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ENFORCEMENT OF EC ENVIRONMENTAL LAW IN POLISH LAW

(EIA Projects, IPPC Plants, ET Allowances, Natura 2000 Sites, Water and Air Plans[1])

Questionnaire on National Laws, Practices and Experiences on Enforcement

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I. Please describe generally the most import tools for the enforcement of environmental law in your country. Also describe the relative "weight" of private law, administrative law and criminal law for the enforcement.

While evaluating the functioning of the system to guarantee environment protection with the use of various legal instruments (administrative, civil and penal), we cannot ignore the specific character of environment as a legally protected good, and in this context, the circumstance that it is the state that is "*the main subject of the environment protection" (…) "it creates the law and (…) uses all the means and ways of effecting impact available to it in order to protect both public and private interest" (…), which interests in the field of environment protection are in many cases convergent"* (J. Boć, p. 394, own transl.). For that reason, the major position in the environmental law is occupied by public law instruments (including in particular the ones contained in the administrative law) which serve the purpose of realizing and protecting the public interest, while private law instruments, which serve the purpose of realizing and protecting individual interest, are of a complementary function to the public law instruments, although by no means unimportant, especially if we consider the evolution of civil law instruments for environment protection in Polish law (see: A. Wasilewski, *Actio negatoria*…).

Individual tools for the enforcement of environmental law have different functions (preventive, compensatory or repressive). Punitive tools of enforcement have, first of all, the repressive function, while the remaining ones are realized in a lesser extent. Amongst administrative and civil tools, there are ones that have primarily preventive function (*actio negatoria* in civil law, the obligation to limit the negative impact on the environment in public law), but also ones that have primarily compensatory function (compensation in civil law, redress in public law); in each case the remaining functions are also realized, but in a lesser extent.

II. Please answer sub-questions 1-4 for each situation listed as a-i below. Also indicate whether you know of national cases where these issues have been dealt with:

1) Which sanctions are provided under national law (criminal, administrative etc.)?

For the needs of this paper, we shall adopt a broad definition of the term "sanction" to

[1] EIA-projects refer to projects within the scope of the EIA-directive 85/337; IPPC-plants refer to industrial installations within the scope of the IPPC-directives (96/61); ET-allowances refer to the directive 2003/87 on emission trading (ET-directive); Natura 2000 sites refer to sites designated under the bird directive (79/409) and the habitat directive (92/43); water plans refer to the plans for improving quality of water that must be adopted according to the water frame directive (2000/60); air plans refer to the plans for improving quality of air that must be adopted according to the air frame directive (2008/50).

include in it various kinds of negative legal consequences for a subject resulting from unlawful action – violation of orders / bans stipulated in provisions of environmental law or administrative decisions - constituting legal warranty that the universal obligation of environment protection is realized.
Sanctions result from the execution of legal liability, which in the field of environment protection includes first of all: (a) administrative law liability, which occurs in the situation of a real infringement of the state of the environment as well as in the situation where there is a risk of such negative impact; (b) civil law liability, which occurs in the situation in which there is a direct threat of a damage or an actual damage (traditional or environmental) caused by an impact on the environment (even if the impact is legal); or (c) criminal, which occurs if a person commits a crime or a petty offence against the environment (an act prohibited under penalty by the law in force at the time of the committing, caused by fault and harmful to the society, in the case of a crime to the degree higher than negligible).

The discretion of MSs to decide how offences should be sanctioned is limited by the provisions of EU law which expressively provide specific enforcement measures; if not the MS's enjoy discretion in this respect, although within the limit of art. 10 TEC (see: J. Jans, s. 181-182)

