# Access to justice in environmental matters

Bulgária

To find more national information about access to justice in environmental matters, please click on one of the links below:



Last update: 20/07/2022



## 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**

Bulgaria is a country in which the basic rights and obligations of the citizens are constitutionally established, as well as the obligations of the state for protection and maintenance of the environment. According to Art. 55 of the Constitution, citizens have the right to a healthy and favourable environment in accordance with established standards and regulations. Historically, nature protection laws have existed before, but environmental protection was established in the legal system as an independent object of protection from the effects of industrialisation in the early 1970s, coinciding with the period of political enlightenment and cooperation in Europe (Helsinki Process). Environmental movements and civil protests against air pollution in Ruse in the 1980s were significant for the transition from a totalitarian to a democratic society. After the adoption of the 1991 Constitution, in connection with the preparation and EU accession of the country in 2007, the legislation was in line with the EU legal system (horizontal and sectoral), subject to its primacy and the direct effect of supranational law. The international treaties to which Bulgaria is a party are also part of the system of domestic law.

Depending on the accepted classification according to the method of normative regulation, the protection of the environment as an objective law and justice is interdisciplinary[1], subject to a relatively lesser extent to other branches of law such as civil, criminal, commercial and constitutional law, and finds expression most often in administrative law and process[2]. The main procedural principle of access to justice is that each party has the right to be heard by the court before an act (e.g. administrative decision) takes effect which is important for its rights and interests. The court shall ensure that the parties have an equal opportunity to exercise the rights conferred on them and it applies the law equally to all pursuant to the Civil Procedure Code (CPC). Individuals and legal persons enjoy equal procedural opportunities to participate in administrative proceedings and in the judicial review of administrative acts to defend their rights and legitimate interests, as stipulated in the Administrative Procedure Code (APC). The APC stipulates the main principles of the administrative procedures in Chapter II. Among them are the principles of legality, proportionality, equality, independence and impartiality, of the active role of the authorities and the court, acting ex officio, an expression of which is the obligation of the court to point out to the parties that in some circumstances the burden to provide evidence is theirs.[3] Access to justice in environmental matters is one of the main principles of environmental protection in Bulgaria, together with other principles listed in Art. 3 of the Environmental Protection Act (EPA) such as sustainable development; public participation and transparency in the decision-making process in the field of environment; awareness of citizens about the state of the environment; the polluter pays principle.

The environmental government system comprises authorities of the executive power at central level and authorities at local level. The specialised administration of competent administrative authorities with rights and obligations in the environmental field consists of the Minister of Environment and Water (MoEW), the executive director of the Executive Agency for Environment (EEA), the directors of the Regional Inspectorates for Environment and Water (RIEW) and the directors of the basin directorates, plus the administration of general competence: the Council of Ministers, the mayors of the municipalities and, in towns with district division, the mayors of the districts, and the regional governors.

The Bulgarian Parliament (the National Assembly) is the main legislative body which passes, amends, supplements and repeals laws, e.g. the EPA (Art. 84, p.1 of the Constitution). The Council of Ministers adopts decrees, ordinances and resolutions pursuant to and in implementation of the laws, e.g. the ordinances on SEA and EIA. The Council of Ministers drafts rules and regulations by decree (Art. 114 of the Constitution). In the field of environment, the Minister of Environment and Water issues rules, regulations, instructions and orders (by delegation of Art. 115 of the Constitution[4]), e.g. rulebooks like the Rules on the functions, tasks and composition of the Supreme Environmental Expert Council. An essential characteristic of the legal system is the hierarchy of normative acts and their application by the court depending on their rank according to the explicit provision of Art. 15 of the Law on Normative Acts (LNA) of 1973, still in force today. The principle of application, in the case of non-compliance of the normative act, of a higher degree is also confirmed in Art. 5 of the APC, adopted in 2006. The administrative normative by-laws according to the APC can also be directly challenged in court.

The structure of normative acts is determined according to the LNA and Decree № 833 for application of the LNA. The section "Additional provisions" at the end of the normative act also indicates the directives transposed by it and introduces requirements of other normative acts of the EU.

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

The Bulgarian Constitution provides for a right to a healthy and favourable environment corresponding to the established standards and norms (Art. 55). Protection of the environment is also a citizen's duty. Enforcement of the right to a healthy and favourable environment is possible, together with other constitutional fundamental rights and freedoms (Chapter II) like:

the right to life (Art. 28)

the inviolability of the home (Art.33)

freedom of expression – Art. 39

the right to access to and dissemination of information – Art. 41(2)

freedom of assembly – Art. 43

freedom of association – Art. 44(1).
Citizens are guaranteed access to court to appeal administrative acts[5] (Art. 120 of the Constitution), unless provided otherwise by the law. No explicit legal exception exists in the field of environmental law. All provisions of the Constitution apply directly (Art.5(2)) and all citizens are equal before the law (Art.6(2)).
As to the right to a healthy and favourable environment, it is usually applied together with other legal rules and standards of procedural or substantive nature, such as:
the obligation of the State to ensure the protection of the environment and of living nature in all its variety, and the rational use of natural resources (Art.15),
the right of citizens to file complaints, proposals and petitions with the state authorities (Art. 45),
the right of citizens to legal defence whenever their rights or legitimate interests are violated or endangered, and the right to be accompanied by a legal counsel when appearing before an agency of the State (Art. 56), and
the obligation of the judiciary to protect the rights and legitimate interests of all citizens, legal entities and the State (Art. 117 (1)).

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

The main legal provisions on the environment and access to justice in environmental matters in Bulgaria are set out in the framework Environmental Protection Act (EPA). In addition, the general legal rules for access to justice are set out in the Administrative Procedure Code (APC), the Administrative Offences and Penalties Act (AOPA) and the Civil Procedure Code, which applies subsidiarily to any matters not explicitly regulated by the APC. Other relevant sectoral environmental laws and by-laws that could provide for environmental rights to be defended include the Biological Diversity Act, the Genetically Modified Organisms Act, the Water Act, the Protected Areas Act, the Waste Management Act, the Clean Ambient Air Act, the Protection from Environmental Noise Act, the Black Sea Coast Spatial Development Act, the Agricultural Land Protection Act, the SEA Ordinance on the conditions and procedures for carrying out Environmental Assessment of Plans and Programmes, the Ordinance on the terms and procedure for carrying out an EIA, the Ordinance on the terms and procedure for carrying out the assessment for compatibility of plans, programmes, projects and investment proposals with the subject and purpose of protection of protected areas, the Ordinance on conditions and the order for issuing of integrated permits (IED Ordinance); and the Ordinance on prevention of major accidents involving dangerous substances and limitation of their consequences (SD Ordinance).

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

The legal implementation of the requirements regarding access to justice has been in progress since the ratification of the Aarhus Convention, in force as from 2004, and EU accession, from 2007, respectively. The listed examples of court rulings are significant for the evolution of the interpretation of the issues on exercising citizens/NGOs right of access to justice.
As an achievement of general importance for the strength of the supremacy of the rule of law in nature conservation, the Supreme Administrative Court (case № 12379/2018) repealed Decision of the Council of Ministers No. 821/29.12.2017 on amendment of the management plan for Pirin National Park. The judicial review incorporates interpretation of the provisions of Bulgarian and international law, taking into account decisions of the CJEU, directives of the EU and decisions of the World Heritage Committee to the Convention concerning the Protection of the World Cultural and Natural Heritage. Of key importance is the recognition by the court of the primacy of the requirement of Art. 6.4 of the Aarhus Convention for public participation at an early stage when all options are open and an effective public hearing can be carried out. Another achievement in this case was that the many laws to which the court referred in concluding that the authorities had breached the law included Art. 6(4) of the Aarhus Convention.
The main aspects of access to justice for citizens and environmental NGOs (ENGOs) in environmental matters based on Art. 9 par. 2 of the Aarhus Convention are recognised by virtue of the binding effect of the ratification act and the successive internal law - § 1, p. 25 EPA. Recognising sufficient interest in such cases for members of the public, it broadens the principle of impairment of rights depending on direct violation, or threat of violation, of the rights, freedoms and legal interests of individuals and organisations according to Art. 147 APC. Such a broad interpretation of access to justice in environmental matters for individuals and ENGOs is consistently implemented as a precondition of standing capacity, but depending also on the interpretation of the nature of the administrative act appealed.[6] In the case of an appeal of the integrated permit for a thermal power plant, the first-instance district court denied legal standing of an ENGO registered with private interest[7]. The third chamber of the Supreme Administrative Court (SAC) (case № 7384/2015) repealed this decision of the district court, stating that the parameters of the legal interest to appeal the administrative act are defined by the subject of the act, which establishes obligations or affects rights and legal interests of the appealing citizen or organisation, and these parameters are decisive for the admissibility of the judicial review for legality of the act. However, more recent case-law of the SAC shows the opposite tendency, and the court does not grant standing to ENGOs of private interest to challenge Art. 6 of the Aarhus Convention decisions. In a lawsuit concerning an appeal of the decision of the Energy and Water Regulatory Commission (EWRC) to extend the duration of the licence for electric power generation sought to establish a practice of allowing ENGOs in litigations on the Energy Act so that they could appeal the acts of the EWRC. In that case (№ 12922/2015), the SAC denied the right of appeal to ENGOs. Other problems with procedures outside the scope of Art. 6 of the Aarhus Convention is granting of standing in other procedures for environmental permits – challenging water permits for instance.
Environmental cases are handled under the common administrative procedure – i.e. there are no specific court rules applicable to environmental matters. The second, cassation, instance has recently been stripped of the right to challenge EIA/SEA decisions on projects, plans and programmes of strategic national importance[8]. Also worth mentioning is a lawsuit based on class action related to environment, case № 6614/2017 of the Sofia City Court brought by citizens against Sofia Municipality for the lack of effective measures for achieving good quality of ambient air.
The case-law of SAC is important for jurisprudence in the application of environmental law. It is not a formal source of law, but its has binding power for the law-enforcement authorities. However, the interpretative rulings of the SAC could be seen as a subsidiary source of law.[9] Legislative changes in 2017 in the Law on Access to Public Information to limit the cassation appeal of decisions issued in cases against refusal of information, including on the environment, i. e. their consideration at only one instance[10], was subject to public and institutional criticism, with a veto by the President and a request to declare them unconstitutional.[11]

**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?**

International treaties ratified in accordance with the constitutional procedure, promulgated and having come into force with respect to the Republic of Bulgaria become part of national legislation. They have primacy over any conflicting provisions of domestic legislation (Art. 5(4) of the Constitution). The parties to the administrative procedures could directly refer to the international environmental treaties ratified by the Republic of Bulgaria.
Both administrative bodies and courts apply the Aarhus Convention directly. As mentioned above, the Supreme Administrative Court (case № 12379/2018) recognised the primacy of the requirement of Art. 6.4 of the Aarhus Convention for public participation at an early stage when all options are open and an effective public hearing can be carried out.

## 1.2. Jurisdiction of the courts

**1) Number of levels in the court system**

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 interest (less than 12,500 EUR and up to 25,00 EUR for property right disputes).
Regional courts acting as first instance courts for more important disputes and as appellate instance for district court decisions.
The SCC performing the function of cassation instance for all appellate decisions (with a few exceptions).
The administrative judicial system consists of:
28 administrative courts that deal with appeals against administrative decisions.[12]
The SAC can act either as first instance court or as a cassation instance.
District courts that hear appeals against administrative acts for sanctioning administrative offences (misdemeanours), incl. for not executing or violating a decree, order or other act related to the environmental legislation (Art. 32(2) of AOPA). A cassation appeal against a district court's decision in such a case will be dealt with by a three-judge chamber of the respective administrative court.
The Supreme Judicial Council, the Judges Chamber, is the authority that appoints, promotes and dismisses judges. There are no specialised courts or tribunals for hearing environmental cases. However, at some administrative courts judges are organised in chambers to the effect that environmental cases are decided by a limited number of judges in the respective court.

**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)?**

The 28 regional administrative courts act as first instance in all administrative cases, with the exception of those cases which fall within the jurisdiction of the Supreme Administrative Court.
The SAC hears cases such as appeals against acts of the Council of Ministers, the prime minister, the deputy prime ministers and the ministers, cassation appeals and protests against first-instance decisions of court, and motions for reversal of effective judicial acts on administrative cases.
The territorial jurisdiction is defined by the address or seat of the persons addressed by the individual administrative act. If the addressees have different addresses/seats but within a single court district, the case is heard by the administrative court in the district of the territorial structure of the administration of the authority which has issued the act. All other cases are heard by the administrative court in the district where the seat of the authority is found. Appeals against general administrative acts[13] are heard by the administrative court at the seat of the authority that issued the contested act. Such acts could be decisions of the municipal council for adoption or amendment of the annual budget of the municipality, or the Order of the Minister of Environment and Water for declaring a protected territory under Art. 39 of the Law on Protected Territories (PAT).[14] Legal actions for compensation shall be brought before the court at the address or seat of the appellant, including in cases where they are adjoined with appeals against administrative acts.
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.

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

Environmental cases are handled under the common administrative court procedure stipulated in the APC or by subsidiary application of the Civil Procedure Code – i.e. there are no specific court rules applicable to environmental matters; incl. a number of provisions e.g. alternative competence, statute of limitations on administrative sanctions (Art. 34 AOPA).
The general rule is a two-instance judicial review, except for lawsuits for EIA/SEA decisions for approval of projects, plans and programmes of strategic importance for which the first-instance decision is final.
Within the amendments of APC from 2018, the respective norms providing for a one-instance court procedure for challenging decisions transforming the status of agricultural land for construction and other non-agricultural purposes under Art. 20a, 3, 24a, 1 and 38, 1 of the Protection of Agricultural Lands Act, as well as decisions aimed - in the case of lack of the proprietor's consent - at providing the respective rights empowering the land access of the operator for prospecting, exploring or extracting minerals according to Art. 75 of the Underground Natural Resources Act. The Constitutional court rejected the request to rule on the non-conformity of the adopted provisions of the APC as a restriction of the right to justice[15].

**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 general rule in the APC, applicable also to environmental lawsuits, is that administrative acts may be contested before the court in respect of the legal conformity of the acts. Administrative acts may be contested on the grounds of lack of competence; non-compliance with the established form; material breach of administrative procedure rules; conflict with provisions of substantive law; non-conformity with the purpose of the law.
In jurisdiction disputes, the question whether the case falls under the jurisdiction of an administrative court or another authority outside the court system may be raised during any stage of the proceedings, including ex officio by the court. (Art. 130(3) APC). The court also acts on its own motion when there is a question about the territorial jurisdiction of the court. (Art. 134(2) APC). The court shall constitute the parties, acting on its own motion. (Art. 154 APC). The court may also act on its own motion in appointing experts and ordering inspection and certification. (Art. 171(2) APC). Acting on its own initiative or on a motion by a party, the court may correct any written errors, errors in calculations or other such obvious inaccuracies in the court decision. (Art.175 (1) APC).
Within a cassation review, the SAC could act also on its own motion to assess the validity, admissibility and conformity of the court decision with the substantive law. (Art. 218(2) APC).

### 1.3. Organisation of justice at administrative and judicial level

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

The general rules for administrative procedures at national, regional and local level are regulated in the Administrative Procedure Code. A proceeding for the issuance of an individual administrative act shall be started at the initiative of the competent authority or at the request of an individual or an organisation and, in cases provided for in the law, by the prosecutor, the ombudsman, the superior or another state body. The special procedural rules for environmental law procedures are stipulated in the Environmental Protection Act or in the sectoral laws with relevance to environment (e.g. the Water Act). The main competent authorities issuing decisions in environmental procedures are the Minister of Environment and Water, the Directors of Regional Inspectorate of Environment and Waters and the Executive Director of the Executive Environmental Agency, the directors of the basin directorates, the mayors of the municipalities. The regional governors ensure the implementation of the state policy for environmental protection in the territory of the region and have other duties listed in Art. 15 of the EPA.

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

An administrative act may be contested before the court even if the possibility for administrative contestation of the administrative act has not been exhausted, unless otherwise provided for in this APC or in a special law.
In administrative matters, two-instance court procedures are in place. Lawsuits for EIA/SEA decisions for approval of projects, plans and programmes of strategic importance for which the first-instance decision is final.
See p.1.2.3. for other provisions on one-instance court procedures.

According to the data of the EU Justice Scoreboard on the indicator time needed to resolve administrative cases at all court instances, Bulgaria was second (with the shortest time) after Sweden in 2017, and first in 2018.
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, and, in some cases, a third cassation instance, e.g. against an appellate court decision in conflict with a decision of the Court of Justice of the European Union[16].
The grounds for cassation, specified in Art. 209 of the APC, are defects of the first-instance decision concerning the requirements for validity, admissibility and correctness of the judicial act, respectively, namely is it
invalid,
inadmissible, or
incorrect because of a breach of the material law, substantial breach of the court procedural rules or insufficiency.
The duration of the lawsuit depends on the complexity of the case, e.g. the evidence collection, however recently the SAC in particular was able to deliver a decision per court instance within 6 months or less from filing of the case. The EPA sets special timelines for the courts to hear and deliver a decision for lawsuits on the EIA/SEA decisions for projects, plans and programmes of strategic national importance. Such court cases should be heard within 6 months and a decision pronounced with 1 month after the case is completed.
In the realisation of projects which are designated as sites of national significance by an act of the Council of Ministers and are also sites of strategic importance, judicial control over the administrative decisions in the SEA and EIA procedures is carried out in one court instance proceedings (Art. 88(4) and Art. 93(10) EPA). In these cases there are short deadlines for consideration of the case by the court and pronouncement of decisions –6 months and 1 month respectively. Inasmuch as these rules represent deviation from the established principle, they limit the access to justice in its fullest possible scope guaranteed by the APC and expressed by first instance and cassation court review that aim not only to review and correct the defects of the administrative decision but also of the first-instance court decision by order of the instance control exercised by the Supreme Administrative Court, which is the highest court in the administrative court proceedings with the highest authority, experience and capacity.

