Teisė kreiptis į teismus aplinkosaugos klausimais

Lenkija

Daugiau šalių pateikiamos informacijos apie teisę kreiptis į teismus aplinkosaugos klausimais rasite spustelėję vieną iš toliau pateiktų nuorodų:

1. Teisė kreiptis į teismą valstybėje narėje
2. Teisė kreiptis į teismą, nepatenkanti į PAV (poveikio aplinkai vertinimo), TIPK/PITD (Taršos integruotos prevencijos ir kontrolės (TIPK) / Pramoninių išmetamųjų teršalų direktyvos (PITD)) taikymo sritį, galimybė susipažinti su informacija ir AAAD (Atsakomybės už aplinkos apsaugą direktyva)
3. Kitos svarbios taisyklės dėl apeliacinių skundų, teisių gynimo priemonių ir teisės kreiptis į teismą aplinkosaugos klausimais

Paskutinis naujinimas: 13/10/2021

Access to justice at Member State level

1.1. Legal order – sources of environmental law

1) General introduction to the system of protection of environment and procedural rights of persons (natural, legal, NGOs) in the specific national order

Under Polish law, individual decisions concerning the environment may be challenged by:
natural and legal persons who are considered “parties to the administrative proceedings”,
entities (such as NGOs, the public prosecutor or the Ombudsman) who participate in the proceedings “with the rights of a party”.
The possibilities to challenge plans or programmes relating to the environment are more limited: certain natural or legal persons may challenge them to some extent (there are no special rights for NGOs to have standing here).

2) Constitution – main (content of + including references) provisions on environment and access to justice in the national constitution (if applicable) including procedural rights

Provisions of the Polish Constitution relating to environment are:
Article 5 lays down the general rule that the Republic of Poland ensures the environmental protection pursuant to the principle of sustainable development.
Article 86 according to which 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.
Article 74 paras 1,2 and 4 lay down 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.
In practice, these obligations are rather general principles which are hardly directly enforceable before courts.
Article 68 para 4 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.
Reference: Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r., Dz.U. Nr 78, poz. 483 ze zm. (The Constitution of the Republic of Poland of 2 April 1997, J.L. No. 78, item 483 as amended). Available in Polish and English.

3) Acts, Codes, Decrees, etc. - main provisions on environment and access to justice, national codes, acts

1) The general provisions regarding administrative review are provided for by Administrative Procedure Code of 14 June 1960; codified text J.L. 2020 item 256 as amended (*Ustawa z dnia 14 czerwca 1960 r. Kodeks postępowania administracyjnego; tekst jedn. Dz. U. z 2020 r. poz. 256 ze zm.*) - **APC** (available in Polish).
The APC provides e.g. for basic rules on:
who shall be regarded as a “party to the proceedings” and hence entitled to challenge an administrative decision, including a decision concerning the environment (these rules may however be modified by specific acts regarding the environment (listed below)),
filing an administrative appeal against an administrative decision (competent authorities, timeframes etc.),
NGOs' rights to participate in the proceedings in which public participation is NOT required and to challenge administrative decisions (see point 1.1.1) above).
2) The general provisions regarding judicial review in administrative cases are provided for by Proceedings before Administrative Courts Law Act of 30 August 2002; codified text J.L. of 2019 item 2325 as amended, (*Ustawa z dnia 30 sierpnia 2002 r. Prawo o postępowaniu przed sądami administracyjnymi; tekst jedn. Dz.U. z 2019 r. poz. 2325 ze zm.*) - **PACLA** (available in Polish).
The PACLA provides e.g. for basic rules on:
who has standing before administrative court,
filing a complaint to the administrative court (timeframes, costs etc.).
3) Certain general aspects of the courts activity are provided also by:
The Act of 27 July 2001 on the common courts system; codified text J.L. of 2020 item 2072 as amended (*Ustawa z dnia 27 lipca 2001 r. Prawo o ustroju sądów powszechnych; t.j. Dz. U. z 2020 r. poz. 2072 ze zm.*) (available in Polish)
The Act of 25 July 2002 on the administrative courts system; codified text J.L. of 2019 item 2167 as amended (*Ustawa z dnia 25 lipca 2002 r. Prawo o ustroju sądów administracyjnych; t.j. Dz. U. z 2019 r. poz. 2167 ze zm.*) (available in Polish).
4) Standing regarding plans and programmes adopted by various levels of self-governmental authorities is regulated by:
The Act of 8 March 1990 on Communal Self-Government; codified text J.L. of 2020 item 713 as amended (*Ustawa z dnia 8 marca 1990 r. o samorządzie gminnym, t.j. Dz. U. z 2020 poz. 713 ze zm.*), (available in Polish)

The Act of 5 June 1998 on Poviat Self-Government; codified text J.L. of 2020 item 920 (*Ustawa z dnia 5 czerwca 1998 r. o samorządzie powiatowym, t.j. Dz. U. z 2020 r., poz. 920*), (available in Polish)
The Act of 5 June 1998 on Regional Self-Government, codified text J.L. of 2020 item 1668 as amended (*Ustawa z dnia 5 czerwca 1998 r. o samorządzie województwa, Dz. U. z 2020 r., poz. 1668 ze zm.*) (available in Polish)
5) Standing regarding plans and programmes adopted by governmental authorities:
The Act of 23 January 2009 on the Voivod and the Governmental Administration in the Voivodship, codified text: J.L. of 2019 item 1464 (*Ustawa z dnia 23 stycznia 2009 r. o wojewodzie i administracji rządowej w województwie, Dz. U. z 2019 r., poz. 1464*) (available in Polish)
6) The Act of 3 October 2008 on access to environmental information, public participation in environmental protection and on environmental impact assessments; codified text J.L. 2021, item 247 (*Ustawa z dnia 3 października 2008 r. o udostępnianiu informacji o środowisku i jego ochronie, udziale społeczeństwa w ochronie środowiska oraz o ocenach oddziaływania na środowisko: tekst jedn.: Dz. U. z 2021 r. poz. 247*) - **EIA Act** (available in Polish).
The EIA Act specifies, among other things:
who shall be regarded as a party to the proceedings regarding EIA decisions and hence entitled to challenge these decisions,
NGOs' rights to participate in the proceedings in which public participation is required and to challenge administrative decisions.
7) The Environmental Protection Law Act of 27 April 2001; codified text J.L. 2020, item 1219 as amended, (*Ustawa z dnia 27 kwietnia 2001 r. - Prawo ochrony środowiska; tekst jedn. Dz. U. z 2020 r. poz. 1219 ze zm.*) - **EPLA** (available in Polish).
The EPLA specifies:
specifies who shall be regarded as a party to the proceedings regarding integrated permits, permits for emissions of gases into the air and permits for waste generation - and hence entitled to challenge these decisions,
excludes participation of NGOs in the proceedings regarding permits for emissions of gases into the air and permits for waste generation and challenges against such permits.
8) The Water Law Act of 20 July 2017; codified text J.L. of 2020, item 130 as amended (*Ustawa z dnia 20 lipca 2017 r. Prawo wodne; t.j. Dz. U. z 2020 r. poz. 310 z późn. zm.*) - **WLA** (available in Polish).
The WLA specifies:
specifies who shall be regarded as a party to the proceedings regarding decisions authorizing the use of water (e.g. water permits) and hence entitled to challenge these decisions,
excludes participation of NGOs in the proceedings regarding the aforementioned decisions and challenges against such permits.
9) The Geological and Mining Law Act of 9 June 2011; codified text J.L. 2020, item 1064 as amended (*Ustawa z dnia 9 czerwca 2011 r. Prawo geologiczne i górnicze; tekst jedn. Dz. U. z 2029 r. poz. 1064 ze zm.*) - **GMLA** (available in Polish).
The GMLA specifies:
who shall be regarded as a party to the proceedings regarding geological concessions and hence entitled to challenge these concessions.
10) The Building Law Act of 7 July 1994; codified text J.L. of 2020, item 1333 as amended (*Ustawa z dnia 7 lipca 1994 r. Prawo budowlane (tekst jedn. Dz. U. z 2020 r. poz. 1333 ze zm.*) - **BLA** (available in Polish).
The BLA specifies:
who shall be regarded as a party to the proceedings regarding construction permits and hence entitled to challenge these permits.
Apart from the Building Law Act there are a number of so called "special Acts" regulating the investment process for specific kinds of projects such as roads, railways, flood-control projects etc. These Acts introduce special rules for access to justice regarding permits (development consents) for construction of these projects.

4) Examples of national case-law, role of the Supreme Court in environmental cases

There are a number of verdicts concerning environmental cases, standing etc. The verdicts are however always strictly related to a given case and legal acts covering the situation. Therefore it would be misleading to cite them here, as they have no generally applicable nature.
As explained below, the administrative courts in Poland are divided into two instances - the second (and highest) instance is the Supreme Administrative Court. The Supreme Administrative Court, when annulling the verdict of a voivodship (regional) administrative court, may send the case back to that court (cassation power; Art. 185 PACLA) or may decide on the merits of the case (reformatory power; Art. 188 PACLA). In practice, the cassation verdicts prevail.
The Supreme Administrative Court may adopt resolutions (*uchwały*) aimed at clarifying legal provisions the application of which has resulted in discrepancies in the case law of administrative courts, as well as resolutions of legal issues that raise serious doubts in a specific administrative court case (Art. 15 § 1, 2 and 3 PACLA). Such resolutions are intended to unify the case law; their adoption is rather exceptional: e.g. in 2018 the Supreme Administrative Court issued nine such resolutions; five of them were related to tax law[1].
Court judgements in Poland are not recognised as formal sources of law and are used only for interpretation purposes.

5) Can the parties to the administrative procedure directly rely on international environmental agreements, or can only the national and EU transposing legislation be referred to?

One may invoke international agreements directly in judicial and administrative proceedings as according to Article 91 paras 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 the verdict of the Voivodship Administrative Court in Warsaw of 20 March 2020 (IV SA/Wa 1248/19) the Court acknowledged the primacy of the Aarhus Convention over national law which was in non-compliance with the Convention. However, it must be stressed that: (a) the Court justified the supremacy of the Convention by the fact that it forms a part of EU law and (b) at the time of finalizing this study (January 2021) the verdict was not final yet (it is subject to review procedure by the Supreme Administrative Court).
In practice however, it is recommended to invoke not only the international agreement but also the relevant national law, as this gives better chances for the arguments presented to be acknowledged by court.

1.2. Jurisdiction of the courts

1) Number of levels in the court system

According to Article 175 para 1 of the Constitution, the Polish judicial system consists of the following main types of courts:
So-called general (common) 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;

Administrative courts;
Military courts.

The above courts are divided into levels (instances). Basically there are two instances of common courts, however in certain cases the Supreme Court (*Sąd Najwyższy*) is competent to examine extraordinary appeals against final judgments of second instance courts (not all the cases may go to the Supreme Court). Moreover, the Supreme Court supervises the activities of common and military courts in the area of adjudication.
The administrative courts are divided into two instances - the second (and highest) instance is the Supreme Administrative Court (*Naczelny 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 in the 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 covered by the Criminal Code or environmental legislation.

2) Rules of competence and jurisdiction – how is it determined if there is jurisdiction of the court, cases of conflict between different national tribunals (in different Member States)?

Polish administrative courts are always competent to examine decisions and other acts or omissions by Polish administrative authorities and are never competent to examine acts or omissions by foreign authorities. Thus, the issue of conflict between different tribunals in different Member States is irrelevant for administrative courts (it may be relevant for private (civil) law).
The territorial jurisdiction of a given regional administrative court depends on where the seat of the authority whose act or omission are subject to a complaint is located. For example, where the second instance authority is located in Warsaw, the Warsaw Regional Administrative Court will be competent.

3) Specialities as regards court rules in the environmental sector (special environmental tribunals), laymen contributing, expert judges

In Poland the environmental cases are decided by bodies and courts of general competence, there are no special environmental courts or boards. There are no expert judges nor laymen contributing neither.

4) Level of control of judges in case of administrative appeals, concept of own motion, what are its limits? Rules on court action on its own motion.

The administrative courts of the first instance (voivodship administrative courts) are not bound by the allegations presented in the complaint. They examine the legality of the acts or omissions by the administrative authorities in a given case (Arts. 134 and 135 PACLA). However, as it will be explained under point 1.5, the administrative courts in Poland (unlike civil courts) have no competence to call expert witnesses, so the assessment of merits is based on the documents.
The Supreme Administrative Court, which examines the legality of the first instance court verdict, is in principle bound by the allegations presented in the complaint. However, the Court takes into account certain serious infringements, even if they were not raised by the claimant. These infringements are listed in Art. 183(2) PACLA:
the court proceedings were inadmissible;
the party had no judicial or procedural capacity, an authority appointed to represent him or a legal representative, or if the party's representative was not duly authorised;
the same case is the subject of proceedings previously brought before an administrative court or if the case has already been finally judged;
the composition of the court adjudicating the case was contrary to the provisions of law or if a judge excluded by law participated in the case;
the party was deprived of the opportunity to defend its rights;
the voivodship administrative court adjudicated in a case in which the Supreme Administrative Court has jurisdiction.