1.1. Administrative sanctions

- the most commonly used means of enforcement of environmental laws
- imposed according to the procedural rules of the "general administrative procedure"
- kinds of administrative sanction *sensu largo* (see: M. Wincenciak, s. 93 and next)
    - repressive sanctions e.g. administrative fines (*for non-compliance with an ecological permission*); increased charges (*for using the environment without a required ecological permission*);
    - executive sanctions – sanctions enforcing execution of a particular obligation (e.g. *limitation the negative impact on the environment, restore the lawful state - in case it is impossible an obligation to pay compensation to the benefit of environmental protection funds- so called administrative redress; taking preventive or remedial action; suspension of carrying the activity; cessation of using some installation*) if one of the prerequisites provided for by the law occurred (e.g. *a negative impact on the environment by an "operator"; qualified negative impact on the environment by a natural person; a considerable deterioration of the state of the environment or a threat to people's lives or health; lack of an integrated permission; undertaking activities that may have a considerable negative impact on the protection objectives of the Nature 2000 area or an intended area without a prior applicable permission; a threat or causing an environmental damage)*
    - sanctions of withdrawal or limitation of an authorization: e.g. to withdraw or limit the awarded permission in the case of: (a) a non-compliance with the law or with the conditions of the permission; (b) a change in the legal provisions pertaining to environment protection so that the emission on the conditions specified in the permission is rendered impossible

The discretion of a competent authority to decide whether and how offences should be sanctioned in a specific case resulting from: (a) administrative discretion awarded to it (*formulated in the wording: "the organ may"*); (b) formulating the prerequisites of liability with the use of fuzzy terms (*e.g. a considerable deterioration of the state of the environment*); (c) in some cases, a possibility of applying of one of the possible sanctions or both of them simultaneously, is from the one hand determined by general principles of law and general

principles of the Administrative Procedure Code (including the principle of legality and the principle of objective truth), on the other by the fact that the organs of administration are responsible for ensuring effectiveness of the environmental provisions, including the ones pertaining to legal liability in environment protection.

1.2. Civil sanction

a) regulated in the Civil Code – CC - (traditional damage) – (preventive action or compensation) – (damage to property and/or injury to the person) - (possisble reparation of a damage: restitution of the previous condition so called natural restutution or payment)

- restitution to the lawful state and ceasing the infringement (*actio negatoria*, art 222 § 2 of the Civil Code) - infringement of an ownership otherwise then by deprivation of an owner his factual use of a property;
- warding off an imminent threat of damage and if necessary providing proper security

  "One who, as a result of another person's behavior, especially in the case of the lack of adequate supervision over the operation of the managed by him enterprise or plant or over the condition of his building or other installation, is endangered by a direct damage may demand that the person should undertake measures necessary to ward off the imminent danger, and, if necessary, to provide proper security"(art. 439 CC)
- reparation of a damage (compensation) – the strict base liability (art. 435 CC) is a useful tool for environmental cases
  An operator who runs, on his own account, an enterprise or a plant that is operated by forces of nature (steam, gas, electricity, liquid fuels, etc.) is responsible for damage to a person or property that has been caused to anyone by the operation of the enterprise or plant, unless the damage was caused by force majeure, or exclusively through the fault of the injured party or a third party, for whom the operator does not take responsibility (art. 453 CC)

b) regulated by Environmental Protection Law Act – EPLA (traditional damage and environmental damage)

Both horizontal and sectoral regulations of the environmental protection law (mining law, act on GMO) modify the provisions of Civil Code by specifying the prerequisite and the scope of the civil liability, what is justified by special characteristic of environment as a protected value.

- restitution to the lawful state and ceasing the infringement (*Everyone who through unlawful impact on the environment is exposed to hazard of a damage or has suffered a damage may demand from the liable subject for this danger or violation restitution of the lawful state and undertaking preventive measures, especially through installing installations or equipment safeguarding against the danger or violation; in the case there it is impossible or excessively difficult, he may demand that the activity causing the danger or violation be discontinued (Sec. 1). If the danger or violation concerns the environment as a public good, the State Treasury, territorial self-governing unit as well as an ecological organization can file the above mentioned claims (Sec.2). (art. 323 of Envirenmental Protecion law Act).* This provision:
  - not only broadens the subjective capacity of the entitled parties to file a suit in relation to the entitled subjects on the basis of Article 222 § 2 of the Civil Code (everyone, not only the owner),
  - but most of all, it makes it possible for the enumerated parties to file a claim with a civil court for the protection of public good – the environment (ecological

organisations, among others, have such standing);
  - filing a claim is acceptable both in the case of violation and the danger to the protected good;
  - the subject of the claim can be: restitution of lawful state; taking preventive measures; and discontinuation of the activity, if the other two claims are impossible or excessively difficult;
  - does not entitle to claim payment as a reparation of a damage.