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

Environmental cases are handled under the common administrative procedure – i.e. there are no specific court rules applicable to environmental matters. Specificities of judicial procedures in environmental matters could be divided into three groups with respect to standing (p.1.4), evidence collection (p.1.5.) and scope of review (p.1.8)[17].

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

An administrative act may be contested before the court even if the possibility for administrative contestation of said act has not been exhausted, unless otherwise provided for in the APC or in a special law. If the person has used the possibility of administrative review and is not satisfied with the outcome, it can refer the case to the court in accordance with the rules for judicial review of administrative acts. Where the act, the tacit refusal or the tacit consent have been contested according to an administrative procedure, the time begins to run from the communication that the superior administrative authority has rendered a decision and, if the authority has not pronounced it, from the latest date on which the authority should have pronounced it (Art. 149 (3) APC).
Regarding the court instances of the judicial review, the second court instance for appeals of decisions on EIA/SEA has been removed and the cases are heard and decided with a final decision by the first-instance court. This applies to SEAs/EIAs related to investment proposals, their extensions and changes defined by the Council of Ministers as projects of national and strategic importance, as well as decisions of the Minister of Environment and Water in the case of a joint procedure between EIA and integrated permit or for approval of safety reports for upper-tier establishments under the Seveso Directive (Art. 94, para.1, p.9 EPA). Such court cases should be heard within 6 months and a decision pronounced with 1 month after the case is completed.[18]
The procedure for challenging the assessment of compatibility with the objectives of protected areas for habitat protection (Article 31 BDA) is determined alternatively depending on the applicable environmental assessment procedure. The appropriate assessment falling within the scope of the EPA could be carried out through the SEA procedure (for plans and programmes) or through the EIA procedure (for projects) under the EPA and in compliance with special provisions of the Biological Diversity Act (BDA) and Chapter Three of the Ordinance on the terms and conditions for assessing the compatibility of plans, programmes, projects and investment proposals with the subject and purpose of protection of protected areas. Alternatively, outside these cases the appropriate assessment is carried out in a separate procedure and the final act is subject to separate judicial review[19]

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

In both administrative and civil court procedures, an extraordinary remedy for reversal of court decisions exist. The Administrative Procedure Code provides for motions for reversal of effective judicial acts in administrative cases. A right to motion for reversal vests in a party to the case to which the judicial act is adverse.[20] The Prosecutor General or the Deputy Prosecutor General heading the Supreme Cassation Prosecution Office may motion for the reversal of effective judicial acts on the grounds and within the time limits applicable to the parties in the case. An act shall be reversible:
upon discovery of new circumstances or new written evidence of material relevance to the case which could not have been known to the party upon adjudication in the case;
upon establishment, according to the duly established court procedure, of falsity of the testimony of witnesses or of expert findings on which the act is based, or of a criminal act by the party, by the representative thereof or by a member of the court panel in connection with adjudication in the case;
where the act is based on a document which has been pronounced forged according to the duly established judicial procedure, or on an act of a court or another State institution which was subsequently revoked;
where another effective court decision has been rendered in respect of an identical motion, between identical parties and on identical grounds and the court decision is contrary to the decision for which the reversal is motioned;
if, consequent to the breach of the relevant rules, the party was deprived of the possibility to participate in the administrative proceeding or was not duly represented, as well as if the party was unable to appear in person or through an authorised representative by reason of an irremovable obstacle;
if the European Court of Human Rights has found, by judgment, any violation of the Convention for the Protection of Human Rights and Fundamental Freedoms;
when the judgment or ruling in an administrative lawsuit is null and void (128a APC).
According to the general rule provided in the Civil Procedure Code (CPC), applicable also to administrative lawsuits, if the interpretation of a provision of the legislation of the European Union or the interpretation and validity of an act of the bodies of the European Union is of importance for the correct settlement of the lawsuit, the Bulgarian court shall make a request for preliminary ruling to the Court of Justice of the European Union (CJEU). The request shall be made by the court before which the lawsuit is pending, ex officio or upon a request of the party. The court whose decision is subject to appeal may deny the request of the party to forward a request on causative matters for interpretation of a provision or of an act. The ruling denying such a request is not subject to appeal.

The national court, whose decision is not subject to appeal, shall always forward a request for interpretation, except where the answer to the question arises clearly and undoubtedly from a previous decision of the CJEU or the meaning and sense of the provision or of the act are clear beyond any doubt (Art. 629 (4) CPC).

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

There are no special rules for environmental cases and out-of-court solutions regarding such conflicts. As a general rule, a judicial settlement may be reached during any stage of the proceedings under the same conditions under which the settlement may be reached in the proceedings before the administrative authority. All parties to the case shall mandatorily participate in the settlement. By the ruling confirming the settlement, the court invalidates the administrative act and dismisses the case. The ruling may be appealed only by a party which did not participate in the settlement. Should any such settlement be revoked, examination of the case shall proceed. A confirmed settlement shall have the significance of an effective decision of court.[21] (Art. 178 APC)

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

The role of the Ombudsperson of the Republic of Bulgaria includes facilitating conflicts in relations between the administration and affected persons in cases of wrongful conduct, but s/he cannot overturn an administrative decision. In cases provided for in the law, the Ombudsperson could initiate a proceeding for the issuance of an individual administrative act. S/he could put forward suggestions and recommendations for removing the causes and conditions for breaches of rights and freedoms, incl. by initiating proposals for draft laws.

According to Art. 150 (3) of the Bulgarian Constitution, the Ombudsperson may approach the Constitutional Court with a request to declare as unconstitutional a law which infringes human rights and freedoms.

The Ombudsperson can ask the authorities[22], listed under Article 150 of the Constitution, to approach the Constitutional Court if s/he is of the opinion that this is necessary to interpret the Constitution or to pronounce on compliance with the Constitution of the international treaties entered into by the Republic of Bulgaria prior to their ratification and on compliance of laws with the generally recognised rules of international law and with the international treaties to which the Republic of Bulgaria is a party. The Ombudsperson has a right to motion for reversal of effective administrative acts pursuant to Art. 99-100 of the APC, as well as at the phase of their execution. The motion concerns any effective individual or general administrative act which has not been contested before the court, and it may be revoked or modified by the immediately superior administrative authority and, if the act was not subject to administrative contestation, by the authority which issued the act. The grounds for reversal are that some of the requirements for legal conformity of the act have been materially breached.

The local ombudspersons, wherever such are elected, are competent with the statutes approved by the municipal councils acting under local government autonomy. A request for assistance can be submitted to the ombudsperson by individuals and NGOs working in the public interest in the field of human rights via an online form available at the website.

The Role of the Public (State) prosecutors:

The public (state) prosecutor[23] as an institution ensures that legality is observed by leading the investigation and supervising the legality thereof; by conducting investigations; by bringing charges against suspected criminals and supporting the charges in indictable cases, incl. for environmental crimes. It can take part in administrative suits related to the environment by challenging administrative acts and/or be a controlling party in such suits on behalf of the state. The prosecutor can, in cases provided for by the law, initiate proceedings for the issuing of an individual administrative act.

### 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)?**

The Bulgarian legislation grants standing to interested persons (ENGOs and physical persons) to bring to court both measures of a general nature such as protected areas management plans and normative administrative acts – secondary legislation issued by the executive authorities. §1, p. 24 of the Additional Provisions of the Environmental Protection Act states that "public" is defined as one or more natural or legal persons, and associations, organisations or groups thereof established in accordance with national legislation. §1, p. 25 of the EPA further defines "the public concerned" as the public referred to in §1, p. 24 who are affected or likely to be affected by, or which has an interest in, the procedures for approval of plans, programmes and development proposals, and in the decision-making process on the granting or updating of permits according to the respective environmental procedure or in the conditions set in the permits, including non-governmental organisations promoting environmental protection which are established in accordance with national legislation[24].

The national courts interpret differently “the public concerned” pursuant to Art. 2, p.5 of the Aarhus Convention, transposed by §§ 24 and 25 of the Additional Provisions of the Environmental Protection Act. At the moment, the prevailing case-law on the matter is that only ENGOs registered with public interest have a right of appeal in environmental cases. Conversely, other judges[25] have held that the right of appeal applies to all ENGOs, whether registered with private or public interest[26]. To grant standing to the interested public within the scope of Art. 9(2) of the Aarhus Convention, the court carries out an admissibility test based on two groups of criteria, namely arising from the special composition of the provision in connection with the legal definition of par. 1, items 24 and 25 of the Additional Provisions of the EPA regarding the legal personality and legal interest of the complainant, as well as the suitability of the challenged act as a subject of appeal. In order to assess the material relevance of the act for resolving issues of environmental protection, the court shall examine the relevance to the activities included in Annex I to the Convention and the national legislation under item 20 of Annex I; as well as, on a general basis according to Art. 159, item 1 of the APC, the content of the administrative act as an internal or intermediate act, which is not subject to appeal as it has no dispositional consequences in relation to the legal sphere of citizens and legal entities but is aimed only at hierarchically subordinated structures or the preparation of another final act. For example, standing was granted to an ENGO to challenge an act on coordination of an investment project, a negative screening decision not to carry out appropriate assessment under Art. 31(19) of the BDA (for a Natura 2000 protected area), but the court did not grant the right to legal review of a municipal programme for improving the quality of the ambient air under Art. 27 of the Clean Ambient Air Act due to the qualification for lack of authoritative order representing an individual administrative act. Despite examples of contradictory court practice, it is evolving with reference to the achievements in implementing Directive 2003/35 /EU, as well as the Compliance Committee to the Aarhus Convention.

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

No, there are not. Only regarding the court instances of the judicial review, the second court instance for appeals of decisions on EIA/SEA has been removed and the cases are heard and decided with a final decision by the first-instance court. This applies to SEAs/EIAs related to investment proposals, their extensions and changes defined by the Council of Ministers as projects of national and strategic importance, as well as in cases of integration of EIA procedure with at least one of the procedures for granting of integrated permits or approval of safety reports for upper-tier establishments under the Seveso Directive (Art. 94, para.1, p.9 EPA). Such court cases should be heard within 6 months and a decision pronounced with 1 month after the case is completed.

The different sectoral laws refer to the APC in order to provide the procedure that is applicable for appealing administrative acts under the specific authorisation. The uniform grounds[27] for assessing legal conformity of the act are consistent with the diversity of the corresponding requirements, both substantive and procedural, and the nature as an individual or general administrative act of the specific authorisation. Such explicit referring rules are *inter alia* Art. 31 of the BDA for the decision on appropriate assessment of plans, programmes and development proposals, or modifications or extensions thereof;

Art. 71, 77 of the Water Act for the permit or the decision on refusal of the authority competent for water use-related permissions; Art. 77 of the Waste Management Act for the issued permit, the decision on amending and/or supplementing, the refusal to issue, amend and/or supplement the permit, its withdrawal, as well as the decision to revoke a designation of a waste treatment site.[28]

**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.)**

See p.1 above on the standing rules for NGOs and individuals: §1, p. 24 and 25 of the Additional Provisions of the Environmental Protection Act.

The Bulgarian courts have ruled on some occasions on the admissibility of an appeal by ENGOs based on their self-identification and registration with public or private interest. In the case of the appeal of the integrated permit of a thermal power plant[29], the first-instance administrative court denied the legal standing of ENGOs registered with private interest. The Supreme Administrative Court repealed the decision of the district court by stating that the parameters of the legal interest to appeal the administrative act are defined by the subject of the act which establishes obligations or affects the rights and legal interests of the appealing citizen or organisation, and these parameters are decisive for admissibility of the legal review of legality of the act. However, more recent case-law of the SAC shows the opposite tendency, and the court does not grant standing to ENGOs with private interest. In the case of the appeal of the decision of the Energy and Water Regulatory Commission (EWRC) to extend the duration of the licence for electric power generation, it was sought to establish a practice of allowing ENGOs in litigations on the Energy Act so that they could appeal acts of the EWRC. In this case, the court denied the right of appeal to the ENGOs.

The right to standing is recognised as a public subjective right of concerned citizens and organizations to contest the administrative act depending on their legal interest, i.e. in a procedure to defend rights, freedoms or legitimate interests that have been breached or threatened by the act, or to oppose obligations that have been imposed. The concerned persons with standing are defined through rights or legitimate interests, which may be personal or environmentally related. The second alternative, in conformity with Art. 9, par. 2 of the Aarhus Convention and Art. 147 of the APC, has been accepted in court practice as a criterion for considering, along with other relevant ones[30], whether to grant standing to the ENGO in challenging SEA/EIA/appropriate assessment /integrated permit decisions[31],[32]. More specifically, the question of whether the general development plan[33] is an act within the category of environmentally significant decisions in the relevant context has been prevailingly resolved by denying the standing capacity of the ENGO, in addition to the decisive argument of the exclusion of said act from court control by virtue of Art. 215, (6) SDA.[34]

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

Persons who have no command of the Bulgarian language may use their native language or another language which they specify. In such cases, an interpreter shall be appointed. Any documents presented in a foreign language must be accompanied by an accurate translation into the Bulgarian language. If the competent authority is unable itself to verify the accuracy of the translation, the said authority shall appoint a translator for the account of the party concerned, unless a law or an international treaty provides otherwise. The costs of translation shall be borne by the person who has no command of the Bulgarian language if the administrative proceeding was initiated at the request thereof, unless a law or an international treaty provides otherwise (Art. 14(4) APC).

### 1.5. Evidence and experts in the procedures

*Overview on 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?**

The judicial authorities cannot initiate a case ex officio – this applies to 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. As to evidence collection, courts usually prefer to hear expert opinions, and witnesses are allowed to give evidence in court. The scope of review of administrative decisions 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.

The administrative court is obliged to carry out a full review of the legality of the contested administrative act without being constrained by the grounds for review put forward with the complaint. The procedural activity of the court to establish the facts relevant to the case follows the principles and specific requirements of the APC (Art. 39 and Art. 171). Mainly, the court considers the evidence collected in the administrative procedure before the competent administrative authority (the administrative file); however, having in mind the burden of proof, the parties to the case are free to establish the facts and circumstances to their benefit. The administrative authority and the persons for whom the contested administrative act is favourable must establish the existence of grounds of fact specified in the act and the fulfilment of the legal requirements for its issuance. Where a refusal to issue an administrative act is contested, the contestant must establish that the conditions for the issuance of the act have existed. The court should instruct the parties about the distribution of the burden of proof. In line with the ex officio principle in the proceedings, the court shall indicate to the parties that for some circumstances relevant for resolving the case, they do not provide evidence (Art. 9(3) APC), and on its own initiative can appoint court experts and order inspection and certification. The court may interrogate as witnesses persons who have given evidence before an administrative authority and expert witnesses only if it finds it necessary to hear them immediately. In the detailed regulation of the process of presenting evidence, the general rules of the Civil Procedure Code (CPC) apply. Such rules are the assessment by the court of all the evidence in the case and of the arguments of the parties based on the court's internal conviction (Art. 12 CPC) and the law, the rules about the use of written evidence, about witness statements and the opinions of the experts presented to the court.

**2) Can one introduce new evidence?**

The parties can, on their own initiative, make evidence claims to clarify facts and circumstances that will be beneficial for them in the proceedings, as long as they are admissible means for collecting evidence pursuant to the Civil Procedure Code and the stage of the court procedure. The court delivers a ruling on the evidence claim made after giving the parties the opportunity to make a statement. The court hearing of the case in administrative cases has as its purpose not so much to collect new evidence but to review the legality of the decision/administrative act of the administrative authority. In this regard, new evidence to prove legally valid facts and circumstances that have occurred even before the issuing of the decision/act are admissible (Art. 171 (2), 142 (2) APC). When an administrative decision is challenged before court, a party can request evidence collection of facts. There is no limitation on the facts that can be established – irrespective of whether these facts occurred before or after the decision was taken. The facts should be relevant to the subject of the court review. If the issue is not submitted to the discretion of the administrative body, after declaring null or revoking the administrative act the court decides the case on its merits (Art. 173(1) APC).

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

One or more experts appointed by the court could be involved to provide expert opinion in the procedure. Their involvement could be initiated by the parties or on the initiative of the court if, to ascertain facts, special knowledge is required that the court does not possess. The request for admission of an expert opinion specifies in which field special knowledge is required, the subject and task of the expertise, the materials that are provided to the expert(s), name, education and speciality of the expert(s). Expert opinion about legal questions is not admissible, as this would violate the competence of the court.

Approval of lists of experts qualified in accordance with defined criteria for the territory of the respective court district is regulated by the Judiciary System Act and an Ordinance of the Minister of Justice. The lists are promulgated in the State Gazette and are publicly accessible, incl. at the website of the Ministry of Justice. If necessary, the court can appoint an expert listed in another court district or not listed in any list.

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

The expert's opinion is evidence and the court is not bound to accept the expert's conclusion presented with the opinion, but considers it together with all other evidence on the case. The case-law practice has accepted that an expert opinion presented in another court case cannot be used.

*3.2) Rules for experts being called upon by the court*

An expert may be appointed ex officio from the list of approved experts for the respective court if, to clarify certain issues arising in the case, special knowledge in the field of science, art, crafts etc. needs to be obtained. The expert should be independent and each of the parties may request removal of the expert if there are grounds for presuming non-independence. The expert is obliged to immediately inform the court of all circumstances which may be grounds for removal. They are obliged to take a stand on the allegations in the request for its removal (Art 196 CPC). The remuneration of experts is determined by the court in view of the work performed and the expenses incurred.

The conclusions of the expert opinion of the expert(s) appointed by the court is admissible as evidence regardless of whether this has been at the initiative of the parties or the court.