1.3. Organisation of justice at administrative and judicial level

1) System of the administrative procedure (ministries and/or specific state authorities)

Individual administrative decisions, including those regarding the environment, may be issued either by self-governmental authorities or by governmental authorities.
The self-governmental authorities competent to issue individual decisions are:
mayor of a town or a village / head of the community (*wójt, burmistrz, prezydent miasta*),
starost (*starosta*) - head of a poviat (district, *powiat*)
marshall of the voivodship (*marszałek województwa*) - head of the self-governmental authorities in the voivodship (*województwo*).
For example, the EIA decisions are issued mainly by the head of the community. Integrated permits and decisions relating to waste management are issued by the starost or a marshal of the voivodship, depending on the type of installation / activity.
The governmental authorities competent to issue individual decisions are e.g.:
Regional Director for Environmental Protection (*regionalny dyrektor ochrony środowiska*),
Director of the Regional Board of Water Management (*dyrektor regionalnego* zarządu gospodarki wodnej Wód Polskich) and other Polish Waters authorities,
Voivodship Inspector of Environmental Protection (*wojewódzki inspetor ochrony środowiska*),
relevant ministers: Minister of Climate and Environment, Minister of Infrastructure.
For example, in the case of certain projects, the EIA decisions are issued by the Regional Director for Environmental Protection; the Director is also competent in the field of environmental liability and nature conservation. The Polish Waters authorities are responsible for water management, including for issuing the water permits. Voivodship Inspectors of Environmental Protection are responsible for compliance control and imposing sanctions for non-compliance with the environmental requirements.

2) How can one appeal an administrative environmental decision before court? When can one expect the final ruling?

In order to appeal an administrative environmental decision before the court one has to file an appeal to the administrative authority of the second instance first. The appeal to the administrative court may be filed only after the second instance authority issues its decision (see point 1.3.4) for details).
The second instance authority shall in principle issue its decision within one month or, when the case is particularly complicated, within two months. In practice this stage may take up to three to five months. There are no deadlines for administrative courts. In practice it takes usually about five to nine months before the administrative court of the first instance and about one to one and a half year before the Supreme Administrative Court.

3) Existence of special environmental courts, main role, competence

In Poland the environmental cases are decided by bodies and courts of general competence, there are no special environmental courts or boards. There are no specific judicial procedures applicable to environmental matters neither.

4) Appeal against environmental administrative decisions delivered by competent authorities and appeal against Court orders and decisions (levels)

In the case of administrative decisions (including decisions in environmental cases), the ordinary appeal process consists of three steps:
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 governmental authorities - a relevant higher instance authority (for the Regional Director for Environmental Protection - the General Director for Environmental Protection; for the Voivodship Inspector of Environmental Protection - the Chief Inspector of Environmental Protection etc.[2]

when the decision of the second instance authority is not in favour 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*)
when the court's verdict is not in favour of the claimant, he/she may file a complaint to the administrative court of second instance, i.e. to the Supreme Administrative Court (*Naczelny Sąd Administracyjny*).
The court has no right to amend the decision by itself. Where 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 issued it. Then the authority, in re-examining the case, will be bound by the interpretations provided by the court.
During the court proceedings, the voivodship administrative courts may issue orders, e.g. on interim measures. These orders may be appealed to the Supreme Administrative Court.

5) Extraordinary ways of appeal. Rules in the environmental area. Rules for introducing preliminary references

The extraordinary remedies may be taken in administrative proceedings (i.e. before the administrative authorities) where (both conditions have to be fulfilled):
the administrative decision is already final (there is no possibility to challenge it within the ordinary scheme) and
the decisions has certain, serious flaw - one of those listed in Articles 145, 145a, 145b or 156 of the APC (Articles 145-145b list grounds for the "reopening of proceedings" and Article 156 for the "invalidation of decision"):
a) Article 145
§ 1. In a case which has been closed with a final decision, proceedings shall be reopened if:
the evidence on the basis of which the relevant facts were established is proved to be false;
the decision was issued as a result of an offence;
the decision was issued by an employee or public administration body which is subject to exclusion pursuant to Articles 24, 25 and 27;
the party did not participate in the proceedings through no fault of its own;
new facts or new evidence relevant to the case or new evidence existing on the date of the decision, unknown to the authority which issued the decision, come to light;
the decision was issued without obtaining the legally required position of another authority;
the preliminary issue has been resolved by a competent authority or a court other than the assessment adopted when issuing the decision (Article 100 § 2);
the decision was issued on the basis of another decision or court ruling, which was subsequently revoked or amended.
b) Article 145a
§ 1. Reopening of proceedings may also be demanded if the Constitutional Tribunal has ruled that a normative act, on the basis of which the decision was made, is inconsistent with the Constitution, an international agreement or a law.
c) Article 145aa
§ 1. A reopening of proceedings may also be demanded in case of a judgment of the Court of Justice of the European Union that affects the substance of the decision taken.
d) Article 145b
§ 1. Reopening of proceedings may also be demanded also in case when a court verdict stating that the principle of equal treatment has been breached has been issued, in accordance with the Act of 3 December 2010 on the implementation of certain provisions of the European Union in the field of equal treatment (Journal of Laws of 2016, item 1219), if the breach of this principle had an impact on the resolution of the case ended with a final decision.
e) Article 156
§ 1. A public administration authority shall annul the decision which:
was issued in violation of the provisions on jurisdiction;
was issued without legal basis or with a gross violation of law;
concerns a case previously resolved by another final decision or a case which has been tacitly resolved;
was addressed to a person who is not a party in the case;
was unenforceable on the date of its delivery and its unenforceability is permanent;
if executed, it would give rise to a criminal offence;
it contains a defect which makes it legally invalid.
Decisions issued by the administrative authorities within the aforementioned extraordinary proceedings may be challenged before the administrative courts on the general rules. There are no extraordinary ways of appeal to be applied directly before courts.
Administrative courts may refer the case to the Court of Justice of the European Union for a preliminary ruling. There are no special regulations for this reference in Polish law - the relevant EU regulations do apply here. Parties may ask the administrative court to request the preliminary ruling from the CJEU, however it is up to the Polish court if it exercises this right. In case the court decides not to refer to the CJEU, no special order denying this request is issued and the parties have no special legal measures to challenge such a negative decision.

6) Are there out of court solutions in the environmental area as regards solving conflicts (mediation, etc.)?

The PACLA provides for a "mediation procedure" to be carried out before the administrative court. However, this procedure is hardly used at all and practically never in environmental cases. The reason for that is that the purpose of mediation is to explain and consider the factual and legal circumstances of the case and to adopt arrangements by the parties as to how to settle it within the limits of applicable law (Art. 115 § 2 PACLA). As environmental law consists mostly of provisions which are binding, the scope of possible mediation is extremely small.
Other remark concerns administrative proceeding. The APC allows for mediation, however this may be conducted in the course of the proceedings if the nature of the case allows it (Art. 96a § 1 APC). That means that also in administrative proceeding the scope of possible mediation is very small.

7) How can other actors help (ombudsperson (if applicable), public prosecutor), accessible link to the sites?

According to Article 5 of the Act of 28 January 2016, Law on the public prosecutor's office (codified text: J.L. of 2019, item 740, as amended), the public prosecutor may participate as a party or participant in any proceedings conducted by public authorities and administration bodies, courts and tribunals, unless the acts provide otherwise.
This right is reflected in Arts. 182 - 183 APC, according to which public prosecutors have standing in administrative proceedings: they may either initiate the proceedings or intervene in on-going proceedings, including challenging decisions. It is reflected also in Art. 8 § 1 PACLA which repeats the general rule of the Law on the public prosecutor's office.
The Ombudsman enjoys the same rights under Art. 14 § 6 of the Act of 15 July 1987 on the Ombudsman (codified text: J.L. of 2020 item 627) and under Art. 8 § 1 PACLA.

In the case of EIA decisions (decisions concluding the procedure of environmental impact assessment) and the decisions concluding proceedings where the habitat assessment was carried out, similar rights are granted to the regional director for environmental protection, as well as to the General Director for Environmental Protection (Art. 76 of the EIA Act).
Although the above-mentioned actors act ex officio, they often undertake their action after having received information/complaints from an individual or NGO.
Ombudsman's office
Prosecutor's office
General Director for Environmental Protection

1.4. How can one bring a case to court?

1) Who can challenge an environmental administrative decision (relevance of the concept of concerned public and NGOs)?

Under Polish law, individual decisions relating to the environment may be challenged by: (a) natural and legal persons who are considered as "parties to the administrative proceedings", (b) entities (such as NGOs, the public prosecutor or the Ombudsman) who participate in the proceedings "with the rights of a party".
According to the general rule provided by Article 28 of the Administrative Procedure Act (APC), "parties to the administrative proceedings" are persons having sufficient legal interest in the case. They are entitled to challenge decisions before the second instance authority first and then before the administrative court.
Environmental NGOs are granted specific rights to participate in the proceedings in which public participation is required - and to challenge the decision issued within these proceeding. These proceedings are those regarding: EIA decisions, habitat assessments, integrated permits, permits regarding GMO. The specific rights are granted by Art. 44 of the EIA Act.
In proceedings not requiring public participation, NGOs may apply to be admitted to the proceedings with the rights of a party (the legal basis for this is Art. 31 of the APC). Such application may be refused by the authority, if it considers that the conditions set by Article 31 of the APC are not met (these conditions are described in detail under question 1.4.2) below). The refusal may be challenged before the authority of the second instance and then before the court. The possibilities and conditions for such participation are however limited comparing to those granted by Art. 44 of the EIA Act.

2) Are there different rules applicable in sectoral legislation (nature conservation, water management, waste, EIA, IPPC/IED, etc.)?

Specific provisions, such as those on EIA or integrated permits, provide for rules on who shall be considered as a party in a given case and - automatically - who is entitled to challenge relevant decisions:
According to Article 74(3a) of the EIA Act, the status of a party in proceedings concerning EIA decisions is granted to the developer and owners of properties located in the area which will be affected by the proposed project. This area is understood as: (1) the anticipated area on which the project will be carried out and the area located within 100 m of the borders of that area; (2) the plots on which, as a result of implementation, exploitation or use of the project, the environmental quality standards would be exceeded, or (3) plots located within the range of a significant impact of the project, which may introduce restrictions on the development of the real estate.
Article 185(1) EPLA limits the parties in the proceedings regarding integrated permits, permits for emissions of gases into the air and permits for waste generation to the operator of the installation subject to the permit. Only in very exceptional cases - when a so-called "restricted use area" is to be created around the installation – are certain neighbours also regarded as parties to the proceedings.
Article 401(1) WLA specifies that parties to the proceedings regarding decisions authorizing use of water (e.g. water permits) and hence entitled to challenge these decisions are: the project proponent and the persons who will be affected by the intended use of water or the entities within the range of impact of the planned water facilities. Art. 402 WLA excludes the participation of NGOs in these proceedings and their right to challenge the decisions issued.
Article 41 GMLA specifies that parties to proceedings regarding concessions for extraction of mineral resources are only the owners of properties on which the mining activity is to be carried out.
Article 28(2) BLA specifies that parties to proceedings regarding construction permits are only investors and owners, perpetual usufructuaries or managers of properties located in the area of impact of the building object. The term "impact of the building object" is defined by Article 3(20) BLA as "an area designated in the vicinity of a building object on the basis of specific regulations, introducing restrictions on development, including buildings, of that area".
Article 28(3) BLA excludes the participation of NGOs in these proceedings and their right to challenge the decisions issued (NGOs may participate only in proceedings regarding construction permits within which so-called a repeated EIA (*ponowna ocena oddziaływania na środowisko*) is carried out (Art. 28(4) BLA).
Apart from the Building Law Act there are a number of so called "special Acts" regulating the investment process for specific kinds of project such as roads, railways, flood-control projects etc. These special Acts introduce special rules for access to justice regarding permits (development consents) for construction of these projects.

3) Standing rules applicable for NGOs and individuals (in administrative procedure and at judicial level, for organisations with legal personality, ad hoc groups of representatives of the public, standing for foreign NGOs, etc.)

Individuals

Administrative proceedings

As mentioned above, in **administrative proceedings** regarding individual administrative decisions, standing is granted to "parties" to the proceedings, while a party - according to Article 28 of the APC - is a "*person whose legal interest or duty is 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*" is therefore crucial to understanding who can challenge decisions of the administration.
Therefore, according to the general rules provided by the APC, standing is granted to those individuals (whether natural or legal persons) who have a "legal interest" (which includes also administrative duties). A person has a 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 and a person to whom a decision was addressed always have a "legal interest" in the case and thus have standing. Such persons are considered to be "parties" to the administrative procedure.
As indicated above under question 1.4.3, there are a number of legal Acts amending or specifying these general rules with regard to particular administrative decisions.

Proceedings before administrative courts

As proceedings **before the administrative courts** in the case of individual administrative decisions are a follow-up to proceedings before the authority of the second instance, the circle of persons entitled to file a complaint to the court of the first instance is determined by the administrative phase of proceedings[3]. However, a person who did not take part in the administrative proceedings but whose legal interest is affected by the proceedings may also file a complaint to the administrative court (Article 50 § 1 PACLA).
Apart from the right to file a complaint, the right to participate in the court proceedings with the status of a party is granted 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 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 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; it rather does not apply to environmental cases.

