Access to justice in environmental matters - Poland

I. Constitutional Foundations

The Polish Constitution does not provide the right to (clean, healthy, favorable, etc.) environment.

- Art. 5 of the Constitution provides for the general rule that the Republic of Poland ensures the environmental protection pursuant to the principle of sustainable development.
- According to Article 86 of the Constitution, everyone shall care for the quality of the environment and shall be held responsible for causing its degradation. The principles of such responsibility shall be specified by statute.
- Art. 74 para 1,2 and 4 of the Constitution provide for the general obligation for public authorities to protect the environment.
  - Public authorities shall pursue policies ensuring the ecological security of current and future generations.
  - Protection of the environment shall be the duty of public authorities.
  - Public authorities shall support the activities of citizens to protect and improve the quality of the environment.
- Article 68 para 4 of the Constitution states that public authorities shall combat epidemic illnesses and prevent the negative health consequences of degradation of the environment.
- Article 74 para 3 grants everyone the right to obtain information about the quality of the environment and its protection.

It would be insufficient to invoke only the constitutional provisions in administrative or judicial procedures, because the above mentioned constitutional provisions provided for by Articles 86 and 74 need to be specified in statutes (see Art. 81 and the last sentence of Art. 86 of the Constitution). They may be however invoked as additional arguments in order to strengthen the argumentation of the claim.

One may invoke international agreements directly in judicial and administrative proceedings as according to Article 91 para 1 and 2 of the Constitution, ratified international agreements, after their promulgation in the Official Journal of Laws, once they become part of the domestic legal order and are applied directly. In practice however, it is recomended to invoke both the international agreement and the national law applicable.

The Aarhus Convention may be applied directly by administrative bodies and courts if it meets the standard of direct applicability - it fulfills the conditions of Article 91 of the Constitution.

In one case the court found the Aarhus Convention as not meeting this standard because of its provisions requiring the Parties to "take necessary legislative, regulatory and other measures" while in a number of other verdicts the courts, without assessing its direct applicability, have invoked the Aarhus Convention additionally to the relevant national regulations (and not as the only, or main, legal basis).

II. Judiciary

According to Article 175 para 1 of the Constitution, the Polish judicial system consists of the following main types of courts:

1. So-called general courts, further divided into:

    a) **Civil courts**, within which - apart from **"general" civil** branches - exist i.e. **commercial**, family and labour branches;

    b) Criminal courts;

2. **Administrative courts**;
3. Military courts.

The above courts are divided into levels (instances). There are three instances of general courts - the highest instance is the Supreme Court (*Sąd Najwyższy*). However not all the cases may go to the Supreme Court (for certain cases there are only two instances available).

The administrative courts are divided into two instances - the second (and highest) instance is the Main Administrative Court (*Nacz elny Sąd Administracyjny*). According to Article 184 of the Constitution, their role is to provide judicial review over activities of public administration.

In practice most cases related to the environment are subject to **administrative court** jurisdiction (as the environmental issues are usually decided by an administrative decision or other administrative acts).

Civil courts examine cases of private law domain (disputes between two private parties) including cases involving environmental damage to property.

Criminal courts examine cases related to environmental offences or petty offences envisaged in the Criminal Code or in environmental legislation.

In Poland the environmental cases are decided by bodies and courts of general competence, there are no special environmental courts or boards.

So-called 'forum shopping' (choosing the competent court by a party to the proceedings) is not possible in Poland. This means that one has to file the case into the right (e.g. administrative or general) court, of the right level and in the right place (town).

The system of appeals differs depending on the type of court.

In case of administrative decisions (including decisions in environmental cases), the ordinary appeal scheme consists of three steps:

- first - filing a complaint to the administrative authority of the second instance (superior over the authority which issued a challenged decision). For example for the self-governmental authorities the second instance authority would be the Self-governmental Appeal Board (*Samorządowe Kolegium Odwoławcze*), for the voivode (*wojewoda*) - the relevant minister etc.
- in case when the decision of the second instance authority is not in favor of the claimant, he/she may file a complaint to the administrative court of first instance, i.e. to the voivodship administrative court (*wojewódzki sąd administracyjny*)
- in case when the court's verdict is not in favor of the claimant, he may file a complaint to the administrative court of second instance, i.e. to the Main Administrative Court (*Naczelny Sąd Administracyjny*)

The extraordinary remedies may be taken in administrative proceedings (i.e. before the administrative authorities) in case when:

- the administrative decision is already final (there is no possibility to challenge within the ordinary scheme)
- the decisions has certain, serious flaw - one of those listed in Articles 145 and 156 of the Administrative Procedure Code (*Kod eks postępowania administracyjnego*), for example when the person who was to be treated as a party to the proceedings - and who shall have a right to participate in that proceedings - was deprived that right by the authority (e.g. because the authority failed to notify that person correctly).

All the aforementioned complaints may be filed by entitled persons only (see chapter VII on standing).

The court has no right to amend the decision by itself.

In case when the administrative court finds that the complaint against an administrative decision was justified, it annuls the decision, which means that the proceeding goes back to the administrative authority which had issued it. Then the authority, while re-examining the case, will be bound by the interpretations provided by the court.

In Poland there are no special environmental courts or specific judicial procedures applicable to environmental matters.

As a rule, the administrative courts are bound by the content of the motions submitted by the parties to the proceedings (do not act on their own motion).

Thus the courts consider only those infringements of law or other aspects which were raised by the parties, but certain most serious infringements should be taken into account by the court even if not indicated by the claimant.