*3.3) Rules for experts called upon by the parties*

At the request of the party, an expert in a particular field of expertise may be appointed from the list of approved experts for the respective court. If necessary, an expert who is not included in the respective list may also be appointed as an expert. The expert is appointed by the court, but each party can object to the appointment if there are doubts about their independence. The conclusions of the expert opinion of the expert(s) appointed by the court is admissible as evidence if it is made at the initiative of the parties. However, expert opinion obtained privately by the parties outside the court proceedings is not admissible evidence.

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

When the court allows expert opinion and assigns experts appointed at the request of the parties or ex-officio, it determines an initial deposit, as well as the proportions of it to be paid by each party, and the timing for payment. Upon accepting expert opinion, the court rules on the final deposit to be paid in and the remaining amounts to be paid by the parties. If the timing for payment is not complied with, with the decision on the case the court adjudicates on the party to pay it in.

Expert fees are paid out from the sum deposited by the party to the proceedings or from the budget of the authority which has appointed the expert(s). The amount of the fee (hourly fee of 3% of the minimal wage at the time of appointment), the manner of calculating the time needed for the expertise, as well as the additional costs related to completion of the assigned task by the expert(s) are regulated by an Ordinance of the Minister of Justice pursuant to Art. 403 (1) of the Judiciary System Act (Ordinance № 2/29.06 2015 on the registration, qualification and remuneration of court experts).

## 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**

There is no specialisation of environmental lawyers or special qualification required to represent clients in environmental cases in the administrative courts. The general competence requirements apply - to be admitted to the bar and to be a member of the Bar Association or a judicial consultant to the authorities /parties to the case. Over the years, some lawyers have established reputation and experience as environmental lawyers, mostly defending cases of citizens and ENGOs against decisions on EIA, SEA or other authorisation of developments or approval of strategic documents.

*1.1 Existence or not of pro bono assistance*

There is no structured approach to the provision of pro bono assistance, and there appears to be an overall lack of awareness of pro bono services both among practitioners and among individuals who need such services according to an analysis which states that there are four areas of pro bono legal assistance: NGOs offering pro bono services; pro bono law clinics at higher education institutions; private practitioners offering pro bono services as part of their general practice; and practitioners offering free legal representation to friends and family. Most pro bono services are provided on an ad-hoc basis. The law firms could decide to allocate part of the time of their lawyers[35] for pro bono legal services, however that is not regulated by the law but based on their good practice.

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.)?*

The pro bono assistance is not structured or regulated by the law and is mostly ad hoc. If pro bono assistance is offered by NGOs, law firms, individual practitioners or law clinics (see above), they have their own rules of procedure for providing the assistance.

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

If pro bono assistance is offered by NGOs, law firms, individual practitioners or law clinics, they will have their own rules for application for assistance.

The National Legal Aid Bureau, the bar associations or the national legal aid hotline.

The National Register of Legal Aid contains a list of attorneys providing legal services to clients. Any attorney who wants to be on the list must file an application, approved by the local Bar Association Council, to be entered in the register. The register is published on the internet. The NLAB is exclusively competent for the decision on applications for legal assistance in the pre-trial stage.

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

The National Register of Legal Aid

Register of bar associations

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

Some of the active ENGOs include:

WWF Bulgaria

Wildlife Society Balkani

Association of Parks in Bulgaria

Za Zemiata, with a special programme on Access to Justice

For the Nature Coalition (not registered as a legal entity)

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

Greenpeace (not formally registered as a legal entity)

WWF Bulgaria

Friends of the Earth and CEE Bankwatch Network

## 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).**

The administrative review appeal or protest (by the prosecutor) against an administrative (environmental) decision can be lodged in writing through the agency of the administrative authority whose act is contested within 14 days after communication of the act to the persons and organisations concerned. The administrative appeal is a procedural opportunity for challenging both legality and expediency, i.e. application of discretion by the administrative authority, of an act.

A tacit refusal may be contested within 1 month after expiry of the time limit within which the administrative authority was obligated to pronounce. Where the persons concerned have not been notified of the initiation of the proceedings, the time limit for contesting shall be 2 months from expiry of the time limit for ruling (Art. 84(2) APC).

The procedure set out in the APC is also applicable for appealing decisions of the competent body with regard to the plans, programmes and development proposals with the subject and purpose of preservation of the respective protected zone. An amendment of Art. 31, (19, 20) of the BDA from 2017 provides for a one-instance final court decision on appeals of acts related to sites designated as sites of strategic national importance by an act of the Council of Ministers.

**2) Time limit to deliver decision by an administrative organ**

The general rule is that the administrative act (decision) is issued within 14 days after the date of initiation of the proceedings. Administrative acts which declare or state already existing rights or obligations are issued within 7 days after the date of initiation of the proceedings if the act is of significance for recognising, exercising or extinguishing rights and obligations. The same time limit of 7 days also applies to acts related to issuing of documents of significance for recognising, exercising or extinguishing rights and obligations as well as refusal to issue such documents. However, this time limit of 7 days can be extended to 14 days if the issuance of an act includes an expert examination or where the personal participation of the person concerned is required for the performance of the expert examination.

Any case files which may be reviewed on the basis of evidence presented together with the request or proposal to initiate proceedings, or presented by another administrative authority which has them available, or on the basis of well-known facts, officially known facts or legal presumptions, shall be resolved without delay and no later than seven days (Art.57(4) APC). Information which another authority concerned has available on paper shall be provided within 3 days upon request, and the time limit for pronouncement shall start from the date of receipt of the information. Automatic notification within the meaning of the Electronic Governance Act is made immediately.

Where it is necessary to collect evidence on material circumstances or to allow other individuals and organisations to defend themselves, the act shall be issued within 1 month after initiation of the proceedings. Where the authority is collective, the question of the issuance of the act shall be addressed not later than at the first meeting after the expiry of the time limits referred to above. When another authority has to be approached for consent or opinion, the time limit for the issuance of the act shall be presumed to have been extended accordingly, but this extension may not exceed 14 days. In all cases of extension of the time limit, the administrative authority shall notify the applicant immediately.

The above-mentioned time limits do not include the preparatory activities in the procedures for issuing of the administrative act, e.g. in the case of environmental assessments (e.g. preparing the EIA or SEA report, carrying out public consultation/hearings). There are special time limits for issuing administrative decisions pursuant to the EPA. For example, the motivated screening SEA decision is issued within 30 days after the submitting of a request by the developer of the plan or programme, depending on the specific characteristics and their complexity. The competent authority issues an EIA decision within 45 days after the public hearing, accounting for its results.

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

An administrative act may be contested before the court even if the possibility for administrative challenge of the administrative act has not been exhausted, unless otherwise provided for in the APC or in a special law.

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

There is no stipulated deadline for the national courts to hear a case. The general rule according to the Civil Procedure Act (Art. 13) and the APC (Art. 127 (1)) is that the court hears and rules on the case within a reasonable time limit. The APC stipulates a limit of 1 month after the hearing at which the examination of the case is completed for the court to render a decision. However, as mentioned in 1.7.3., the EPA stipulates special timelines for the courts to hear and deliver a decision in lawsuits on EIA/SEA decisions for projects, plans and programmes of strategic national importance or in the case of joint procedures where the Minister of Environment and Water issues an EIA decision and integrated permit/safety report (under the Seveso Directive). Such court cases should be heard within 6 months and a decision pronounced with 1 month after the case is completed.

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

*Within administrative procedures*

The administrative authority affords the parties an opportunity to express an opinion on the evidence collected within the administrative procedure, as well as on the requests submitted, setting a time limit of 7 days.

The ruling whereby anticipatory enforcement is admitted or refused shall be appealable through the agency of the administrative authority before the court within 3 days after communication, regardless of whether the administrative act has been contested.

The administrative act, or the refusal to issue an act, shall be communicated following the procedure of notification of the APC within 3 days after its issuance to all persons concerned, including those who did not participate in the proceedings.

A tacit refusal may be contested within 1 month after expiry of the time limit within which the administrative authority is obligated to pronounce. Where the persons concerned have not been notified about the start of the proceedings, the time limit for contestation is 2 months after expiry of the time for pronouncing the act. The conditions and procedure for certifying and contesting the tacit consent shall be regulated in special laws.

An appeal or protest within the administrative appeal procedure shall be lodged in writing through the agency of the administrative authority whose act is contested within 14 days after communication of the act to the persons and organisations concerned.

If an appeal or protest does not satisfy the formal requirements for content and required annexes, a notification is dispatched to the submitters on resolving the non-conformities within 7 days after receipt of the communication. Where the submitter's address is not given, notification shall be effected by means of the posting of a notice at the place designated for this purpose in the building of the administrative authority within 7 days.

In cases where the appeal was submitted after expiry of the time limit, the appellant may request resumption of the time limit within 7 days after communication of the act on termination of the proceedings if non-compliance with the said time limit is due to special unforeseen circumstances.

Within 7 days or, where the administrative authority is collective, within 14 days after receipt of the appeal or protest, the first-instance administrative authority may review the matter and withdraw, on its own initiative, the contested act, revoke or amend the act, or issue the relevant act, if it has refused to issue the act, and notify the parties concerned of this.

Within 2 weeks after receipt of the case file, where single-person, or within 1 month, where collective, the superior authority competent to consider the appeal or protest shall render a reasoned decision.

*Within the judicial procedures*

Administrative acts shall be contestable within 14 days after communication thereof. A tacit refusal or tacit consent is contestable within 1 month after expiry of the time limit within which the administrative authority is obligated to pronounce the act.

Where the act or tacit refusal has been contested according to an administrative review procedure, the relevant time limit begins to run from the communication that the superior administrative authority has rendered a decision and, if the authority has not pronounced the act, from the latest date on which it should have pronounced the act.

Where a prosecutor has not participated in the administrative proceedings, the prosecutor may contest the act within 1 month after its issuance. There is no time limit for the contestability of administrative acts by a motion to declare nullity.

Within 14 days after receipt of the transcript of the appeal/protest, each of the parties may present a written response and provide evidence.

The ruling on the motion of anticipatory enforcement can be challenged within 3 days after communication thereof.

The minutes of a court public hearing are published on the website of the court within 14 days after the hearing.

**1.7.2. Interim and precautionary measures, enforcement of judgments**

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

The principle is that an appeal challenging an administrative decision has suspensive effect unless an anticipatory enforcement has been allowed by the administrative authority or by law. After its introduction in 1991, the principle of suspensive effect of the appeal of an individual administrative act has been eroded by the institute of anticipatory enforcement. Pursuant to the special provisions for such enforcement in a number of laws for the acts regulated by them and according to the powers under Art. 60 of the APC, the deciding administrative authority can admit, with a reasoned decision, anticipatory enforcement of the act (the decision being part of the act or a special order). The reasons could be protecting the life or health of individuals, protecting particularly important state or public interests, preventing a risk of the frustration or material impediment of the enforcement of the act, or where delay in enforcement may lead to a significant or difficult to repair damage.

The administrative act shall not be enforced prior to expiry of the time limits for its contestation or, where an appeal or protest has been lodged, until resolution of the dispute by the relevant authority. This rule shall not apply if all parties concerned request in writing an anticipatory enforcement of the act or if an anticipatory enforcement of the act is admitted by a law or by an order under Article 60 of the APC. The superior administrative authority may stay the anticipatory enforcement, allowed by order, upon the request of the contestant if this is required in the public interest or would inflict an irreparable detriment on the person concerned. In this case, the suspensive effect of the appeal will be restored.

Allowing and staying the anticipatory enforcement are defined by the criteria in Art. 60(1) and Art 90 (3) of the APC, the main criterion being significant or irreparable damages following delay in enforcing the act or irreparable damages from its anticipatory enforcement.

The defence against preliminary enforcement may be provided by means of appeal in a separate legal control procedure independently from appealing the administrative act itself. The order by which the preliminary execution is admitted or refused may be appealed through the administrative body before the court within 3 days after its announcement, regardless of whether the administrative act has been appealed. It shall not stop the admitted preliminary execution, but the court may stop it till its final decision. The ruling of the court is still subject to appeal according to Art. 60, (8) of the APC. Otherwise, the preliminary execution may be stopped within the main procedure under the conditions of Art. 166 of the APC, i.e. if it may cause to the appellant significant or hard-to-repair damage. The execution may be stopped only on the grounds of new circumstances.

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

Suspension of enforcement of the administrative act, where it includes an order for anticipatory enforcement, or admission of anticipatory enforcement are both injunctive relief measures envisaged in the administrative process explicitly regulated in the APC. The provision of Art. 60 of the APC regulates the possibility for inclusion in the administrative act or in a separate act issued after its issuance of an order for its anticipatory enforcement without explicit indication of the administrative phase (Art. 60, para. 3; Art. 90, para. 2, p. 2 APC).

In order to allow anticipatory enforcement, the administrative body should duly assess and reason its decision based on the following criteria: the life or health of individuals, protecting particularly important state or public interests, preventing a risk of the frustration or material impediment of enforcement of the act, or where delay in enforcement may lead to a significant or difficult to repair damage. The superior administrative authority may stay the anticipatory enforcement, allowed by order, upon the request of the contestant if this is required in the public interest or would inflict an irreparable detriment on the person concerned. In this case, the suspensive effect of the appeal will be restored

**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?**

The material prerequisites for issuing an anticipatory enforcement order are regulated in Art. 60, para. 1 of the APC in relation to the assessment of the public interest and the private interest, namely: the administrative act includes an order on the anticipatory enforcement thereof, where this is required in order to ensure the life or health of individuals, to protect particularly important state or public interests, to prevent a risk of the frustration or material impediment of enforcement of the act, or where delay in enforcement may lead to a significant or difficult to repair damage, or at the request of some of the parties in protection of a particularly important interest thereof. In the latter case, the administrative authority requires an appropriate guarantee. All parties concerned can also request in writing an anticipatory enforcement of the act. On the request of the appellant, the higher administrative body can stay the preliminary execution admitted by an order (not by a law provision) if it not been necessitated by public interest or will cause irreparable damage to the person concerned (Art. 90 APC).

The initial request for admission of anticipatory enforcement, whether in the course of the administrative procedure or after the act is issued, is not conditional on compliance with a certain procedural time limit. Art. 60(4) of the APC explicitly provides that a repeat request for anticipatory enforcement by a party can be made solely on the basis of new circumstances.

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

The principle of suspensive effect of the appeal applies except in cases of anticipatory enforcement of the act. See 1.7.2. for anticipatory enforcement granted by the administrative authority and the reasoning (criteria) for such a decision. Beside cases of immediate enforcement provided in special laws[36], the enforcement is unconditional, including when the preliminary enforcement of the administrative act is allowed by law, which explicitly excludes the judicial review on this issue (Art. 166, para. 4 APC).

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

Pursuant to Art. 166, para 1 of the APC filing a complaint or protest with the court has suspensive effect (suspends the execution of the act). However, the administrative authority that issues the act can order the anticipatory enforcement of it, where this is required to ensure the life or health of individuals, to protect particularly important state or public interests, to prevent a risk of the frustration or material impediment of the enforcement of the act, or where delay in enforcement may lead to a significant or irreparable detriment, or at the request of some of the parties in protection of their particularly important interest. In the latter case, the administrative authority shall require a relevant guarantee.

On the other hand, the court may also allow anticipatory enforcement of the act under the conditions of Art. 167 of the APC. At any stage of the proceedings, the court, at a request of a party, may admit anticipatory enforcement of the administrative act under the same terms under which the enforcement would be

admitted by the administrative authority. When such enforcement could inflict significant or difficult to repair damage, the court may admit it subject to the condition of payment of a security deposit at an amount set by the court. A second motion for such enforcement may be submitted to the court solely on the basis of new circumstances.

**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?**

When the administrative authority has granted by order anticipatory enforcement of the act (Art. 60(1) APC), the court may stay it at the request of the appealing party or of a statutorily constituted person affected by the administrative act. The reason for the suspension is the possibility of significant or difficult to repair damage (Art. 166(2) APC). The party must present evidence of the occurrence of property damage or damage from the violation of non-material rights, as well as its possible extent.

Suspension of the enforcement of acts for which the law has allowed anticipatory enforcement is admissible at any stage of the proceedings up to entry into effect of the decision. Acting on a motion by the contestant, the court may stay the anticipatory enforcement admitted by an effective order of the authority which has issued the act. The enforcement may be stayed solely on the basis of new circumstances and insofar as the legal review of the administrative acts is not explicitly excluded from the special law.

Financial guarantee is paid in the contrary case – when the court, at a request of a party, admits anticipatory enforcement of the administrative act. When such enforcement could inflict significant or irreparable damage, the court may admit it subject to the condition of payment of a security deposit at an amount set by the court. (Art. 167 APC)

**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.**

The APC promotes as a principle access to justice, including no financial barriers (Art. 12), and stipulates that no stamp duties are collected and no costs are paid for any proceedings, except in the special cases provided for in the APC or in another law, as well as in the cases of judicial appeal against administrative acts and the bringing of a legal action under the APC.

In the Tariff for State Taxes, the tax for filing a cassation appeal against an administrative act by NGOs or individuals is 10 BGN (about 5 EUR[37]). However, the 2019 amendments to the APC significantly increased the tax for the cassation appeal from 5 BGN to 70 BGN for individuals, sole traders, state and municipal authorities and other persons with public functions or offering public services, and 370 BGN for organisations. The tax is not paid for the filing of a protest by the prosecutor or by individuals for whom it is acknowledged by the court or another authority (e.g. the chairman of the Supreme Administrative Court[38]) that they do not possess the means to pay. When a material interest could be defined in the administrative court proceedings, the state tax is proportional and amounts to 0.8% of the material interest of (value for) the party, but not more than 1,700 BGN, and in the event that the interest in the case is above 10,000,000 BNG the tax is 4,500 BGN.[39] Another part of the costs in judicial proceedings is the attorney's fee, the minimum for which is defined in Ordinance № 1 on the Minimum Amounts of Attorneys' Fees (e.g. for procedural representation, defence and assistance in administrative cases without a specific material interest, except for the special cases in para. 2, no less than 500 BGN, (Art.8(3)).