National NGOs

As indicated above, there are two different legal bases for NGOs' participation in the proceedings, and for their right to challenge the decision: Article 44 of the EIA Act encompassing certain environmental proceedings (those requiring public participation), or Article 31 of the APC encompassing all other administrative proceedings concluded with an administrative decision.

Article 31 APC

According to the general rule provided by Article 31 APC, 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. In this case an NGO has to prove that:
it is registered in a Court register or in a register maintained by the Starost (head of self-governmental authority in the district), as ad hoc groupings do not have standing;
its participation in the proceedings is justified by the objectives established in the by-laws of the organisation (in other words if the subject matter of the case is in conformity with the organization's objectives);
its participation in the proceedings is justified by the "public interest".
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 the merit justification (need) for participation by the organisation in a given case (in other words: the authority decides whether it considers it useful, from the point of view of the "public interest", to allow the organisation to participate). A refusal may be challenged by the organisation to the authority of second instance and then - subsequently - to the administrative court.
The organisation which took part in the preceding administrative proceedings on the basis of Article 31 APC has standing also before the administrative courts. An NGO which has not taken part in the preceding administrative proceedings is not entitled to challenge the decision of the second instance authority, i.e. has no right to file a complaint to the administrative court (Article 50 § 1 PACLA).
However, if the judicial-administrative proceedings, initiated by another party, concern the scope of the NGO's activity, participation of the organisation may be granted by the court of its own motion; the courts' refusal may be challenged before the administrative court of second instance (Article 33 § 2 PACLA). According to case law, the court also has to verify whether the "public interest" speaks for the participation of the NGO.

Article 44 EIA Act

According to the special provisions provided by Article 44 of the EIA Act, environmental NGOs may:
take part in the proceedings with a right of a party and then challenge the decision before the authority of the second instance;
challenge the decision before the authority of the second instance even if it did not take part in the first instance administrative proceedings;
challenge the decision of the second instance authority before the administrative court even if it did not take part in the administrative proceedings.
In this case the NGO has to prove that:
it is registered in a Court register or in a register maintained by the Starost (head of self-governmental authority in a poviat), as ad hoc groupings do not have standing;
it has been registered for at least 12 months before the proceedings it wants to intervene in were initiated;
its statutory purpose is related to environmental protection.
Contrary to the proceedings carried out on the basis of Article 31 APC, NGOs 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 but is not entitled to decide whether the participation of such organisation is "needed" and "justified" from the point of view of public interest. This means that an NGO which fulfils the afore-mentioned requirements and expresses its intention to participate in a given procedure participates in it by virtue of law.

Foreign NGOs enjoy the same rights as Polish NGOs and have to meet the same conditions, including - in the case of the proceedings regulated in Article 31 APC - proving that their participation is justified (that it protects the common interest in a given case).

Ad hoc groups have no standing. As indicated above, in order to take part in the proceedings, an organisation has to be registered in the Court or in the register maintained by the Starost (head of self-governmental authority in the district).

4) What are the rules for translation and interpretation if foreign parties are involved?

All administrative and judicial proceedings are to be conducted out in Polish.

The proceedings before the authority of the second instance are conducted mainly in writing. The foreign party is then responsible for preparing its appeal, motions etc. in Polish.
In proceedings before the administrative court, the foreign party may ask the court to provide the services of an interpreter (Article 5 § 2 of the Act on the common courts system in conjunction with Article 49 § 1 of the Act of 25 July 2002 on the administrative courts system). If the court grants it, the services of an interpreter are free to the party (the costs are borne by the State).

1.5. Evidence and experts in the procedures

Overview of specific rules in administrative environmental matters, control of judge, calling for an expert in the procedure

1) Evaluation of evidence – are there any limits in obtaining or evaluating evidence, can the court request evidence on its own motion?

Pursuant to Art. 77 § 1 APC, a public administration body is required to collect and consider all possible evidence. According to Art. 75 § 1 of the APC, everything that can help to clarify the case and is not illegal should be considered as evidence. In particular, evidence may include documents, witness statements, expert reports and visual inspections.
The administrative authority of the second instance examines all the aspects of the case. According to Article 136 APC, the second instance authority may take evidence on its own (as well as examining the evidence gathered by the first instance authority). At this stage the parties may submit their evidence too. The evidence is subject to assessment by the administrative authority of the second instance.
At the stage of court proceedings, the possibility of taking and examining new evidence is strictly limited. The administrative court of the first instance examines in principle the legality of the acts or omissions of the administrative authority. This includes verifying whether the authority has correctly established or assessed the facts (merits) of the case. This means that the parties cannot introduce new evidence at this stage.

The verification by the court consists in examining the proceedings before the administrative authorities (of both instances), including determining whether the authorities had correctly taken into account and assessed the evidence available in the case, including the technical documents.
According to Article 133 § 1 PACLA, the verification by the administrative court shall be based on the documents available in the file on the case; the court has no mandate to take evidence on its own (the main role of administrative courts is not to carry out evidence proceedings, but to check whether evidence proceedings have been properly and exhaustively carried out by the administrative authority). The only exemption from this general rule is provided by Article 106 § 3 PACLA, according to which the court may examine additional documents as evidence, but only when this will not "excessively" prolong the proceedings, which in practice means that there will be no need to adjourn the trial. According to jurisprudence a document admitted as evidence before the regional administrative court on the basis of Article 106 § 3 PACLA may not "have a nature of an experts' opinion".

2) Can one introduce new evidence?

As explained above, at the stage of the administrative appeal - yes; at the stage of the administrative court proceedings - in principle no.

3) How can one get expert opinions in the procedures? Publicly available lists and registries of experts

The administrative courts, unlike the civil courts, have no competence to call expert witnesses. As explained above, the administrative courts base their judgement on the documents available in the files on the case.

3.1) Is the expert opinion binding on judges, is there a level of discretion?

N/A

3.2) Rules for experts being called upon by the court

N/A

3.3) Rules for experts called upon by the parties

N/A

3.4) What are the procedural fees to be paid and when in relation to expert opinions and expert witnessing?

N/A

1.6. Legal professions and possible actors, participants to the procedures

1) Role of lawyers, compulsory or not, how to contact, publicly accessible internet link to registry or website of the bar, perhaps of specialised lawyers in the environmental field

Only the cassation complaints addressed to the administrative court of second instance (Supreme Administrative Court) have to be prepared and signed by a lawyer: an advocate (*adwokat*) or an attorney at law (*radca prawny*) representing the claimant[4]. There is no such requirement before the administrative authorities and before the administrative court of first instance.

The list of advocates is available on the Advocates' Bar webpage.

The list of attorneys at law is available on the Attorneys' Bar webpage.

A list of some lawyers specialising in environmental law has been published by ClientEarth.

Other lawyers specialising in environmental law have to be sought out on a case-by-case basis.

The conditions for co-operation with them (including pro bono assistance) have to be negotiated with them on an individual basis.

1.1 Existence or not of pro bono assistance

There is no systemic form of pro bono assistance consisting in initiation of or representation in court proceedings. Certain lawyers or law firms may offer such assistance on a case-by-case basis.

1.2 If pro bono assistance does exist, what are the main elements of the procedure to receive it (perhaps links to forms, court or agency in charge, address, telephone, email, ways to contact, etc.)?

There is a systemic type of pro bono assistance consisting in informing citizens about their rights and obligations, about the law in force and about the possible ways of resolving legal problems (as mentioned above, this does not include court proceedings). This type of assistance is provided for on the basis of the Act of 5 August 2015 on free legal assistance, free citizen counselling and legal education, codified text J.L. of 2020, item 2232, *Ustawa z dnia 5 sierpnia 2015 r. o nieodpłatnej pomocy prawnej, nieodpłatnym poradnictwie obywatelskim oraz edukacji prawnej, t.j. Dz. U. z 2020 r. poz. 2232*).

The free assistance is available to natural persons who claim that they cannot afford a lawyer.

1.3 Who should be addressed by the applicant for pro bono assistance?

The legal assistance referred to in the Act on free legal assistance is provided by lawyers (advocates or attorneys at law) appointed by self-governmental district (poviat) authorities. The lawyers consult clients in "free assistance offices " (*punkty nieodpłatnej pomocy prawnej*).

Further information, including the list of offices, is presented on this webpage.

2) Expert registries or publicly available websites of bars or registries that include the contact details of experts

There are no complex registers of experts; rather, they have to be looked for on a case-by-case basis. However, one may wish to check e.g. the list of experts held by Polska Izba Ekologii (the Polish Ecology Chamber).

3) List of NGOs who are active in the field, links to sites where these NGOs are accessible

ClientEarth. Prawnicy dla ziemi
WWF Polska
Greenpeace Polska
Pracownia na rzecz Wszystkich Istot
Fundacja Greenmind
Fundacja Ekorozwoju

4) List of international NGOs, who are active in the Member State

Some international NGOs have their offices (branches) registered in Poland. Formally such a branch is treated as a Polish NGO. These NGOs are:

ClientEarth. Prawnicy dla ziemi
WWF Polska
Greenpeace Polska

1.7. Guarantees for effective procedures

1.7.1. Procedural time limits

1) Time limit to challenge an administrative environmental decision (not judicial) by an administrative body (either superior or same level).

Regular appeal

An appeal against the decision of the authority of the first instance to the authority of the second instance shall be filed within 14 days from the date when the decision of the first instance authority has been delivered to the appealing party.

In some cases (such as EIA decisions where there are more than 10 parties to the proceedings) the decision is not to be delivered to each party by post, as is the normal principle, but by way of public announcement. In such cases it is assumed that delivery occurs on the 14th day after that announcement (Article 49 APC). Then, any party to the proceedings (as well as NGOs having standing) has the next 14 days to lodge an appeal.

Extraordinary appeal

In case of extraordinary appeal based on Article 145 APC[5], a party may file a motion to reopen the proceedings within one month from the date when the party became aware of the circumstance constituting the basis for reopening of proceedings.

In case of extraordinary appeal based on Article 145a APC (reopening of proceedings in cases where the Constitutional Tribunal ruled that a normative act, on the basis of which the decision was made, is inconsistent with the Constitution, an international agreement or a law), a party may file a motion to reopen the proceedings within one month from the date of entry into force of the decision of the Constitutional Tribunal.

In case of extraordinary appeal based on Article 145aa APC (reopening of proceedings in case of a judgment of the Court of Justice of the European Union that affects the substance of the decision taken), a party may file a motion to reopen the proceedings within one month from the day when the CJEU judgement has been published.

In the case of extraordinary appeal based on Article 145b APC (reopening of proceedings in cases where a court verdict stating that the principle of equal treatment has been breached and that the breach had an impact on the resolution of the case ending with a final decision), a party may file a motion to reopen the proceedings within one month from the date on which the court decision becomes final.

In the case of extraordinary appeal based on Article 156 § 1 APC[6], a motion to annul a decision may be lodged at any time, however the decision shall not be annulled on the grounds set out in Article 156 §1 items 1, 3, 4 or 7 where ten years have elapsed since its delivery or publication and if the decision has had irreversible legal effects.

2) Time limit to deliver decision by an administrative organ

As a rule, the administrative authority of the first instance should deliver its decision within a month or, in a particularly complex case, no later than within two months from the date of initiation of the proceedings (Article 35 § 3 APC). This time limit may be extended if necessary - according to Article 36 APC, any extension of the proceedings shall be reasonably justified and the parties shall be informed; in the case of excessive length of proceedings or administrative inaction, the party may lodge a complaint to the administrative court. The proceedings may also be suspended if specific provisions so require (for example in EIA-related cases, for the period of preparation of the EIA report) or in some cases listed in Articles 97 and 98 APC (e.g. death of one of the parties to the proceedings and pending inheritance case).

The administrative authority of the second instance should deliver its decision within a month after it receives the appeal (Article 35 § 3 APC). The appeal is however to be filed not directly to the authority of the second instance but via the authority of the first instance - which, within 7 days of reception of the appeal, shall transfer it together with the entire documentation of the case to the authority of the second instance (Article 129 § 1 and Article 133 APC).

The time limit to deliver the administrative decision is however called “instructional” for the authority which means that in practice this may take longer, although here too the authority has to justify the extension and inform the parties of it (Article 36 APC applies).

3) Is it possible to challenge the first level administrative decision directly before court?

As a rule this is not possible.

There is one exception to this rule, namely when the decision has been issued in the first instance by a Minister (or another central authority which has no higher instance over it) or a Self-Governmental Appeal Board (authorities which have no “higher instance” over them). In such cases, a party dissatisfied with the decision may request the authority to reconsider the case (Art. 127 § 3 APC). In such situations, the party may decide not to exercise the right to request reconsideration, but to lodge a complaint directly to the administrative court instead (Art. 52 § 3 PACLA).

4) Is there a deadline set for the national court to deliver its judgment?