Administrative courts relay only on the documents of the administrative proceedings at stake and on the evidence submitted by parties (has no right to call the experts).

III. Access to Information Cases

The refusal to disclose information has to have a form of administrative decision. Therefore the regular scheme of challenging that decision (as described in chapter II above) does apply, i.e.:

- a complaint to the administrative authority of the second instance
- if the second instance authority confirms the refusal - a complaint to the administrative court of first instance, i.e. to the voivodship administrative court (*wojewódzki sąd administracyjny*)
- if the verdict of the voivodship court is unsatisfying - a complaint to the Main Administrative Court

In case when the refusal was given by the superior authority (i.e. an authority over which there is no ‘second instance’, e.g. a Minister), the person which was refused the information, has to file to that authority a request to reconsider the case. When the authority confirms its initial refusal, the interested person may file the claim to the administrative court (the voivodship court and then to the Main Administrative Court.

The refusal of request for information has to include information on remedies available (as all the administrative decisions do). In practice the authorities sometimes (despite the obligation) fail to include such information, which however does not mean that the remedies are not available.

- Complaint to the administrative authority of the second instance (or the request to reconsider the case) has to be filed within 14 days since the refusing decision was delivered to the interested person.
- Complaint to the administrative court of first instance – has to be filed (through the respective administrative authority) within 30 days since the decision of the second instance authority (or confirmation of the refusal) was delivered.
- Complaint to the administrative court of second instance – has to be filed within 30 days since the verdict of the first instance court was delivered.

In relation to access to information (both general access to information and access to environmental information) special procedural rules apply, meant to accelerate the procedure and provide prompt review by the court of first instance. Thus the administrative authority through which the complaint to the administrative court is filed, is obliged to transmit to the court both the complaint and its reply to the complaint within 15 days. The court is obliged to consider the complaint within 30 days. This assures prompt review by the court of first instance as compared with other cases where usual time for having the verdict of the court of first instance is several months.

Each complaint needs:

- to include the data of the claimant,

- to state to which authority (or court) it is addressed,
- to indicate which decision (verdict) it concerns,
- to indicate what the claimant solicits (e.g. annulment of the refusal),
- to be undersigned by hand.

Complaints addressed to the court need to contain proper justification of the allegations. Complaints addressed to the second instance authority formally do not, but in practice the justification significantly increases the chances to win the case.

Only the complaints addressed to the administrative court of second instance (Main Administrative Court) have to be prepared and signed by a lawyer representing the claimant; for the remaining complaints there is not such a requirement.

Usually the courts do not have the information the accessibility of which is disputed.

They decide on the basis of the description of the information in the claimant's motion and the arguments of the authority refusing the information.

When the court finds the complaint justified, it annuls the decision refusing the information and provides the justification why the refusal was incorrect.

The authority is bound by the court's interpretation and thus - indirectly - obliged to disclose the information. However, it is not excluded that the authority invokes new grounds for refusal (exceptions allowing to refuse the information) which were not indicated earlier and therefore not considered by the court.

IV. Access to Justice in Public Participation

The environmental matters may be decided by the authorities:

- in a form of administrative decision - when an individual case is concerned, such as for example a permit for emissions from a plant, an 'EIA decision' concluding the procedure of environmental impact assessment for a new (planned) project, or a decision imposing a fine on a plant which causes illegal pollution;
- in a form of a resolution (*uchwała*) adopted by a collective body such as the local community council (*rada gminy*); the resolutions may concern adoption of e.g. land use plans or other plans or programmes.

The procedural aspects of individual administrative decisions are regulated in the Administrative Procedure Code - APC (*Kodeks postępowania administracyjnego*).

In such proceedings certain persons (having sufficient legal interest in the case) have a right to participate and consequently to challenge then the decision. Those persons are 'parties to the proceedings'. The APC and specific provisions provide for rules who shall be considered a party in a given case (see chapter VII on standing).

The administrative decision may be challenged before the administrative authority of the second instance.

In case the superior authority issued the decision (i.e. an authority over which there is no 'second instance', e.g. a Minister), the interested person may file to that authority a request to reconsider the case.

The first instance administrative decisions cannot be taken to court directly.

As a rule, before one files a lawsuit to an administrative court) he/she has to go through administrative proceedings. This means that any act or omission of a public authority (including an administrative decision) must be challenged within administrative proceeding first (most frequently - before an authority of second instance), and only after this proceeding has finished, can the case be brought before an administrative court.

The administrative courts, while considering the case, verify both procedural and substantive legality of the decision. This means that their task is to verify whether the administrative body issued its decision in accordance with the applicable law or not.

Therefore the courts may look into technical documentation only insofar as the law provides for specific requirements to be met by such documentation (e.g. list of mandatory issues to be addressed in the EIA report). The courts may then check whether all the required elements are included, and usually do not want to consider the accuracy of the technical data provided (in particular that the administrative courts do not call experts and the judges themself do not have relevant technical knowledge).

Owners of the properties covered by a land use plan, as well as the neighbours of such properties, may challenge the plan.

In order to do so, they would need:

- to file to the municipal council which adopted the plan a request to reconsider the case;
- if the council confirms it's previous stand - to file a lawsuit to the administrative court of first instance, i.e. to the voivodship administrative court (*wojewódzki sąd administracyjny*)
- if the verdict of the voivodship court is unsatisfying - a lawsuit to the Main Administrative Court.

