I. Constitutional Foundations

The Bulgarian Constitution provides for a right to a healthy and favorable environment corresponding to the established standards and norms (Article 55). Protection of the environment is also a citizen's duty. Enforcement of the right to a healthy and favorable environment is possible in conjunction with other constitutional rights:
of information - Article41(2)
of expression - Article39
of free assembly - Article43
of association – Article44(1)
Citizens are guaranteed access to court for appealing administrative acts (Article120 of the Constitution), unless otherwise provided for by law. No such legal exception exists in environmental law. Legal interest is required for bringing administrative acts before justice.
The direct implementation of all constitutional provisions is possible. As to the right to a healthy and favorable environment it is usually invoked together with an existing standard, either procedural or substantive.
International agreements which are ratified by the Parliament and are in force for BULGARIA become part of the internal legal order after their publication in the State Gazette. Such agreements are given priority over national laws in case of contradiction between them.
Both administrative bodies and courts apply the Aarhus Convention directly. A small number of court decisions express doubts over the possibility for direct implementation of Article 9 (3) of the Aarhus Convention.

II. Judiciary

The court system consists of the Supreme Cassation Court (SCC), the Supreme Administrative Court (SAC), appellate courts, regional courts, military courts and district (local) courts.
Justice in civil matters is provided by:
District courts as first instance courts for disputes of relatively small economic (less than 12,500 EUR) interest;
Regional courts acting as first instance courts for more important disputes and as appellate instance for district court's decisions;
The SCC performing the function of cassation instance for all appellate decisions (with small exceptions);
The administrative judicial system consists of:
28 administrative courts, that deal with appeals against administrative decisions;
The SAC can act either as first instance court, or as a cassation instance;
District courts that hear appeals against administrative acts for sanctioning misdemeanors. A cassation appeal against a district court's decision in such a case will be dealt with by a three judges chamber of the respective administrative court.
Judges are independent. Those of them who have served for more than five years cannot be removed from their position, unless exceptional circumstances occur.
The Supreme Judicial Council (SJC) is the authority that appoints, promotes and dismisses the judges. No specialized courts or tribunals to deal with environmental cases exist. However, at some administrative courts judges are organized in chambers to the effect that environmental cases are decided by limited number of the judges to the respective court.
Forum shopping practically does not exist in BULGARIA. In administrative cases rules to define the competent court are strict and no choice is left to the claimant as to which court to address. A kind of choice with regard to the level of the competent court is given to the high administration in access to environmental information cases. A request for such information addressed to a minister could be answered either by the minister himself or by his deputy /the ministry's secretary – an appeal against the answer would be heard by the SAC in the first and by the City of Sofia Administrative Court in the second case. In civil liability cases (environmental liability included) the person who suffered damages could address either the court of the defendant's seat /residence or the court of the site where the damages occurred.
In administrative matters a two instance procedure before court is in place.
- A complainant has the right to appeal an administrative decision before the administrative court and then the first instance court decision

before the SAC via a cassation appeal. In civil procedure a claimant has a procedural right to address two instances, namely, a trial instance and an appellate instance.
Since 2007 when a new Civil Procedure Code was adopted, access to the cassation instance (SCC) was limited. A cassation appeal shall be lodged when the judgment is null; the judgment is inadmissible; the judgment is incorrect by reason of violation of the substantive law, a material breach of the rules of court procedure, or lack of justification.
In both administrative and civil court procedure an extraordinary remedy for reversal of court's decisions exist.
Theoretically after quashing an administrative decision, the court can issue an administrative act only if there are no topics left to the discretion of the administration. If there are such topics, the file has to be sent back to the administration and the court provides the administration with mandatory instructions how to implement the law. In practice courts never proceed to issuing environmental permits. As to access to information appeals, after a refusal is overturned, the court can not release the requested information directly to the applicant - firstly because usually the court is not in possession of the information and secondly because courts are not allowed to release the information directly to the applicant.
Environmental cases are handled under the common administrative procedure – i.e. there are no specific court rules applicable to environmental matters. It is to be stressed that access to justice for appealing environmental permits is a relatively recent phenomenon – back till the end of 1990-ies most permitting procedures did not even exist. Even the most general notions such as the notion of legal standing are still shaping up(1) . Interest in addressing the administrative courts has grown a lot in the last 5-6 years and there is a variety of new situations that administrative courts are facing.
Specificities of judicial procedures in environmental matters could be divided into three groups with respect to:
Standing;
Evidence collection;
Scope of review;
As to evidence collection courts usually prefer to hear expert opinions and witnesses are allowed to give evidence in court. The judicial authorities cannot seize themselves – this is valid in both administrative and civil matters. However, if somebody else starts a procedure, and especially if the procedure is an administrative one, courts can proceed ex officio in a number of situations. In administrative procedures courts can initiate collection of evidence. The scope of review of administrative decision and of first instance decisions is not limited by what parties have claimed. In civil procedure law courts are given less prerogatives to act ex officio.