CASE: On these grounds, in the case filed by an NGO against the Treasury – Forest Division in B, the obligation was put by the court of first instance on the Treasury – due to illegal logging of seven 100-year-old oak trees – to restore the state of lawfulness by devoting the sum of PLN 9,246,84 obtained from selling the timber to finance protection activities specified in the forest arrangement plan for the area where the illegal logging had been done. The court of the second instance however reversed that verdict.

- Compensation - (the EPLA broaden the scope of strict based liability provided in art. 435 of Civil Code (as above) – it could also be used when the damage was caused also by so called 'establishment' of a higher or high risk, regardless of whether they are set in motion by natural forces);
- Regress claims – a subject who repairs an environmental damage caused by the polluter is entitled to claim from the polluter reimbursement of the borne expenses for that aim; the amount of the claim is limited to reasonable costs incurred for the restoration of the lawful state (art. 326 of the EPLA).

The legislator in the EPLA also determined that the liability for damage caused by the impact on the environment is not excluded by the circumstances that the activity being the cause of the injury is conducted on the basis of a decision and within its limits (art. 325 EPLA).
Due to the granted claims, the Act also provides special right to access the information, which aim to allow to prove the liability of polluters.

c) regulated by others environmental protection regulation -(traditional damage and environmental damage)

- Compensation: e.g. The Act on Genetically Modified Organisms introduced strict liability for damages on a person, property and the environment being a result of activity regulated by this Act (such as controlled use of GMOs' or deliberate release of GMOs'). The liability is not excluded by the circumstances that the activities are conducted on the basis of and within the limits of the granted decision. Each subject that incurred individual or property damage may claim compensation. If the damage concerns the environment as a public good, then the State Treasury, a territorial self-governing unit as well as an ecological organization may demand compensation. Due to the granted claims, the Act also provides special right to access the information, which allows to prove the liability of the polluters.

1.3. Punitive sanctions/ penalties

- criminal violations of environmental law can take a form of petty offences (an act punishable by a fine, penalty of restricted liberty or penalty of arrest) or offences (an act punishable by a fine and imprisonment),

- penalties are defined in penal code, code of offence as well as in different environmental acts,
- not only the value of the environment but also the fulfillment of legally defined administrative duties, regardless of their material influence on environment, are object of the penal protection; this second aspect of penal protection in 'environmental area' is emphasized in literature (J. Boć., s. 404),
- possible sanctions – punishment (fines, penalty of restricted liberty, penalty of arrest, imprisonment) and punitive measures (including the duty to repair the damage and to pay compensatory damages).

1.4. Others, like financial sanction provided by financial law

- interest rates established like for tax arrears as well as suspension of the right to receive subsidy for 3 consecutive years, starting from the day when the unlawful use of the subsidy was discovered - sanctions for breach of the obligation to use the subsidies granted from the national budget to the purpose they were intended for, or for receiving undue subsidy, or in an excessive amount;

- interest rates established like for tax arrears, a temporary suspension of the right to receive funds for realization of the project within the framework of the programmes financed with the participation of these funds - sanctions for breach of the obligation to use the funds from the European Union budget and other funds from foreign sources to the purpose they were intended for, or for infringement of the required procedures, or for receiving undue funds, or in an excessive amount.

2) Can NGOs and/or citizens challenge the enforcement – or lack of enforcement – by the competent authority, or is it within the full discretion of the competent authority to decide whether and how offences should be sanctioned? (If NGOs and citizens can challenge such decisions and omissions, including failures of a procedural character, please describe how.)

Three important rights of NGO are: (1) the right to demand to institute the administrative proceedings by the competent authority (concern these proceedings which are instituted *ex officio* which is the case in all cases where administrative sanctions are to be imposed), (2) the right to participate in the administrative proceeding with the rights of a party and (3) the right to challenge issued decisions to higher administrative body and/or to the administrative courts.

a) The right of NGO to force the competent authority to take enforcement measures

The administrative proceedings aim to impose administrative sanction are initiated *ex officio,* which means that firstly, in the situation when legal premises of imposing sanction occurred, the proceeding must be instituted and secondly that the competent authority should be fundamentally the initiator of it. However, the initiation can also come from public prosecutor, Commissioner for Citizens Right, a social organization (the right to demand to initiate the proceedings, see below). The initiation can also come from everyone who has the right to submit petitions, proposals and complaints to organs of public authority (see below).