In the lawsuit a person concerned should prove that he/she has 'legal interest' in the case (i.e. that he/she is an owner of the property which may be affected by the plan).

During the EIA procedure for so called 'Group II projects' a competent authority issues first an "EIA screening decision' (postanowienie w sprawie obowiązku przeprowadzenia oceny oddziaływania na środowisko) in which it decides whether an EIA procedure needs to be carried out for the project or not.

The EIA decision ('decyzja o środowiskowych uwarunkowaniach') is the next step.

Such "EIA screening decisions" (postanowienia), may be challenged separately by the parties to the proceedings (i.e. in the way of 'zażalenie') when they are 'positive', i.e. when the authorities decide to carry out EIA procedure.

In case when the "EIA screening decision" (postanowienie) is negative (the authorities decide NOT to carry out EIA procedure) it may be challenged within an appeal (odwołanie) against the EIA decision ('decyzja o środowiskowych uwarunkowaniach').

'Scoping decisions' (postanowienia dotyczące zakresu raportu) are decisions issued within the EIA procedure in which the competent authority sets the scope of an EIA report (statement, environmental impact study) to be prepared by a developer.

For "Group II projects" the positive screening decision (postanowienie nakładające obowiązek przeprowadzenia oceny oddziaływania na środowisko) sets at the same time scope of the report. Such decision (postanowienie) may be challenged by the parties to the proceedings.

For "Group I projects" the competent authority issues a scoping decision (postanowienie dotyczące zakresu raportu) only on the application of a developer. Such a scoping decision (postanowienie) cannot be challenged separately (by the way of complaint - zażalenie). however may be challenged by the parties to the proceedings within an appeal (odwołanie) against the EIA decision ('decyzja o środowiskowych uwarunkowaniach').

Parties to the proceedings, as well as NGOs participating in the proceedings with the rights of a party' may challenge EIA decisions: first before the administrative authority of the second instance and then before the administrative court.

In their complaints the parties and NGOs may raise both procedural and substantive issues.

Parties to the proceedings regarding an EIA decision (i.e. persons whose legal interest may be affected by the decision, usually owners of adjoining properties), as well as NGOs participating in the proceedings may challenge the decision: first before the administrative authority of the second instance and then before the administrative court.

The administrative courts while considering the case, verify both procedural and substantive legality of the decision. This means that their task is to verify whether the administrative body issued its decision in accordance with the applicable law or not.

Therefore the courts may look into technical aspects of the case (e.g. technical documentation) only insofar as the law provides for specific requirements to be met by such documentation (e.g. list of mandatory issues to be addressed in the EIA report). The courts may then check whether all the required elements are included, and usually do not want to consider the accuracy of the technical data provided (in particular that the administrative courts do not call experts and the judges themself do not have relevant technical knowledge).

Parties to the proceedings regarding EIA decision and environmental NGOs may challenge EIA decision irrespective of their participation in the public consultation phase.

Filing an appeal to the administrative authority of the second instance has a suspensive effect which means that the EIA decision cannot be executed by a developer. In practice this means that the developer cannot apply for a construction permit or another decision required for development of the project.

However, the competent authorities sometimes place an "order of immediate applicability" in the EIA decision, in particular with regard to infrastructure projects such as roads etc. Such an 'order' causes that the developer can apply for a construction permit once he obtains the EIA decision.

Filing a lawsuit to the administrative court of first instance does not automatically suspend execution of the administrative decision subject to complaint. However, the administrative court may suspend the execution of the decision, upon the motion of the

claimant, in case when there is a threat that execution may cause a significant damage or effects hard to reverse. In such cases the claimant has to demonstrate that the threat is plausible.

Parties to the proceedings, as well as NGOs participating in the proceedings with the rights of a party' may challenge IPPC permit: first before the administrative authority of the second instance and then before the administrative court.

The administrative courts while considering the case, verify both procedural and substantive legality of the decision. This means that their task is to verify whether the administrative body issued its decision in accordance with the applicable law or not.

Therefore the courts may look into technical aspects of the case (e.g. technical documentation) only insofar as the law provides for specific requirements to be met by such documentation (e.g. list of mandatory issues to be addressed in the IPPC permit). The courts may then check whether all the required elements are included, and usually do not want to consider the accuracy of the technical data provided (in particular that the administrative courts do not call experts and the judges themself do not have relevant technical knowledge).

Parties to the proceedings regarding IPPC permits and environmental NGOs may challenge the permits irrespective of their participation in the public consultation phase.

V. Access to Justice against Acts or Omissions

Acts or omissions of individuals' or legal entities' affecting the environment may be challenged before civil courts only in case when they cause at the same time a damage in one's material or non-material interest (e.g. when water pollution causes damage in one' s farm). In such cases affected persons may claim redress from the polluter (but cannot claim reparation of the environment as such).

In case when an act or omission affects the environment "as a common good', environmental NGOs may file a lawsuit to the civil court against any entity (person) causing damage or threat of damage by impact of its unlawful influence on the environment. In the lawsuit they may ask for restoration of the situation in compliance with the law or for undertaking relevant preventive measures (Art. 323 of the Environmental Protection Law Act of 2001).

The lawsuit may be filed against both "private person" (e.g. a company operating an industrial plant) and a public authority - in case when it acts not in its regulatory capacity but e.g. as owner or administrator of certain property, or as operator of a facility.

The decisions of authorities may be challenged by entitled persons (parties to the proceedings etc.).