According to the general rule, there is no deadline set for the administrative court to deliver its judgment. The exception concerns cases regarding access to environmental information: in the case of decisions refusing such information, the court shall issue its judgement within 30 days after receipt of the complaint (Article 20(2) of the EIA Act). The complaint is to be filed not directly to the court but via the administrative authority of the second instance - which, within 15 days of receipt of the appeal, shall transfer it together with the entire documentation of the case to the court (in other cases the second instance authority has 30 days to transfer the documentation).

5) Time limits applicable during the procedure (for parties, submitting evidence, other possible deadlines, etc.)

The authorities or courts may summon parties e.g. to submit documents, complete their motions or undertake other activities. The deadlines for those fulfilling these orders are indicated by the authority or the court respectively.

1.7.2. Interim and precautionary measures, enforcement of judgments

1) When does the appeal challenging an administrative decision have suspensive effect?

Filing an appeal to the administrative authority of the second instance has suspensive effect, which means that the decision cannot be executed. However, the competent authorities sometimes grant “immediate enforceability” (*“rygor natychmiastowej wykonalności”*) of the decision, which means that it may be executed immediately. Immediate enforceability may be included into the decision itself or issued in the form of a separate order (*postanowienie*). Immediate enforceability may be challenged before the authority of the second instance and then before the administrative court: either in the appeal against the entire decision or against the order, as the case may be.

Filing a motion within the extraordinary administrative appeal does not have an automatic suspensive effect, however the competent authority may suspend the execution of the decision ex officio or on the motion of a party (Article 152 and Article 159 APC).

2) Is there a possibility for an injunctive relief during the administrative appeal by the authority or the superior authority?

In a regular administrative appeal procedure there is no need for injunctive relief, as filing an appeal to the administrative authority of the second instance has a suspensive effect.

In an extraordinary administrative appeal, the competent authority may suspend the execution of the decision ex officio or on the motion of a party (Article 152 and Article 159 APC).

3) Is there a possibility to introduce a request for such a measure during the procedure and under what conditions? Possible deadline to submit this request?

As indicated above, in a regular administrative appeal procedure, there is no need for injunctive relief, as filing an appeal to the administrative authority of the second instance has a suspensive effect. In cases where “immediate enforceability” has been granted, it is possible to challenge its legitimacy. This cannot however be regarded as injunctive relief, as the issue is examined together with the main appeal and not earlier and separately.

In an extraordinary administrative appeal, a party may file a motion for suspension of the execution of the decision (Article 152 and Article 159 APC). The motion shall be filed along with the motion for reopening the proceedings or annulment of the decision, or later, during the extraordinary proceedings.

4) Is there immediate execution of an administrative decision irrespective of the appeal introduced? Under what conditions?

As indicated above, the competent authorities may grant “immediate enforceability” of the decision, which means that it may be executed immediately irrespective of any appeal introduced. The conditions for this are provided for by Article 108 APC: where it is necessary for the protection of human health or life, or to protect national farming from heavy losses, or for any other public interest or an extremely important interest of a party.

5) Is the administrative decision suspended once challenged before court at the judicial phase?

Filing a complaint to the administrative court of first instance does not automatically suspend execution of the administrative decision subject to complaint. However, after the complaint has been filed to the second instance authority (and before it is forwarded to the administrative court), the authority may suspend, ex officio or at the request of the complainant, the execution of the decision (Article 62 § 2(1) PACLA. The administrative court may also suspend the execution of the decision, upon the motion of the claimant, in cases where 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.

6) Is there a possibility for the national tribunals to provide injunctive relief (conditional upon a financial deposit)? Is there separate appeal against this order on the injunctive relief or the financial deposit?

The administrative court of first instance may suspend execution of the administrative decision subject to complaint - ex officio or on the motion of a party (Article 61 § 2 PACLA). There is a possibility for separate appeal against this order on this injunctive relief (Article 194 § 1 point 2 of the PACLA).

According to the general rules, the injunctive relief is not conditional upon a financial deposit. However, in the case of a motion for injunctive relief regarding a complaint against a construction permit, the court may make it conditional upon a financial deposit (Article 35a BLA). The amount of this deposit is not set by law, however Article 35a(3) BLA states that the deposit shall be used to satisfy the investor's claims, so it may be assumed that it could be high. There is a right of appeal against the court order on financial deposit.

1.7.3. Costs - Legal aid - Pro bono assistance, other financial assistance mechanisms

1) How can one calculate what costs will be involved when one intends to initiate a procedure - administrative costs, judicial costs, costs for filing a case, experts' fees, lawyers' fees, cost of appeal, etc.

Administrative and court fees:

Filing an appeal with the administrative authority at second instance (and at the same time, the appeal procedure) is free of charge, according to Annex, part I item 53, column 4 to the Stamp Duty Act[7].

As far as the court fees are concerned, it should be noted that in Poland court fees vary according to “the value of the case”, but only in cases where the value of the case at stake can be measured (i.e., if the case concerns a monetary obligation, for example the payment of a fee for the use of the environment or an administrative fine for non-compliance with the environmental requirements).

However, it is recognised that in environmental cases concerning typical administrative decisions (such as environmental permits, EIA decisions etc.) the value of the case at stake cannot be measured. In such cases, the court fee is fixed at PLN 200 (currently about EUR 44) for the court of first instance and PLN 100 (about EUR 22) for the court of second instance.

Attorneys' fees:

Attorneys' fees depend in practice on the contract between the attorney and his client. Therefore the costs of legal representation may differ depending on the law firm, the experience of the lawyer etc. As a rough guide, they may vary from PLN 150 to 600 (EUR 33 to 135) per hour. The number of hours depends on the complexity of a case, number of appeal instances etc.

Experts' fees:

As indicated above, the administrative courts decide on the basis of the documents that have been collected in the course of the administrative review procedure and may only admit new evidence in exceptional cases, and only in the form “of documents” (Article 106 PACLA). Thus, expert opinions would be commissioned by parties to the proceedings mainly during proceedings before administrative authorities of first or second instance. The average cost of an expert's report would be around PLN 7,000 (EUR 1,540).

2) Cost of injunctive relief/interim measure, is a deposit necessary?

According to the general rules, the injunctive relief is not conditional upon a financial deposit. However, in case of a motion for injunctive relief regarding a complaint against a construction permit, the court may make it conditional upon a financial deposit (Article 35a BLA). The amount of this deposit is not set by law, however Article 35a(3) BLA states that the deposit shall be used to satisfy the investor's claims, so it may be assumed that it could be high. There is a right of appeal against the court order on a financial deposit.

3) Is there legal aid available for natural persons?

Persons (both natural and legal, including NGOs) who are unable to fund the costs of the court or hiring attorney may apply to the administrative court for legal aid, which in Poland is called “right of aid” *prawo pomocy* (Articles 243 - 263 PACLA). The application must be lodged with the court and accompanied by evidence of the financial status of the applicant. There is no fixed level of income or assets below which the legal aid is provided. It is up to the court's discretion to determine whether legal aid would be justified or not.

The right to aid encompasses an exemption from payment of the court fees and covers the costs of appointing an attorney who will represent the claimant in court. The right to aid may be reversed if the grounds for granting the aid cease to apply. There are however no statistics on the frequency of granting or refusal of aid by the courts.

4) Is there legal aid available for associations, legal persons, NGOs with legal personality and without legal personality? If yes, how to request legal aid? Is there pro bono assistance?

See above.

5) Are there other financial mechanisms available to provide financial assistance?

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 expense in the project's budget). Certain NGOs also carry out advocacy for other NGOs or individuals, including assistance in legal proceedings, and may receive public money for this.

6) Does the 'loser party pays' principle apply? How is it applied by courts, are there exceptions?

Within the **administrative review procedure**, each party bears its own costs, which means that the winning party does not recover its costs (the second instance authority does not decide on costs).

Filing an appeal before the administrative authority of the second instance is however free of charge.

According to Article 200 PACLA, before the administrative **court of first instance**, if the authorities lose the case, they have to pay the claimant's costs. This includes:

the court fees,

the costs of legal representation, which are however limited to the cap set by specific provisions[8]. In cases in which no financial value is set (and the majority of environmental cases belong to this category[9]) this cap is PLN 480 which is about EUR 107 (normally these are not the real costs which the claimant paid, as these costs are market-based and not regulated by law).

If the **authority wins, it is not entitled to claim its costs**. Other participants in the court proceedings (persons referred to in Art. 33 PACLA) bear their own costs; the losing party is not obliged to cover them.
Articles 203 and 204 PACLA lay down rules on the distribution of costs in proceedings before the **court of second instance**. This includes the court fees and also the costs of legal representation but only up to the cap of PLN 480 which is about EUR 107.
Article 203 regulates the situation where the court of second instance allowed the appeal. According to this provision:
in cases where the court of first instance dismissed the complaint and the court of second instance annulled the first instance court's judgement, the authority whose decision was subject to proceedings before the court of first instance has to pay the costs of the person who filed the appeal,
in cases where the court of first instance allowed the complaint and the court of second instance annulled the first instance court's judgement, the claimant in the proceedings before the court of first instance has to pay the costs of the person/authority who filed the appeal.
Article 204 regulates the situation where the court of second instance dismissed the appeal. According to this provision:
in cases where the court of first instance dismissed the complaint and the court of second instance sustained the first instance court's judgement, the person who filed the appeal has to pay the costs of the authority whose decision was subject to proceedings before the court of first instance,
in cases where the court of first instance allowed the complaint and the court of second instance sustained the first instance court's judgement, the person who filed the appeal has to pay the costs of the claimant in the proceedings before the court of first instance.
However, if an appeal was filed by an NGO acting in the public interest, the courts in practice do not order the NGO to reimburse the costs to another party (i. e., they exempt the NGO from payment of costs).

7) Can the court provide an exemption from procedural costs, duties, filing fees, taxation of costs, etc.? Any other national characteristics linked to this topic?

As indicated above, a person who is granted the "right of aid" is exempted from payment of the court fees.

1.7.4. Access to information on access to justice - provisions related to Directive 2003/4/EC

1) Where are the national rules on environmental access to justice available? Internet link to be provided. Are there other forms of structured dissemination?

No official webpages concerning environmental access to justice have been identified.

2) During different environmental procedures how is this information provided? From whom should the applicant request information?

Any decision issued during administrative proceedings, including that of the second instance authority, shall include information on possibilities to challenge it. During court hearings, where a party is not represented by a lawyer, the court has to inform the party about the remedies available (Article 140 § 1 PACLA). See also point 4) below.

3) What are the sectoral rules (EIA, IPPC/IED, regarding plans and programmes, etc.)?

There are no special sectoral rules regarding information for the applicants.

4) Is it obligatory to provide access to justice information in the administrative decision and in the judgment?

It is obligatory to provide access to justice information, in the case of an administrative decision (Article 107 § 1 point 7 APC) and if a judgement (Article 140 § 2 PACLA).

5) Is translation, interpretation provided to foreign participants? What are the rules applicable?

Administrative decisions and judgements, including information about available remedies, are delivered in Polish. During the hearing before the administrative court, the foreign party may ask the court to provide the services of an interpreter to translate also the information about remedies provided during the hearing (Article 5 § 2 of the Act on the common courts system in connection with Article 49 § 1 of the Act of 25 July 2002 on the administrative courts system). If the court grants it, the services of an interpreter are free to the party (the costs are borne by the State).

1.8. Special procedural rules

1.8.1. Environmental Impact Assessment (EIA) - provisions related to Directive 2003/35/EC

Country-specific EIA rules related to access to justice

1) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)

Under Polish law (the EIA Act[10]), the EIA procedure, or - in case of a negative screening decision - the screening procedure, is concluded by the separate so-called 'EIA decision' (Poland established a special "procedure to comply with the aims of the Directive", as referred to in Article 2(2) of the EIA Directive).

Negative screening

In the case of a negative screening decision, the EIA decision states that the EIA procedure is not needed and provides the reasoning for that.
Polish law provides for a possibility to challenge the EIA decision (negative screening decision) itself. This possibility is always granted to individuals (parties to the proceedings).
Environmental NGOs however have limited possibilities to challenge the negative screening decision. In such cases they are unable to use the provisions granting them access to justice in the case of EIA decisions concluding the 'full' EIA procedure (Article 44 of the EIA Act). Instead, they may only try to enter into the administrative proceedings - and then to challenge the decision - on the basis of the more general Article 31 APC. As explained above, this Article is however less favourable to organisations than Article 44 of the EIA Act, because Article 31 foresees that the public authority has to assess whether "the interest of society requires" it to allow the organisation to participate - while under Article 44 of the EIA Act the authority only examines whether an environmental organisation fulfils formal requirements (is registered etc.) but does not assess whether the participation of such an organisation is "needed" and "justified" from the point of view of public interest. Depriving organisations of the right to participate in administrative proceedings on the basis of Article 31 APC means that they will not be entitled to participate in appeal proceedings either.
In any case, an EIA decision stating a negative result of screening may be challenged before a second instance authority within 14 days after the date when decision has been delivered to a given party (see point 1.7.1).

Positive screening

In the case of positive screening, the competent authority issues a separate order (*postanowienie*) stating that EIA is necessary and setting the scope of environmental report (which means that this order covers both screening and scoping).
This order may be challenged by the parties to the proceedings as well as by NGOs participating in the proceedings. An appeal against the positive screening order shall be challenged within 7 days after the date when it has been delivered to a given party.