Where the court revokes the appealed administrative act or refusal to issue an administrative act, the stamp duties, court costs and fee for one lawyer, if the appellant has retained a lawyer, are reimbursed from the budget of the authority which issued the revoked act or refusal. The appellant is entitled to the same awarded costs upon dismissal of the case by reason of a withdrawal of the contested administrative act.

Where the court rejects the contestation or the appellant withdraws the appeal, the party for which the administrative act is favourable is entitled to be awarded costs. The appellant shall pay all costs incurred in litigation, including the minimum fee for one lawyer, fixed according to the ordinance to the Bar Act on minimum lawyers' fees, if the other party has hired a lawyer, or, if the administrative authority has been represented by its staff legal adviser, remuneration is awarded in the amount determined by the court (Art. 78(8) CPC).

Where the court allows expertise and assigns experts appointed at the request of the parties or ex officio, it determines an initial deposit, as well as the proportions to be paid by each party, and the timing for payment. Upon accepting the expert opinion, the court rules on the final deposit to be paid in and the remaining amounts to be paid by the parties.

The expert fees are paid out from the deposit or from the budget of the authority which has appointed the experts. The amount of the fee, the manner of calculating the time needed for the expertise, as well as the additional costs related to completion of the assigned task by the experts are regulated by an Ordinance of the Minister of Justice pursuant to Art. 403 (1) of the Judiciary System Act (Ordinance № 2/29.06 2015 on the registration, qualification and remuneration of court experts).

The fee for claims by the affected parties for damages caused by illegal administrative acts is defined as a simple flat fee, i.e. not in accordance with the material interest (value for the party) in the case.

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

During any stage of the proceedings up to entry into effect of the ruling, acting on a motion by the contestant, the court may stay the anticipatory enforcement admitted by the authority under Article 60(1) if the enforcement could inflict a significant or difficult to repair damage on the contestant. The enforcement may be stayed solely on the basis of new circumstances. The motion referred to in paragraph (2) shall be examined in camera. The court shall immediately render a ruling. No deposit is required in the case of staying the enforcement (Art. 166 APC).

Conversely, at any stage of the proceedings the court, at the request of a party, may admit anticipatory enforcement of the administrative act under the same terms under which the enforcement would be admitted by the administrative authority. When such an enforcement could inflict significant or irreparable damage, the court may admit it subject to the condition of payment of a security deposit at an amount set by the court (Art. 167(1-2) APC) (see 1.7.2.5 and 1.7.2.6).

**3) Is there legal aid available for natural persons?**

Pro bono assistance is regulated by the Legal Aid Act (in force from 01.01.2006 with amendments), which aim is to guarantee equal access to justice for all persons in criminal, civil and administrative cases before all court instances by ensuring and providing effective legal aid. Legal aid funds are provided from the state budget. Legal aid is organised by the National Legal Aid Bureau (NLAB) and by the bar association councils. The aid is provided for consultations for reaching an out-of-the court agreement before the start of the judicial proceedings or for submitting a case to the court, for drafting documents necessary for submitting a case and representation in court. The aid is provided e.g. to persons and families who are eligible for receiving social aid monthly allowances. The legal aid system covers cases where a party to an administrative case does not possess the financial means to pay the lawyer's fee, wants to have one, and it is in interest of justice. Legal aid is provided in cases where, based on evidence issued by the competent authorities, the court or the chairperson of the NLAB decides that the party lacks the means to pay the lawyer's fee. The court or the chairman decides on that taking into consideration the income of the person or of his/her family, his/her material assets declared, the family, health and employment status, and age. In the case of representation in the court, the court rules on the need of the party to obtain legal aid. In cases of legal aid for consultations or for drafting of documents for submission of a case, the decision is taken by the chairperson of the NLAB.

The national legal aid hotline is another means for providing legal aid to individuals under more relaxed conditions than the general rules. The hotline is administrated by the NLAB and aid is provided by lawyers listed at the NLAB.
The types of legal aid are:
consultation with a view to reaching an agreement before commencement of the court proceedings or for filing a case, including consultation;
preparation of documents for filing a case;
procedural representation;
representation upon detention.
For pp.1 and 2, the legal aid is free of charge and is provided to those who qualify for it.[40]
The legal aid system covers cases of p. 3 for court presentation where a party to an administrative case does not possess the financial means to pay the lawyer's fee, wants to have one, and it is in the interest of justice. Legal aid is provided only to individuals and not to NGOs or other persons in cases where, based on evidence issued by the competent authorities, the court or the chairperson of the National Legal Aid Bureau (NLAB) decides that the party lack the means to pay the lawyer's fee. The court or the chairman decides on a case-by-case basis taking into consideration the income of the person or of his/her family, his/her material assets declared, the family, health and employment status, and age. In the case of representation in court, the court rules on the need of the party to obtain legal aid. In cases of legal aid for consultations or for drafting of documents for submission of a case, the decision is taken by the chairperson of the NLAB.
Link to the National Legal Aid Bureau website.
National legal aid hotline: (+359) 0700 18 250

**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?**

No, there is no state support and legal aid for associations, legal persons, or NGOs with or without legal personality. There is no access to a legal aid lawyer within the legal aid scheme. Legal aid is provided only to individuals who lack the means to pay the lawyer's fee. However, some environmental projects, albeit rarely, provide opportunities for NGOs or informal local groups to obtain legal aid to challenge administrative decisions on approval of plans and projects with adverse environmental impacts. For example, the Biodiversity Foundation Bulgaria runs a charity programme – the Emergency Fund for Biodiversity – aimed at covering the costs for responding to hot nature protection problems and paying for lawyers, court experts, etc.

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

No, not strictly for legal aid but some EU-funded programmes or the recent Active Citizens Fund of the EEA grant programme in Bulgaria support provision of legal aid, incl. in the thematic outcome "Increased civic engagement in environmental protection/climate change".

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

The 'loser party pays' principle applies according to Art. 143 of the APC (Liability for Costs). Where the court revokes the appealed administrative act or refusal to issue an administrative act, the stamp duties, court costs and fee for one lawyer, if the appellant has retained a lawyer, are reimbursed from the budget of the authority which issued the revoked act or refusal. The appellant is entitled to the same awarded costs upon dismissal of the case by reason of a withdrawal of the contested administrative act. Where the court rejects the contestation or the appellant withdraws the appeal, the party to which the administrative act is favourable shall be entitled to be awarded costs.
When the court rejects the contestation or the appellant withdraws the appeal, the party to which the administrative act is favourable is entitled to be awarded costs. The appellant shall pay all costs incurred in litigation, including the minimum fee for one lawyer, fixed according to the ordinance to the Bar Act on minimum lawyers' fees, if the other party has retained a lawyer. The only grounds for a possible reduction of the lawyer's fee is provided in the CPC, applicable also in administrative litigation. The CPC states that the court can reduce the lawyer's fee to be paid if the amount does not correspond to the legal and factual complexity of the case, but not to less than the minimum amount determined according to Art. 36 of the Bar Act.
Otherwise, no state duties and no court costs are paid on any administrative proceedings under the APC, as well as in cases of judicial appeal against administrative acts and upon bringing a legal action, unless provided for otherwise in another law

**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?**

The tax for cassation appeal is not paid for filing of a protest by the prosecutor or by individuals for whom it is acknowledged by the court or another authority (e.g. the chairman of the Supreme Administrative Court) that they do not possess the means to pay.

**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?**

There is a link to the website of the Ministry of Environment and Water (MoEW) with general information about the Aarhus Convention and some guidance related to its provisions. Other forms of dissemination are provided mostly by NGOs on their websites or on the special project websites.

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

Mostly, any interested person can get information about access to justice from the administrative decisions or court decisions, which state the authority before which the act can be appealed and the time limit for appeal (see also 1.7.4.3. and 1.7.4.4).

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

The Environmental Protection Act stipulates in Art. 3 that one of the principles of environmental protection is access to justice on environmental matters. The general rules of the APC apply (see 1.7.4.4). For the EIA procedure, the EPA requires that the EIA decision shall contain the authority and the deadline within which it can be appealed (Art. 99(3), item 9 EPA). The same requirement is stipulated in the SEA Ordinance referring both to the screening decision (whether to carry out an SEA) and to the final SEA decision (Art. 14(2) and Art. 26 (2)). The Ordinance on appropriate assessment (according to Art. 6.3 of the Habitats Directive) also has provisions about access to justice (the authority and the timeframe for appeal) for the screening decision and the final decision (Art. 20 (3) and Art. 28(2-3)).
In EIA procedures, within 7 days after issuing the decision on the EIA, the competent body or an official authorised by that body announces the EIA decision through the central mass media, on its website and/or in another appropriate way.
For IED installations, Art. 127 of the EPA states that decisions for granting, refusal, modification, updating or revocation of an integrated permit shall be announced by the competent authority through the mass media within 14 days after the date of issue, at the same time sending it to the states affected by the operation of the installation in case of cross-border transfer, and it can be challenged pursuant to the APC within 14 days after the notification.
The discretional court judicial competence according to Art. 127 of the APC is also relevant on admissibility of the appeal of the contested act issued under sectoral legislation on the components and factors of the environment in question. For example, the River Basins Management Plans (RBMP) and the actualisations of them, approved by the Council of Ministers upon a proposal of the Minster of Environment and Water (Art. 160 of the Water Act) were recognised as a general administrative act suitable for appeal under APC.[41] Conversely, the Air Quality Programmes were not designated as appealable administrative acts.[42], [43]

In the event that the relevant special law lacks an explicit arrangement on the procedure and deadline for appealing the authorisation act – in the concrete example within the Underground Resources Act concerning the prospecting permit issued – the general provisions of the APC, including the announcement procedure of Art. 61, shall apply.[44] Art. 140 (1) of the APC states that if the administrative act, or the announcement of its issuance, does not state before which body and in what timeframe an appeal can be submitted, the respective timeframe for appeal shall be extended to 2 months.

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

The administrative authority issues or refuses to issue the act by means of a reasoned decision. Where the administrative act is issued in writing, the act also states the authority before which the act can be appealed and the timeframe for appeal (Art. 59 (2), p.7 APC). The same applies to the decision. It states whether the court decision is subject to appeal, to which court and within what period. (Art. 172(1), p.8 APC).

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

The proceedings under APC (administrative and judicial) are conducted in the Bulgarian language (Art.14). Persons who have no command of the Bulgarian language may use their native language or another language which they specify. In such cases, an interpreter is appointed. Any documents presented in a foreign language must be accompanied by an accurate translation into the Bulgarian language. If the competent authority is unable itself to verify the accuracy of the translation, the said authority shall appoint a translator for the account of the party concerned, unless a law or international treaty provides otherwise. The costs of translation shall be borne by the person who has no command of the Bulgarian language if the administrative proceeding was initiated at his/her request, unless a law or international treaty provides otherwise.

## 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)**

EIA screening is regulated by Art. 93 of the EPA and Chapter II of the EIA Ordinance. The Minister of Environment and Water or the Director of the RIEW is the EIA competent authority, depending on the characteristics of the project (e.g. the minister for EIA in projects with transboundary impacts). They rule on the need for EIA (screening decision) within 1 month of submission of the request by the developer of the proposal by publicly announcing the reasons for their decision. The screening decisions of the competent authorities are subject to appeal (administrative and/or judicial review) under the APC (within 14 days after the notification). The appeal can be submitted by interested parties who can prove they are directly affected by the proposal. It is established case-law that legal entities, including environmental non-governmental organisations, that meet the criteria of national law, namely registered under the relevant procedure[45], have standing in the judicial proceedings before a court (see also § 1, pp. 24-25 of the Additional Provisions of the EPA)

A special provision for access to justice on the screening decision is where decisions of the first-instance court of appeal against decisions of the Minister of Environment and Water on investment proposals, their extensions or amendments which are defined as sites of national significance by an act of the Council of Ministers and which are sites of strategic importance are final. In this case, the court considers the complaints and pronounces a decision within 6 months from their submission. The court shall announce its decision within 1 month of the session in which the case was closed.

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

The EIA scoping phase is defined in Art. 95 of the EPA and Chapter III of the EIA Ordinance.

The developer of the investment proposal informs the competent authority in writing by announcing its proposal on its website, if there is one, and through the mass media or other appropriate means. The competent authority announces the proposal on its website and notifies the mayor of the affected municipality, district and town hall in writing. The mayor of the respective municipality, district and town hall announces the investment proposal on their website, if there is one, or in a publicly accessible place.

The developer has to proceed on the basis of approved terms of reference for the scope and content of the EIA for the investment proposals listed in Annex No. 1 to EPA or for those proposals for which a screening decision for those listed in Annex No. 2 to carry out an EIA has been made. It consults the EIA competent authorities, other specialised departments and affected public with regard to the scope of the EIA. There is no administrative act issued at this phase to be challenged, hence no access to justice at the scoping EIA stage.

**3) At what stage(s) can the public challenge the administrative decisions on environmental projects? Deadline to challenge decisions?**

Screening decisions of the competent authorities are subject to appeal under the APC (within 14 days after the notification). The appeal can be submitted by interested parties who can prove they are directly affected by the proposal. It is established case-law that legal entities, including ENGOs, that meet the criteria of national law, namely registered under the relevant procedure, have standing in the judicial proceedings (see also 1.8.1.1). The scoping decision cannot be challenged, but interested parties, incl. the public and ENGOs are consulted (see 1.8.1.2).

**4) Can one challenge the final authorisation? Under what conditions, if one is an individual, an NGO, a foreign NGO?**

An appeal to challenge the final authorisation within the EIA/appropriate assessment procedure pursuant to the EPA or BDA can be submitted by interested parties who can prove they are directly affected by the proposal. It is established case-law that legal entities, including ENGOs, that meet the criteria of national law, namely registered under the relevant procedure, have standing in the judicial proceedings before a court (see also § 1, pp. 24-25 of the Additional Provisions of the EPA).

The participation in the EIA of foreign NGOs or citizens and their standing in court procedures is not regulated by the EPA. As a general principle, the APC applies to any foreigners who reside in the Republic of Bulgaria, insofar as the Constitution and laws do not require Bulgarian citizenship. The procedure for EIAs of investment proposals for construction, activities and technologies in the territory of the Republic of Bulgaria expected to have significant environmental impact on the territory of other states (transboundary EIA) is regulated by Art. 98(1) of the EPA. The Minister of Environment and Water notifies the affected states at the earliest possible stage of the investment proposal, but not later than the date of notifying the domestic population. Upon consenting for participation in the EIA procedure, the minister provides the affected state with a description of the investment proposal and information about possible cross-border environmental impacts, as well as information about the character of the decision expected to be taken. This might be one avenue by which NGOs in the affected countries can submit objections or comments, if their respective state provides for such opportunity. However, there is no national case-law identifying how this would apply to granting of standing and appealing the EIA decision.[46]

However, the access to justice regarding the final authorisation in terms of development consent, e.g. construction permit, is limited to interested persons according to the SDA, excluding the application of the presumption of interest for ENGOs that the EPA grants them[47]. The appeal is against the administrative acts which, depending on the type and size of the construction, are a necessary condition for permitting the construction, together with the environmental authorizations, under the EPA and the BDA[48]. The issued construction permit, or refusal to issue such a permit, is notified to interested persons under the conditions and by order of the APC. Interested persons in cases of new construction, or extension or upgrading of an existing construction: the assignor, the owners and holders of limited real rights in the land property, the person who has the right to build on another's property by virtue of a special law, and, in the case of constructions in neighbourhoods and properties under Art. 22(1) SDA, the assignor and owner of the land. The individual administrative acts under SDA, refusals for their issuance and administrative acts by which they are revoked or left in force, may be appealed to the relevant administrative court at the location of the real estate. Acts and refusals of the Minister of Regional Development and Public Works, the Minister

of Defence and the Minister of the Interior are appealed to the Supreme Administrative Court. The prosecutor may file protests regarding the legality of acts subject to appeal (ENGOs and concerned citizens sending a signal to the prosecutor could be an indirect way for them to access justice by “delegating” to the prosecutor).
Complaints and protests must be filed through the authorities whose act is being appealed or protested within 14 days of its notification and, when the act is notified by promulgation in the State Gazette, within 30 days of its promulgation. Complaints and protests against acts approving a detailed development plan or issuing a permit for construction of a site of national importance or a municipal site of primary importance must be submitted through the body that issued the act within 14 days from the promulgation of the act in the State Gazette (Art. 215 SDA).
In the proceedings for amendment of a permit for use of a water body, the right to challenge on the grounds of § 1, items 24 and 25 of the EPA is generally recognised, but the organisation is not allowed due to the nature of the act - only for extension not affecting the parameters of the permit for use of a water body. For the issuance of the administrative act, in this case the proceedings under Art. 62a of the Act on Waters for disclosure of the requested change to the public and to holders of already issued water-use permits, are not applicable and therefore no right of appeal arises [49].

**5) Scope of judicial review – control on substantive/procedural legality. Can the court act on its own motion?**

The general principles of the judicial control set out in the APC also apply to EIA decisions. Judicial review is carried out for the legality of the grounds under Art. 146 APC: lack of competence; non-compliance with the established form; significant violation of administrative production rules; contradiction with substantive provisions; inconsistency with the purpose of the law.
Administrative acts are also equated with the administrative services under Art. 21, para. 3 of the APC. Acts constituting tacit refusal or tacit consent within the meaning of Art. 58 of the APC could also be subject to control.
For the courts acting on their own motion, the general principles apply, see 1.2.4.

**6) At what stage are decisions, acts or omissions challengeable?**

The screening decision and the EIA final decision completing the full procedure can be challenged. Within 7 days after issuing the EIA decision, the competent authority delivers the decision to the developer and announces the decision through the central mass media, on its website and/or in another appropriate way. The competent authority ensures access to the contents of the EIA decision, including its appendices, through its website and following the provisions of the Access to Public Information Act. Interested persons can appeal the decision on EIA pursuant to the APC within 14 days after the announcement of the decision. For screening decisions, see 1.8.1.1.