III. Access to Information Cases

There are two categories of cases where a request for environmental information was refused or wrongfully/inadequately answered:
The first category are the common refusals where there is no specific purpose of the request.
The refusal is appealable directly before a court - either before the SAC (if the refusal was issued by a minister) or before the administrative court (in the rest of the cases).
The second category are refusals to release environmental information which was asked for the needs of participation in any of the procedures, regulated in the Environment Protection Law (EPL).
In such situation the applicant can first address the appeal to the higher administrative authority, and at a later stage to the court (the idea being to provide such applicants with a quicker tool for getting the necessary information)..
Refusals in common cases have to include information on the rules for appealing – this is explicitly required by the Access to Public Information Act (APIA). As to the refusals of the second category, they should contain the same kind of information because for them a general provision about the content of any administrative decision is applicable.
Appeals against refusals of request for information should minimally contain:
Name and address of the complainant;
The court before which the refusal is appealed;
Identification of the administrative act that is appealed;
The request of the complainant;
Indication of why the complainant considers the refusal unlawful;
Appeals should be filed no later than 14 days after receipt of refusal. Tacit refusals could be appealed in a month period after expiry of the deadline for issuing the administrative act (the response to the request for information). Appeals are addressed to the court via the competent authority – i.e. the appeal is filed at the authority that has issued the refusal.
Courts usually are not in possession of the requested information. As they have the right to consider the lawfulness of the grounds for refusal, courts may theoretically ask to get the information in question from the authority. This does not happen often in access to environmental information cases.
When courts find a refusal of request for information unlawful, they quash the refusal (the administrative act) and order the administrative authority to release the requested information. The court's decision contains indications about how the law should be implemented.

IV. Access to Justice in Public Participation

Any administrative procedure has two subsequent stages – administrative and before court. As for the first stage procedures may vary in accordance to the requirements of the specific regulation – water, waste, or another type of environmental regulation. The procedure before court is applicable to all kind of administrative decisions and is regulated in the Administrative Procedure Code (APC). The APC distinguishes three types of administrative decisions – individual, of general nature and normative. Procedures for appealing may slightly differ in accordance of what type of decision is brought to court.
The APC provides for an appeal before the superior administrative body. As some authorities (Council of Ministers, ministers) do not have superior administrative authority, their decisions only could be appealed *before* court. Superior administrative body can check whether the subordinated administration has applied correctly its discretionary power. First instance decisions can be taken directly to court. Administrative remedies do not have to be exhausted before bringing the case before court.
Courts can review the lawfulness of administrative decisions. Courts cannot deal with issues related to the discretionary power of the administration. Both procedural legality and substantive legality are subject to the court's control. Controlling procedural legality in environmental decision-making does not differ from doing this in any other administrative process. In environmental matters substantive legal issues are often closely related to technical findings and even calculations. The lawful implementation of notions like "best available techniques" or of requirements such as "to identify, describe and assess in an appropriate manner the direct and indirect effect of a project on fauna and flora, soil, water, air, landscape…" presupposes an in depth understanding of many technical aspects of the permitted activity. *The judges are supposed to apply the law and experts are heard for answers to technical questions. Sometimes, e.g. in urban planning and permitting legislation normative acts regulate in small details technical issues. In such situations courts appoint experts to answer technical questions despite the fact that "technical" assessment might touch on some legal issues. There is common understanding that technical and/or calculation errors could be checked by the court.*