Act or omissions of states bodies such as for example a decision of the Inspection for Environmental Protection (*Inspekcja Ochrony Środowiska*) not to enforce compliance with environmental requirements from a polluter (or to impose on him too lenient sanctions) cannot be challenged by members of the public.

NGOs may however demand public authorities to intervene in cases where environmental law is violated by a third person and have a right to challenge the inaction of authorities (Art. 31 of the Administrative Protection Code). Where a public authority (e.g. Inspector for Environmental Protection) recognises the demand of the organisation as justified, it can decide to initiate the proceedings *ex officio*. A decision to refuse to initiate the proceedings may be challenged by the organisation to the authority of second instance and then - consequently - to the administrative court.

Regional Directors for Environmental Protection (*regionalni dyrektorzy ochrony środowiska*) are the authorities responsible for dealing with environmental liability issues (those regulated by the Act of 2007 on prevention and remedying of environmental damage; transposing Directive 2004/35).

In case of damages caused by GMO, the competenet authority is the Minister of Environment (*Minister Środowiska*).

Every person can notify these authorities about an environmental damage observed asking them to undertake relevant action. A person submitting the notification shall attach to it the relevant information and data supporting the observations related to the environmental damage (Art. 24.1 and 2 of the Act of 2007 on prevention and remedying of environmental damage).

In case the competent authority refuses to undertake action, the person who submitted a request for action may challenge the refusal to the administrative court.

Environmental NGOs or state bodies who have notified a damage to the competent authority may also participate in the proceedings and file a lawsuit against a 'positive' decision issued by the authority (i.e. a decision imposing obligations on a person who have caused a damage). Such a decision may be also challenged by the person to which the decision is addressed (the 'polluter'). Other persons who have notified a damage are not entitled to do so.

There are no additional means apart from those described above.

VI. Other Means of Access to Justice

Apart from the above mentioned administrative and civil means, there are also criminal means which may be used in case when the act or omission constitutes at the same time a criminal offence.

In such a case, everyone (including NGOs) who is aware that the offence was committed has an obligation to notify the public prosecutor or the police (art. 304 of the Penal Procedure Code of 1997).

The public prosecutor is then obliged to act ex officio. However, if it decides not to initiate the investigation (because considers it to be unjustified), the right to challenge such a decision is only granted to:

- the injured person (and it must be remembered that in typical environmental cases there is usually none who could claim to be an injured person),
- the NGO (as well as public authorities or bodies) notifying the offence.

Natural persons (citizens) notifying the offence are not entitled to challenge the refusal by the public prosecutor.

The decision of public prosecutor to discontinue the initiated investigation (in case he does not find sufficient justification or evidence to file an indictment) may be challenged only by the injured person (the NGOs do not have such right).

In Poland there are no specific ombudspersons and public prosecutors dealing with environmental cases, thus these cases are dealt with by the general ombudspersons and prosecutors.

Ombudspersons and public prosecutors have standing in administrative proceedings: they may either initiate the proceedings or intervene in on-going proceedings (including challenge decisions). Although they act ex officio, they often undertake their action after having received information / complaint from an individual or NGO.

Public prosecutors are of course also competent to initiate criminal proceedings, including cases of environmental crimes (described in chapter XXII of the Penal Code or in other legal acts).

Private criminal prosecution is not available in environmental matters.

In case when the authority fails to deliver the decision in time or to inform the parties about reasons for delay, parties to the proceedings (but not third persons) may file a complaint to the administrative authority of the second instance and then to the administrative court.

The complaints may be lodged also in case when the proceeding is too lengthy (przewlekłość postępowania), i.e. when the extension of the deadline by the authority seems to be unjustified.

The authority of second instance, and then the administrative court, orders the first instance authority to fix the case (issue a decision).

VII. Legal Standing

Legal Standing	**Administrative Procedure**	**Judicial Procedure**
Indiv	In administrative proceedings regarding individual administrative decisions, standing is granted to "**parties"** to the administrative proceedings, while a party - according to Article 28 of Administrative Procedure Code - may be a "*person whose legal interest or duty is*	As proceedings before tha administrative courts in case of individual administrative decisions are a follow-up of proceedings before the authority of the second instance, the circle of persons entitled to file a