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

No, there is not. An administrative act may be contested before the court even if the possibility for administrative contestation of the act has not been exhausted, unless otherwise provided for in the APC or in a special law (Art. 148 APC) (see also 1.3.2).

**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?**

The procedural standing, and in particular the legal standing (interest) of the appellant, is not made conditional on his/her participation with objections or comments in the public hearing.

**9) Fair, equitable – what meaning is given to equality of arms in the national jurisdiction?**

The principles on which the proceedings provided for in the Administrative Procedure Code are based are set out in Chapter Two "Basic Principles", including Art. 8 of the APC. All parties concerned with the outcome of the proceedings under the APC enjoy equal procedural opportunities to participate in the proceedings for the defence of rights and legitimate interests. Within the limits of operational autonomy, similar cases should be treated equally under equal conditions. The court instructs the parties that they do not provide evidence of certain circumstances relevant to adjudication in the case (Art.9 APC). Where collection of further evidence, other than such contained in the case file, is necessary for clarification of the legal dispute, the rapporteur judge instructs the relevant party on the need to collect such evidence (Art. 163 APC). The court is obligated to cooperate with the parties to rectify any errors in form and any ambiguities in the statements of the parties and to instruct them that for certain circumstances relevant to the case they do not provide evidence (Art.171 APC).

**10) How is the notion of “timely” implemented by the national legislation?**

The principle of speed and procedural economy is essential for the administrative and judicial phases. Art. 11 of the APC provides that procedural actions shall be performed within the time limits established by the law, and within the shortest time necessary according to the specific circumstances and the purpose of the procedural action or administrative act.
Non-pronouncement by the administrative body within the term according to Art. 58 of the APC equates to tacit refusal, and, in cases provided for by a special law, tacit consent, which is appealable. A tacit refusal or tacit consent may be challenged within 1 month of expiry of the period within which the administrative authority is required to rule.
Administrative acts may be challenged within the prescribed time limits after their notification. In addition to disciplinary responsibility, officials responsible for failure to comply with the timeframe shall also bear administrative penalties under Chapter Eighteen of APC.
The one-instance and fast (6-month) legal review of investment proposals, their extensions or amendments of projects of national significance and strategic importance, though limiting access to justice, can be partially effective in the case of a favourable court ruling for the complainant, providing timeliness and a quicker result for preventing the implementation of plans and programmes with adverse environmental impacts (see 1.8.1.1).

**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?**

No specific requirements for injunctive relief other than those mentioned in 1.7.2 have been laid down for challenging decisions concerning EIA. For example, at any stage of the proceedings up to entry into effect of the court decision acting on a motion by the contestant, the court may impose injunctive relief by staying the anticipatory enforcement admitted by the authority which has issued the act under Article 60(1) of the APC if the enforcement could inflict a significant or difficult to repair damage on the contestant. The enforcement may be stayed solely on the basis of new circumstances.

### 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**

In the national legal order, Art.120 of the Constitution has adopted the concept of a general clause of court control over the legality of administrative acts. Access to justice on the prevention and control of pollution is regulated further by the APC and the special provisions of the EPA – Chapter seven “Prevention and restriction of industrial pollution”, Section II "Integrated permits". The conditions and order for issuing integrated permits are regulated with an Ordinance of the Council of Ministers (Art. 119(1) EPA) (IP Ordinance).
The decision for granting, refusal, modification, updating or revocation of an integrated permit (IP) is announced by the competent authority for permits through the mass media within 14 days after the date of issue, at the same time sending it to the states affected by operation of the installation in case of cross-border transfer. During this timeframe, the applicant shall also be notified in writing. Interested persons can appeal the decision pursuant the APC within 14 days after its announcement (Art.127 EPA).

**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?**

The special grounds (special clause) for appeal are provided in Art. 127 of the EPA following the principal legal logic and provisions for appealing individual administrative acts. It states that the decisions for granting, refusal, modification, updating or revocation of an integrated permit shall be announced by the competent authority through the mass media within 14 days after the date of issue, at the same time sending it to the states affected by operation of the installation in the case of cross-border transfer, and it can be challenged pursuant to the APC within 14 days after notification.

For challenges of decisions in a joint procedure (IED and EIA) for which the Minister of Environment and Water is a competent authority, the provisions of Art. 99 of the EPA apply – within 7 days after decreeing of the decision on EIA, the competent body or an official authorised by it announces the EIA decision through the central mass media, on its website and/or in another appropriate way.

The decisions of the executive director of the EEA are subject to administrative review before the superior administrative authority, which is the Minister of Environment and Water, as well as to legal review before the administrative court without the administrative review option being exhausted.

The right to appeal is enjoyed by interested persons as well as the public concerned as per § 1, pp. 24 and 25 of the EPA, which defines “public” and “public concerned”, and procedural standing is granted to affected individuals and legal persons and their organisations incorporated in line with the national legislation, incl. ENGOs incorporated in line with the national legislation.

Concerning foreign individuals, the general principle stipulated in the APC is that it applies only to foreigners who reside in the Republic of Bulgaria or who are participants in an administrative proceeding before a Bulgarian authority outside the Republic of Bulgaria, insofar as the Constitution and laws do not require Bulgarian citizenship. However, following the requirements of the Aarhus Convention, to which Bulgaria is a party (Article 3(9)[50], there should be no discrimination and no person should be excluded from the definition on the grounds of nationality, domicile, citizenship or seat.

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

There is no express screening procedure defined in the EPA or in the Ordinance on integrated permits (IP), thus no access to justice at this stage.[51].

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

There is no strict scoping phase in the procedure beside the assessment of the formal requirements for the permit application.

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

The decision for granting, refusal, modification, updating or revocation of an integrated permit shall be announced by the competent authority through the mass media within 14 days after the date of issue. The notifications are published on the website of the EAA and in the public register containing data about the results of the issuance, refusal to issue, revocation, review, amendment and updating of IPs. Interested parties can appeal the decision in conformity with the APC within 14 days after its announcement.

**6) Can the public challenge the final authorisation?**

The decision of the competent authority concerning integrated permits can be appealed by interested persons (e.g. ENGOs with public interest or individuals) within 14 days after its announcement (Art.127 EPA).

**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?**

The general principles of the judicial control set out in the APC also apply to IED decisions. Judicial review is carried out for the legality of the grounds under Art. 146 APC: lack of competence; non-compliance with the established form; significant violation of administrative production rules; contradiction with substantive provisions; inconsistency with the purpose of the law.

Chapter fifteen of the APC, "Protection against Unjustified Actions and Inactions of the Administration", provides for procedures for litigation.

For the courts acting on their own motion, the general principles apply, see 1.2.4.

**8) At what stage are these challengeable?**

IED decisions for granting, refusal, modification, updating or revocation of an integrated permit are announced by the competent authority through the mass media within 14 days after the date of issue, at the same time sending it to the states affected by operation of the installation in the case of cross-border impacts and transfer of emissions. The permit applicant is also notified in writing. Interested persons can appeal the decision by the order of the APC within 14 days after being notified (Art.127(2) EPA).

Under the prerequisites of Article 256 of the APC, inaction on an obligation directly arising from a normative act can be challenged indefinitely. In this case, the provisions for challenging individual administrative acts shall be applied accordingly. Failure to perform factual actions which the administrative authority is obliged to perform by virtue of the law are subject to challenge within 14 days from the submission of a request to the authority for its execution. In its decision, the court orders the administrative authority to take the action, setting a time limit, or rejects the request.

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

An administrative act may be contested before the court even if the possibility for administrative contestation of the act has not been exhausted, unless otherwise provided for in the APC or in a special law (Art. 148 APC) (see also 1.3.2).

The administrative appeal is an opportunity, not a condition, for challenging the legality or expediency, i.e. application of the discretion by the administrative authority, of an act.

Administrative litigation is not one of the procedural preconditions for judicial appeal, i.e. the possibility of judicial appeal is not conditional on a prior appeal before the higher administrative authority (Art. 148 and Art. 149(1,3) of the APC).

**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?**

The procedural standing, and in particular the legal standing (interest), of the challenger is not made conditional on his/her participation with objections or comments in the public hearing.

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

The principles on which the proceedings provided for in the Administrative Procedure Code are based are set out in Chapter Two, "Basic Principles", including Art. 8 of the APC, which can be traced to the relevant procedural institutes:

All parties concerned with the outcome of the proceedings under the APC shall enjoy equal procedural opportunities to participate in the proceedings for the defence of rights and legitimate interests. Within the limits of operational autonomy, similar cases shall be treated equally under equal conditions (see also 1.8.1.9).

**12) How is the notion of “timely” implemented by the national legislation?**

The principle of speed and procedural economy is essential for the administrative and judicial phases. Art. 11 of the APC provides that procedural actions shall be performed within the time limits established by the law, and within the shortest time necessary according to the specific circumstances and the purpose of the procedural action or of the administrative act.

Non-pronouncement by the administrative body within the timeframe according to Art. 58 of the APC equates to tacit refusal and, in the cases provided for by a special law, tacit consent, which is appealable. A tacit refusal or tacit consent may be challenged within 1 month of expiry of the period within which the administrative authority is required to rule.
Administrative acts may be challenged within the prescribed time limits after their notification. In addition to disciplinary responsibility, officials responsible for failure to comply with the timeframe shall also bear administrative penalties under Chapter Eighteen of the APC.
The IP and EIA decisions are obligatory for the issuing of permission for construction. The IP decision can be challenged by interested parties within 14 days after its announcement (see also 1.8.2.5).
An exception is made for facilities and equipment in respect of which an EIA procedure is completed with a decision confirming the implementation of the BAT in compliance with Art. 99a of the EPA. If the procedure is according to the EIA rules, there is a special time limit for decisions on decisions related to the implementation of projects designated as nationally significant and strategically important by an act of the Council of Ministers. In this case, the court proceedings are to be concluded within 6 months from the filing of the appeal and the court must announce the decision within 1 month after the hearing at which the case has been concluded.

**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?**

No specific requirements for injunctive relief other than those mentioned in 1.7.2 have been laid down for challenging decisions concerning integrated permits. For example, at any stage of the proceedings up to entry into effect of the court decision acting on a motion by the contestant, the court may impose injunctive relief by staying the anticipatory enforcement admitted by the authority which has issued the act under Article 60(1) of the APC if the enforcement could inflict a significant or difficult to repair damage on the contestant. The enforcement may be stayed solely on the basis of new circumstances.

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

In the context of implementation of the Aarhus Convention in Bulgaria, public awareness measures on information provision and public involvement in decision-making are more visible, for example through the EEA website. The MoEW website provides general information about the Aarhus Convention and some guidances related to its provisions. Other forms of dissemination are provided mostly by NGOs on their websites or on the special project websites, or as a result of European projects, for example: https://e-justice.europa.eu/content_access_to_justice_in_environmental_matters-300-bg-bg.do?clang=en. See also 1.7.4.

### 1.8.3. Environmental liability[52]

*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?**

The Act on liability for prevention and remedying of environmental damage (ELA) provides for several opportunities for judicial review of the competent authorities' decisions. The most important is if authorities refuse to apply remedial measures. Any natural or legal person who has been affected, or may be affected, by environmental damage, or has sufficient interest in the taking of a decision for removing environmental damages, or claims that their right has been violated, may request that a competent authority initiate a procedure to determine and apply remedial measures. ENGOs are not required to prove such circumstances and their interest/standing is presumed by the law[53] (Art. 47 (2) ELA).
If the competent authority issues a decision (an order) for refusal of applying remedial measures in which they indicate the grounds for it and publish it on their website, interested parties, incl. ENGOs, can appeal the refusal under the APC (Art.48(5)). The usual 14-day time limit after notification of the decision applies.
When the applied preventive measures are not enough for prevention of an imminent threat from environmental damages, the competent authority[54] may suggest to the Minister of Environment and Water a proposal for applying preventive measures within 3 days from drawing up of the written statement about the damages. Within 10 days from receiving a proposal, the Minister issues an order for applying preventive measures, which shall be published on the website of the MoEW. The order can be appealed under the APC. The appeal does not stop its enforcement (Art.23(3-4) ELA). There is no established case-law on such cases, but it could be presumed that ENGOs will be granted standing in the judicial proceedings.
The draft order concerning remedial measures[55] which the operator is obliged to implement is made public on the website of the competent authority within 3 days after it is drawn up. The publication also contains an invitation to the public to submit their recommendations and opinions. The draft order is posted in a public place on the administration's premises. Recommendations and opinions may be submitted in writing within 14 days from publication of the draft order. Within 7 days from expiry of the time for comments, the competent authority issues an order for applying the remedial measures and makes it public on its website. The order is subject to appeal under the APC within 14 days. (Art. 29 ELA)
In the case of factual complexity in determining the remedial measures and/or in the event that additional analyses are needed, the competent authority issues an order for the measures based on a report for remedial measures drawn up by the operator. The draft order is made public on its website with an invitation to the public to produce their recommendation and opinions within 14 days. The order for remedial measures is issued within 30 days from expiry of the 14-day timeframe for comments. Within 3 days from its issue, the order is published on the authority's website. It is subject to appeal under the APC within 14 days. (Art. 30-32 ELA)
In the same vein, when the operator (person causing the damage) is unknown and 1) the measures can be determined without additional analysis or 2) when, because of factual complexity in determining the remedial measures additional analysis is needed, the order for remedial measures is subject to appeal under the APC within 14 days. (Art 33-34 ELA).
The order for remedial measures, when an unknown operator has been established, shall be published on the MoEW website and is subject to appeal under the APC. (Art. 36 ELA)

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

The general 14-day time limit for appeal following the notification of the decision applies. A tacit refusal or tacit consent shall be contestable within 1 month after expiry of the time limit within which the administrative authority was obligated to pronounce. (Art. 149 (1-2) APC). See also 1.8.3.1.

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

The person that submits a request for action in an application and provides the following:
address for correspondence;
place, territorial scope and type of environmental damages caused;
data on the operator which has caused the environmental damages, if known;
actual or presumed reasons for the occurrence of the environmental damages;
violated right of the applicant or sufficient interest in the taking of a decision to eliminate environmental damages;
visible and/or presumed consequences of the environmental damages;
recommendations for the undertaking of respective remedial measures, if the person has such;

other circumstances and facts supporting the information and the observations in connection with the environmental damages caused.

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

The competent authority considers the request within 7 days from receipt of the application. If the information provided is not complete, it returns the application with an indication of what additional information is to be provided by the applicant. The applicant shall provide the additional information within 7 days of receiving the instruction. If the applicant does not provide the additional information within the timeframe, the competent authority does not consider the request.

**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)?**

If the competent authority issues a decision (an order) for refusal to apply remedial measures, it is published it on its website and interested parties, incl. ENGOs, are informed about it.

Within 10 days from receiving a proposal for applying preventive measures, the Minister issues an order for such measures, which shall be published on the MoEW website.

In the case of factual complexity in determining the remedial measures and/or in the event that additional analyses are needed, the competent authority issues an order for the measures. The draft order is made public on its website with an invitation to the public to provide their recommendations and opinions within 14 days.

The draft order about remedial measures[56] which the operator is obliged to implement is made public on the website of the competent authority within 3 days after it is drawn up. The publication also contains an invitation to the public to submit their recommendations and opinions. The draft order is posted in a public place on the administration's premises. Recommendations and opinions may be submitted in writing within 14 days from publication of the draft order. Within 7 days from expiry of the time for comments, the competent authority issues an order for applying the remedial measures and makes it public on its website.

The orders for remedial measures when an unknown operator has been established shall be published on the MoEW website.

**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 law does not provide for specific extension of entitlement to citizens or NGOs to request actions in cases of imminent threat of damage. The initiative lies with the operator, where it is known, or otherwise with the competent authority. However, citizens or NGOs can give signals and inform the competent authority about the imminent threat. In the case of an imminent threat of environmental damages where the operator is not known, the competent authority, within 3 days after receiving the information, shall perform an on-site check of the facts and circumstances related to the imminent threat of environmental damages and draw up a written statement. (Art.21(1) ELA)

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

The Minister of Environment and Water (with competences defined in Art.7 of the ELA, e.g. issues orders for the application of preventive and remedial measures in the cases provided by law; holds consultations with the public and operators in determining remedial measures; applies coercive administrative measures and imposes the administrative penalties provided for in the law);

The directors of the Regional Inspectorates on Environment and Water (RIEW) (with competences defined in Art. 8, e.g. carries out inspections for establishment of the operator and ascertainment of the immediate threat or the environmental damages caused; considers requests of representatives of the public for undertaking preventive and remedial measures; holds consultations with the public and with operators on determining remedial measures);

The directors of the Basin Directorates for Water Management (with competences defined in Art. 9, e.g. undertake actions in the event of an immediate threat or in the event that environmental damages have been caused within the scope of the region for basin water management);

The directors of the national parks (with competences defined in Art. 10, e.g. undertake actions in the case of an immediate threat of environmental damages or in the event that environmental damages have been caused in the territory of the national park).

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

No. An administrative act may be contested before the court even if the possibility for administrative appeal of the act has not been exhausted, unless otherwise provided for in the APC or in a special law. (Art. 148 APC) See also 1.3.2.

**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?**

In the event of transboundary effects of projects or plans or programmes, there are procedures for transboundary consultations with the affected states in line with the obligations under the relevant international Convention and EU Directives. § 1, p. 23 of the Additional Provisions of the EPA defines interested states in cross-border context as these states, which are source of negative impacts on environment, and the states, which might be affected by these impacts, Parties to the Convention for environmental impact assessment in cross-border context.