There are two types of land use plans (LUPs) – general LUPs and detailed LUPs. General LUPs cannot be appealed before court. Detailed LUPs can be appealed but standing is very much limited and sometimes even neighbours cannot take a DLUP to court. NGOs are denied standing with respect to LUPs. General LUPs are subject to a mandatory strategic environmental assessment (SEA), detailed LUPs - to an assessment of the necessity for an SEA. Jurisprudence is not unequivocal with regards to the reviewability of the SEA opinion – some decisions admit SEA opinions could be appealed separately from the LUP. Other decisions find that SEA opinions can not be appealed separately from a LUP and thus recognize standing to NGOs to appeal LUPs only on the basis of the standing to bring to court the SEA opinion. The decisions of the first group seem to prevail and the problem for access to justice with the LUPs exist. Review of LUPs by courts do not differ from other review procedures as to forums, rules of evidence and rules on hearing. When hearing appeals against LUPs courts tend to tackle mainly the technical spatial planning aspects – environmental issues are not considered to be substantively related to LUP.
EIA(Environmental impact assessment) screening decisions are subject to court review. NGOs have standing. Few decisions denied standing to non environmental NGOs to appeal EIA screening decisions. EIA screening decisions review shows no specificities with regard to forum, rules of evidence, rules on hearing and extent of review by the court. Screening decisions are heard by administrative courts at first instance.
EIA scoping is a part of the EIA procedure which does not end with a separate decision. That is why scoping decisions are not reviewable separately from the final EIA decisions. The EIA procedure provides for detailed rules about how scoping should be carried out. Attempts have been made to appeal final EIA decisions only on the basis of procedural errors with regard to scoping. Courts usually do not accept such allegations – the administrative jurisprudence requires the appellant to prove a causal link between the procedural error and the lawfulness of the final decision – only on that condition procedural violations are held by courts.
The most abundant jurisprudence is with EIA final decisions. Other authorizations (water permits, waste management permits) can also be appealed before court, but fewer court decisions have been taken in these matters. Environmental NGOs of public interest have never been denied standing to appeal final EIA decisions. This is not the case with NGOs of private interest – some courts dismiss their appeals on the ground that protecting the environment is a public cause and not a private one and therefore art,9 paragraph 2 of the Aarhus Convention is not applicable to NGOs of private interest. In EIA final decisions appeal procedures courts are most inclined to enter into a review of the technical findings and calculations of the EIA report. Procedural legality is carefully looked at. Over the time investors and authorities improved their performance as regards the procedural requirements and at present cases of procedural negligence on their part are rare. In most cases substantive issues are put forward as reasons for appealing. In BULGARIA the EIA procedure usually encompasses another procedure for assessment of the impact on Natura 2000 zones. A quick overview shows that nature protection issues were mostly discussed substantive topics by EIA court decisions. In all such cases the possible impact on habitats was explored by expert hearing – i.e. the court subjected to a review technical findings and even calculations of the EIA report.
In order to have standing neither NGOs nor physical persons are required to have taken part in the public consultation or public hearing phase of the EIA procedure. Environmental NGOs of private interest have tried to stress their participation at the consultation and the EIA report public discussion phase as evidence for existing interest to appeal the final EIA decision, but the courts never held that argument. NGOs of public interest can appeal a final EIA decision without having shown up at earlier stages.
In BULGARIA the EIA permit is considered to be an individual administrative act and an appeal against such decision(permit) has a suspensive effect – i.e. the investor can not proceed further with obtaining subsequent permits - either IPPC (Integrated pollution prevention and control) or building permit. In case of an urgent need to proceed with getting other permits or to start construction works authorities or courts can remedy such a situation by ordering a preliminary execution of the EIA decision. Authorities proceeded this way in a number of infrastructure building (waste landfills, highroads, ski run) proposals. Legal requirements for administering preliminary execution are drafted in a general way and are not meant to cover only environmental or EIA decisions. Usually decisions for ordering preliminary execution are shortly motivated (several sentences to no more than a page).
The IPPC permit procedure in BULGARIA is separate from the EIA. The final IPPC authorization can be reviewed by courts. In most cases the minister of environment and water (MOEW) is the competent authority to issue an IPPC permit – appeals against decisions of MOEW are heard by the SAC. Rules of evidence and rules on hearing as well as extent of review by the court in IPPC court procedures do not differ from other appeal procedures. There have been few (no more than 7-8) cases of IPPC authorizations brought to court. At least half of them were initiated by investors who were denied issuance of IPPC permit. Environmental NGOs have standing to appeal IPPC decisions.
The approach of courts in IPPC matters is the same as in EIA. Both substantive and procedural legality are reviewed. There is not enough jurisprudence to enable a conclusion about criteria with respect to matters beyond the IPPC decision such as material and technical findings, calculations and IPPC documentation.
Similar to other environmental permitting procedures, in IPPC participation at earlier phases of the same procedure is not required for having standing to appeal the final IPPC decision.
Like the EIA decision, the IPPC permit is an individual administrative act and absolutely the same rules with respect to injunctive relief are applicable. No special rules applicable to IPPC procedures exist as to injunctive relief.

V. Access to Justice against Acts or Omissions

Civil court procedures can be started against private individuals or legal entities in case their unlawful activities have caused damages to any person – private or public. Such lawsuits are explicitly provided in the framework Environment Protection Law (EPL) and in the Water Act (WA).
The requisites for the abovementioned lawsuits are as follows:
a) an unlawful activity;
b) environmental (or water) pollution or damage;
c) damages caused to a person;
d) guilt;
e) a causal link between the unlawful activity and the damages.
The lawsuit can be started either by the person who suffered the damages or by the state authority that is responsible for (manages) the damaged property. The claimant can ask the court to order a stop to the polluting activity or to pay compensation for the caused damages. In practice this lawsuit is not often used. While the unlawfulness of the activity can easily be proved in case the activity in question is carried out without the required permit, the other components of the claim could occur to be more difficult to be established. In most cases it is difficult, even impossible to differentiate between past and recent pollution. In addition it can take two-three years for the procedure to come to an end.
Claims against state bodies in environmental matters could be divided into three groups:
Claims against unlawful activities of authorities.
Claims against unlawful omissions to act, committed by the authorities.
Lawsuits by affected persons against executive power bodies for damages caused by unlawful acts/omissions.
While all three groups of claims should be brought before the administrative court, the latter group of claims are in reality civil lawsuits. The first and the second group of claims are based on a wide range of prerogatives, given to the environmental authorities to stop ongoing unlawful activities, committed by