individuals	*affected by the proceedings or who demands activities of authority because of this legal interest or duty*". The definition of "*party to the administrative proceedings*" therefore becomes crucial to understand who can challenge decisions of the administration. Therefore standing is granted to those individuals (whether natural or legal persons) who have "legal interest" (which includes also administrative duties). A person has legal interest in the case when that interest is protected by any provision of (administrative, civil or other) law. For example when an administrative decision may affect one's property (e.g. in case of construction of a new object the owners of the adjoining properties may be affected). A person who filed an application for an administrative decision challenged then before the administrative court or a person to whom a decision was addressed has always 'legal interest' in the case and thus have standing. Such persons are considered to be "parties" to the administrative procedure.	complaint to the court of the first instance is determined by the administrative phase of proceedings. However, a person who has not took part in the administrative proceedings but whose legal interest is affected by the proceedings may also file a complaint (Article 50.1 of Procedure Administrative Courts Law Act; PACLA). But for a social organisation to be entitled to file a complaint, it must have participated in the preceding administrative proceedings. Apart from the right to file a complaint, there is a possibility to participate in the proceedings with the rights of a party to the following individuals: • persons who participated in the preceding administrative proceedings (both parties to the administrative proceedings and organisations with the rights of a party) but failed to file a complaint to the administrative court (participation of those persons is granted *ex officio*, without them having to file any motion - Article 33.1 of PACLA); • persons whose legal interest is affected by the judicial-administrative proceedings, but who have not taken part in the preceding administrative proceedings (participation of those persons may be granted by the court upon their motion; the courts' refusal may be challenged before the administrative court of second instance - Article 33.2 of PACLA); this situation may concern for example a spouse of a person who challenged the tax decision of the administrative authority of the second instance, in case when that decision was originally addressed to both spouses.
NGOs	Social organisations enjoy standing in cases regarding individual administrative decisions where they represent a common interest. The organisation may participate in the proceedings with the rights of a party which means that it enjoys the same rights as a party to the proceedings, including a right to appeal. In order to be admitted to participate, an organisation must file a relevant motion. The public authority then assesses the motion and decides whether it considers it justified. The assessment is not limited to verification of formal requirements, but concerns also merit justification (need) of participation of the organisation in a given case (in other words: the authority decides whether it considers it useful to allow the organisation to participate). A refusal may be challenged by the organisation (Art. 31 of the Administrative Proceedure Code). NGOs may act "in cases concerning legal interest of other persons", but not necessarily in order to protect these interests. For example in environmental cases, an NGO acts to protect the environment not the legal interest of person who affects the environment (e.g. an industrial operator) - nevertheless the case concerns the interest of that operator. In certain environmental cases the environmental NGOs enjoy more farreaching rights (see below answer to question 2).	NGOs which have not taken part in the preceding administrative proceedings have standing also before adminitrative courts. NGOs which have not taken part in the preceding administrative proceedings if the judicial-administrative proceedings concerns the scope of their activity (participation of those organisations may be granted by the court upon their motion; the courts' refusal may be challenged before the administrative court of second instance. According to the case law, the court has also to verify whether the 'public interest' speaks for the participation of the NGO. In certainn environmental cases the environmental NGOs enjoy more farreaching rights (see below answer to question 2).

Other legal entities	Legal persons have the same rights as individuals	Legal persons have the same rights as individuals
Ad hoc groups	No standing	No standing
foreign NGOs	Same as Polish NGOs, however they may have problems to prove that their participation is justified (that it protects the common interest in a given case).	Same as Polish NGOs.
Any other#_ftn1[1]	The public authorities in some specific cases may initiate administrative action against another public authority. For example the voivode (head of governmental administration on the region), supervises - to the certain extent - the activity of self-governmental authorities and in certain cases has a right to annul acts of those authorities or to file a complaint against such acts to the administrative court. In addition, the public prosecutor and the Ombudsman also may initiate administrative proceedings or proceedings before administrative court.	The public authorities in some specific cases may initiate administrative action against another public authority. For example the voivode (head of governmental administration on the region), supervises - to the certain extent - the activity of self-governmental authorities and in certain cases has a right to annul acts of those authorities or to file a complaint against such acts to the administrative court. In addition the public prosecutor and the Ombudsman also may initiate administrative proceedings or proceedings before administrative court.

Environmental NGOs enjoy more far-reaching rights than other social organisations in the environmental cases concerning which public participation is required (i.e. EIA#_ftn2[2] and IPPC#_ftn3[3] issues). However, the right to challenge a decision of a public authority is not limited to the public participation issues. Once public participation is involved, the environmental NGOs obtain a right to challenge all procedural and substantive issues regarding the decision. The difference between the general rules of NGOs' participation (as provided for by Art. 31 of Administrative Procedure Code) and the environmental NGOs' rights (as provided for by Art. 44 of EIA Act) may be explained as follows:

- Art. 31 of the APC states that an NGO may participate in the proceedings with the rights of a party (which means that it enjoys the same rights as a party to the proceedings, including a right to appeal) only when the public authority considers that the interest of the society requires the participation of the NGO (in other words: the authority decides whether it considers it useful to allow the organisation to participate);
- According to Art. 44 of the EIA Act, environmental NGOs may take part in the proceedings with a right of a party, but - contrary to other social organisations - they do not need to prove that "public interest requires their participation". In other words: in this case the authority only examines whether an environmental organisation fulfils formal requirements (see below) but is not entitled to decide whether the participation of such organisation is "needed" and "justified" from the point of view of public interest. The wider rights in administrative proceedings result automatically in wider standing in the proceeding before the administrative court.

In addition, an environmental NGO may appeal against the decision to the second instance authority even if it not had taken part in the first instance administrative proceedings.

There is no actio popularis in Poland.

The only mechanism which may resemble the actio popularis is the "complaints and proposals procedure" regulated in the Administrative Procedure Code of 1960 (Articles 221-260) but having a very general scope of application. According to this procedure, everyone may lodge a complaint or to submit a proposal either in the public interest or in its own factual interest (no legal interest or substantive legal rights are required here). Both complaints and proposals may concern **any** activity (or omission) of **any** public institution or authority (and in fact also other institutions like for example trade unions etc.). A complaint has to be examined by an authority superior to the authority referred to in the complaint. A proposal has to be examined by the authority responsible for given matters. If a complaint or proposal is submitted to inappropriate body, such body should forward it to the appropriate (competent) one. The appropriate (competent) body has to examine a complaint or a proposal and respond to it within a month. The complaints and proposals under this procedure are considered as "imperfect legal means" because the person using it has no official status regarding the merit of the case, no right to pursue the case, and to follow it with a claim to any court.