2) Rules on standing relating to scoping (conditions, timeframe, public concerned)

In the case of projects always requiring a full EIA (under Polish law, these are all projects listed in Annex I to the EIA Directive plus some projects falling under Annex II to the Directive) in principle there is no separate scoping order (*postanowienie*). For these projects, such an order shall be issued only if the developer requires so, or if the project could have a transboundary impact.
In case of projects subject to individual screening, the order by the competent authority stating that an EIA is required (positive screening order) also sets the scope of environmental report (which means that this order covers both screening and scoping).
This order may be challenged by the parties to the proceedings as well as by NGOs participating in the proceedings. An appeal against the positive screening order shall be challenged within 7 days after the date when it has been delivered to a given party.

3) At what stage(s) can the public challenge the administrative decisions on environmental projects? Deadline to challenge decisions?
As explained above, under Polish law, an EIA decision is a decision concluding the EIA procedure and setting environmental conditions for a decision giving final authorisation of the project (for the development consent).
The EIA decision may be challenged by the parties to the proceedings. According to Article 74(3a) of the EIA Act, the status of party to proceedings concerning the EIA decisions is granted to the developer and owners of (and holders of some other rights[11] to) the properties located in the area which will be affected by the proposed project. This area is understood as:
the anticipated area on which the project will be carried out and the area located within 100 m of the borders of that area;
the plots on which, as a result of implementation, exploitation or use of the project, the environmental quality standards would be exceeded, or
plots located within the range of a significant impact of the project, which may introduce restrictions on the development of the real estate.
The EIA decision may also be challenged by NGOs which are admitted to participate in the proceedings with rights of a party.
An EIA decision may be challenged before the authority of second instance within 14 days after the date when decision has been delivered to a given party or NGO (see point 1.7.1). The decision of the second instance authority may be challenged before the administrative court within 30 days after the date when the decision has been delivered to a given party or NGO. The verdict of the voivodship administrative court may be challenged before the Supreme Administrative Court within 30 days after the verdict along with its written justification has been delivered to a given party.
4) Can one challenge the final authorisation? Under what conditions, if one is an individual, an NGO, a foreign NGO?
The right to challenge a final authorisation (decision subsequent to the EIA decision), depends on the specific provisions regulating particular types of final authorisations (construction permits, water permits, concessions for extraction of minerals etc.). These specific provisions may amend the general rules regarding the scope of parties to the proceedings and hence the scope of persons entitled to challenge the decision; they also may limit the rights of NGOs. See answer to question 1.4.2) for details.
5) Scope of judicial review – control on substantive/procedural legality. Can the court act on its own motion?
In an appeal lodged with the administrative court, the claimant may raise both procedural and substantive issues.
The administrative court of first instance is not bound by the limits of the appeal which means that it may find other flaws in the challenged decision than those presented by the claimant (so in this sense the court may act on its own motion). The Supreme Administrative Court is in principle bound by the appeal save for certain serious errors of the proceedings listed in Article 183 § 2 PACLA.
However, at the stage of court proceedings, the possibility to take and examine new evidence is strictly limited. The administrative court of first instance examines in principle the legality of the acts or omissions of the administrative authority, which includes verifying whether the authority has correctly established or assessed the facts (merits) of the case. The verification by the court consists in examining the proceedings by the administrative authorities (of both instances), including determining whether the authorities had correctly taken into account and assessed the evidence available in the case, including the technical documents.
According to Article 133 § 1 PACLA, the verification by the administrative court shall be based on the documents available in the file on the case and the court **has no mandate to take evidence on its own**. The only exception from this general rule is provided by Article 106 § 3 PACLA, according to which the court may examine additional documents as evidence, but only when it will not ”excessively” prolong the proceedings, which means that there will be no need to adjourn the trial.
Administrative courts, unlike civil courts, have no competence to call expert witnesses.
Consequently, the assessment of substantive issues raised by the parties is limited by the lack of scientific (technical etc.) knowledge of the judges. In practice, the administrative courts rely on the assessment by the administrative authorities, examining only whether the authorities took into account all evidence available, and whether proved it in the reasoning of the decision.
6) At what stage are decisions, acts or omissions challengeable?
See answers to questions 1.8.1) - 1.8.4) above.
7) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?
There is a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures.
There is one exception to this rule, namely when the decision has been issued in the first instance by a Minister (or another central authority which has no higher instance over it). In EIA-related cases such an exception concerns only the EIA decision for a nuclear power plant, as this decision is to be issued by the General Director for Environmental Protection. In this case, a party dissatisfied with the decision may request the authority to reconsider the case (Art. 127 § 3 APC). In this situation, the party may decide not to exercise the right to request reconsideration, but to lodge a complaint directly to the administrative court instead (Art. 52 § 3 PACLA).
8) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc., not meaning the requirement determined under point 12?
There is no requirement to participate actively in the administrative proceedings.
9) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?
Although there is no separate provision transposing this requirement, the legal system in its entirety as described in this document, including provisions on legal aid, may be considered to provide for fair and equitable review proceedings.
Moreover, it should be mentioned that neither the authority of the second instance, nor the administrative court of the first instance (the Regional Administrative Court) are bound by the scope of the appeal and arguments presented by the claimant. In consequence, where the claimant misses an important ground for annulment due to a lack of (legal or other) knowledge, the authority or court would act in their interest anyway.
10) How is the notion of “timely” implemented by the national legislation?
As explained under points 1.7.1) and 1.7.2), the administrative authority of the second instance should deliver its decision within a month after it receives the appeal (Article 35 § 3 APC). The appeal is however to be filed not directly to the authority of the second instance but via the authority of the first instance - which, within 7 days after receipt of the appeal, shall transfer it together with the entire documentation of the case to the authority of the second instance (Article 129 § 1 and Article 133 APC). The time limit to deliver the administrative decision is however called “instructional” for the authority, which means that in practice this may take longer (according to Article 36 APC, any extension of the proceedings shall be reasonably justified and parties shall be informed; in case of excessive length of proceedings or administrative inaction the party may lodge a complaint to the administrative court). There no deadline set for the administrative court to deliver its judgment in EIA-related cases.
11) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to this sector apart from the general national provisions?
In theory, rules on injunctive relief as described under point 1.7.2. apply also to EIA decisions.
However, in practice, administrative courts can refuse to suspend the execution of EIA decision, justifying this by the fact that the EIA decision does not give the right yet to commence the development of the project (as the developer needs to obtain another decision(s)) - see verdict of the Supreme Administrative

Court of 6 July 2010, II OZ 658/10; verdict of the Supreme Administrative Court of 14 October 2010, II OSK 2028/10; verdict of the Regional Administrative Court in Wrocław of 10 September 2010, II SA/Wr 433/10.
At the same time, at the stage of certain 'subsequent decisions' both the circle of parties and the possibility for environmental organisations to participate are limited (see remarks above) and thus often there is no one who could challenge a subsequent decision (e.g. a construction permit) and file a motion for suspension of its execution (apart of course from the developer who initiated the proceedings but he is normally not interested in challenging a positive decision he has received).

1.8.2. Integrated Pollution Prevention and Control (IPPC)/Industrial Emissions Directive (IED) - provisions related to Directive 2003/35/EC

1) Country-specific IPPC/IED rules related to access to justice

See answers below.

2) Standing rules, at what stages can one challenge decisions (if one is an NGO, a foreign NGO, a citizen)? Is the final decision challengeable?

According to the general rules, integrated permits issued on the basis of provisions transposing the IED may be challenged by parties to the proceedings and by environmental NGOs (including foreign ones) enjoying the rights of a party on the basis of Article 44 of the EIA Act (see answers under points 1.4.1) and 1.4.2)).
The scope of parties to the proceedings regarding permits is however very limited by Article 185(1) and (1a) of the EPLA. According to Article 185(1), the status of a party is granted only to the operator of the installation subject to the permit and - in very exceptional cases, i.e. when a so-called "restricted use area" is to be created around the installation - to owners of properties included into the restricted use area. The Supreme Administrative Court stated in a verdict of 24 April 2018 (II OSK 2743/17) that this limitation of the circle of parties is in non-compliance with the IED. The Court verdict is however binding with regard to a given case only. According to Article 185(1a), where the integrated permit regulates water taking or discharge of waste water, the following entities also shall be parties to the proceedings: the Polish Waters authorities,- for inland flowing waters and groundwater; the minister responsible for maritime economy, for waters of the territorial sea and internal sea waters.

3) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)

In Poland procedures related to IED are separate from EIAs so there is no screening phase.

4) Rules on standing relating to scoping (conditions, timeframe, public concerned)

In Poland procedures related to IED are separate from EIAs so there is no scoping phase.

5) At what stage(s) can the public challenge the administrative decisions on environmental projects? Is there a deadline to challenge decisions?

The "Decision on environmental project" under the IED is the integrated permit. It may be challenged before the second instance authority within 14 days after it is delivered to a given party. The decision of the second instance authority may be challenged before the administrative court within 30 days after the date when the decision has been delivered to a given party or NGO. The verdict of the regional administrative court may be challenged before the Supreme Administrative Court within 30 days after the verdict along with its written justification has been delivered to a given party.

6) Can the public challenge the final authorisation?

The "final authorisation" here is the integrated permit. It may be challenged according to the rules described under points 1.8.2.2) and 1.8.2.5).

7) Scope of judicial review – control on substantive/procedural legality. Can the court act on its own motion? Is it possible to challenge decisions, acts or omissions?

In an appeal lodged with the administrative court the claimant may raise both procedural and substantive issues.
The administrative court of first instance is not bound by the limits of the appeal, which means that it may find other flaws in the challenged decision than those presented by the claimant (so in this sense the court may act on its own motion). The Supreme Administrative Court is in principle bound by the appeal save for certain serious errors of the proceedings listed in Article 183 § 2 PACLA.
However, at the stage of court proceedings, the possibility to take and examine new evidence is strictly limited. The administrative court of first instance examines in principle the legality of the acts or omissions of the administrative authority which includes verifying the authority has correctly established or assessed the facts (merits) of the case. The verification by the court consists in examining the proceedings by the administrative authorities (of both instances), including determining whether the authorities had correctly taken into account and assessed the evidence available in the case, including the technical documents
According to Article 133 § 1 PACLA, the verification by the administrative court shall be based on the documents available in the file on the case and the court **has no mandate to take evidence on its own**. The only exception from this general rule is provided by Article 106 § 3 PACLA, according to which the court may examine additional documents as evidence, but only when it will not "excessively" prolong the proceedings, which means that there will be no need to adjourn the trial.
Administrative courts, unlike civil courts, have no competence to call expert witnesses.
Consequently, the assessment of substantive issues raised by the parties is limited by the lack of scientific (technical etc.) knowledge of the judges. In practice, the administrative courts rely on the assessment by the administrative authorities, examining only whether the authorities took into account all evidence available, and whether proved it in the reasoning of the decision.

8) At what stage are these challengeable?

Permits issued under provisions transposing the IED are challengeable after they have been issued by the competent authority, within 14 days after the permit is delivered to a given party.

9) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

There is a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures.

10) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc., not meaning the requirement determined under point 12?

There is no requirement for the parties to participate actively in the administrative proceedings.

11) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

Although there is no separate provision transposing this requirement, the legal system in its entirety as described in this document, including provisions on legal aid, may be considered to provide for fair and equitable review proceedings.

12) How is the notion of "timely" implemented by the national legislation?

As explained under point 1.7.1) and 1.7.2), the administrative authority of the second instance should deliver its decision within a month after it receives the appeal (Article 35 § 3 of APC). The appeal is however to be filed not directly to the authority of the second instance but via the authority of the first instance - which, within 7 days after receipt of the appeal, shall transfer it together with the entire documentation of the case to the authority of the second instance (Article 129 § 1 and Article 133 APC). The time limit to deliver the administrative decision is however called "instructional" for the authority which means that

in practice this may take longer (according to Article 36 APC any extension of the proceedings shall be reasonably justified and parties shall be informed; in case of excessive length of proceedings or administrative inaction the party may lodge a complaint to the administrative court). There no deadline set for the administrative court to deliver its judgment in IED-related cases.

13) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to this sector apart from the general national provisions?

Rules on injunctive relief as described under point 1.7.2. apply also to permits issued under provisions transposing the IED.

14) Is information on access to justice provided to the public in a structured and accessible manner?

It is obligatory to provide access to justice information, in the case of an administrative decision (Article 107 § 1 point 7 APC) and of a judgement (Article 140 § 2 PACLA).

1.8.3. Environmental liability[12]

Country-specific legal rules relating to the application of the Environmental Liability Directive 2004/35/EC, Articles 12 and 13

1) Which requirements need to be fulfilled for natural or legal persons (including environmental NGOs) to have the decision taken on environmental remediation by the competent authority reviewed by a court or another independent and impartial body in accordance with Article 13(1) ELD?

Under Polish law, everyone is entitled to a "request for action" as regulated by Article 12 of the ELD and if the authority refuses to take action (considering the request unjustified), every person whose request was denied may challenge this refusal to the authority of the second instance and then to the court (Article 24 of the Act of 13 April 2007 on Prevention and Repair of Environmental Damage[13]).

