



Standing up for Your Right(s) in Europe
A Comparative Study on Legal Standing (*Locus
Standi*) before the EU and Member States' Courts

Editors:
M. Eliantonio
Ch.W. Backes
C.H. van Rhee
T. Spronken
A. Berlee

Standing up for Your Right(s) in Europe
A Comparative Study on Legal Standing (*Locus
Standi*) before the EU and Member States' Courts



Editors: Dr. M. Eliantonio, Prof.dr. Ch.W. Backes, Prof.dr. C.H. van Rhee, Prof.dr. T.N.B.M. Spronken, A. Berlee, LL.M.

Standing up for Your Right(s) in Europe
A Comparative Study on Legal Standing (*Locus Standi*) before the EU and Member States' Courts

This book is based on a comparative study commissioned by the European Parliament on Legal Standing (*Locus standi*) before the EU and Member States' Courts.

Manuscript completed in 2012.

The study on which this book is based is available on the Internet at www.europarl.europa.eu/studies.

The opinions expressed in this document are the sole responsibility of the authors and do not necessarily represent the official position of the European Parliament.

Intersentia Ltd
Trinity House | Cambridge Business Park | Cowley Road
Cambridge | CB4 0WZ | United Kingdom
Tel.: +44 1223 393 753 | Email: mail@intersentia.co.uk

ISBN 978-1-78068-156-6
D/2013/7849/43
NUR 824

© 2013 Intersentia
Cambridge - Antwerp - Portland
www.intersentia.com | www.intersentia.co.uk

Cover image: Honoré-Victorien Daumier, *Les gens de la justice*, c.1846. Lithography.
Bibliothèque Nationale de France, Paris, France

British Library Cataloguing in Publication Data. A catalogue record for this book is available from the British Library.

No part of this book may be reproduced in any form, by print, photo copy, microfilm or any other means, without written permission from the author.

|

TABLE OF CONTENTS

List of Abbreviations	xi
List of Tables and Maps.....	xiii
Executive Summary	1
Chapter 1: Background and Aim of the Study	9
1. Definitions, Sources and Scope of the Study	11
1.1. Gender-neutral Language Use	11
1.2. Definition of Locus Standi	11
1.3. Sources Reviewed	12
1.4. Selection of Legal Systems	12
2. Structure of the Study.....	14
3. Methodology	15
Chapter 2: Analysis of Locus Standi before the CJEU.....	17
1. Introduction	18
2. The Rationale of Standing.....	18
3. The Variations in Standing before the EU Courts	18
3.1. Action for Annulment	19
3.1.1. What are 'Natural and Legal Persons'?.....	19
3.1.2. What does 'Direct Concern' Mean?	20
3.1.3. What does 'Individual Concern' Mean?	21
3.1.4. What does 'Regulatory Act' Mean?	23
3.1.5. A 'Complete' System of Remedies?.....	24
3.2. Action for Failure to Act	27
3.3. Action for Damages	28
3.4. Appeal	29

4.	Third Party Intervention before the EU Courts	29
4.1.	What does 'Interest in the Result of a Case submitted to the Court' mean?.....	30
4.2.	Intervention of Associations	31
4.3.	Position of the Original Parties and Appeal.....	32
5.	Multi-party Litigation at EU Level	32
6.	The Protection of Public Interests before the EU Courts	33
7.	Beyond the <i>Plaumann</i> Orthodoxy: The EU Courts' Practice in the Application of the <i>Plaumann</i> Doctrine.....	33
7.1.	The Results of the EU Courts' Application of 'Individual Concern' in the Different Policy Fields	34
7.2.	'Individual Concern' and Claims of Associations	36
7.3.	'Individual Concern' in Special Types of Claims.....	37
7.4.	The Importance of the Claim	38
8.	'Individual Concern' as a Tool for the Administration of Justice?	39
9.	Influence of General Principles	39
10.	Accession to the ECHR.....	40
11.	The EU and the Aarhus Convention	41
12.	Conclusion: General Strictness with Some Exceptions	44

Chapter 3: Comparative Analysis of *Locus Standi* before National Civil Courts . 47