SEA: The developer of the plans and programmes sends a copy of the plans and programmes (PP) and of the SEA report to each state that could be affected by application of the PP subject to SEA and organises consultations with the state(s) which could probably be affected. The results of the consultations should be reflected in the SEA report and are taken into account in the statement of the Minister of Environment and Water or the director of the respective RIEW. Access to the SEA decision is ensured to affected and interested parties and each state likely to be affected by application of the PP. (Art. 87 (1-2), 88(2) EPA)

EIA: Regarding investment proposals for construction, activities and technologies in the territory of the Republic of Bulgaria that are expected to have significant impact on the environment in the territory of other state or states, the Minister of Environment and Water shall notify the affected states at the earliest possible stage of the investment proposal, but not later than the date of notifying the domestic population; upon consenting for participation in the EIA procedure, the minister provides the affected state with a description of the investment proposal and information about possible cross-border environmental impacts, as well as information about the character of the decision expected to be taken. (Art. 98 (1) EPA)

For Seveso III undertakings/facilities of high risk potential (upper-tier establishments), if there is a danger of occurrence of a large accident with transboundary effects, the Minister of Environment and Water notifies potentially affected states and provides information in compliance with the requirements of the Convention on the Transboundary Effects of Industrial Accidents. (Art. 111(2) and 116 (4) EPA)

IED installations: Within 14 days from conclusion of the checks for compliance of the contents and form of the application for an integrated permit with the requirements of the integrated permit (IP) ordinance, the competent authority initiates a procedure for granting the IP, announces and grants the interested parties equal access to the application for a month, including the states affected by the operation of the installation in the case of transboundary impacts (122a (5) EPA). The decision for granting, refusal, modification, updating or revocation of an IP is announced by the competent authority through the mass media within 14 days after the date of issue, at the same time sending it to the states affected by operation of the installation in the case of cross-border transfer.

ELD: In the case of an imminent threat of environmental damages or in the event that environmental damages have been caused by activities performed in the territory of the Republic of Bulgaria which affect or may affect another state, the Minister of Environment and Water shall immediately notify the affected state or the EU Member States by providing information about the damages and information about the procedures according to the law. Upon request by the competent authorities of the other state or the EU Member States, the minister provides additional information. (Art. 49, 52 of ELA)

**2) Notion of public concerned?**

The EPA, in its additional provisions, defines “public" as one or more natural persons or corporate bodies and their associations, organisations and groups, created in compliance with the national legislation. Further, "affected public" is members of the public who are affected, or are likely to be affected, or who have an interest in the procedures for approval of plans, programmes or investment proposals and in the taking of decisions for the issuing or updating of permissions by order of this Act or the conditions in the permission, including ENGOs established in compliance with the national legislation. However, both definitions concerning legal persons are to be interpreted as those established in compliance with national (Bulgarian) legislation. Concerning individuals, the general principle stipulated in the APC is that it applies only to foreigners who reside in the Republic of Bulgaria or who are participants in an administrative proceeding before a Bulgarian authority outside the Republic of Bulgaria, insofar as the Constitution and laws do not require Bulgarian citizenship. However, following the requirements of the Aarhus Convention, to which Bulgaria is a party (Article 3(9)[57], there should be no discrimination and no person should be excluded from the definition on the grounds of nationality, domicile, citizenship or seat[58]. The principle set out in the Constitution of the Republic of Bulgaria is that international treaties which have been ratified in accordance with the constitutional procedure, promulgated and have come into force with respect to the Republic of Bulgaria shall be part of the legislation of the State. They shall have primacy over any conflicting provisions of the domestic legislation. However, no case-law has been identified to reflect the position of the Bulgarian courts.

See also 1.4.1.

**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)?**

See 1.8.4.2. The national law does not provide special rules on standing of NGOs of another state. However, the Aarhus Convention, which is part of the national legislation and, according to Art. 5(4) of the Constitution, shall have primacy over any conflicting provision of the domestic legislation, states in Art. 2 (5) that “the public concerned” is members of the public affected, or likely to be affected, by the environmental decision-making or having an interest in it. The term should be seen in the light of the non-discrimination provision in Art. 3(9), which means that the obligation to inform the public concerned includes also, where appropriate, the public across national borders.[59]

In its findings on communication ACCC/C/2004/03 (Ukraine), the Compliance Committee to the Aarhus Convention observed that “foreign or international non-governmental environmental organizations that have similarly expressed an interest in or concern about the procedure would generally fall under these definitions as well.” It should be applied at least for participation in the decision-making process.[60]

Also, it should be noted that some of the international ENGOs have their branches registered in Bulgaria as legal entities with all procedural rights.

Only individuals are granted legal aid according to Bulgarian law. Mostly foreigners seeking asylum are granted legal aid. There is no provision for such aid in environmental cases.

Once foreign NGOs are granted standing by the court, they have procedural rights to also request injunctive relief and interim measures.

The Ordinance on the Terms and Conditions for EIA, Chapter Eight, provides for a procedural sequence of the transboundary consultations where Bulgaria is a country of origin or the country concerned. According to Art. 23 of the EIA Ordinance, the Ordinance is subsidiary "unless an international agreement between the Republic of Bulgaria and the State or States concerned provides otherwise." The main subject of it are the requirements for exchange of information and public discussion, as well as inclusion of the requirements of the affected party in the EIA decision, but without justice – it would mean recognition of the extraterritorial effect of the court decision. However, we could not draw a clear conclusion on what this would mean in practice for foreign citizens and NGOs without case-law identified that would reflect the position of the Bulgarian courts.

**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)?**

No national rules on granting standing to foreigners are to be found in the general principle stipulated in the APC that it applies only to foreigners who reside in the Republic of Bulgaria or who are participants in an administrative proceeding before a Bulgarian authority outside the Republic of Bulgaria, insofar as the Constitution and the laws do not require Bulgarian citizenship. Following the requirements of the Aarhus Convention (Article 3(9))[61], there should be no discrimination and no person should be excluded from the definition on the grounds of nationality, domicile, citizenship or seat. Foreigners could be considered as “the public concerned” affected, or likely to be affected, by the environmental decision-making or having an interest in it.

Persons who are non-citizens therefore have rights and interests under the Convention. For example, in cases where the area potentially affected by a proposed activity crosses an international border, members of the public in the neighbouring country will be members of the “public concerned” for the purposes of Art. 6 of the Convention.

Only individuals are granted legal aid according to Bulgarian law. Mostly these are foreigners seeking asylum. There are no provisions for such aid in environmental cases.

Once foreign citizens are granted standing by the court, they have procedural rights to also request injunctive relief and interim measures.

See also 1.8.4.2. and 1.8.4.3.

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

Following the procedures for transboundary consultations under the international conventions and EU Directives, foreign persons (individuals and NGOs) should be informed by the competent authority of their respective country, and following the procedures for access to information in that country depending on the procedure in question. For example, if Bulgaria is the affected country in the case of notification about expected significant impact on the environment in the territory of Bulgaria as a result of proposed activity in the territory of another state, the Minister of Environment and Water shall ensure public access to the information provided about EIA and the timely sending of all statements about the information before the taking of decisions by the competent authority of the other state.

See also 1.8.4.1. for different procedures.

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

See 1.8.4.1. for different procedures, however it depends on the transboundary consultations. For example, in EIA procedures in the territory of the Republic of Bulgaria expected to have significant impact on the environment in the territory of another state or other states, the Minister of Environment and Water notifies the affected states at the earliest possible stage of the investment proposal, but not later than the date of notifying the domestic population.

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

See 1.8.4.1. for different procedures, however it depends on the transboundary consultations. For example, in EIA procedures in the territory of the Republic of Bulgaria expected to have significant impact on the environment in the territory of another state or other states, the Minister of Environment and Water notifies the affected states at the earliest possible stage of the investment proposal, but not later than the date of notifying the domestic population. However,

there are no specific rules on providing information on assess to justice[62]. For example, within the SEA procedure public access (via the competent authority's website, SEA online register) to the SEA decision and to the negative screening decision is ensured to the public, the affected and interested parties, and each state for that is likely to be affected by the application of the plan or programme (Art. 88(2) EPA). However, no relevant case-law has been identified to reflect the position of the Bulgarian courts on granting standing to foreign ENGOs and citizens in environmental cases.

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

The general rules of the APC apply. Persons who have no command of the Bulgarian language may use their native language or another language which they specify. In such cases, an interpreter shall be appointed. Any documents presented in a foreign language must be accompanied by an accurate translation into the Bulgarian language. If the competent authority is unable itself to verify the accuracy of the translation, the said authority shall appoint a translator for the account of the party concerned, unless a law or an international treaty provides otherwise. The costs of translation shall be borne by the person who has no command of the Bulgarian language if the administrative proceeding was initiated at the request thereof, unless a law or an international treaty provides otherwise. (Art 14 APC)

See also 1.4.4.

**9) Any other relevant rules?**

The Bulgarian Constitution stipulates that foreigners who reside in the Republic of Bulgaria shall have all the rights and obligations under this Constitution, with the exception of the rights and obligations for which the Constitution and laws require Bulgarian citizenship (Art. 26(2)). The Act on Access to Public Information states that every citizen of the Republic of Bulgaria has the right to access to public information under the conditions and by the order determined in this law, unless another law provides for a special procedure for searching, receiving and distributing such information. (Art.4)

In the Republic of Bulgaria, foreigners and stateless persons shall enjoy the right to access to public information. The right shall be used by all legal entities. The Environmental Protection Act as special law in terms of access to information states in Art. 17 that everyone has the right to access available environmental information without the need to prove a specific interest, hence there is no restriction on such access.

---

[1] Environmental protection is carried out via legal mechanisms in all main branches of law – civil law, administrative law (with a framework Environmental Protection Act, many sectoral laws and the APC), administrative penal law (administrative offences punishable under the sectoral laws and the procedure provided in the Law on Administrative Offences and Punishments) and penal law (the Penal Code).

[2] In administrative law, access to justice is strongly influenced by the Aarhus Convention and the EU legal order, which means broader possibilities for A2J in procedures which are considered Art.6 of the Aarhus Convention's procedures by the EU Acquis Communautaire.

[3] It should be mentioned that the CPC and the APC are relatively new pieces of legislation (2006-2008) and the jurisprudence in their realm is in a process of establishment.

[4] Art. 115 The ministers shall issue regulations, ordinances, instructions and orders.

[5] For example, orders on the designation of Natura 2000 protected areas are not subject to appeal (Article 12(7) of the Biodiversity Act), pending a ruling by the Constitutional Court in constitutional case No 14/2020.

[6] Ruling № 466/ 14.01.2014 adm. case. № 15788/2013 Supreme Administrative Court with analysis on the appealability of the administrative act as such in the scope of Art. 6(1) a) and b) of the Aarhus Convention.

[7] According to the Bulgarian law on non-for-profit entities, there is a division by registration for NGOs in public and private interest – see below p.1.4.

[8] Defined as sites of national importance by an act of the Council of Ministers and are sites of strategic importance (Art.99(9) EPA)

[9] See Stalev Zh. „Case-law as a source of law“, Journal. „Съвременно право“, 1997, № 6

[10] The problem with the removal of the second instance in court cases for access to information on environmental matters, which has, as a result, a kind of "local justice" in such cases where sometimes the number of judges in a regional administrative court is very small (between 2 and 5).

[11] Decision of the Constitutional Court № 5/2019 г. Case №12/2018 г., State Gazette, 36/2019

[12] District courts are first instance courts for contesting most acts issued under the Act on the Ownership and Use of Agricultural Land; in this case, the Administrative Court is the cassation instance. (Paragraph 19 of the Transitional and Final Provisions of the Code of Administrative Procedure). District courts are first instance courts when appealing against an order imposing an administrative penalty (a fine) (Article 58e of the Administrative Infringements and Penalties Act (ZANN)).

[13] The general administrative acts are the administrative acts of a single legal effect whereby rights or obligations are created or rights, freedoms or legitimate interests of an indefinite number of persons are affected, as well as the refusals to issue such acts. (Art.65 APC)

[14] An administrative act, which is deemed not to be subject to appeal under Article 39 (Designation) and Article 42 (Changes) of the Protected Territories Act (ZZT); A refusal can, however, be appealed (Decision No 4144 of 04.04.2017 in administrative case No 12973/2016, of the 5-member chamber of the Supreme Administrative Court).

[15] See Decision of the Constitutional Court in case N 12/2018, SG N 36/2019

[16] Other grounds for third cassation instance appeal are court decisions on a substantive or procedural issue: decided in contradiction of the obligatory practice of the Supreme Court of Cassation and the Supreme Court in interpretative decisions and decrees, as well as in contradiction of the practice of the Supreme Court of Cassation; decided in contradiction with acts of the Constitutional Court of the Republic of Bulgaria or of the Court of Justice of the European Union; of importance for the exact application of the law, as well as for the development of the law. (Art.280(1) CPC)

[17] № 7560/16.06.2020, case. № 12754/2019, VI section, SAC /defining the public concerned is a legal, not an expert, issue/; ECLI:BG:AP300:2015: 20150900154.001 /criteria to reject an action on cancellation of an ENGO/; №11516/31.10.2016 case № 1092/2016, V section, SAC /the control regarding other administrative acts is beyond the scope of judicial review within the subject matter of the case/

[18] Carrying out an integrated procedure is regulated according to Art. 94(4) of the EPA as an option depending on the receipt of a request of the assignor, which is binding in its application in this hypothesis and does not imply an assessment of a specially authorised and competent body - the Minister of Environment and Water without providing for a decision at this stage. It can be compared with the hypothesis under Art. 93 (10) of the EPA for appealing screening decisions of the Ministry of Environment and Water, referring to national sites. The systematic place of the provision is in Art. 99 of the EPA, which regulates final decisions on EIA.

[19] № 1704/17.02.2016, case № 13691/2015, 5-member composition, SAC /the grounds of the requirement to carry out an assessment under Art. 6 of Directive 92/43/EEC on conservation of natural habitats include probability, but not certainty, of the negative effect/. This example is indicative of the scope of the court's review of the obligation, at the expense of the limited degree of discretion, for the competent authority to require an assessment.

[20] The same right is granted to a person who was not a party to the main proceedings (Art. 245-249 APC - Cancellation at the request of a third party). The possibility for a party to the proceedings to reverse a final decision was used at least in a couple of cases by investors who found support in the SAC.

[21] The lack of legal standing of the public concerned poses problems when a negative environmental impact assessment (EIA) decision is contested, an agreement concluded with the contracting authority or a decision by a regional inspectorate for environment and water (RIEW) directly annulled by the court. (Order No 323/17.09.2020 of the Veliko Tarnovo Administrative Court in administrative case No 528/2020).
[22] The Constitutional Court shall act on an initiative from no fewer than one fifth of all members of the National Assembly, the President, the Council of Ministers, the Supreme Court of Cassation, the Supreme Administrative Court or the Prosecutor General. A challenge to competence may also be filed by a municipal council (in the case of competence disputes between the National Assembly, the President and the Council of Ministers, and between the bodies of local self-government and the central executive branch of government) and by the Supreme Bar Council (for declaring as unconstitutional an Act which violates the rights and freedoms of citizens).
[23] See Art. 120 and 127 of the Constitution on the powers of the court and the prosecutor within the judicial system to control and to observe the legality of administrative acts.
[24] In this regard, two categories of cases permitting decisions can be outlined (under Art. 9(2) of the Aarhus Convention and others). In the category of "others" fall planning measures of a general nature, such as protected areas management plans, and also normative administrative acts. Standing in the two latter categories is granted on the basis of assessment of "interest". The fact that standing when challenging protected areas management plans is not problematic at all does not mean that in other areas, such as air quality programmes, there is no problem.
[25] See case № 7384/2015, Supreme Administrative Court
[26] Not-for-profit organisations (NGOs) freely determine their goals and can identify themselves as organisations carrying out activities for public or private benefit. The determination shall be made by the statutes, the constituting act or amendments in them.
[27] Following art. 146 of the APC, they are lack of competence; non-compliance with the established form; material breach of administrative procedure rules; conflict with provisions of substantive law; non-conformity with the purpose of the law.
[28] № 935/27.05.2011 г. case № 521/2011, Administrative Court Plovdiv /on the conformity of the extension of a permit of river dragging activities with the RBMP/; № 156/08.01.2014 Г. case № 14789/2013, 5-member composition SAC /on the refusal for operating authorisation for utilisation of motor vehicles derived from the use/, for other examples, see footnote 3,4
[29] Supreme Administrative Court (case № 7384/2015)
[30] Supreme Administrative Court, case № 12064/2017 /The nature of the act as an internal act within the municipal administration is an obstacle to challenging the Air Quality Programme issued under Art. 27 CAAA.
[31] But not for all administrative acts, e.g. decisions of the municipal councils on adopting programmes under Art. 27 of the Clean Ambient Air Act for improving air quality.
[32] ECLI:BG:AD718:2015:20150700930.001, confirmed by SAC, case № 7777/2015
[33] See art. 103 and 104 of the Territorial Development Act
[34] The provision has been declared unconstitutional by the Constitutional Court at the request of the Supreme Bar Council, case № 2/2020. Decision № 14 /2020 (State Gazette No. 92/2020).
[35] In this example, up to 40 hours' attorney work annually: http://madaralaw.com/en/Pro-bono.c109.
[36] By virtue of Art. 22, item 1 of the APC, the procedure for issuing individual administrative acts under the APC shall not apply to administrative acts which, under a special law, are issued and executed immediately. The effect of the acts that are immediately enforced may be exempted not only from the conditions for the expiry of the time-limit for the appeal and the hindering (suspensive) effect of the appeal or the protest for their challenge, but also from the requirement to notify the addressees of the act. Their enforcement is unconditional under the preconditions laid down by the legislator in the relevant special law, most often in connection with acts imposing coercive administrative measures. For example, the decisions of the commission, with which concentration between enterprises is prohibited or termination of the violation is ruled, including by imposing of behavioural and/or structural measures for restoration of the competition, shall be subject to immediate execution. (Art.66(1) Competition protection Act)
[37] 1 BGN is approximately 0.5 EUR and the exchange rate is fixed by law.
[38] Amendments to the Code of Administrative Procedure (SG No 15/2021) re-organised the way in which the regularity of cassation appeals is examined (Article 213a). The examination will be carried out by the court whose decision is being appealed and encompasses orders waiving payment of a state fee, suspending enforcement (Article 166) or authorising provisional enforcement (Article 167). The court of first instance may dismiss the appeal or close the case by means of an order on the grounds referred to in Article 215 and Article 213a(3) of the Code of Administrative Procedure. The amended Article 229(1) (1) does not allow private appeals against the dismissal orders referred to in Article 213a(7), i.e. orders dismissing appeals against referral and dismissal decisions issued for failure to comply, within the time limit, with an instruction to correct an irregularity, at the relevant stage of the process at which the irregularity is established (when the regularity of the cassation appeal is examined by the court of first instance (Article 213a(1), second sentence or (2), on the basis of Article 215); when the first instance examination is checked by the President of the Court of Cassation, his or her deputies or the president of the division (Article 213a(6)) and, lastly, by the court in the course of the cassation proceedings (Article 213a(6)(2), second scenario), as well as on appeals against a refusal to waive state fees. The amendment also confers a new power on the court, which may now, of its own motion, monitor regularity and issue instructions concerning procedural irregularities (Article 142b).
[39] p. 4.3 of the Decision of the Constitutional court, case № 12/2018, SG 36/2019
[40] E.g. to persons and families who meet the conditions for receiving monthly allowance by the order of Art. 9 and 10 of the Regulations for implementation of the Social Assistance Act.
[41] The issues on the admissibility of an appeal in the case are resolved by Ruling № 13598/09.11.2017, case № 9701/2017 SAC.
[42] See footnote 13 above about case № 12064/2017, SAC
[43] The admissibility of complaint in regard to the nature of the administrative act is grounds on its own separate from the legal personality of the ENGO and the legal interest.
[44] Ruling № 6343 from 15.05.2018, case № 5051/2018 , 5-member composition, SAC
[45] Not-for-profit legal entities (NGOs) freely determine their goals and can identify themselves as organisations carrying out activities for public or private benefit. The identification shall be made by the statutes, the constituting act or amendments in them. The rules for NGOs for public benefit are detailed in Chapter III of the Act on not-for-profit legal entities (http://bcnl.org/en/legislation/law-for-the-non-profit-corporate-bodies-legal-entities.html)
[46] It should be mentioned that the Aarhus Convention Compliance Committee (ACCC) findings emphasise that such a right should be granted even for members of the public of a country whose authorities did not take steps to conduct a transboundary EIA procedure (see ACCC findings in C-71 and C-91).
[47] In its findings in the C-58 case, the ACCC states that: "By not ensuring that all members of the public concerned having sufficient interest, in particular environmental organizations, have access to review procedures to challenge the final decisions permitting activities listed in annex I to the Convention, (paras. 79–81), the Party concerned (Bulgaria) fails to comply with article 9, paragraph 2, in conjunction with article 9, paragraph 4, of the Convention.