However, where the authority issued a decision on remedial or prevention measures, only the environmental NGO which made the request for action - and not other persons who had made the request - is entitled to challenge this decision. Apart from the NGOs, the addressee of the decision and owner of the land on which the damage occurred and where the measures are to be undertaken are regarded as parties to the proceedings and therefore entitled to challenge the decision.

2) In what deadline does one need to introduce appeals?

The deadline to challenge a decision on remedial / preventive measures before the administrative authority of the second instance is 14 days after the date when the decision has been delivered (this is the normal deadline applicable for all administrative decisions).

The final decision of the second instance authority may be appealed against to the administrative court within 30 days of its delivery to the complainant.

3) Are there requirements for observations accompanying the request for action pursuant to Article 12(2) ELD and if yes, which ones?

According to Article 24(3) of the Act on Environmental Damage, the request for action shall contain:

the name of the person reporting an imminent threat of environmental damage or environmental damage and their address;

information about the place where the environmental damage or threat of environmental damage has occurred - if possible by providing the address or number of the parcel of land;

information on the time when the damage or threat has occurred - if possible by indicating the date of its occurrence;

a description of the situation identified indicating the existence of the damage or threat, including, where possible, its nature.

According to Article 24(4) of the Act on Environmental Damage, the notification should, as far as possible, contain documentation confirming the occurrence of the environmental damage or threat of damage and the identity of the responsible person. Moreover, in the case of damage to land, the notification should, as far as possible, include the names of the harmful substances and contamination tests carried out by a certified laboratory.

4) Are there specific requirements regarding 'plausibility' for showing that environmental damage occurred, and if yes, which ones?

There are no specific regulations on how, and to what extent, plausibility must be proven, but the aforementioned Article 24(4) of the Act on Environmental Damage requires proof of the damage or threat "as far as possible".

5) Is a certain manner required and/or time limits set, and if yes, which ones, as regards the notification of the decision by the competent authority to the entitled natural or legal persons (including the entitled environmental NGOs)?

According to the APC, every administrative decision has to be delivered to the parties to the proceedings and to the persons with the status of a party. The APC does not set any deadline for delivery, but the common assumption is that it should happen as soon as possible.

In principle, a decision is to be delivered by post (or – if the parties so wish– electronically). However, in the case of decisions related to environmental liability cases (i.e. issued on the basis of the Act on Environmental Damage), when there are more than 20 parties to the proceedings, the "delivery" of the decision takes the form of a public announcement (Art. 20a of the Act on Environmental Damage and Art. 49-49a APC). The public notice is to be placed on the Internet (in the official Public Information Bulletin from the authority) as well as on noticeboards and in other places commonly used for notices in towns where the parties live. The public notice does not contain the decision itself, but states that the decision has been issued and provides information where the parties can make themselves acquainted with it.

6) Does the MS apply an extension of the entitlement to request action by competent authority from damage to the environment in cases of imminent threat of such damage?

The MS applies an extension of the entitlement to request action by competent authority from damage to the environment in cases of imminent threat of such damage.

7) Which are the competent authorities designated by the MS?

The main authority competent in cases of environmental damage and the threat of environmental damage is the Regional Director of Environmental Protection (governmental authority). There are 16 Regional Directors, one in each region. Only in cases of damage / threat caused by GMOs is, the competent authority the Minister of Climate and Environment.

The General Director of Environmental Protection is the second instance authority for Regional Directors of Environmental Protection and for maintaining the national register of environmental damage and threats of damage.

8) Does the MS require that the administrative review procedure be exhausted prior to recourse to judicial proceedings?

The MS requires that the administrative review procedure be exhausted prior to recourse to judicial proceedings. There is one exception to this rule, namely when the decision has been issued in the first instance by a Minister. In cases related to environmental liability, this exception may concern only the damage caused by GMOs, as only then is the Minister the authority competent in the first instance. In this case, a party dissatisfied with the decision may request the authority to reconsider the case (Art. 127 § 3 APC). In this situation, the party may decide not to exercise the right to request reconsideration, but to lodge a complaint directly to the administrative court instead (Art. 52 § 3 PACLA).

1.8.4. Cross-border rules of procedures in environmental cases

1) Rules on involving other countries? At which stage of the procedure is there a possibility to challenge environmental decisions?

Where the transboundary procedure is required according to provisions transposing the EIA Directive (and the Espoo Convention) or the IED, other countries are involved in an intergovernmental process. This process is to be carried out within the proceedings concerning EIA decisions or integrated permits respectively. The intergovernmental process itself does not mean granting access to justice to the foreign public, but may help to identify the public concerned in an affected country and to inform the public about the decision issued - as the authorities of the affected country are involved then.
The rules for granting standing to foreign persons (individuals and NGOs) will be explained below.
The problem is however that they may not receive proper information about the decision. This problem is relevant in particular for decisions issued on the basis of provisions transposing the ELD. Although there is an obligation to inform the affected country about the environmental damage, there is no “Espoo-like” procedure which might involve the public from the affected country.

2) Notion of public concerned?

Polish law does not use the notion of public concerned in the meaning of persons entitled to express their comments and opinions during the public participation procedure (concerning EIAs or integrated permits), as this possibility is granted to every person.
The scope of the “public concerned having a sufficient interest”, i.e. persons having standing, is described below under questions 3) and 4).

3) Do NGOs of the affected country have standing? When and to what court should they submit their appeals? What procedural assistance are they eligible for (legal aid, request for injunctive relief, interim measures, pro bono)?

Administrative review proceedings

The APC does not contain any specific provisions regarding the foreign public (i.e. individuals living abroad in affected countries or legal persons, including NGOs, based in these countries) but does not exclude them either. This means that there are no legal obstacles for them to enjoy the same rights as persons living or based in Poland, provided that they fulfil the same conditions as Polish citizens or NGOs respectively. Consequently, the same limitations will apply to them. As far as NGOs are concerned, it should be assumed that public authorities and courts will check whether they are registered in their own respective countries (i.e. whether they are not ad hoc informal groups). These NGOs should submit proof of registration (inclusion in relevant registers) in their own respective countries.

Court review proceedings

Article 300 PACLA refers to the Civil Procedure Code provisions on participation of foreign persons. According to Article 1117 § 1 and 2 of the Civil Procedure Code, the capacity of foreign persons to take part in civil proceedings (proceedings capacity) shall be assessed according to their domestic law. This means that where an NGOs has a right to participate in its own country, it will also enjoy that right before the Polish courts.
According to Article 299 PACLA, foreign persons participating in the proceedings, living or based abroad and outside the European Union, Switzerland or EFTA countries, are obliged to nominate a person in Poland entitled to pick up correspondence from the court.
Foreign NGOs fulfilling the conditions for standing are entitled to the same procedural assistance as is available to Polish NGOs (there are no legal obstacles to that). However, there is no practice in this regard (no cases of foreign NGOs applying for this kind of assistance were identified), so it is impossible to say how the situation would look in practice.

4) Do individuals of the affected country have standing? What procedural assistance are they eligible for (legal aid, request for injunctive relief, interim measures, pro bono)?

The main condition for individual persons to become a party to the proceedings and thereby to acquire the right to challenge a decision would be to have legal interest in a case, for example to be the owner of a property affected by the activity authorised by the decision. The concept of legal interest has been described under question 4.1.3). Also the same limitations of the circle of parties as described 1.4.2) and 1.8 apply to foreign individuals.
The problem with their access to justice is that in Poland there is no practice to identify the public concerned abroad and to inform them (see answer to question 5) below).

Administrative review proceedings

The APC does not contain any specific provisions regarding the foreign public (i.e. individuals living abroad in affected countries) but does not exclude them either. This means that there are no legal obstacles for them to enjoy the same rights as persons living or based in Poland, provided that they fulfil the same conditions as Polish citizens. Consequently, the same limitations will apply to them.

Court review proceedings

Article 300 PACLA refers to the Civil Procedure Code provisions on participation of foreign persons. According to Article 1117 § 1 and 2 of the Civil Procedure Code, the capacity of foreign persons to take part in civil proceedings (proceedings capacity) shall be, in principle, assessed according to their domestic law. This means that where an individual or an NGOs has a right to participate in its own country, it will also enjoy that right before the Polish courts. However, according to Article 1117 § 3 of the Civil Procedure Code, an individual who would not have the capacity to take part in proceedings in his own country but fulfils the requirements to have this capacity under Polish law, would have this capacity before the Polish courts (this rule applies to natural persons, so not to NGOs).
According to Article 299 PACLA, foreign persons participating in the proceedings, living or based abroad and outside the European Union, Switzerland or EFTA countries, are obliged to nominate a person in Poland entitled to pick up correspondence from the court.
Foreign citizens fulfilling the conditions for standing are entitled to the same procedural assistance as available for Polish citizens (there are no legal obstacles to that). However, there is no practice in this regard (no cases of foreign citizens applying for this kind of assistance were identified), so it is impossible to say how the situation would look in practice.

5) At what stage is the information provided to the public concerned (including the above parties)?

In cases when the Espoo-based transboundary procedure is carried out, the competent authorities of the affected country will receive a translated decision issued by the Polish authorities. The decision is always accompanied by information on the remedies available. Usually, the foreign authorities take the responsibility for informing their own public about the decision issued and how to make themselves acquainted with it.
Where no Espoo transboundary procedure takes place, the foreign public is neither identified nor informed by Polish authorities.

6) What are the timeframes for public involvement including access to justice?

There are no special regulations on this. It should be assumed that the deadlines for filing an appeal by foreign persons having standing will be counted in the same way as those foreseen for the Polish public.

7) How is information on access to justice provided to the parties?

See answer to question 5) above.

8) Is translation, interpretation provided to foreign participants? What are the rules applicable?

All administrative and judicial proceedings are to be conducted out in Polish. The proceedings before the authority of the second instance are conducted out mainly in writing. The foreign party is then responsible for preparing its appeal, motions etc. in Polish. In proceedings before the administrative court, the foreign party may ask the court to provide the services of an interpreter (Article 5 § 2 of the Act on the common courts system in conjunction with Article 49 § 1 Act of 25 July 2002 on the administrative courts system).

9) Any other relevant rules?
There are no other relevant rules.

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[1] See data available here.
[2] There is one exception to the rule that a complaint to the administrative authority of second instance is required, namely when the decision has been issued in the first instance by a Minister or a Self-governmental Appeal Board (authorities which have no "higher instance" over them). In such cases, a party dissatisfied with the decision may request the authority to reconsider the case (Art. 127 § 3 APC). In such situations, the party may decide not to exercise the right to request for the reconsideration, but to lodge a complaint directly to the administrative court instead (Art. 52 § 3 PACLA).
[3] Although the proceedings before the administrative court are separate from the administrative proceedings (formally, it is not the next stage of the administrative proceedings).
[4] There are some exceptions to this rule indicated in Art. 175 § 2, Art. 175 § 2a and Art. 175 § 3 PACLA - the most important of them is the situation where the cassation appeal is lodged by the prosecutor or the Ombudsman.
[5] The evidence on the basis of which the relevant facts were established is proved to be false; the decision was issued as a result of an offence; the decision was issued by an employee or public administration body which is subject to exclusion; the party did not participate in the proceedings through no fault of its own; new facts or new evidence relevant to the case or new evidence existing on the date of the decision, unknown to the authority which issued the decision, come to light; the decision was issued without obtaining the legally required position of another authority; the preliminary issue has been resolved by a competent authority or a court other than the assessment adopted when issuing the decision; the decision was issued on the basis of another decision or court ruling, which was subsequently revoked or amended.
[6] A decision: was issued in violation of the provisions on jurisdiction; was issued without legal basis or in gross breach of the law; concerns a case previously resolved by another final decision or a case which has been tacitly resolved; was addressed to a person who is not a party in the case; was unenforceable on the date of its delivery and its unenforceability is permanent; if executed, it would give rise to a criminal offence; it contains a defect which makes it legally invalid.
[7] Stamp Duty Act of 16 November 2006 (codified text OJ of 2020, item 1546 as amended).
[8] Regulation of the Minister of Justice of 22 October 2015 on advocates' fees (J.L. of 2015, item 1800 as amended) and Regulation of the Minister of Justice of 22 October 2015 on attorneys' fees (codified text J.L. of 2018 item 265).
[9] For example, complaints against permits for emissions, EIA decisions other decisions allowing for the use of the environment are considered as cases in which no financial value is set. The financial value may be attributed to complaints against decisions imposing environmental fees or fines but in such cases only the company or other entity obliged to pay the fees or fines has standing (citizens or environmental NGOs have no standing here).
[10] The EIA Act Amendment, aimed at changing some rules on access to justice in EIA related cases, is currently being prepared. Currently (January 2021) the final version of the Amendment is not known yet.
[11] So called limited real rights i.e.: usufructs, easements (servitudes), pledges, cooperative ownership rights to premises and mortgages
[12] See also Case C-529/15, EU:C:2017:419.
[13] Act of 13 April 2007 on the Prevention and Remediation of Environmental Damage Of 2019, item 1862 as amended).