- *the right of NGO to force the competent authority to act*

According to general rule of art. 31 of Code of Administrative Procedure any social organization (including environmental one) has a right to demand the competent authority to institute the administrative proceedings, if it is justified by statutory objectives of the organization and the public interest. Recognizing the demand justified the competent authority institute the proceedings *ex officio*. In case the NGO's demand is refused, the NGO can appeal with a higher administrative body and then file a complaint with the administrative court against this decision.
There are also special rules in environmental regulation concerning such right of NGO – e.g. art. 25 paras.1-7 of the Act on the prevention and remedying of environmental damage (transposition of ELD) provide the right of everyone (including NGOs) to notify the competent authority about an imminent threat of damage to the environment or damage to the environment. The authority, recognizing the notification justified, makes a decision to institute proceedings in the matter of giving decision obligating the operator to take preventive or remedial actions or takes preventive or remedial actions in the instances referred in law. The NGO, which made notifications, are entitled to participate in the proceedings with the parties' rights. If the authority refuses to institute proceedings by way of decision the NGO can lodge a complaint and then, if necessary, a charge to administrative court against it.

- *the right of everyone to submit petitions, proposals and complaints to organs of public authority*

Everyone (also social organizations) shall have a right guaranteed by the Constitution of the Republic of Poland, to lodge complaints and requests to state authorities and self-government authorities. Both complaints, petitions and proposals may be lodged in the interest of public, among others. The subject of the complaint can be, in particular, negligence or inappropriate realization of administrative activities, violation of the law. The weakness of this public initiative results from the fact that the complaint proceedings are one-instance and the proceedings in complaints are not subject to the administrative court control.

b) The right of NGO to challenge "the enforcement decision" (an appeal in administrative proceedings and a complaint to the administrative court) – often used by NGO in environmental matters

In the administrative proceeding aimed to impose administrative sanction, instituted ex officio (regardless whether on authority's own initiative or on NGO demand) the NGO can participate with the parties' rights and then can challenge the issued decision to higher administrative body and to the court.

These NGO's procedural rights differs depending on character of the proceeding:

- in 'regular administrative proceedings' NGO can participate on the basis of Art. 31 of the Code of Administrative Procedure, ie. if it is justified by its statutory objectives and public interest. Its participation in the proceedings before the first instance authority is than a prerequisite to challenge the decision, also to court. In regular administrative proceedings' both accepting NGO participation as well as refusing this right must take the form of decision, which can be controlled by higher administrative body and by courts.
- in so called 'public participation proceeding' (special proceeding in environmental matters) NGO can participate on the basis of the EIA Act, ie. if it is justified by its

statutory objectives. Its participation in the proceedings before the first instance authority; is not a prerequisite to challenge the decision to higher administrative body or to the court. In 'public participation proceeding' only refusing NGO participation needs a formal decision which can be controlled by higher administrative body and court. Polish provisions on NGO's access to justice in those proceedings transpose Art. 10a of the EIA Directive and Art. 16 of the IPPC Directive (2008/1/EC). Therefore they are of limited usefulness to the issue of challenging most of the enforcement decisions.

3) In light of European Community law, including the possible direct or indirect effect of directives, does national law grant NGOs and/or affected citizens the right to take direct enforcement measures against the polluter?

In private law disputes - legitimate NGOs and legitimate citizens have the right to take direct enforcement measures against the polluter by bringing an action against polluter to civil court (see point 1.2.). But in such proceeding admitting a claim exclusively (sic!) on the basis of directly effective provision of EC directive which has not been transposed (or was not properly transposed) into national law is impossible. The conception of horizontal direct effect has not been accepted. But in such situation national courts are required to interpret national law as far as possible in conformity with the directive and its provisions (the concept of consistent interpretation).