[48] To the issued permit for construction is annexed an EIA decision or a decision for assessment of the need for EIA, as well as a decision for approval of a safety report for construction or reconstruction of an enterprise and/or facility, or parts thereof, with high risk potential (Art. 149 (6) SDA).
[49] Ruling № 9488/28.06.2011in case № 5702/2011, III division SAC
[50] "Within the scope of the relevant provisions of this Convention, the public shall have access to information, have the possibility to participate in decision-making and have access to justice in environmental matters without discrimination as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities."
[51] The administrative procedural actions of the administrative authority concerning the issuance of the act shall not be subject to separate appeal, unless otherwise provided for in this Code or in a special law. (Art. 64 APC)
[52] See also case C-529/15.
[53] The well-known facts, the facts for which the law formulates a presumption, as well as the facts which are known to the body ex officio shall not be subject to proving. (Art.37 (2) APC). It is not necessary to prove facts for which there is presumption established by law. Rebuttal of such presumption is permitted in all cases, except when prohibited by law. (Art.154(2) CPC)
[54] The ELA refers here to the competent authorities as listed in 1.8.3.7, namely: the directors of the Regional Inspectorates on Environment and Water (RIEW); the directors of the Basin Directorates for Water Management; the directors of the national parks. The same applies when referring to competent authorities in this section.
[55] Measures to control, capture, remedying of the polluters and/or other factors, caused the ecological damages, in view to restriction or preventing of further ecological damages, negative impacts over human health and further affecting services from the natural resources.
[56] Measures to control, capture, remedy the polluters and/or other factors that caused the environmental damages with a view to restricting or preventing further environmental damages, negative impacts on human health and services from natural resources.
[57] "Within the scope of the relevant provisions of this Convention, the public shall have access to information, have the possibility to participate in decision-making and have access to justice in environmental matters without discrimination as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities."
[58] Persons who are non-citizens therefore have rights and interests under the Convention. For example, in cases where the area potentially affected by a proposed activity crosses an international border, members of the public in the neighbouring country will be members of the "public concerned" for the purposes of article 6. Moreover, in its findings on communication ACCC/C/2004/03 (Ukraine), the Committee observed that "foreign or international non-governmental environmental organizations that have similarly expressed an interest in or concern about the procedure would generally fall under these definitions as well."
[59] The Aarhus Convention. An Implementation Guide. Second Edition. 2014
[60] Ibid.
[61] 'Within the scope of the relevant provisions of this Convention, the public shall have access to information, have the possibility to participate in decision-making and have access to justice in environmental matters without discrimination as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities.'
[62] Upon consenting to participate in the EIA procedure, the ministry provides the affected country with a description of the investment proposal and information on possible transboundary environmental impact, as well as information on the nature of the decision that is to be taken. (Art. 98(1) EPA)

Last update: 08/04/2021


## 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?**

The system of national environmental legislation largely follows the structure of transposition of relevant EU sectoral directives by environmental components and factors. Despite the differences in their purpose, the EIA procedure, as well as the procedures under the special laws, constitute administrative authorisation for environmental interventions with a similar legal characteristic of an environmental permit , i.e. an administrative act favouring the subject of the act but with a specific subject to protect a common environmental value.
According to the regulations for drafting normative acts, after 2007 the EU directives, whose requirements are introduced in Bulgarian legislation, are indicated in the Additional Provisions section of the relevant legal act.

**Biodiversity Act**

The assessment of compatibility with the conservation objectives of the protected areas established in accordance with the Birds and Habitats Directives (appropriate assessment) shall be carried out jointly with the EIA and the SEA respectively, where the project, programme or investment proposal is subject to such an assessment according to Chapter Six of the EPA. Where the investment proposal, plan or programme does not fall within the scope of the EPA, pursuant to paragraph 3 of Art. 31 of the Biodiversity Act, the appropriate assessment is carried out in accordance with the Ordinance on appropriate assessment. The decisions of the competent authority may be appealed pursuant to the Administrative Procedure Code. The decisions of the first-instance court on appeals against decisions of the competent body on assessment of plans, programmes and investment proposals related to the implementation of sites which are defined as sites of national importance by an act of the Council of Ministers and are sites of strategic importance are final. (Art.31(19) Biodiversity Act)

**Genetically Modified Organisms Act**

The GMO Act introduces the requirements of Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC and of Directive 2009/41/EC of the European Parliament and of the Council of 6 May 2009 on the contained use of genetically modified micro-organisms. The GMO Act explicitly stipulates that interested parties may appeal under the Administrative Procedure Code against refusals to register premises for contained use of GMOs and refusals to issue permits

for contained use of GMOs and permits to release GMOs into the environment. Decisions to register premises for contained use of GMOs and to issue permits for contained use of GMOs and permits to release GMOs into the environment can be challenged by the interested parties under the general appeal procedures against administrative acts.

**Water Act**

Art. 1 states that the purpose of the Act is to ensure integrated water management in the public interest and for the protection of the health of the population. The Water Act transposes Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy and has the role of a framework law in the sector of water management.

The issuance of administrative acts for water use (permits) – permits for water abstraction and permits for the use of a water body are regulated in Chapter Four of the Water Act. There are cases when a permit is not required, as well as the special regimes of extraction of mineral waters which are exclusive state property through concessions under the Concessions Act. The permit or the decision for refusal of the competent authority is subject to appeal before the respective administrative court by order of the Administrative Procedure Code. (Art.71 Water Act)

**Seveso III laws**

The Disaster Protection Act transposes Directive 2012/18/ EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC (Seveso III directive). The main regulation of the Seveso regimes is in the EPA and in the Ordinance for prevention of major accidents with hazardous substances and for restriction of consequences from them. Decisions for approval or disapproval of the safety report may be appealed under the Administrative Procedure Code within 14 days from their announcement.

**Environmental Noise Protection Act**

The law introduces the requirements of Directive 2002/49/ EC of the European Parliament and of the Council of 25 June 2002 on the assessment and management of environmental noise (OJ L 189/12 of 18 July 2002).

There is a distinction between the assessment, management and control of noise in residential and public buildings, which are carried out in accordance with the Health Act, as well as with the by-laws on its implementation, with the Noise Protection Act being subsidiary.

Upon ascertainment of a violation of the prohibition for emitting noise (e.g. of open areas in zones and territories, intended for residential construction, recreational zones and territories and zones with mixed purpose of road vehicles), the officials appointed by the Minister of the Interior issue a written order for suspension of the sound system. The order may be appealed pursuant to the Administrative Procedure Code, as the appeal does not suspend the execution. (Art.28a)

**Waste Management Act**

The issued permit and other decisions concerning the site for waste treatment may be appealed before the respective administrative court pursuant to the Administrative Procedure Code. The appeal does not suspend the execution of the appealed act. (Art.77)

Other laws that provide rules for access to justice aim at protecting the sustainable use of natural resources, in particular land-use regimes and changing the designation of agricultural land, forests and the Black Sea coast, exploitation of mineral resources, and the land-use designation in the General Spatial Plan: the Agricultural Land Conservation Act, the Forestry Act, the Black Sea Coast Spatial Development Act, the Underground Resources Act, the Territorial Development Act.

The reasoning of the Bulgarian courts when deciding on legal standing has also included reference to the case-law of the Court of Justice, in particular Case C-240/09. The court examined the grounds of a legal review of procedures involving the participation of the public concerned. In this case, a special legal standing, arising from the requirements of Art. 9, para. 2 of the Aarhus Convention in relation to the projects of Annex I to the Convention, for which approval the national law provides for public consultation, was recognised (e.g. Ruling 466/14.01.2014, administrative case № 15788/2013, 7 chamber of SAC[2]).

The court maintains that the legal standing, in the hypotheses of contesting acts directly reflecting on the environment, shows a deviation from the right to challenge referred to in Art. 147(1) APC content of the right to challenge. As an international treaty which, in view of the provision of Art. 5(4) of the Constitution, has primacy over national provisions that contradict it, and in view of the special EPA, the existence of legal standing of the association should be assessed in accordance with Art. 9, § 2 of the Convention. According to this provision, access to justice is considered to be provided to non-governmental organisations that have sufficient interest or an infringed right; for the purposes of the Convention, the interest of any non-governmental organisation which meets the requirements of national law and works to protect the environment - Art. 9, §2 in conjunction with Art. 2, item 5 of the Convention, assuming that the organisation may also have an infringed right. The provisions of §1, item 25 and item 24 of the EPA are similar. Given this relevant legislation, as far as the legal standing of NGOs and the indisputably established registration of a private complainant in accordance with national law and the subject of “activity – environmental protection” are concerned, they can have legal standing, provided the other requirements of the Convention are also complied with[3].

For procedures that do not require public participation, the general requirement for legal standing within the meaning of national law is applied under the conditions of Art. 147 of the APC, i.e. for having legal standing as an owner of a (potentially) violated or infringed right.

**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?**

As a general principle applicable to procedures under the laws listed above, within the administrative review both the appropriateness and legality of the administrative act may be challenged. Judicial review is only for lawfulness in the case of procedural violations that are substantial and breach material law. According to Art. 146 of the APC, the grounds for legal review are:

lack of jurisdiction;

non-compliance with the established form;

significant violation of administrative production rules;

contradiction of substantive provisions;

non-compliance with the purpose of the law.

The court monitors ex officio the validity, admissibility and conformity of the administrative decision with substantive law.

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

The choice to challenge an administrative act for its legality and expediency first within an administrative review before a superior authority or directly with the court for its legality is at the discretion of the contesting party, but with the reservation that a mandatory phase of challenge before the higher administrative body might be introduced by law. Art. 148 of the APC stipulates that the administrative act can be challenged before the court without exhausting the possibility of challenging it by administrative procedure, unless otherwise provided by law, including in the Code itself. Such was the provision of Art. 216 of the Spatial Development Act (repealed SG, No. 25 of 2019), which did not allow direct challenge to the court of a building permit and the other acts of the chief architect referred to therein.

See also 1.7.3.

**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.?**

The exercise of the right to participate, incl. for the public concerned, in the administrative process for issuing of an act is not among the statutory requirements for standing and challenging this act.
See also 1.8.1.8 and 2.1.1.

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

Procedural violations which do not necessarily affect the discretion of the decision-making authority as expressed in the contested act do not constitute grounds for annulment in the legal review. The court is not competent to rule on the discretion of the decision-making authority (expediency) for making a choice between more than one legally valid alternatives.

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

See the general principle of equality in the Administrative Procedure Code, which is explained in 1.8.1.9. in the context of EIA procedure.

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

The general principles of speed and procedural economy as essential for the administrative and judicial phases are reviewed in 1.8.1.10 within the context of EIA procedure.

**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?**

The general rules described in 1.7.2. apply.

**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?**

The general rules about costs described in 1.7.3. apply.

**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?**

The administrative decisions that finalise the SEA procedure[5] are the screening statement (decision whether or not to carry out a full SEA) and the final full decision on the SEA procedure (Art.88(1) EPA). Access to the statement or decision is ensured for the public, the affected and interested parties and each state in the case of transboundary effects that will arise as a result of application of the plan or programme (PP) following the rules stipulated in the SEA Ordinance. The interested parties may appeal the statement or decision under the APC within 14 days from its announcement. Access to justice is possible at the stage of SEA procedure for assessment of PP. In spatial planning, where most of the PPs subject to SEA are adopted, there is no access to justice for ENGOs, only for directly affected individuals.The detailed plans cannot be challenged by the general public or ENGOs, only by owners, holders of limited property rights and concessionaires of the plot or of the neighbouring real estates regulated or directly affected by the Detailed Spatial Plan) (Art. 131 SDA).
See also 2.4.3.
§ 1, pp. 24-25 of the Additional Provisions of the EPA defines the "public" and "public concerned" who can also be interested parties in administrative and legal appeals in SEA procedures. ENGOs that meet the criteria of national law, namely registered under the relevant procedure, have standing in the judicial proceedings before a court. However, there is no established case-law on access to court for ENGOs with private interest as opposed to those with public interest. The interested parties may appeal the SEA screening or final decision under the APC within 14 days from its announcement. The decisions of the first-instance court on appeals against decisions regarding the realisation of sites designated as PP of national significance by an act of the Council of Ministers which are also PP of strategic importance are final. The court considers the complaints and rules with a decision within 6 months from their submission. The court announces its decision within 1 month of the session in which the case was heard and closed. Though one-instance legal review limits the access to justice, in the event that the court rules in favour of the complainant the timeliness and overall result of preventing implementation of PP with adverse environmental impacts is partially effective.
With access to justice to the screening and final SEA decisions, the system of legal review is comprehensive and efficient. However, the barriers to access to justice to the PP reduce its effectiveness, which could be improved with legislative changes, for which the Aarhus Convention Compliance Committee and the Meeting of the Parties are also calling. See also 2.4.3 and 1.4.1.

**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?**

As a general principle applicable to procedures under the laws listed above, within the administrative review both the appropriateness and legality of the administrative act may be challenged. Judicial review is only for legality – procedural legality for violations that are substantial and substantive legality for breach of material law. See also 2.1.2.

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

No, there is not. An administrative act may be contested before the court even if the possibility for administrative contestation of the act has not been exhausted, unless otherwise provided for in the APC or in a special law. (Art. 148 APC). See also 1.3.2. and 1.8.1.7.

**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.?**

The exercise of the right to participate, incl. for the public concerned, in the administrative process for issuing the act is not among the statutory requirements for recognising the procedural legitimation for challenging it.
See also 1.8.1.8 and 2.1.1.

**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 general rules described in 1.7.2. apply accordingly.

**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?**

The general rules about costs described in 1.7.3. apply accordingly.

**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[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 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?**

The general rule about the participation of citizens and organisations in administrative procedures is set out in Art. 27 of the APC. Upon submission of a request to initiate or join the proceeding, or upon receipt of the notification referred to in Article 26, the applicant and the individuals and organisations concerned who have joined the proceeding become parties to the proceeding for the issuance of an individual administrative act. The administrative authority must verify the prerequisites for admissibility of the request and for participation of the individuals or organisations concerned in the proceeding for the issuance of the individual administrative act. This principle can apply to any act of a general nature relevant for approval of PPs outside the scope of SEA. Once these persons are admitted as parties to the proceeding, the general rules for administrative and legal review apply. (Please see 2.1.2.).

In the current practice of the administrative courts, the decisions of the municipal councils on adopting programmes under Art. 27 of the Clean Ambient Air Act for improving air quality by decreasing pollution levels and achieving air quality value levels are not accepted as challengeable administrative acts due to the nature of the act as an “internal act” which does not affect the rights and interests of citizens and organisations. Based on this, the courts have concluded that the ambient air quality programme is not an act of a public authority that can be challenged by members of the public. A Bulgarian NGO, “Za Zemiata”, also filed a case with the Compliance Committee to the Aarhus Convention claiming violation of the Convention by denying legal standing to citizens and ENGOs to challenge Air Quality Plans.

See also 2.2.1.