Access to justice falling outside of the scope of EIA, IPPC/IED, access to information and ELD

1.1. Decisions, acts or omissions concerning specific activities falling within the scope of EU environmental legislation outside the scope of the EIA and IED Directives[1]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedures for adopting the decision, act or omission and its content (in particular, the conditions to be fulfilled and any time-limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

As explained under points 1.4.1) and 1.4.3), under Polish law, individual decisions relating to the environment may be challenged by: (a) natural and legal persons who are considered as "parties to the administrative proceedings", (b) entities (such as NGOs, the public prosecutor or the Ombudsman) who participate in the proceedings "with the rights of a party".

(a) According to Article 28 APC, a party is a "*person whose legal interest or duty is affected by the proceedings or who demands activities of authority because of this legal interest or duty*". The definition of a "*party to the administrative proceedings*" is therefore crucial to understanding who can challenge decisions of the administration.

Therefore, according to the general rules provided by the APC, standing is granted to those individuals (whether natural or legal persons) who have a "legal interest" (which includes also administrative duties). A person has a 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 always has a "legal interest" in the case and thus have standing. Such persons are considered to be "parties" to the administrative procedure.

As proceedings **before the administrative courts** in the case of individual administrative decisions are a follow-up to proceedings before the authority of the second instance, the circle of persons entitled to file a complaint to the court of the first instance is determined by the administrative phase of proceedings. However, a person who did not take part in the administrative proceedings but whose legal interest is affected by the proceedings may also file a complaint (Article 50 § 1 PACLA).

(b) In proceedings not requiring public participation, environmental NGOs may apply to be admitted to the proceedings with the status of a party. The legal basis for this is Art. 31 APC according to which 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. In this case the NGO has to prove that:

it is registered in a Court register or in a register maintained by the Starost (head of self-governmental authority in the district), as ad hoc groupings do not have standing;
its participation in the proceedings is justified by the objectives established in the by-laws of the organisation (in other words if the subject matter of the case is in conformity with the organization's objectives);
its participation in the proceedings is justified by the "public interest".
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 the merit justification (need) for participation by the organisation in a given case (in other words: the authority decides whether it considers it useful, from the point of view of the "public interest", to allow the organisation to participate). A refusal may be challenged by the organisation to the authority of second instance and then - subsequently - to the administrative court.
The organisation which took part in the preceding administrative proceedings on the basis of Article 31 of APC has standing also before the administrative courts. An NGO which has not taken part in the preceding administrative proceedings is not entitled to challenge the decision of the second instance authority, i.e. has no right to file a complaint to the administrative court (Article 50 § 1 PACLA).
However, if the judicial-administrative proceedings, initiated by another party, concerns the scope of the NGO's activity, participation of the organisation may be granted by the court of its own motion; the courts' refusal may be challenged before the administrative court of second instance (Article 33 § 2 PACLA). According to case law, the court also has to verify whether the "public interest" speaks for the participation of the NGO.
The rules described above may be modified by specific provisions regarding particular decisions:
Article 185(1) EPLA limits the circle of parties in the proceedings regarding permits for emissions of gases into THE air (i.e. other than integrated permits) to the operator of the installation subject to the permit. Only in very exceptional cases - when a so-called "restricted use area" is to be created around the installation - are certain neighbours also regarded as parties to the proceedings.
Article 401(1) WLA specifies that parties to the proceedings regarding decisions authorising the use of water (e.g. water permits) and hence entitled to challenge these decisions are: the project proponent and the persons who will be affected by the intended use of water or the entities within the range of impact of the planned water facilities. Art. 402 WLA excludes the participation of NGOs in these proceedings and their right to challenge the decisions issued.
Article 41 GMLA specifies that parties to the proceedings regarding concessions for extraction of mineral resources are only the owners of properties on which the mining activity is to be carried out.
Article 28(2) BLA specifies that parties to the proceedings regarding construction permits are only investors and owners, perpetual usufructuaries or managers of properties located in the area of impact of the building object. The term "impact of the building object" is defined by Article 3(20) BLA as "an area designated in the vicinity of a building object on the basis of specific regulations, introducing restrictions on development, including buildings, of that area". Article 28(3) BLA excludes the participation of NGOs in these proceedings and their right to challenge the decisions issued.
Decisions issued on the basis of the WLA, GMLA and BLA may concerns projects subject to EIA or other projects. The above limitations regarding persons having standing in such cases jeopardise the effectiveness of access to justice in these matters, as in practice in some cases only the developer (operator) who initiated the proceedings is entitled to challenge a decision.
An appeal against the decision of the authority of the first instance to the authority of the second instance shall be filed within 14 days from the date when the decision of the first instance authority has been delivered to the appealing party. The decision of the second instance authority may be challenged before the administrative court within 30 days after the date when the decision has been delivered to a given party or NGO. The verdict of the regional administrative court may be challenged before the Supreme Administrative Court within 30 days after the verdict along with its written justification has been delivered to a given party.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

Administrative review

In an appeal lodged with the administrative authority of the second instance, the claimant may raise both procedural and substantive issues. The authority shall examine all the allegations but is not bound by the limits of the appeal, which means that it may find other flaws of the challenged decision than those presented by the claimant.

Judicial review

In an appeal lodged with the administrative court, the claimant may raise both procedural and substantive issues.
The administrative court of first instance is not bound by the limits of the appeal, which means that it may find other flaws in the challenged decision than those presented by the claimant (so in this sense the court may act on its own motion). The Supreme Administrative Court is in principle bound by the appeal save for certain serious errors in the proceedings listed in Article 183 § 2 PACLA.
However, at the stage of court proceedings, the possibility to take and examine new evidence is strictly limited. The administrative court of first instance examines in principle the legality of the acts or omissions of the administrative authority which includes verifying whether the authority has correctly established or assessed the facts (merits) of the case. The verification by the court consists in examining the proceedings by the administrative authorities (of both instances), including determining whether the authorities had correctly taken into account and assessed the evidence available in the case, including the technical documents.
According to Article 133 § 1 PACLA, the verification by the administrative court shall be based on the documents available in the file on the case and the court **has no mandate to take evidence on its own**. The only exception from this general rule is provided by Article 106 § 3 PACLA, according to which the court may examine additional documents as evidence, but only when it will not "excessively" prolong the proceedings, which means that there will be no need to adjourn the trial.
Administrative courts, unlike civil courts, have no competence to call expert witnesses.
Consequently, the assessment of substantive issues raised by the parties is limited by the lack of scientific (technical etc.) knowledge of the judges. In practice, the administrative courts rely on the assessment by the administrative authorities, examining only whether the authorities took into account all evidence available, and whether they proved it in the reasoning behind the decision.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

There is a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures.
There is one exception to this rule, namely when the decision has been issued in the first instance by a Minister or a Self-governmental Appeal Board (authorities which have no "higher instance" over them). In such cases, a party dissatisfied with the decision may request the authority to reconsider the case (Art. 127 § 3 APC). In this situations, the party may decide not to exercise the right to request reconsideration, but to lodge a complaint directly to the administrative court instead (Art. 52 § 3 PACLA).

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

There is no requirement to participate actively in the administrative proceedings.

5) Are there some grounds/arguments precluded from the judicial review phase?

There are no grounds/arguments precluded from the judicial review phase. However, at the stage of proceedings before the Supreme Administrative Court only the proceedings before the administrative court of the first instance are subject to examination, so the arguments have to be focused on this phase.

6) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

Although there is no separate provision transposing this requirement, the legal system in its entirety as described in this document, including provisions on legal aid, may be considered to provide for fair and equitable review proceedings.

7) How is the notion of "timely" implemented by the national legislation?

As explained under point 1.7.1) and 1.7.2), the administrative authority of the second instance should deliver its decision within a month after it receives the appeal (Article 35 § 3 APC). The appeal is however to be filed not directly to the authority of the second instance but via the authority of the first instance - which, within 7 days after receipt of the appeal, shall transfer it together with the entire documentation of the case to the authority of the second instance (Article 129 § 1 and Article 133 APC). The time limit to deliver the administrative decision is however called "instructional" for the authority which means that in practice this may take longer (according to Article 36 APC, any prolongation of the proceedings shall be reasonably justified and parties shall be informed; in case of excessive length of proceedings or administrative inaction the party may lodge a complaint to the administrative court). There no deadline set for the administrative court.

8) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

Rules on injunctive relief as described under point 1.7.2. apply to all administrative decisions.

9) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive, and do these include express statutory reference to a requirement that costs should not be prohibitive?

Within the **administrative review procedure**, each party bears its own costs, which means that the wining party does not recover its costs (the second instance authority does not decide on costs).

Filing an appeal before the administrative authority of the second instance is however free of charge.

According to Article 200 PACLA, before the administrative **court of first instance**, if the authorities lose the case, they have to pay the claimant's costs. This includes:

the court fees,

the costs of legal representation which are however limited to the cap set by specific provisions[2]. In cases in which no financial value is set (and the majority of environmental cases belong to this category[3]) this cap is PLN 480 which is about EUR 107 (normally these are not the real costs which the claimant paid).

If the **authority wins, it is not entitled to claim its costs**. Other participants in the court proceedings (persons referred to in Art. 33 PACLA) bear their own costs; the losing party is not obliged to cover them.

There is no express statutory reference to a requirement that costs should not be prohibitive, however if the **authority wins, it is not entitled to claim its costs**. Also, the above court fees are rather modest.

Articles 203 and 204 f PACLA provide for rules on the distribution of costs in proceedings before the **court of second instance**. This includes the court fees and also the costs of legal representation but only up to the cap which in the vast majority of environmental cases brought by citizens or by environmental NGOs is PLN 480 (about EUR 107).

Article 203 regulates the situation when the court of second instance allowed the appeal. According to this provision:

in cases where the court of first instance dismissed the complaint and the court of second instance annulled the first instance court's judgement, the authority whose decision was subject to proceedings before the court of first instance has to pay the costs of the person who filed the appeal,

in cases where the court of first instance allowed the complaint and the court of second instance annulled the first instance court's judgement, the claimant in the proceedings before the court of first instance has to pay the costs of the person/authority who filed the appeal.

Article 204 regulates the situation where the court of second instance dismissed the appeal. According to this provision:

in cases where the court of first instance dismissed the complaint and the court of second instance sustained the first instance court's judgement - the person who filed the appeal has to pay the costs of the authority whose decision was subject to proceedings before the court of first instance,

in cases where the court of first instance allowed the complaint and the court of second instance sustained the first instance court's judgement - the person who filed the appeal has to pay the costs of the claimant in the proceedings before the court of first instance.

However, if an appeal was filed by an NGO acting in the public interest, the courts in practice do not order the NGO to reimburse the costs to another party (i. e., they exempt the NGO from the payment of costs).

1.2. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with national implementing legislation for the Strategic Environmental Assessment (SEA) Directive 2001/42/EC[4]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedures for adopting the decision, act or omission (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

In Poland, plans, programmes and other strategic documents, including those regarding environment, are to be adopted by:

self-governmental authorities; there are three levels of self-governmental authorities: community (*gmina*), district or poviat (*powiat*) and region (*województwo*) or

governmental authorities: either at the central level (by ministers or other central agencies) or at the regional level.

Specific Acts (*ustawy*) specify when and by whom a given document shall be adopted.

Certain of these documents have a status of "local law" which means that they are sources of law recognized by the Polish Constitution; others do not have this status but still are important for the management of a given area (they influence the individual decisions, determine activities by the competent authorities, shape the development etc.).

The circle of persons entitled to challenge the plans and programmes is determined by the Acts providing the general basis for adoption of these plans and programmes (which are in this regard *lex specialis* in relation to the general rules provided by PACLA). These are:

For plans and programmes to be adopted by various levels of self-governmental authorities:

The Act of 8 March 1990 on Communal Self-Government – Art. 101(1),

The Act of 5 June 1998 on Poviat Self-Government – Art. 87(1),

The Act of 5 June 1998 on Regional Self-Government – Art. 90(1).