private persons or to prevent imminent danger of pollution – such prerogatives are provided for by several environmental laws. They are called “coercive administrative measures” (CAM). The CAM could be either preventive, or aiming a stop or recovery from a pollution. A CAM could be appealed before a court by any person having interest to do so. In case of appeal the common rules for appealing administrative act apply. An appeal against a CAM however does not have suspending effect.

In environmental liability matters there is a separate Law on the Responsibility for Prevention and Removal of Environmental Damages (LRPRED). There are two types of measures imposed by the authorities if a situation of environmental damages or of a threat of such damages exists – preventive and for remedying the pollution. Competent authorities under this law are the minister for environment and water, the directors of the RIEWs, the River Basin directors and the National Park directors. The law provides for several requirements to the public for filing a request for action in environmental liability matters, but they are not heavy to implement (the most important being the requirement for supplying the authority with evidence about legal interest if the request is filed by a physical person). NGOs do not have to prove their legal interest. Operators of facilities, contrary to what is expected from the public, have to provide the authorities with explicit and specific information related to the environmental threat/damage/measures. Rules for exchange of information between different environmental authorities are also provided. In general there are no special conditions for court review of either the administrative act for ordering a measure or the refusal to do so. The common rules for court review of any administrative act apply. The appeal against a preventive measure ordered under the LRPED does not have suspending effect. The subject of review is specific, because the procedure for imposing a measure provides for special requirements – e.g. consultations, publications, steps in case the operator is either unknown or not in condition to implement the necessary measures. The enforcement of the environmental liability regime under the LRPRED is carried out under a threat of fines/sanctions for those who do not act according to the legal requirements or to the ordered measures. The competent authorities who sanction the committed misdemeanors are the same as those who impose the measures. Apart from that LRPRED provides for 3 CAMs – the CA can either order a stop of the operator’s activity, or seal off a territory or prohibit/limit the use of a water body. For bringing a CAM, issued under the LRPRED before court the common regime applies. It is to be mentioned that breaking a seal put to keep people off a premise or an object is a crime punishable under the Penal Code.

VI. Other Means of Access to Justice

The Bulgarian legislation grants standing to interested persons (environmental NGOs and physical persons) to bring to court both measures of general nature such as protected areas management plans and normative acts – secondary legislation issued by the executive authorities.

The Role of the Ombudsperson (National Ombudsman):

Suggests solutions to problems in relations between the administration and persons, but he can not overturn an administrative decision.

Has the right to start an administrative procedure for issuing an administrative act.

Cannot bring a case before the Constitutional Court –

instead he can suggest to those who can do that an issue to be considered by the Constitutional Court.

The Role of the Public (State) prosecutors:

considered to be part of the judiciary, not of the executive power.

Given discretion to determine whether or not may participate in administrative measures.

Can also start an administrative procedure

In penal matters public prosecutors are the only authority that can charge someone with a crime (environmental crime included)

No private prosecution exists in Bulgarian environmental penal law.

Earlier a description of the administrative review procedure the prosecutor’s role the ombudsperson’s prerogatives and the CAM was provided. It could be added that the common administrative procedure gives the affected persons a right to appeal before the administrative court any act or inaction/omission of an administrative body. In case of an unlawful act the court considers whether or not the act in question is law-founded. If it is not the case the court orders the unlawful behavior of the administration to stop. In case of unlawful omission the court considers whether or not there is an obligation to act. If the court finds the appeal well founded, it stipulates that the administrative authority should implement the law not later than a précised date.

VII. Legal Standing

Legal Standing	Administrative Procedure	Judicial Procedure
Individuals	X	X
NGOs	X	X
Other legal entities	X	X
Ad hoc groups	X	No
foreign NGOs	X	X
Any other[5]	Local authorities with respect to some central power decisions	X

The accession to the EU (2007) and the transposition of EU law multiplied the number of administrative procedures in environmental law. The legal doctrine and case-law are still in process of defining criteria for standing in different environmental administrative procedures. Environmental cases brought to court are not numerous and some situations have not been tested yet. In Bulgarian legal doctrine there is no differentiation between the concepts of impairment of right and sufficient interest. The interest to participate in an administrative procedure and to appeal an administrative decision is considered according to the concrete facts. When considering the interest, the case-law implies impairment of rights, not always linking the affected right with ownership or use. With respect to NGOs, the same approach applies. However in EIA and SEA all environmental NGOs, except those of private purpose are granted standing. In EIA and in SEA procedures anybody can participate. Foreign environmental NGOs are recognized to have the same rights as local NGOs – exactly as the Aarhus Convention requires.