1.	Court System	47
2.	Specialisation	48
3.	Definition of a Civil Claim.....	48
4.	Definition, Rationale and Conditions of <i>Locus Standi</i>	49
5.	<i>Locus Standi</i> of Public Authorities.....	50
6.	Standing of Entities Lacking Legal Personality	50
7.	Standing: Declaratory and Injunctive Relief.....	50
8.	<i>Locus Standi</i> and Third Parties to the Action	51
9.	<i>Locus Standi</i> on Appeal	52
10.	Collective Interest Litigation and <i>Locus Standi</i>	53
11.	<i>Actio Popularis</i> (Public Interest Litigation) and <i>Locus Standi</i>	56
12.	Alternatives to Collective Interest Litigation	57
13.	Strictness in the Application of <i>Locus Standi</i> at the National Level.....	57
14.	Standing as a Tool for the Administration of Justice?.....	58
15.	Human Rights as a Basis for Standing	59
16.	EU Law and National <i>Locus Standi</i> Requirements.....	59
17.	Influence of EU Law on Purely National Cases (no Cross-border Litigation).....	60
18.	Final Remarks: A French Particularity	60

Chapter 4: Comparative Analysis of <i>Locus Standi</i> before National Administrative Courts	61
1. Court Systems in Administrative Law	62
2. Type of Administrative Action which may be Challenged before Administrative Courts.....	63
3. Types of Remedies Available before Administrative Courts.....	64
4. General and Specialised Administrative Courts?.....	64
5. How many Instances?	65
6. The Rationale of Standing.....	66
6.1. Right-based or Interest-based?.....	67
6.2. Objection Procedure as a Prerequisite?.....	70
7. Variations in Standing.....	71
7.1. Differences Depending on Court Instance	71
7.2. Differences Depending on Type of Remedy?.....	71
7.3. Differences Depending on the Sector of Administrative Law	72
7.4. Standing of Public Interest Groups	73
7.5. Representation of Collective Interests.....	75
7.6. Standing of Public Authorities.....	76
7.7. Human Rights as a Basis for Standing	76
7.8. Standing as a Tool for the Administration of Justice?.....	77
8. Third Party Intervention before Administrative Courts.....	78
9. Multi-party Litigation.....	79
10. Influence of EU Law	80
10.1. Influence of the Aarhus Convention	80
10.2. Influence of Secondary EU Law	83
10.3. General Principles of EU Law, notably the Principle of Effective Judicial Protection	83
10.4. Final Remarks.....	84
Chapter 5: Comparative Analysis of <i>Locus Standi</i> of Victims of Crime before Criminal Courts	85
1. Court Systems in Criminal Law	85
2. Definition of Victims of Crime in Relation to <i>Locus Standi</i>	86
2.1. Belgium	86
2.2. England and Wales.....	86
2.3. France	87
2.4. Germany.....	87
2.5. Hungary	88
2.6. Italy	88
2.7. The Netherlands.....	88
2.8. Poland.....	89
2.9. Sweden	89
2.10. Turkey	89

3.	Different Types of Standing before a Criminal Court.....	90
3.1.	Private Prosecution.....	90
3.2.	Standing in the Investigative or Pre-trial Stage of Criminal Proceedings....	92
3.3.	Review of Decisions not to Prosecute.....	93
3.4.	Right to Compensation in Criminal Proceedings.....	95
3.5.	Division of Standing between Criminal and Civil Courts.....	96
3.6.	Right to be Heard.....	98
4.	Procedural Requirements in Standing Rules and Courts' Practice.....	99
4.1.	Belgium.....	100
4.2.	Germany.....	101
4.3.	France.....	102
4.4.	Hungary.....	103
4.5.	Italy.....	103
4.6.	The Netherlands.....	104
4.7.	Poland.....	105
4.8.	Sweden.....	106
4.9.	Turkey.....	106
4.10.	Expedited Criminal Proceedings.....	107
5.	Information provided to Victims of Crime.....	110
6.	Influence of EU Law.....	112
Chapter 6: Comparisons and Recommendations.....		113
1.	Comparison EU and National Level.....	113
1.1.	Introduction.....	113
1.2.	Comparison.....	113
2.	Horizontal Comparison of Findings in Civil, Criminal and Administrative Law.....	114
3.	Recommendations.....	116
3.1.	Recommendations at EU Level.....	116
3.2.	Recommendations for Civil Law.....	117
3.2.1.	General.....	117
3.2.2.	Opt-in or Opt-out?.....	117
3.2.3.	Identification of Group Members.....	117
3.2.4.	Preventing Abusive Litigation.....	118
3.2.5.	Alternatives for Collective Interest Litigation.....	118
3.2.6.	Role of the EU.....	119
3.3.	Recommendations for Administrative Law.....	119
3.3.1.	Variety and Complexity of the National Systems of Judicial Review.....	119
3.3.2.	Compliance with the Aarhus Convention.....	120
3.3.3.	Other Recommendations.....	121
3.4.	Recommendations for Criminal Law.....	121