Ombudsman and public prosecutors are not "appeal bodies", however they are granted standing in administrative proceedings: they may either initiate the proceedings or intervene in on-going proceedings (including to challenge decisions). Although they act ex officio, they often undertake their action after having received information / complaint from an individual or organisation.

The rules of access to justice in environmental cases differ for strategic decisions (such as air quality plans or other strategic documents) and for individual administrative decision (such as EIA decision, IPPC permit, sectoral emission permit).

For strategic decisions access to justice is very limited.

In case the statutory legal acts specify their status as a "local law", they may be challenged by persons whose legal interest may be affected by implementation of the plan.

However, it is not always clear whether a given type of plan is "local law" or not.

For example local land use plans or air quality action plans are regarded as "local laws" respectively by the Act on Land Use Planning or by the Environmental Protection Law Act.

At the same time status of such acts for example the one of environmental protection programs is unclear, as the Environmental Protection Law Act does not define it and the jurisprudence is also inconsistent in this respect (for example the Regional Administrative Court in Krakow stated that the waste management plans - being part of the environmental protection programs - are not local law; however this view is not always accepted).

That difference in the status of the strategic decisions is important as access to justice is guaranteed only for those strategic decisions which are considered as "local laws".

There are no special rights for NGOS to challenge strategic decisions.

For individual administrative decisions, the standing of individuals and NGOs may depend on the type of decision. The general rules were described in a table above and special rights of environmental NGOs - in the answer to question 2.

There are also certain modifications in the standing of individuals:

- The Building Law Act (BLA) says that parties to the proceedings regarding a construction permit are only the applicant and owners or administrators of properties situated in the area affected by the building structure, while “the affected area” is defined as area indicated by special provisions providing for limitations in the use of the area (Article 28.2 and Article 3 item 20 of the BLA). Such provision limits significantly the circle of parties, as “*special provisions providing for limitations in the use of the area*” are rather rare.

The circle of parties to construction permit proceedings is established according to the general rules (i.e. on the basis of the APC) only when within these proceedings the “repeated environmental impact assessment” is carried out.

- Environmental Protection Law Act (EPLA) limits the circle of parties to the proceedings regarding “sectoral” permits for emissions into air or water as well as permits for generation of waste. According to the EPLA provisions, only the operator applying for the permit and owners of properties located within the “restricted use area” if such an area was established for the installation are parties.

The circle of parties to emission permit proceedings is established according to the general rules (i.e. on the basis of the APC) only with regard to IPPC permits (which is required by the IPPC Directive).

- Water Law Act states that “party to the proceedings concerning water permit shall be: (1) person applying for a permit; (2) owner of water; (3) owner of the sewage system to which the industrial waste water are to be introduced; (4) owner of the existing water facility located within the scope of impact of the activity subject to the water permit; (5) owner of the land facility located within the scope of impact of the activity subject to the water permit; (6) person entitled to fishing on the area within the scope of impact of the activity subject to the water permit” (Art. 127.7 of the Water Law Act).

However, unlike the two above examples, Art. 127 of the Water Law Act seems not to limit the circle of parties to the proceedings, but only specifies it, still being in line with Art. 28 of the APC.

- Geological and Mining Law Act which states that parties to the proceedings concerning concession for extraction of mineral resources are owners of properties on which the mining activity is to be carried out (Art. 41 of the Geological and Mining Law Act).

VIII. Legal Representation

There is no requirement to be represented by a lawyer before the administrative authorities and before the administrative court of first instance. Such an obligation concerns only cases before the administrative court of the second instance - the cassation compliant has to be prepared by an advocate (adwokat) or an attorney at law (radca prawny).

Certain law firms specialize in environmental law. A person looking for such a law firm should consult their websites in order to verify their experience in that field.

It happens that certain environmental NGOs also provide some legal advice (for free or for reduced prices) but it is usually project-based (i.e. works when an NGO carries out a project within which legal advice for citizens is foreseen). Therefore in practice NGOs do not provide such advice on a permanent basis.

IX. Evidence

Administrative courts decide cases on the basis of documents gathered during administrative procedure preceding the judicial phase, as the judicial proceeding focuses on verifying the correctness of the proceedings carried out by administrative authorities.

When the court states the evidence gathered in the administrative phase was insufficient, it annuls the decision and makes over the case back to the administrative authority ordering it to repeat the evidence proceedings.

As indicated above, the administrative courts evaluate evidence gathered during the administrative proceedings and thus they do not carry out own evidence proceedings.

Administrative courts (which usually examine environmental cases) do not call experts. Their judgments are based on the documents gathered during administrative procedure. The parties to the proceedings may file their motions and arguments and in theory might accompany them with the expert opinions but the court is not bound by them.

X. Injunctive Relief

Filing an appeal to the administrative authority of the second instance has a suspensive effect.

In exceptional cases the authority of the first instance may grant its decision on the so-called order of immediate enforceability ("go-ahead order"). Granting of such an order determines that the decision of first instance may immediately be enforced regardless of whether an appeal has been filed or not (in this case the appeal has no suspensive effect). Conditions under which an order of immediate enforceability may be granted are: protection of human health or life, other important public interests or particularly important interest of a party.

If the order is issued, there are no other means available at the administrative level to suspend the enforceability of the decision, however the order (which constitutes part of the administrative decision) may be challenged into the administrative court.

For EIA decisions and for decisions environmental emission permits (including IPPC permits) may be granted according to the general rules - under the conditions as described above.