In general criteria for standing in horizontal procedures (EIA and SEA(Strategic environmental impact assessment)) are more liberal than in sectoral procedures – e.g. water or waste related.

There is no actio popularis in BULGARIA.

The public prosecutor can participate in any environmental administrative procedure, including in its second phase – the court phase. The public prosecutor is supposed to protect the public interest and the range of his rights for participation in administrative procedures is broad. As for the Ombudsman, he can start procedures for issuing administrative decisions, but he does not have the right to appeal an administrative decision before court – he is not meant to act in judicial procedures.

VIII. Legal Representation

There is no legal requirement for lawyers’ assistance at court – either in administrative, or in civil court procedures. However, filing a lawsuit, and especially defense in the civil court without legal counsel might cause a lot of trouble to a party. A recently adopted (2007) Civil Procedure Code (CPC) provides for very strict rules with respect to evidence collection and appearance in court. The spirit of the new CPC is very much different from the spirit of the former

CPC – it requires much more procedural discipline. Under administrative court procedure rules, unlike CPC, the judge is supposed to have a leading role in examining a case. Firstly, with respect to the scope of the legal review the court is not bound by the factual and legal grounds stated by the complainant. Secondly, the court has a legal obligation to assist the parties to a procedure to remove formal mistakes in their statements. The judge should indicate for which factual allegations no evidence is provided. Failing to do so, amounts to a procedural error and a court's decision might be overturned by the superior instance only on that ground. In environmental administrative court procedures another situation seems to happen – the facts are numerous,of different nature and often contradictory technical interpretations of the facts exist, the line between legal and technical requirements might be blurred. That is why in more and more cases courts suggest the parties that it might be better to hire a lawyer.

Usually public interest environmental lawyers combine their current practice in other legal fields such as corporate, civil or administrative law with environmental counseling and litigation. Five-six years ago most environmental cases were heard by courts in Sofia. Since recently this trend has changed, mainly because a lot of EIA, SEA or nature protection related appeals are considered by local administrative courts. Environmental NGOs with experience in a given field usually know public interest environmental lawyers whom one can contact – it is advisable to ask such NGOs.

IX. Evidence

The main evidence in the administrative court procedure is the "administrative file" – i.e. the evidence collected by the administrative authority with respect to the facts and circumstances relevant to the administrative act. The administrative authority has a wide variety of prerogatives for evidence collecting before issuing the act. In addition to the evidence collected by the administrative authority the court can, on demand of the parties to the procedure or ex officio, collect additional evidence. Thus, the court can summon witnesses to give evidence. Any documents could be required and/or presented before the court. Expert opinions are also collected at this phase of the procedure.

The court has freedom in evaluating the evidence collected. The Civil Procedure Code (CPC), which is also applicable for procedures for appealing administrative acts explicitly states that the expert opinion is not binding for the court, which means that the court can reject part or the whole of it. Official documents, i.e. the documents issued by public authorities in performance of their duties, have binding force with respect to the facts certified therein. As for the documents issued by private persons they are taken into account only if they contain evidence which might be used against the claims of the person that issued the document. As a rule in public interest environmental cases the disputes are decided on the basis of expert opinions. In many cases the courts consider the completeness of the administrative file and if there are not documents evidencing that some legal requirements were fulfilled, the courts hold that these requirements were not met.

Parties can introduce new evidence at the court procedure stage. In all cases parties should explain to the court what new evidence is asked and in relation to what facts and circumstances. The facts and circumstances should be relevant to the allegations of unlawfulness of the administrative decision. Usually the court is not inclined to revisit all or a big part of the facts established by the administrative authority. This means that the plaintiff should focus on some key, major issues when asking new evidence to be collected. The court can request evidence on its own motion and this is related to the prerogative of the court to check the legality of a decision, regardless of the parties' claims.

Evidence, including expert opinions can be asked either when the appeal is filed, or by an additional demand filed at the court or at the hearing. The court appreciates it if the evidence is requested beforehand so that the other parties can take position and the court itself has enough time to consider the demand. The party that seeks the expert opinion should formulate the questions to be answered. The expert opinion should be ready and filed at the court at least seven days before the court hearing so that the parties have enough time to have a look at it. The expert opinion as evidence has to be collected at a court hearing and the parties are invited to ask questions. The court only tolerates questions related to the subject matter of the requested expert opinion. The court refuses to accept expert opinions that were not collected in the way described above.