3.4.1. The Requirements of the Framework Decision on the Standing of Victims in Criminal Proceedings of 15 March 2001 (2001/220/JHA) and the Proposal for a Directive Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime (COM (2011) 275).	122
3.4.2. Expedited Criminal Proceedings	123
List of References	125
Annex I: Questionnaire for Country Reporters on Administrative Law	131
Annex II: Questionnaire for Country Reporters on Administrative Law.....	135
Annex III: Questionnaire for Country Reporters on Criminal Law	139
Annex IV: Guidance Document for Country Reporters	143
Annex V: Guidance Document for Country Reviewers.....	145
Annex VI: Country Reports	147
Belgium.....	149
England and Wales	195
France.....	233
Germany.....	277
Hungary	323
Italy	383
The Netherlands.....	427
Poland	467
Sweden	517
Turkey.....	571

LIST OF ABBREVIATIONS

AC	Aarhus Convention
AG	Advocate General
CC	Civil Code
CCP	Code of Criminal Procedure
CFI	Court of First Instance
CJ	Court of Justice
CJEU	Court of Justice of the European Union
CPS	Crown Prosecution Service
EC	European Commission
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
EU	European Union
GC	General Court
KapMuG	Kapitalanleger-Musterverfahrensgesetz
NGO	Non-governmental Organisation
PIG	Public Interest Group
TFEU	Treaty on the Functioning of the European Union
UK	United Kingdom
VWGO	Verwaltungsgerichtsordnung; Code of Administrative Court Procedure

LIST OF TABLES AND MAPS

List of Tables

Table 1: Specialisation of Courts	48
Table 2: Collective Interest Actions	56
Table 3: <i>Actio popularis</i>	56
Table 4: Alternatives to Collective Interest Litigation	57
Table 5: Strict or Lenient on Standing in Civil Matters	58
Table 6: Judicial Policy Tool	59
Table 7: Civil Law and Human Rights	59
Table 8: Civil Law and EU Law	60
Table 9: Administrative Courts	62
Table 10: Types of Administrative Courts	65
Table 11: Administrative Law Instances	65
Table 12: Right-based or Interest-based	67
Table 13: Objection Procedure Required?	70
Table 14: Differences in Instances of Court	71
Table 15: Differing Requirements Depending On Area of Administrative Law	72
Table 16: Public Interest Groups in Administrative Law	73
Table 17: Representation of Collective Interests in Administrative Law	75
Table 18: Public Authorities in Administrative Law	76
Table 19: Human Rights in Administrative Law	77
Table 20: Influence of Aarhus Convention	80
Table 21: Scope of the Term 'Victim'	90
Table 22: Private Prosecution	93
Table 23: Possibilities of a Victim to have a Decision not to Prosecute Reviewed	95
Table 24: Right to Compensation in Criminal Proceedings	96
Table 25: Division of Standing between Criminal and Civil Courts	98
Table 26: Right to be Heard in Court	99
Table 27: Types of Standing of Victims in Criminal Proceedings	99
Table 28: Information Given to Victims	111

List of Maps

Map 1: Geographical spread of study

13