For plans and programmes to be adopted by governmental authorities:
The Act of 23 January 2009 on the Voivod and the Governmental Administration in the Voivodship - Arts. 63(1).
Standing of individual persons
The Act on Communal Self-Government and the Act on Poviat Self-Government stipulate that a strategic document adopted by the administration **may be challenged by persons whose legal interest or right has been infringed by that document**; these persons may file a claim to the administrative court (Article 101(1) of the Act on Communal Self-Government; Art. 87(1) of the Act on Poviat Self-Government).
The Act on Regional Self-Government allows people to challenge only the plans and programmes with the status of "local law" and grants the right to challenge them to **persons whose legal interest or right has been infringed by the provision of the local law** (Art. 90(1) of the Act on Regional Self-Government).
Also Article 63(1) of the Act on the Voivod and the Governmental Administration in the Voivodship allows for challenging the plans and programmes with the status of "local law" and grants the right to challenge these plans to **persons whose legal interest or right has been infringed by the provision of the local law** (thus the circle of persons entitled is exactly the same as in the above cited Acts on self-governmental authorities).
As explained above, the "legal interest" is understood in Poland as an interest protected by any provision of (administrative, civil or other) law - the classic example of such interest is ownership of property (which could be affected e.g. by a construction of a new project).
The above cited four Acts (on self-government authorities and on governmental authorities) grant access to justice to persons whose legal interest is "involved" in the case, and who can prove that their legal interest or right has been infringed (the mere threat or possibility of infringement is insufficient).
This means that the **group of persons entitled to challenge a plan or programme is very narrow - narrower than in case of individual decisions**, where it is sufficient to demonstrate the mere existence of a legal interest in the case and not its violation (this view was confirmed by the Supreme Administrative Court e.g. in the verdict of 22 February 2017 (II OSK 1497/15), in the verdict of 20 November 2014 r. (I OSK 1747/14) and in the decision of 8 October 2013 (II OZ 787/13).
In a number of verdicts, the administrative courts confirmed the above, narrow, understanding of standing to challenge plans or programmes and presented a narrow interpretation of the infringement of the legal interest or right.
For example, in the verdict of 17 October 2017, the Supreme Administrative Court held that the right to challenge the local spatial plan is granted to the person whose legal interest has been infringed by the contested plan, while the infringement must be direct, individual, objective and real, and the complainant must demonstrate a link between the contested resolution and its individual legal position (II OSK 2559/16).
In the verdict of 14 April 2011, the Supreme Administrative Court interpreted Article 87(1) of the Act on Poviat Self-Government and held that this Article should be interpreted narrowly and not in a broad way by deriving a breach of a legal interest from general values or principles of law (I OSK 5/11).
In the verdict of 30 March 2017, the Supreme Administrative Court, in interpreting Art. 101(1) of the Act on Communal Self-Government, held that in order to appeal against a resolution of the Commune Council, a person has to prove that their legal interest has been violated and only that they "have" a legal interest in the case (II OSK 1941/15).
Similar views have been expressed in other verdicts and decisions of the Supreme Administrative Court, e.g.: verdict of 14 November 2017 (II OSK 457/16), verdict of 20 June 2017 (II OSK 2648/15), verdict of 31 May 2017 (II OSK 2298/15), verdict of 20 April 2017 (II GSK 1912/15), verdict of 7 March 2017 (II OSK 1679/15), verdict of 7 March 2017 (II OSK 1587/15), verdict of 10 February 2017 (II OSK 1344/15), verdict of 5 November 2014 (II OSK 977/13), verdict of 25 March 2014 (II OSK 355/14), verdict of 28 June 2007 (II OSK 1596/06).
Following the interpretations of the Supreme Administrative Court, the Regional Administrative Courts apply the same approach.
An appeal to the court is to be submitted at any time, there is no deadline (Art. 53.2a PACLA).
Standing of NGOs
As far as NGOs are concerned, it should be stressed that there is no provision in Polish law allowing them to challenge a plan or programme (unless they had their own legal interest or right infringed, which means they would act as private entities and not in the common interest).
The lack of standing for NGOs in cases concerning of strategic documents is confirmed by the jurisprudence of the Supreme Administrative Court (see verdict of 15 February 2017, II OSK 1277/15; verdict of 21 March 2017, II OSK 2865/15 and order of 23 January 2018, II OSK 3218/17).
2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?
Persons having standing may raise all aspects (regarding both procedural and substantive legality). However, according to jurisprudence the court examines the case only within the limits of the claimant's legal interest. This means that for example in the case of a local spatial plan the court - although it examines the entire procedure regarding the plan - may annul it only with regard to the property of the claimant, as the claimant's legal interest concerns only this piece of land (verdict of the Supreme Administrative Court of 5 June 2014, II OSK 117/13; verdict of the Supreme Administrative Court of 25 November 2008, II OSK 978/08).
3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?
In the case of strategic documents (plans and programmes) the exhaustion of administrative review procedures prior to recourse to judicial review is not required.
4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?
There is no requirement to participate actively in the public consultation phase of the administrative procedure in order to have standing.
5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?
The administrative court of the first instance may suspend execution of the administrative decision subject to complaint - ex officio or on the motion of a party (Article 61 § 3 PACLA).
6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?
In cases concerning plans or programmes, the court fee is fixed at PLN 300 (currently about EUR 66) for the court of first instance and PLN 150 (about EUR 33) for the court of second instance.
According to Article 200 PACLA, before the administrative **court of first instance**, if the authorities lose the case they have to pay the claimant's costs. This includes the court fees and also the costs of legal representation but only up to the cap of PLN 480 (about EUR 107) - normally these are not the real costs which the claimant paid.
In case the **authority wins, it is not entitled to claim its costs**.
Articles 203 and 204 PACLA lay down rules on the distribution of costs in proceedings before the **court of second instance**. This includes the court fees and also the costs of legal representation but only up to the cap of PLN 480 (about EUR 107).

Article 203 regulates the situation where the court of second instance allowed the appeal. According to this provision:
in cases where the court of first instance dismissed the complaint and the court of second instance annulled the first instance court's judgement, the authority whose decision was subject to proceedings before the court of first instance has to pay the costs of the person who filed the appeal,
in cases where the court of first instance allowed the complaint and the court of second instance annulled the first instance court's judgement, the claimant in the proceedings before the court of first instance has to pay the costs of the person/authority who filed the appeal.
Article 204 regulates the situation where the court of second instance dismissed the appeal. According to this provision:
in cases where the court of first instance dismissed the complaint and the court of second instance sustained the first instance court's judgement - the person who filed the appeal has to pay the costs of the authority whose decision was subject to proceedings before the court of first instance,
in cases where the court of first instance allowed the complaint and the court of second instance sustained the first instance court's judgement - the person who filed the appeal has to pay the costs of the claimant in the proceedings before the court of first instance.
However, if an appeal was filed by an NGO acting in the public interest, the courts in practice do not order the NGO to reimburse the costs to another party (i. e., they exempt the NGO from the payment of costs).

1.3. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with the public participation requirements of Article 7 of the Aarhus Convention in respect of plans and programmes not submitted to the procedures set out in the Strategic Environmental Assessment (SEA) Directive 2001/42/EC[5]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedures for adopting the decision, act or omission (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

All rules, as well as the assessment of the effectiveness of the level of access to national courts as described under point 2.2, apply here.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

All rules described under point 2.2 apply here.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

All rules described under point 2.2 apply here.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

All rules described under point 2.2 apply here.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

All rules described under point 2.2 apply here.

6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

All rules described under point 2.2 apply here.

1.4. Decisions, acts or omissions also concerning plans and programmes required to be prepared under EU environmental legislation[6]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the content of the plan (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

All rules described under point 2.2 apply here.

2) Does the form in which the plan or programme is adopted make a difference in terms of legal standing (see also Section 2.5 below)?

Plans or programmes adopted in the form of a Regulation (*rozporządzenie*) by the Council of Ministers or a Minister are not subject to access to justice as described under point 2.2. For them the rules described under point 2.5 do apply.

3) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

All rules described under point 2.2 apply here.

4) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

All rules described under point 2.2 apply here.

5) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

All rules described under point 2.2 apply here.

6) Are there some grounds/arguments precluded from the judicial review phase?

All rules described under point 2.2 apply here.

7) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

Although there is no separate provision transposing this requirement, the legal system in its entirety as described in this document, including provisions on legal aid, may be considered to provide for fair and equitable review proceedings.

8) How is the notion of "timely" implemented by the national legislation?

There no deadline set for the administrative court to deliver its judgment, so it is not implemented.

9) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

All rules described under point 2.2 apply here.

10) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

All rules described under point 2.2 apply here.

1.5. Executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts[7]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedure for adopting or the content of the decision, act or omission of the national regulatory act (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

There is no direct access to the court to challenge a normative instrument. Such an instrument may be subject to a "constitutional complaint" to be lodged with the Constitutional Tribunal, but only with regard to its compliance with the Constitution. According to Article 79 para 1 of the Constitution, "everyone whose constitutional freedoms or rights have been infringed, shall have the right to appeal to the Constitutional Tribunal for its judgment on the conformity to the Constitution of a statute or another normative act upon which basis a court or organ of public administration has made a final decision on his freedoms or rights or on his obligations specified in the Constitution".

This means that the conditions to lodge a constitutional complaint are:

one has to obtain a final verdict or a final administrative decision deciding on this person's constitutional rights or freedoms,

the verdict or decision has to be based on a normative act subject to complaint;

the constitutional complaint shall concern the compliance of that normative act with the Constitution.

In Poland only the water management plans (of those relating to the environment) have to be adopted by way of a normative act: a regulation by the minister in charge of water management. These plans are: river basin management plans, flood risk management plans (as required by Chapter IV of the Directive on the assessment and management of flood risks) and drought management plans. Although these plans may influence the individual administrative decisions, it seems unlikely that a decision could be regarded as "issued on the basis" of a given plan.

Moreover, bearing in mind the nature of the water management plans, it seems rather unlikely that they could be in non-compliance with the Constitution. Therefore the constitutional complaint is will probably not apply to these plans.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

The review by the Constitutional Tribunal encompasses conformity with the Constitution only.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

Not applicable to the constitutional complaint (see answer to question 2.5.1).

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

Not applicable to the constitutional complaint.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

There is no injunctive relief.

6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

According to Article 54 of the Act of 30 November 2016 on the organisation and procedure of proceedings before the Constitutional Tribunal, the costs of the proceedings before the Tribunal shall be borne by the State Treasury. In the judgment accepting a constitutional complaint, the Tribunal shall award to the claimant the reimbursement of the costs of proceedings from the body which issued the normative act which is the subject of the constitutional complaint. In justified cases, the Tribunal may also award reimbursement of the costs if it has not accepted the constitutional complaint. The Tribunal may determine the amount of the costs of representation of a constitutional complaint by an advocate or legal adviser, depending on the nature of the case and the contribution of the representative in contributing to its clarification and resolution.

7) Is it possible to bring a legal challenge before a national court concerning any related EU regulatory act with a view to a validity reference under Article 267 TFEU, and if so how[8]?

There is no such procedure.

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[1] This category of case reflects recent case-law of the CJEU such as: Protect C-664/15 (EU:C:2017:987), the Slovak brown bear case C-240/09 (EU:C:2011:125), see as described under Commission Notice C/2017/2616 on access to justice in environmental matters, OJ C 275, 18.8.2017, p. 1.

[2] Regulation of the Minister of Justice of 22 October 2015 on advocates' fees (J.L. of 2015, item 1800 as amended) and Regulation of the Minister of Justice of 22 October 2015 on attorneys' fees (codified text J.L. of 2018 item 265).

[3] For example complaints against permits for emissions, EIA decisions or other decisions allowing the use of the environment are considered as cases in which no financial value is set. The financial value may be attributed to complaints against decisions imposing environmental fees or fines, but in such cases only the company or other entity obliged to pay the fees or fines has standing (citizens or environmental NGOs have no standing here).

[4] The SEA Directive relates to plans and programmes. These are also covered by Article 7 and Article 9(3) of the Aarhus Convention.

[5] See findings under ACCC/C/2010/54 for an example of a plan not submitted to SEA but subject to the public participation requirements of Article 7 of the Aarhus Convention.

[6] These fall within the scope of both Article 7 and Article 9(3) of the Aarhus Convention. See also relevant case-law of the Court of Justice of the European Union such as Case C-237/07, Janecek (EU:C:2008:447) and cases such as Boxus and Solvay C-128/09 - C-131/09 and C-182/10 (EU:C:2011:667), as referred to under Commission Notice C/2017/2616 on access to justice in environmental matters.

[7] Such acts come within the scope of Article 8 and Article 9(3) of the Aarhus Convention. An example of such an act concerns the decision of the national administration that featured in Case C-281/16, *Vereniging Hoekschewaards Landschap*, EU:C:2017:774.

[8] For an example of such a preliminary reference, see Case C-281/16, *Vereniging Hoekschewaards Landschap*, EU:C:2017:774.

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Other relevant rules on appeals, remedies and access to justice in environmental matters

Silence of administration

In cases where the authority fails to deliver the decision in time or to inform the parties about reasons for the delay (inaction of the authority), parties to the proceedings may file a reminder (*ponaglenie*) to the administrative authority of the second instance. The reminder is to be lodged via the authority which failed to act (Article 37 APC). If the reminder is ineffective, the party may lodge a complaint with the administrative court (Article 3 § 2 point 8 PACLA).
The reminder, and then the court complaints, may also be lodged in cases where the proceedings are 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 (to issue a decision).

Penalties to be imposed on public administration for failing to provide effective access to justice

There is no procedure for imposing such penalties.

Penalties for cases when the administration does not comply with a judgment (quasi contempt of the court)

The possibility to apply such penalties depends on the content and the nature of the judgement.
In cases where the court finds inaction by authority or excessively lengthy proceedings, it may impose on the administrative authority a fine of up to ten times the average monthly salary in the previous year. Moreover, the court may grant a sum of money from the authority to the applicant up to half the aforementioned amount (Article 154 PACLA).
In certain cases, the court in its verdict may oblige the authority to issue a decision within a specified period of time, indicating the manner of resolving the case. In this case the competent authority shall notify the court of the decision within seven days of its issuance. If the court is not notified, it may decide to impose on the authority a fine of up to ten times the average monthly salary in the previous year. Moreover, the court may grant a sum of money from the authority to the applicant up to half the aforementioned amount (Article 145a PACLA).

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