In general, the same rules apply for evidence collecting in environmental civil lawsuits. However, in civil litigation there are peculiarities. The parties to a process are supposed to provide the court with their allegations with respect to the relevant facts and to the evidence supporting the facts. The court is not allowed to interfere and to guide the procedural behavior of the parties. It only can state on the admissibility of the requested evidence. Terms for evidence requesting are shorter and in many cases preclusive.

X. Injunctive Relief

In administrative court procedure the appeal against an individual administrative act has a suspensive effect, unless the opposite is provided by a law. In environmental law there are no cases where the appeal is denied a suspensive effect, except in some cases provided in the Territorial Management Law. Challenging administrative acts of general nature (plans, programs) and normative nature does not stop the implementation of the respective acts. As most part of the administrative court litigation consists of challenging individual administrative acts usually appeals stop enforcement of the administrative decisions.

If the appeal has a suspensive effect, investors can request preliminary execution of the decision and the administrative authorities can grant it.

The APC enumerates five conditions for doing so:

1) where this is required in order to ensure the citizens' life or health;

2) to protect particularly important State or public interests;

3) to prevent a risk of impediment or of failure to enforce the administrative act;

4) or where a delay in enforcement may lead to a significant or irreparable harm;

5) or at the request of some of the parties as a protection of their particularly important interest.

In the latter case a cross-undertaking in damages is required. The order that grants preliminary execution can be appealed before court. The deadline for doing so is three days from the date of publishing of the decision. Independently from what has happened during the administrative phase of the procedure the court before which the appeal procedure is pending can order a preliminary execution of the administrative decision under the same five conditions. Unlike the administrative authority the court can require an undertaking, regardless of the reason for granting preliminary execution, if there is a risk of significant or irreparable detriment to any person.

In administrative court procedure the court, either the first instance or the cassation court, on demand by the plaintiff, can stop the preliminary execution granted by the administrative authority – i.e. the court can order injunctive relief. There are two conditions for doing so. Firstly, there should be a risk that the preliminary execution could inflict significant or irreparable harm to the plaintiff. Secondly the demand should be founded on new circumstances – i.e. on circumstances that occurred after the preliminary execution had been granted.

In civil court procedure the aim of an injunction is to make sure that the execution of a court decision will take place. Civil environmental lawsuits – lawsuits for compensation for inflicted damages or for stopping a polluting activity - could hardly present a situation where injunction is needed. Theoretically, the first instance court can order a preliminary execution of its decision, for instance in a lawsuit for stopping a polluting activity. But the law states that preliminary execution is inadmissible if the execution can inflict irreparable harm or harm that could not be assessed. The latter condition could be a hindrance for obtaining preliminary execution in civil environmental litigation.

Thus in general due to the small number of civil lawsuits, to the suspensive effect of the appeal against individual administrative decisions and to the specific conditions for ordering injunctive relief, the jurisprudence has dealt mostly with appeals against granted preliminary execution of administrative acts. With

respect to the latter category of litigation it is to be noted that usually the court's motives, like the motives of the administrative authority are succinct. Finally, when courts have to state on demands for preliminary execution, they *usually* avoid considering issues related to the legality of the administrative decision as a whole.

All court decisions – either with respect to preliminary execution or to injunctive relief in administrative court procedure, or to injunction and preliminary execution in civil procedure can be appealed before a higher instance court.

XI. Costs

An applicant faces three categories of costs.

Court fees.

Court fees are fixed by a tariff, adopted by the executive power.

The second category are the attorney's fees.

Attorney's fees are not fixed – every attorney can negotiate the amount of his/her fee. A regulation, issued by the Supreme Bar Association Council sets the minimum fee for each type of attorney's service.

Fee of experts (potential fee) appointed by the court to give expert opinions.

A small fee for publishing an announcement about a pending case might be asked in cases of challenging administrative acts of general nature and normative administrative acts.

Court fees in administrative litigation are low. Citizens and NGO's pay a 5 EURO fee for a first instance court process. For trade companies the same fee amounts to 25 EURO. In civil litigation, fees depend on the type of lawsuit. If a claim is pecuniary, e.g. lawsuit for compensation for damages the court fee would be 4 per cent of the amount claimed. If the claim can not be assessed – e.g. a lawsuit for stopping a polluting activity, the judge sets the fee in each individual case. In civil litigation there is no differentiation of fees between NGOs/citizens and trade companies. Fees for appealing decisions – both in administrative and civil litigation amount to the half of the first instance court fees.

Expert fees can vary depending on the number of experts, the questions that are asked and the personal judgment of the magistrate. Expert fees are fixed by the judge. Environmental litigation often requires specific expertise that is provided by more than one expert and the amount of expert fees may vary from 500 to 1200 EURO. Some judges may fix the fee for a single expert opinion below 500 EURO. An additional spending, though not officially recognized by the court as such may be needed if the NGO wants to check or to oppose the expert opinion evidence collected by the court. In such a case usually another expert is approached with the task to check the correctness of the expert opinion. Lawyers' fees may vary a lot. In administrative litigation the attorney's fees is unlikely to be higher than 1500 EURO. In civil litigation the estimate with regards to attorney's fees is difficult.

