested interests of the political and economic élites. For example, making cities no longer perfect for car traffic, but perfect for citizens (pedestrians), reducing parking space and increasing green areas, changing the heating system, introducing district heating, installing individual water and electricity metres, or eliminating polluters from the city, etc, will require a strategy, political determination to implement the strategy, and an open, transparent policy which makes people understand the general objectives. Environmental impairment is not an act of God, but can be considerably reduced by the long and patient pursuit of more sustainable goals than in the past. There are also models for this among the EU Member States and their regions, provinces and cities.

The second element of a strategy would be to improve environmental provisions, both by the EU and by the Member States. The EU has already started by trying to reduce and even eliminate the landfilling of waste.⁷⁵ While sufficient contaminated sites within the EU continue to exist – landfills, but also abandoned industrial installations and military areas – some Member States (such as Denmark and the Netherlands) have developed policies and strategies to progressively clean up such sites. Sufficient financial means are available to support these national or EU strategies.

Another element is reducing emissions from industrial installations. It is shocking to find that although climate change considerations are now likely to lead to steel production installations considerably reducing their greenhouse gas and other emissions by 2030, thanks to new techniques,⁷⁶ it was not possible for such techniques to be developed earlier in order to improve the health of the population living close by such steel installations. In the same way, there are plans to reduce emissions from waste incinerators, and one wonders why it required climate change discussions for such plans to be developed. Generally, neither the objective of developing cleaner industrial techniques nor the requirement to ensure a certain distance between residential areas and polluting activities were taken too seriously,

⁷⁵ Directive 2018/850 amending directive 1999/31 [2018] OJ L150/100.

⁷⁶ Commission, the European Green Deal, COM (2019) 640, 7.

either by the EU or by the majority of Member States.⁷⁷ The new policy objective of the EU Commission to reach, by 2030, zero emissions into air, water and soil,⁷⁸ utopian as it is, will in any case not be achieved without the strong political, economic and technical activity of the Member States. Yet, Member States are competent to regulate most of the sources which emit polluting substances into the air, water and soil; it requires political will to change the environmental conditions for all the citizens. EU institutions cannot achieve this on their own.

The third aspect concerns the better implementation, application and enforcement of EU environmental law. To begin with, there is no doubt that there is actually some form of discrimination of Roma populations within the EU, and the EU Commission itself called for an improvement of the current situation.⁷⁹ Other minorities, such as Turkish people in Germany, Hungarians in Romania, or North African people in France, also suffer forms of unequal treatment, which includes disadvantages in the application of environmental law provisions, though it is not limited to this.⁸⁰ However, this means that the Commission, which ensures that the provisions of EU law are applied in the Member States and are applied equally, takes care that the, theoretically uniform, EU environmental law provisions are not in practice applied in a way that discriminates minorities. When, for example, the Commission learns from practices such as the fixing of electricity metres in Roma districts at a height that is different from that in other districts, or when it learns that minorities in an agglomeration live on or very close to an authorised or unauthorised landfill, it also has the obligation to make fact-finding visits in order to establish the facts and start improving the situation. Turning a blind eye to such situations with the argument that it is first of all up to the Member States to ensure that EU (environmental) law is applied is not good enough, as the Commission itself has the legal obligation to ‘ensure the application of the Treaties and of measures adopted by the institutions pursuant to them’.⁸¹

In the same way, the Commission should be particularly attentive to see whether the environmental impact assessments for mining and other projects in the Sami region in Northern Scandinavia have really been correctly made, that all Member States actively and systematically disseminate environmental information to their people, that data on water, air and soil pollution are

⁷⁷ An example is the location of the Portuguese airport at Lisbon, which lies in the city centre, whereas the Swedish airport of Stockholm lies about 50 km outside the city centre. This shows the impact of planning measures on environmental impairment.

⁷⁸ Commission (n 76) 14.

⁷⁹ See the references in n 7.

⁸⁰ Such unequal treatment also concerns medical care, health insurance, treatment during the Covid pandemic in 2020, etc.

⁸¹ Article 17(1) TEU.

regularly made publicly available, that waste collection systems do not ‘forget’ to collect waste from ethnic or other minorities, that a meaningful, transparent and open environmental complaint system is set up at EU level, that local, regional or national plans and programmes provide for the appropriate participation of citizens in the decision-making process, that environmental infringement actions under Article 258 TFEU are taken in the same way against big and small, rich and poor Member States, and numerous other aspects; in other words, the Commission should ensure that the application and enforcement of EU environmental law does not lead to unequal treatment in practice.

These observations do not mean that Member States do not have opportunities to improve their enforcement and application practice. Member States do have the possibility to inspect doubtful polluting activities, consider aspects of unequal treatment of minorities and ensure that the environment in their territory is adequately protected. A democracy, we learn in school, shows itself in the way it treats its minorities. All public authorities have the obligation to treat their citizens equally and to apply EU and national environmental protection provisions in a fair, equitable and proportionate way. And minorities need more protection than other sections of the population. At present, the way in which Member States make public account of the application and enforcement of the provisions of (EU and national) environmental law is grossly inadequate. The citizen in most Member States has almost no way of knowing how the provisions to protect the environment are or are not enforced, applied and respected. The requirement of ‘active and systematic’ dissemination of environmental information is generally disregarded by Member States.

Directive 2003/4 also requires Member States to publish every four years a report on the state of the environment in their country.⁸² This obligation is not complied with by the majority of countries, and it is little consolation that the Commission is also obliged to publish a report on the state of the EU environment every four years, but does not do so.⁸³

4 Concluding remark

All three aspects, jointly or severally, would require another environmental policy, and probably even another general policy approach by the EU Member States. This is due to the fact that justice in modern society primarily requires the elimination of privileges and inequalities. Rich and poor persons or groups of persons have always existed in societies, whether assembled around royal

⁸² Directive 2003/4 (n 61) art 7(4).

⁸³ Regulation 1367/2006 (n 62) art 4(4). EU reports on the state of the environment are only published every five years.

courts, around priest clans, economic bodies or political groupings.⁸⁴ Justice in our society can only mean that the inequalities between different groups of the population, be they of a social, economic or environmental nature, are reduced or, ideally, eliminated. Environmental justice cannot be obtained without social and economic justice. And the present contribution has limited itself to looking at the situation within the EU, but did not consider economic, social and environmental injustice at the global level, which would need a contribution of its own.

Policy, Max Weber once formulated, is a strong and slow boring of hard boards.⁸⁵ Improving environmental justice and reducing cases of injustice means that public authorities, but also private citizens, academics and journalists, producers, traders and intellectuals, who all have responsibilities for this planet, actively work in each of the three areas mentioned above, make better environmental rules, apply them better, and ensure that the provisions meet everyone in the same way.

⁸⁴ The statement by John Ball in the 14th century, 'When Adam delved and Eve span, who was then the gentleman?' does not describe a societal reality.

⁸⁵ M Weber, *Politik als Beruf* (Dunder & Humblot 1919).