However in case of certain infrastructure projects (such as roads, airports, flood infrastructure) the special legal acts regulating their construction process which provide for very broad possibilities for the developers to obtain the order of immediate enforceability of the consents for construction (zezwolenie na realizację) of a given project. In practice under those special legal acts, the order of immediate enforceability of such consents is granted almost automatically - on the request of the developer.

Filing a complaint to the administrative court of first instance does not automatically suspend execution of the administrative decision subject to complaint. However, the administrative court may suspend the execution of the decision, upon the motion of the claimant, in case when there is a threat that execution may cause a significant damage or effects hard to reverse. In such cases the claimant has to demonstrate that the threat is plausible.

Normally, the claimant is not obliged to deposit any lump sum (bond) as a guarantee, however such an obligation may be imposed by the court in proceedings regarding construction permit. In case when the complaint is dismissed, the bond is transferred to the developer in order to cover his claim.

In cases when a decision was granted an order of immediate enforceability at the administrative level (and no one has challenged the order in the court, or the court upheld the order), the court would probably also dismiss the motion to suspend the execution of the decision (see verdict of the Main Administrative Court of 1 March 2011 (I OSK 289/11) in which the court stated that such a suspension would be contrary to the institution of "immediate enforceability" and its statutory goal).

XI. Costs

Filing an **appeal to the administrative authority** of the second instance (and - at the same time the appeal procedure) is free of charge.

Theoretically, a party to the proceedings (including appeal proceedings) and persons with the rights of a party may however be charged the costs of proceedings which (1) were caused by fault of the party, e.g. when the authority has to repeat certain acts during the proceedings because the party failed to take part in this act; (2) occurred in the interest or upon a motion of the party and at the same time do not result from the statutory duties of the authorities, e.g. when the party demands calling of another additional expert-witness. The costs of proceedings may include e.g. travel costs of witnesses and expert witnesses or costs of examination on the spot, as well as - translation costs in case of foreigners participating in the proceedings. No statistical data is available on how often authorities make use of those provisions; however the authors of this report have never come across such a case in their legal practice.

In case when a person decides to have a lawyer (attorney) or hire an expert in administrative proceedings, he/she has to cover their fee. In the administrative proceedings each party covers its own costs (the administrative authorities do not decide on costs).

As for the court fee for **complaint to the administrative court of the first instance**, the Polish legal system uses court fees which vary according to "the value of the case" - but only in cases when the value of the case at stake may be measured (if the case concerns monetary obligation, for example the payment of a fee for the use of the environment or the administrative fine for non-compliance with the environmental requirements). In such cases a court fee is:

- for the cases of the value at stake up to PLN 10.000 (EUR 2500) - 4% of the value at stake, but not less than PLN 100 (EUR 25);
- for the cases of the value at stake between PLN 10.000 (EUR 2500) and PLN 50.000 (EUR 12.500) - 3% of the value at stake, but not less than PLN 400 (EUR 100);

- for the cases of the value at stake between PLN 50.000 (EUR 12.500) and PLN 100.000 (EUR 25.000) - 2% of the value at stake, but not less than PLN 1500 (EUR 375);
- for the cases of the value at stake over PLN 100.000 (EUR 25.000) - 1% of the value at stake, but not less than PLN 2000 (EUR 500) and not more than PLN 100.000 (EUR 25.000).

However, in the majority of the environmental cases, the value of the case at stake cannot be measured. In such cases, the court fee for complaint to the administrative court of the first instance in environmental cases is fixed for PLN 200 (about 50 EUR). This is a relatively small amount and cannot be regarded as an obstacle in access to justice.

The court fee for **complaint to the administrative court of the second instance** is 50% of the first instance court fee due a given case - but not less than PLN 100 (EUR 25).

Apart from the court fees parties have to cover their own expenses (such as travels to the court), including attorney costs (if they decide to have an attorney).

Neither the administrative authorities of the second instance, nor the administrative courts call witnesses or experts, so there are no costs related to their participation.

Nevertheless, the parties may wish to order and submit to the authority an expert opinion supporting the party's view. Cost of such an opinion is not reimbursed by the losing party.

The 'basic' attorney fees are set by law. The minimal rates in proceedings before administrative courts (in environmental cases) are:

a) in the court of the first instance - PLN 240 (EUR 60)

b) in the court of the second instance - 75% of the above amount.

The above amounts may be increased in a given case by the court up to 600% of the minimal rate. While setting the final amount of a lawyer's fee, the court takes into account the complexity of the case, the amount of work required etc.

However, in practice the real fees of lawyers exceed the above amounts (are calculated on the hourly or daily basis) and they are subject to individual contract between the lawyer and the client. The additional fee however will not be reimbursed by the losing opposite party.

The expert's fees are always subject to individual contract between the expert and the client.

In case the authorities lose the case they have to pay the winner its costs (both court and attorney fees not exceeding the above statutory rates, but not costs of potential experts), but if authorities win - they are not entitled to claim their costs.

XII. Financial Assistance Mechanisms

Persons (both natural and legal, including NGOs) who are unable to bear the court costs or to hire an attorney may apply to the administrative court for granting legal aid which in Poland is called "right of aid" (*prawo pomocy*). The application must be accompanied by evidences on the financial status of the applicant. The right of aid encompasses exemption from the court fees and appointing of the attorney who - free of charge - will represent the claimant in the court. The right of aid may be reversed in case the reasons for it would cease. There are however no statistics on the frequency of granting or refusing the aid by courts. Organisations rather rarely apply for such aid, as the costs of proceeding are not too high.