The court fee cost for considering an injunction relief/injunction measure is insignificant – no higher than 15 EURO. Theoretically a deposit or cross-undertaking could be asked but in environmental matters such situation never happened. In trade marks/industrial property litigation an analysis made in 2004-2007 showed that for similar cases the amount of the undertaking may vary a lot depending on the estimation of different judges.

The "loser pays principle" is strictly implemented by the courts. In administrative litigation the plaintiff, if losing the case, is bound to pay the minimum fee of no more than one attorney, hired by it's adversary. However this rule has not always been respected, including in public interest environmental cases and plaintiffs were obliged by the court to pay the winning party attorneys' fees which were much higher than the minimum fee. There is no way for shifting the costs or for making the implementation of the "loser pays principle" milder for claimants/plaintiffs in environmental public interest litigation. The only ground for a possible reduction of the attorney's fees is provided in the CPC, applicable also in administrative litigation. The CPC states that the court can reduce the attorney fee to be paid if its amount does not correspond to the legal and factual complexity of the case.

XII. Financial Assistance Mechanisms

No exemptions from procedural costs, duties, filing fees, or taxation of costs exist in environmental matters, regardless of the public interest involved. In administrative litigation, plaintiffs are not bound to pay costs for evidence collecting initiated by the court, even though the evidence relates to the plaintiff's claim.

There is a legal mechanism for exemption from court fees of claimants who "do not have enough means to pay the fees". The situation might be caused by different circumstances – illness, low income, age, etc. which should be proved by the person asking for exemption. The court decides whether to exempt or not the claimant from paying court fees. The Legal Aid Law (LAL) provides for a help to a litigant by covering his/her expenses for attorney. The litigant should be in a poor financial condition. The decision for granting legal aid is taken either by the court or by an administrative body called National Bureau for Legal Aid. The LAL mechanism is a general one and plaintiffs/claimants in environmental litigation are unlikely to profit. A special legal aid mechanism apart from the abovementioned ones does not exist in environmental matters.

The law does not regulate pro bono assistance provided either by individual professionals or by legal firms. So it is up to the law firm to decide under what conditions it would offer pro bono assistance. The availability of such services depends very much on the individual case and the motivation of the law firm management body to be involved in a given case.

There are no legal clinics dealing with environmental cases.

NGOs and citizens identify individual law professionals sharing the same objectives ofpursuing public interest law activities. Some of them have been providing public interest legal services for many years. In regions which are rich in natural habitats, local lawyers help experienced NGOs like Bulgarian Society for Bird Protection , Green Balkans , Bulgarian Biodiversity Foundation or Balkani Wildife Society in doing environmental litigation. The Access to Information Programme does a lot of access to environmental information litigation. An informal group of lawyers, Green Lawyers, address for e-mails: zeleniteadvokati@gmail.com, advocates for more transparency and better protection of the public interest, especially in nature protection.

XIII. Timeliness

The general rule states that an individual administrative act should be issued no later than 14 days to one month after the start of the procedure. In environmental matters, however, procedures are usually more complicated and may last from several months to more than a year. Many environmental procedures provide for specific time limits to deliver a decision – e.g. the EIA decision should be taken in 45 days after the meeting for public discussion of the EIA report.

Low standing administrative authorities could be fined for not respecting the deadlines for delivering administrative decisions. Theoretically a person can sue the government for the delay.

There are no time limits set by the law for judicial procedures in environmental matters. There are a lot of deadlines provided in general for the various steps of the administrative court procedure. There is a three-day deadline after receipt of the appeal, in which the administrative organ should send the file to the court. If a party cannot appear in court because there is an obstacle it can not overcome, the next hearing should be scheduled to take place in three months period from the last session. Time limits for different activities for the parties to a procedure can be set either by the law or by the court. They usually vary, but are never longer than 14 days. One of the principles of the administrative court process says that the procedure should be expeditious.

The duration of an environmental court procedure can vary depending on the number of hearings, its stages and the schedule of hearings of the court. The need for a publication in the State Gazette could add several months to the process. If there are numerous parties to a procedure it can take longer time to

inform all parties for one or several hearings. Usually the duration of a first instance court procedure with two or three hearings is approximately 6-7 months. If there are more than three hearings the procedure can take 8-12 months. An appeal before the second instance might prolong the procedure by additional 6-8 months. A worst-case scenario would be a long lasting first instance process combined with gross procedural errors whereby the second instance sends back the file to be decided again by another judge – i.e. the procedure in this case would restart from the beginning. In such a case it might take 2-3 years before the final court decision enters into force. An additional factor for a delay might be the fact that some courts/chambers are overburdened and the date of the first hearing is fixed for not earlier than 6-9 months after arrival of the appeal at the court. A medium duration of an environmental administrative court procedure with none of the abovementioned complications would be 12-18 months.