Only in public law disputes on environment - the doctrine of vertical direct effect (objective direct effect in environmental cases) is accepted. Legitimate NGOs and legitimate citizens can invoke directly effective EU provision aim to protect environment vis-à-vis national authority, even if it results "*horizontal side-effects*' (J. Jans, s.190-192) but probably only in *Wells* meaning (*mere adverse repercussion on the rights of third parties*). The question is what is *mere adverse repercussion on the rights of third parties* and what exceed this.
Not invoking EU law by the party (e.g. NGO) doesn't release the administrative court from the duty to take it into account, although "*the scope of review of the court depends on which instance is concerned. The administrative court of the first instance examines the complaint within the limits of the case, without being bound by the charges and demands of the complaint nor by the legal grounds invoked in it. The court is thus under obligation to consider ex officio, all infringements of law as well as all legal provisions including the provisions of Community law. The Supreme Administrative Court (the court of second and last instance) examines, however, the case within the limits of cassation taking ex officio into account only the invalidity of the judicial proceedings. It should be noted that the reasons of invalidity are not related to the breach of Community law.*" (S. Biernat and others, s. 37)

I do not know the case where a complaint was admitted exclusively (sic!) on the basis of directly effective provision of EC directive which has not been transposed. Although there are more and more cases in which the doctrine of consistent interpretation is applied (especially in cases concerning Natura 2000 and EIA):

One of the last cases where the doctrine of consistent interpretation was applied concerned the objective scope of 'habitat impact assessment'. The case concern the project „building of the storage reservoir (depth 2,40 meters)".
According to Nature Protection Act being in force at that time (art. 33) projects not directly connected with or necessary to the management of the site but likely to have a significant effect both on Natura 2000 and on proposed Sites of Community Importance (pSCIs) required impact assessment, which should be carried out consistent with rules provided by Environmental Protection Law Act. The last one regulated the procedure of EIA for project likely to have significant impact on environment, defining (at that time) the term

'project' as: "the execution of construction works or other interventions in the environment which consist in the transforming or changing of the manner of land use, including those involving the extraction of mineral resources, which require one of the decisions specified in Art. 46 para.4 of the Environmental Protection Law Act "
The court ruled that objective scope of habitat impact assessment' was defined in Nature Protection Act (art. 33 material provision) and it concerns each project (sic!) not directly connected with or necessary to the management of the site but likely to have a significant effect on Natura 2000 and on proposed Sites of Community Importance (pSCIs). This scope can not be limited by the EPLA to which art. 33 of Nature Protection Act referred, as the last one regulated only the procedural requirements of the 'habitat assessment', not the material scope of it.

The court stated that:
"The obligation to carry out 'habitat impact assessment' concerns each project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, and not only those which require one of the decisions specified in Art. 46 para.4 of the Environmental Protection Law Act - EPL Act (according to the legal state before 3.10.2008)" (IV SA/Wa 84/09)

The court interpreted the provision of Nature Protection law Act (material aspect of habitat assessment) and of EPLA (procedural one) meeting the obligation of consistent interpretation.

4) Could the competent authority (CA) under national law be held liable for erroneous acts and for omissions (non-enforcement) in the cases listed below? If so, how?

- In Polish law there are no special rules on CA liability in case of infringement of UE law; the general rules are applied;
- CA liability is subject of: (a) art. 77 (1) Constitution of Poland: (*Everyone shall have the right to compensation for any harm done to him by any action of an organ of public authority contrary to law.)* (b) the Civil Code (art. 417 and next), (c) and special regulation;
- According to Art. 417 and the following of the Civil Code, liability for damage done by an unlawful activity or omission in execution of public authority stays with the subject (legal person) exercising the public authority under the law or on the basis of a commission;
- With reference to some activities/omissions a qualified procedure of stating the unlawfulness has been introduced - effective seeking compensation in the case of:
  - damage done by legislative lawlessness – depends on prior statement in appropriate proceedings that the activity is not compliant with the Constitution, a ratified international agreement or an act;
  - damage done by issuing an judgment in force or final decision – depends on prior statement in appropriate proceedings of their unlawfulness;
  - damage done by non-issuance of a judgment or decision when the obligation to issue them is provided for by a provision of law – depends on prior statement in appropriate proceedings that it was unlawful not to issue a judgment or decision, unless specified otherwise by separate provisions
  - damage done by legislative omission – depends on prior statement in appropriate proceedings that non-issuance of such act (in spite of the obligation to do so) was unlawful.

(a) When an EIA project is established without an EIA permit.