Environmental NGOs may receive public funding for the projects they carry out. The public funding may also cover the costs connected with legal proceedings (usually the NGOs have to include this type of expenses into the project's budget).

Certain NGOs carry out the activity consisting of advocacy for other NGOs or individuals, including assistance in legal proceedings. Such NGOs may also receive public money for such activity. As such activity is project-based, there is no list of such NGOs dealing with environmental law advocacy.

In Poland there exist law school clinics, however they generally do not focus on environmental law.

XIII. Timeliness

The basic time limit to deliver a decision by an administrative organ is one month and in particularly complicated cases - two months.

However, the authority may extend this deadline informing the parties to the proceedings about this fact, the reasons for delay and indicate the new deadline for fixing the case.

In case when the authority fails to deliver the decision on time or to inform the parties about reasons for delay, the party may file a complaint to the administrative authority of the second instance and then to the administrative court.

The complaints may be lodged also in case when the proceedings is too lengthy (przewlekłość postępowania), i.e. when the extending the deadline by the authority seems to be unjustified.

The authority of second instance, and then the administrative court, orders the first instance authority to fix the case (issue a decision).

An official who failed to fix the case in time without a proper justification, shall be subject to disciplinary liability. The provisions of law do not specify which types of sanctions may be imposed on the office worker (it is an internal matter of a given administration body).

Persons who want to challenge an administrative decision (an individual or strategic one) before the administrative court shall file a lawsuit within 30 days since the decision was delivered to them or was published.

Usually there are no time limits set by law for courts to deliver a verdict. Only in certain cases, indicated by law there are such deadlines - for example in access to information cases (see section III).

Typically the judicial procedure before the court of first instance takes a few months (about 3 - 7 months). The judicial procedure before the court of second instance takes about 6-12 months.

As indicated above, usually there are no deadlines set by law for courts to deliver a verdict. Only in certain cases, indicated by law there are such deadlines - for example in access to information cases (see section III).

There are no sanctions against courts delivering decisions in delay.

XIV. Other Issues

Environmental decisions are challenged by the parties after they are issued by the first instance authority. Then, the second instance authority decision may be challenged before the administrative court

It was not possible to discover information on access to justice in environmental matters provided to the public in a structured and accessible manner.

On the stage of administrative proceedings an administrative case may be resolved by the way as “settlement” agreed between the parties to the proceedings (which may be regarded as **alternative dispute resolution**). The settlements may be agreed both within the first and the second instance proceedings.

However, only parties to the proceedings and not NGOs (participating “with the right of the party”) may participate in the settlement.

In the judicial proceedings before the administrative court, the parties to the proceedings may enter into mediation with the aim to resolve the dispute.

In practice the settlement in administrative proceedings as well as mediation before the administrative court are rarely used.

XV. Being a Foreigner

Anti-discrimination clauses regarding language or country of origin are not directly provided by Polish procedural laws.

However, the fact that laws do not exclude foreign persons from the available judicial redress means that they are granted the same rights as Polish citizens.

However, all the proceedings before Polish authorities and courts are to be carried out in Polish. This means that foreigners who do not speak Polish must have an interpreter.

The translation costs in proceedings before administrative court are borne by the foreigner and - when he/she wins the case - may claim the costs from the losing party.

The issue of translation costs in proceedings before administrative authorities is not specifically regulated, so the rules in this regard are unclear.

XVI. Transboundary Cases

In cases when Poland is the country of origin (the activity carried out in Poland has effects on another country) the Polish procedural rules do not discriminate and do not exclude foreign public.

However, there are also no general regulations regarding this issue. The problem is regulated only in cases when - following the requirements of the Espoo Convention or EU directives (EIA, IPPC) - Polish law foresees a so-called transboundary procedure. In case of such procedure, the governments of both countries (country of origin and affected country) are responsible for carrying it out.

In Polish law, there is no special definition of “public concerned” in a transboundary context. Only in cases when a transboundary procedure under the Espoo Convention or other international agreements is required and carried out, the rules of identifying the public concerned in another country are provided by those agreements.

There are no special regulations regarding the participation of foreign NGOs in environmental proceedings, however, Polish law does not exclude NGOs from other states from the possibility to participate in the proceedings with the rights of a party. Therefore, it may be concluded that foreign environmental NGOs enjoy the same rights as national NGOs.

The authors of this report are not aware of any attempts by foreign environmental or other social organisations to enter administrative proceedings in Poland, so are unable to assess the practice in this regard (most probably there is no practice).

When a case falls into the jurisdiction of Polish courts, there is no possibility to choose different country’s court (so-called “forum-shopping” does not exist under Polish law).

Related Links

- National legislation on environmental matters (in Polish):

http://www.gdos.gov.pl/Articles/view/1916/Akty_prawne

http://www.ekoportal.gov.pl/opencms/opencms/ekoportal/prawo_dokumenty_strategiczne/PodstawoweAkty/

- Main national environmental authorities:

http://www.mos.gov.pl/
http://www.gdos.gov.pl/

http://www.ekoportal.gov.pl/opencms/opencms/ekoportal/home/index.html (the body specializing in environmental information)

- Bar associations:

http://www.nra.pl/nra.php

http://www.kirp.pl

- Ombudsman office:

http://www.rpo.gov.pl/

- Prosecutor office:

http://www.pg.gov.pl/

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