The court has a deadline of 30 days from the last hearing to deliver its decision. In most cases this deadline is respected.

There are no sanctions provided against a court that has delivered a decision in delay. The 30 days deadline is considered not to be binding and not respecting it is not related to any legal consequences. If a judge repeatedly delivers his/her decisions in delay, the judge's behavior could be brought before the Inspectorate to the Supreme Judicial Council of the Republic of Bulgaria.

XIV. Other Issues

Usually environmental decisions are challenged directly before court. This is partly due to the fact that some authorities', e.g. ministerial decisions cannot be brought before a higher administrative instance because there is not any such instance. Recently, especially in EIA and SEA cases, NGOs started appealing decisions, first, before the Minister for Environment and Water, the higher authority of the Regional Inspectorates for Environment and Water and, second, before courts.

There are a wide variety of sources of information on access to justice in environmental matters. On the websites of almost all administrative courts there is information about the administrative court procedure, implemented in any environmental permitting process as well. On some websites one can find texts of laws . On other websites short explanations about access to justice is provided . On the websites of the Ministry for Environment and Water and the Regional Inspectorates for Environment and Water there is information about individual decisions that have been taken and the authorities before which these decisions can be appealed. On the website of the Supreme Administrative Court one can find an electronic version of all decisions taken by the SAC in the last 10-12 years.

Alternative Dispute Resolution (ADR) exists in BULGARIA and is regulated by the Law on Mediation. However environmental administrative court disputes cannot be subject to an ADR procedure. Since 2007 the APC has introduced the settlement of a dispute before the court as a way to make the administrative court procedure more efficient. No such settlements in environmental matters were publicly announced.

Mediation is not frequently used in environmental matters. In some cases of public interest the Minister for Environment and Water initiated meetings for clarifying the parties' positions.

XV. Being a Foreigner

The official language of procedure in Bulgaria is the Bulgarian language. Persons who do not speak and/or understand Bulgarian language are supposed to organize their defense in a manner so that their interests are not hampered. If a person wants to use another language, different from Bulgarian in the court procedure the court appoints a translator. This is valid for both the administrative and the civil court procedures. Translation is paid for by the party who needs it except when national law or international treaty provide otherwise, such as the Law on Asylum and Refugees. The State budget does not cover for translation in Environmental legislation.

The country of origin of a person does not influence in any way it's rights, granted by national legislation or international treaties. Once a person is accepted as a party to a procedure the law guarantees that it can enjoy the same rights as the other parties to the same procedure.

XVI. Transboundary Cases

Bulgaria is a party to the Espoo Convention on EIA in a Transboundary Context. The national secondary legislation provides for rules for the implementation of the obligations of Bulgarian authorities that flow from the Espoo convention. When the Party of origin is another country, the Minister for Environment and Water (MOEW) is responsible authority for performing the tasks related to the Convention. The MOEW is the organ that declares the intention of Bulgaria as affected Party to participate or not to participate in an EIA procedure, carried out by the competent authority of the Party of origin. The MOEW is responsible for the flow of information from the Party of origin to the public concerned in Bulgaria so that the public can participate in the process of decision-making.

The notion of "public concerned" in transboundary context does not differ from the same notion in national context. The legal definition of "public concerned" was transposed into the national Bulgarian legislation from the Aarhus Convention on Access to Environmental Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (The Aarhus Convention for short). All neighbouring countries to BULGARIA, except Turkey are Parties to the Aarhus Convention. This ensures to a large extent an equal treatment of foreign citizens and NGOs before Bulgarian courts and vice versa. When BULGARIA is country of origin it applies the same standard for granting standing to it's nationals as to nationals from the other neighboring countries that are Parties to the Aarhus Convention as well. This stems from Article 3, paragraph 9 of the Aarhus Convention. The question whether NGOs and citizens from the affected country can request injunctive relief and interim measures is very interesting because it presupposes that the Bulgarian jurisprudence has a clear answer to the question whether Article 9, paragraph 4 of the Aarhus Convention can be directly implemented or not. This discussion has not taken place in Bulgariayet. In general the Bulgarian public does not have a choice regarding the competent courts of different countries in environmental matters. In administrative matters the rule is clear – the Bulgarian judiciary checks the legality of decisions taken by the Bulgaria authorities. In civil matters and especially in environmental liability there might be a choice with respect to the competent court, because usually in civil liability both the court where the damages occurred and the court of the seat of the defendant are competent to hear the case.

(1) For instance different judges/chambers of the Administrative Court are taking different stances as to the interest of an NGO of private interest to appeal an EIA decision.

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