I. *Possible sanction (administrative executive sanctions, civil sanction);*

II. *legitimate NGOs and/or citizens can challenge the enforcement by forcing the competent authority to take enforcement measures;*

III. *legitimate NGOs and/or citizens can take direct enforcement measures against the polluter in civil court and claim, depending on circumstances, either preventive action or compensation (if the prerequisite for the claim are fulfilled see part on civil sanctions) - but in such proceeding admitting a claim exclusively (sic!) on the basis of directly effective provision of EC directive which has not been transposed (or was not properly transposed) into national law is impossible. The conception of horizontal direct effect has not been accepted. But in such situation national courts are required to interpret national law as far as possible in conformity with the directive and its provisions (the concept of consistent interpretation).*

IV. *Only in instance were the above described conditions were fulfilled - which in practice would rather not be a case.*

(b) When conditions attached to the EIA decision, granting a development consent, are disregarded.

(c) When an IPPC facility is established without an IPPC permit.

(d) When an IPPC facility is permitted without prior assessment in accordance with article 6(3) of the Habitat Directive.

(e) When an IPPC facility is operated in violation of conditions of an IPPC permit.;

(f) When an IPPC facility releases greenhouse gases beyond what is provided for by allowances under the ET Directive.

(g) When an IPPC facility has negative impact on Natura 2000 sites beyond the threshold in article 6(2) of the Habitat Directive.

In cases (b)-(g) the situation differs as to the possible sanctions which could be imposed - e.g. the possibility of using others administrative sanctions then executive ones [e.g. fine and cessation of using installation in case (e); increased charges in case (c)] or the possibility of using punitive sanctions in cases (c) (d) (e) (e)

5. How is article 9(3) of the Aarhus Convention, regarding access to administrative or judicial procedures for members of the public to challenge violations of environmental law, complied with? In which situations is it NOT complied with?

The legal scheme meant to implement the requirements stemming from Article 9.3 is a combination of administrative and civil law instruments. The administrative ones rely solely on the above mentioned general rules for participation in administrative proceedings and access to administrative review procedures while the civil ones are based on general rules of the civil law combined with some specific provisions in environmental legislation modifying these general rules.

The general rules for participation in administrative proceedings and access to administrative review procedures play a significant role in application of both Article 9.2 and Article 9.3 and have to be presented first.

Art. 9.3 of the Aarhus Convention is implemented in Poland by Art. 31 of APC providing for administrative way (see above).
Challenging of private persons' acts and omissions may be sought however first of all through civil proceedings.

Standing of NGOs in civil proceedings

Under Article 323 of EPLA, environmental organizations (fulfilling the conditions described above) are entitled to file a lawsuit in the public interest of environmental protection. Apart from them, also the State Treasury and self-governmental authority may do so.

Article 323 of EPLA provides for a right to file a civil suit by:

- persons affected by an environmental damage or threat of such damage (Art. 323.1) - this provision is based on general rules of civil law,

- environmental NGOs and self-governmental authorities in case where the threat or violation affects the environment as a common good (Art. 323.2) - this can be considered as an unique right granted to environmental NGOs. As to a definition of environmental organisation - see remarks on Article 2.5 of the Convention above

Art. 323.1 of EPLA says:

"Every person who is directly threatened by damage or has suffered damage as a result of illegal impact on the environment may demand that the entity responsible for this threat or violation should restore the state complying with law and take preventive measures, in particular by putting in place an installation or equipment to protect against the threat or violation; where this is impossible or too difficult, the person may demand that the activity causing the threat or disturbance should be stopped".

6. Please identify possible factors, such as costs, length of procedures or other practical matters, that may prevent effective access to justice for members of the public.

The aforementioned factors do not constitute any significant burdens in access to justice in Poland. Costs of both administrative and civil proceedings in environmental matters are rather modest.
Filing an administrative appeal (and - at the same time the appeal procedure) is currently **free of charge.** In environmental cases the court fee in the first instance is fixed by para 2.6 of the Council of the Ministers Regulation of 16 December 2003 on the Amount and Detailed Rules of Court Fees Charging in Proceedings Before Administrative Courts[2] (an executive regulation issued under PACLA) for **200 PLN (about 50 EUR**). This is a relatively small amount and can not be regarded as an obstacle in access to justice.

[2] Official Journal of Laws No 221 item 2193 as amended

Apart from the court costs parties have to cover its own expenses, including attorney costs (if they decide to have an attorney).
In civil proceedings, the court fee for filing a lawsuit, the appeal to the court of second instance and the cassation complaint depend on the status of the defendant.
In environmental cases against an entrepreneur the court fee is fixed at 100 PLN (about 25 EUR)[3], while in cases against other persons the court fee is related to the values at stake (5% of that value).
Apart from the court fees, each party is obliged to cover its own expenses, including attorney fees, if any.

There is no obligation to be represented by a lawyer in the administrative proceedings and in the administrative court proceedings before the court of first instance (only before the Main Administrative Court).

7. Do NGOs and/or citizens have access to injunctive relief and interim legal remedies? Do you know any national cases which have dealt with this?

Administrative proceedings

Exercising of rights granted by an administrative decision subject to an appeal filed to the authority of the second instance is suspended until the appeal is investigated.
Decision of the 2. instance authority is considered final and in principle may be executed even if challenged to the administrative court. The court may however, on the motion of the claimant, suspend exercising of rights granted by this decision - in case where there is a threat of causing a significant damage or results which are difficult to turn. According to the jurisprudence, construction of a building, on the basis of a construction permit which is subject to court proceedings and might be annuled by the court causes „result which is difficult to turn" (verdict of the Main Administrative Court of 28 April 2005).

Civil proceedings

As mentioned above, Article 323 of EPLA provides also for liability for causing a threat of damage and enables the court to impose on a perpetrator taking preventive measures, in particular by putting in place an installation or equipment to protect against the threat or violation. Where taking such measures is impossible or too difficult, the court may impose ceasing the activity causing the threat.

8. Are there any examples where a final administrative decision has been reopened because of a complaint based on later case law from the ECJ?

The issue of reopening closed final decisions is subject to discussion within the general administrative law doctrine in Poland.
There is very interesting report concerning this issue: "*Consequences of incompatibility with EC law for final administrative decisions and final judgments of administrative courts in the member states*" prepared under the leadership of Prof S. Biernat (Jagiellonian University) in which it was observed, among others, that:

[3] Article 30 of the Court Fees Act of 28 July 2005, Official Journal of Laws No 167, item 1398 as amended

- firstly, in Polish legal order "*the stability of final administrative decisions or court judgments approving administrative decisions is not absolute. Domestic law allows for the revoking of final decisions and/or the reopening of court proceedings, after a final judgment (res judicata) has been delivered*" (s. 27).
- secondly, the ground for reopening proceedings concluded with a final decision because of later case law of ECJ and its affect of the content of a final decision issued is provided expressively only in tax law and "*this legal rule is applicable only to decisions on tax matters and not to all administrative decisions*"
- the Act of Administrative Procedure provide the ground for reopening administrative proceedings in others matters, although it does not expressively refer to "later case law of ECJ" as a ground for reopening the case; so, the possible premises which could be used to do so in such cases consist in: "*new factual circumstances or evidence not known earlier to a party (but which existed at the time of issuing the decision), or that which could not be used in the earlier proceedings by a party, without being detrimental to it, but having an crucial impact on the outcome* " or "*a decision had been issued by an authority upon its own provisional assessment of certain legal question which was later decided in a different way by a competent authority or Court*" s.31);

We are not aware of any such examples in environmental law, but there was one ECJ verdict which gave a trigger to reopen tax cases. In case 313/05 the ECJ ruled that excise duty charged by Polish authorities in connection with the purchase of a second-hand motor vehicles in other Member State were illegal. On the basis of that verdict persons who paid that duty were entitled to demand the paid amount back (even when the tax case was already closed).

9. Has there been any national case in which the State or the local authority have been held liable for not remedying environmental damage or other damage in violation of EC environmental law?

We are not aware of any such cases.

10. Do you now of any significant developments, good practices or failures (e.g. cases, new laws, new institutional arrangements, or new policies) with regard to the enforcement of EC environmental law, not covered by the previous questions, that you would like to highlight?

The necessity of fulfilling the requirements of EU environmental law (in particular concerning EIA, habitat assessment and public participation) for projects funded by EU money contributed to significant raise of awareness of environmental law requirements and also to better enforcement of environmental provisions.
See separate powerpoint presentation by J.Jendrośka.

Literature :

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