**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?**

Most plans and programmes cannot be reviewed outside the SEA procedure by ENGOs and the general public. As mentioned in p. 2.2.1, general development plans are not subject to legal review (Art. 215 (6) SDA). Detailed spatial plans cannot be challenged by the general public or ENGOs, only by owners, holders of limited property rights and concessionaires of the plot or of the neighbouring real estates regulated or directly affected by the Detailed Spatial Plan (Art. 131 SDA). Also, as mentioned above, in the current case-law of the administrative courts the decisions of the municipal councils on adopting programmes under Art. 27 of the Clean Ambient Air Act for improving air quality by decreasing pollution levels and achieving air quality value levels are not accepted as challengeable administrative acts due to the nature of the act as an “internal act” which does not affect the rights and interests of citizens and organisations. The same would apply to other PPs which do not affect the rights and interests of citizens and ENGOs and are not general or individual administrative acts[7] in the definitions of the APC.

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

No. The principal rule of the APC is that an administrative act may be contested before the court even if the possibility for administrative contestation of the act has not been exhausted, unless otherwise provided for in the APC or in a special law. (Art. 148 APC). See also 1.3.2., 1.8.1.7. and 2.3.2.

**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.?**

The exercise of the right to participate, incl. for the public concerned, in the administrative process for issuing the act is not among the statutory requirements for recognising the procedural legitimation for challenging it.

See also 1.8.1.8 and 2.1.1. and 2.3.2

**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 general rules described in 1.7.2. apply.

**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?**

The general rules about costs described in 1.7.3. apply.

### 1.4. Decisions, acts or omissions also concerning plans and programmes required to be prepared under EU environmental legislation[8]

**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?**

There is a growing tendency in the sectoral legislation for positive examples in this group of cases and ongoing gradual establishment of the criteria for access to justice, including with regard to the procedures, i.e. not only in administrative but also civil proceedings. In the case-law, the uncertainties are primarily related to the legal characteristics of the act and the legal interest. A significant contribution to the development of the legislative process has been the most recent Decision № 14/2020 of the Constitutional Court, according to which the non-appealability of administrative acts cannot affect the realisation of the fundamental rights and freedoms of the citizen, unless this is necessary for the protection of higher constitutional values related to particularly important interests of the citizens. The decision in essence denies the unlimited possibility of the law-makers, by expedience, to exclude from judicial control a certain category of acts, in this case general development plans, and declares Art. 215(6) of the Territorial Development Act unconstitutional.

**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)?**

According to Art. 120 of the Constitution, a system of a general legal review for legality has been adopted, which also covers normative administrative acts. The contestation before the Constitutional Court of a law adopted by the National Assembly due to its incompatibility with the Constitution or an international legal act to which the Republic of Bulgaria is a party is limited to the exhaustively determined subjects[9] and an individual constitutional complaint is not admissible.

**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?**

General development plans are not subject to legal review (Art. 215 (6) SDA). The detailed plans cannot be challenged by the general public or ENGOs, only by owners, holders of limited property rights and concessionaires of the plot or of the neighbouring real estates regulated or directly affected by the Detailed Spatial Plan (Art. 131 SDA). The Compliance Committee to the Aarhus Convention found that by barring all members of the public, including environmental organisations, from access to justice with respect to General Spatial Plans Bulgaria fails to comply with Art.9(3) of the Convention; and by barring almost all members of the public, including all environmental organisations, from access to justice with respect to Detailed Spatial Plans Bulgaria fails to comply with Art.9(3) of the Convention[10].

In the Water Act, interested persons who have participated in the procedure for issuing a water-use permit can also challenge the decision or the refusal for a permit within the general procedure.

The grounds for administrative and legal review in cases where individuals or ENGOs are admitted to the procedure are the same as discussed in 2.1.2.

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

There is no such a requirement as a general principle, but according to Art. 148 APC it is possible to introduce such a rule by means of a law. See also 2.1.3.

**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.?**

There is no such a condition for legal standing. See also 2.1.4.

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

Procedural infringements which are not of such a nature as to affect the decision of the decision-making authority expressed in the contested act are not grounds for annulment by judicial review. The court also has no jurisdiction to rule on the discretion given to the decision-making authority (expediency) for the choice made from more than one lawful alternative.

Null and void acts may be challenged without a time limit, but nullity may not be brought after a challenge of the lawfulness of the act has been rejected. See also 2.1.5.

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

Please refer to 1.8.9. and 2.1.6.

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

The general principles of speed and procedural economy as essential for the administrative and judicial phases are reviewed in 1.8.10 within the context of EIA procedure. See also 2.1.7.

**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?**

The general rules described in 1.7.2. and 2.1.8 apply.

The proceedings for damages under Chapter 11 of the APC cover claims for damages caused to citizens or legal entities by illegal acts, actions or omissions of administrative bodies and officials. Amended SG, no. 94 of 2019, adds claims for damages caused by a sufficiently significant violation of European Union law, and the standards of non-contractual liability of the state for violation of European Union law are applied to property liability and admissibility of the claim. In a recent court case, a collective action was admitted by the Sofia City Court, including, at the request of the appellants, the court ordering, as an interim measure, that the municipality announce the average daily levels of fine dust particles on its website, on information boards located in public transport vehicles and in metro stations. It also obliged Sofia Municipality to carry out in its territory the activity of machine-washing of streets of public importance and inner-neighbourhood streets twice a month, and to present in the case a plan for construction of cycle lanes, including from the suburbs to the central part of the city.

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?*

The provision of Art. 60 of the Constitution requires that citizens must pay taxes and duties established by law proportionately to their income and property. An amendment to the Environmental Protection Act which introduced a proportional fee for cassation appeal of decisions for environmental impact assessment (EIA) was pronounced as unconstitutional, Constitutional Court case No.12/2018.

The fee for affected parties to submit a claim for damages caused by illegal administrative acts is defined as a simple flat fee, i.e. not in accordance with the material interest (value for the party) in the case.

The general rules about costs related to access to justice described in 1.7.3. apply. See also 2.1.9.

**1.5. Executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts[11]**

**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?**

If an act is adopted in the form of a law (normative instrument), the only possibility for direct judicial review of this act is before Constitutional Court, and only specific subjects (one fifth of the Members of the Parliament, the President, the Council of Ministers, the Supreme Court of Cassation, the Supreme Administrative Court and the Prosecutor General) are entitled to initiate this review (Art. 150(1) of the Constitution). The Constitutional Court has jurisdiction, among other things, to: provide binding interpretations of the Constitution; to pronounce on any petition to establish unconstitutionality of laws and other acts passed by the National Assembly, as well as acts issued by the President; to settle any competence disputes between the National Assembly, the President and the Council of Ministers, as well as between the bodies of local self-government and the central executive authorities; to pronounce on the consistency of any international treaties concluded by the Republic of Bulgaria with the Constitution prior to ratification of such treaties, as well as on the consistency of any domestic laws with the universally recognised standards of international law and with the international treaties to which Bulgaria is a party. (Art. 149(1) of the Constitution)

According to Art. 150 (3) of the Bulgarian Constitution, the Ombudsperson may approach the Constitutional Court with a petition for declaring as unconstitutional a law which infringes human rights and freedoms. The Ombudsperson can notify the authorities, as listed under Article 150(1) of the Constitution, to approach the Constitutional Court if he/she is of the opinion that it is necessary to interpret the Constitution or to pronounce on compliance with the Constitution of the international treaties entered into by the Republic of Bulgaria prior to their ratification, and on the compliance of laws with the generally recognised rules of international law and with the international treaties to which the Republic of Bulgaria is a party. (See also 1.3.7)

The normative acts (by-laws) issued by the executive authorities can be challenged (Art. 185-196 of the APC). They may be challenged in full or in relation to individual provisions. Citizens, organisations and bodies whose rights, freedoms or legal interests are affected, or may be affected, by a by-law normative act, or for whom such act gives rise to obligations, have the right to challenge the act. The prosecutor may file a protest against the act.

**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?**

There is no administrative review of laws in the Bulgarian national legal system. However, the Regional Governors supervise the normative instruments of municipalities (municipal by-laws).

The acts of the municipal council that could be normative instruments used to implement EU environmental legislation and related EU regulatory acts may be challenged before the respective administrative court.

The regional governor exercises control over the legality of the acts of the municipal councils, unless otherwise provided by law. They may return illegal acts to the municipal council for new discussion or challenge them before the relevant administrative court.

The mayor of the municipality may return illegal or inappropriate acts of the municipal council for new discussion or challenge the illegal acts before the respective administrative court and request suspension of the implementation of the general administrative acts and the effect of the by-laws. The act returned for new discussion shall not enter into force and shall be considered by the municipal council within 14 days from its receipt.

The amended or re-adopted act of the municipal council may be challenged before the respective administrative court pursuant to the APC. The general rules for administrative procedure, as established by law, apply to unsettled issues on the issuance, contestation and implementation of the acts of the municipal councils and the mayors. (Art. 45 of the Local Self-government and Local Administration Act).

**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 no administrative or legal review of laws by the general public and ENGOs. However, they can challenge normative by-laws in full or in relation to individual provisions. There is a right of challenge for citizens, organisations (incl. ENGOs) and authorities whose rights, freedoms or legal interests are affected, or may be affected, by a normative by-law act, or for whom such act gives rise to obligations (185-186 APC).

**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 such a condition for legal standing. See also 2.1.4. Citizens and NGOs can file direct legal appeals against the by-laws (e.g. regulations and ordinances of central authorities).

**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?**

If the Supreme Court of Cassation or the Supreme Administrative Court establishes inconsistency between a law and the Constitution, it shall suspend proceedings in the case and refer the matter to the Constitutional Court (Art. 150(2) Constitution of the Republic of Bulgaria). With the provision of art. 151, para. 2, third sentence, of the Constitution, the constitutional legislator has adopted as a rule that the decision of the Constitutional Court (CC) declaring a law unconstitutional as a normative act is valid from now on (ex nunc). The legal effect of the decision is non-application of the declared unconstitutional law from the day of entry into force of the decision of the CC. From that moment on, it ceases to operate and regulate public relations subject to its regulation. Decisions of the CC shall be promulgated in the State Gazette within 15 days from their adoption and shall enter into force 3 days after their promulgation. (Art.14(3) Constitutional Court Act). In a recent decision[12], the CC declared that in some cases its decisions may have retroactive effect when they declare as unconstitutional non-normative laws, decisions of the National Assembly and decrees of the President.

The appeal of acts of the municipal councils by the regional governor suspends the implementation of the individual and general administrative acts and the effect of the by-laws, unless the court rules otherwise. (Art. 45(4) of the Local Self-government and Local Administration Act)

**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?**

The general rules about costs related to access to justice described in 1.7.3. apply. See also 2.1.9.

**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[13]?**

When the interpretation of a provision of European Union law or the interpretation and validity of an act of the bodies of the European Union is relevant for proper resolution of the case, the Bulgarian court shall make a preliminary reference (inquiry) to the Court of Justice of the EU. The inquiry shall be addressed by the court before which the case is pending, ex officio or at the request of the party. The competent court, whose decision is subject to appeal, may not accept the request of the party to send a preliminary request for interpretation of a provision or of an act. The ruling is not subject to appeal. The court whose decision is not subject to appeal shall always ask for an interpretation, except where the answer to the question follows clearly and unambiguously from a previous ruling of the Court of Justice or the meaning and significance of the provision or act are so clear that they do not give rise to doubt. The competent court shall always make an inquiry when a question is raised about the validity of an act under art. 628. (Art. 628-629 of the Civil Procedure Code)

There is no specific procedure according to national law for directly challenging an act adopted by the EU institution or body before the national court.

---

[1] This category of case reflects recent case-law of the CJEU such as *Protect C-664/15, the Slovak brown bear case C-240/09, see as described under Commission Notice C/2017/2616 on access to justice in environmental matters*

[2] Legal standing is granted for challenging in part the administrative act referring to the need for carrying out of appropriate assessment for impacts on protected areas by the NGO as public concerned. In this court ruling, the court recognises the standing with reference to Annex I, p. 20 of the Aarhus Convention. The case is an example of the challenging of art.6(3) of the Habitats Directive screening decision.

[3] Article 6 of the Convention states that each party shall apply the provisions of this Article: (a) to decisions authorising proposed activities referred to in Annex I; (b) in accordance with their national law in respect of decisions which are not included in Annex I but which may have a significant effect on the environment, the Parties determining whether the proposed activity is subject to these provisions.

[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] The SEA is mandatory for plans and programmes in the fields of agriculture, forestry, fisheries, transport, power generation, waste management, water resources management and industry, including production of underground resources, electronic communications, tourism, development planning and land use, when these plans and programmes outline the framework for the future development of investment proposals of appendices No 1 and 2. Plans and programmes at local level for small territories, and changes of such plans and programmes, are assessed only when, at their application, significant impacts on the environment are expected. All other plans and programmes are submitted to a screening procedure according to the SEA Ordinance. (Art. 85 EPA)

[6] 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.

[7] General administrative acts are administrative acts with one-time legal effect which create rights or obligations or directly affect the rights, freedoms or legal interests of an indefinite number of persons, as well as refusals to issue such acts. (Art. 65 APC)

[8] 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-237/97, Janecek and cases such as Boxus and Solvay C-128/09-C-131/09 and C-182/10, as referred to under Commission Notice C /2017/2616 on access to justice in environmental matters.

[9] The Constitutional Court would act in this case on an initiative from no fewer than one fifth of all Members of the National Assembly, the President, the Council of Ministers, the Supreme Court of Cassation, the Supreme Administrative Court or the Prosecutor General.

[10] ACCC/C/2011/58 Bulgaria. The Meeting of the Parties confirmed these findings with Decision V/9d on compliance by Bulgaria with its obligations under the Convention.

[11] Such acts fall 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*, ECLI:EU:C:2017:774

[12] Case No.3/2020 of the Constitutional Court.

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

Last update: 08/04/2021



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

### Remedies against the silence of the administration (the administrative passivity)

Non-pronouncement of the administrative authority in due time is considered as a tacit refusal to issue the act and can be challenged by the persons concerned (ENGOs are presumed to be concerned persons for administrative acts in the environmental field). Where the proceeding has been instituted before a specific authority and said authority is supposed to make a proposal to another authority for the issuance of the act, a tacit refusal shall occur regardless of whether the authority issuing the act was approached with a proposal. Where a tacit refusal is reversed by an administrative or legal review procedure, the express refusal which follows prior to the decision on reversal is likewise considered reversed.

Within the administrative review, the tacit refusal may be challenged by the persons concerned within 1 month from expiry of the timeframe in which the administrative body was obliged to issue the act. Where the persons concerned have not been notified of the initiation of the proceedings, the time limit for contesting shall be 2 months from expiry of the time limit for ruling. (Art.84(2) APC).

Within the legal review before the court, a tacit refusal or a tacit consent is contestable within 1 month after the expiry of the time limit for the administrative authority to pronounce its decision. Where the act, tacit refusal or tacit consent have been contested according to an administrative procedure, the time limit begins to run from the communication that the superior administrative authority has rendered a decision and, if said authority has not pronounced, from the latest date on which said authority should have pronounced. Where a prosecutor has not participated in the administrative proceeding, said prosecutor may contest the act within 1 month after issuance. There is no time limit for challenging administrative acts by a motion to declare their nullity. (Art. 149 APC)

Where a tacit refusal or tacit consent has been revoked, an express refusal or express consent succeeding prior to the court decision on revocation shall likewise be considered to be revoked. (Art. 172 (3) APC)

Any official who fails to fulfil the requirements for cooperating with and providing information to the public incurs liability to administrative penalties according to the procedure established by the APC, without this affecting the validity of the administrative act. (Art.28(3) APC)

### Penalties for de-facto contempt of court, e.g. when the decision of the court is not followed and respected

Any official who fails to meet an obligation arising from an effective judicial act, outside the cases covered under Section V (Enforcement of administrative decisions and decisions of the court) of the APC, is liable to a fine of BGN 200 to BGN 2,000. Any repeat violation of the same nature is punishable by a fine of BGN 500 for each week of non-performance, unless this is due to objective impossibility. Sanctions for other violations of the APC are imposed on any person (e.g. obliged to act or conform to certain obligations) who fails to meet another administrative procedure obligation and they shall pay a penalty of BGN 150 to BGN 1,500, unless subject to a severer sanction. (Art. 304-305 APC)

Upon culpable non-performance, the enforcement authority shall impose a fine of BGN 50 up to BGN 1,200 per week on the officials performing the functions of a state body until the obligation to perform a specific action is fulfilled. If the obligated authority is collective, no fines shall be imposed on the members thereof who voted in favour of performance of the obligation. The same fines are imposed upon any non-performance of the obligation to refrain from action.

### Other relevant rules and administrative/court practice

The Parliament is obliged to address the consequences of declaring a law as non-constitutional. In the meantime, the courts should directly apply the Constitution and the legal principles while deciding on cases, according to a ruling of the Constitutional Court on Case №5/2019. No legal vacuum in the legislation is possible. The National Assembly must regulate the legal consequences of the application of the unconstitutional law.

In line with this ruling and new case law of the Constitutional Court (CC), the Supreme Court of Cassation (SCC) delivered Decision № 71/6 of April 2020 with the same conclusions, preceding the decision of the Constitutional Court, on the claim for compensation under the Law on the Liability of the State and the Municipalities for Damages. The claim was for damages suffered by inaction in addressing the consequences of unconstitutional amendment to the State Budget Act in the Act on Energy from Renewable Sources (AERS). According to the conclusion of the court expertise for the trial period relevant for the case (01.01.2014 to 09.08.2014) from the plaintiff were withheld 20% fees fee for production of electricity from wind and solar energy under Art. 35a AERS (declared unconstitutional by CC, Case No. 13/2014). After repeal of this provision by the Constitutional Court, § 6, item 2 and item 3 of the Law on the State Budget of the Republic of Bulgaria for 2014, the consequences were not addressed. The SCC ruled that the state should pay compensation of BGN 564,986.04 to the operator of a photovoltaic power plant that suffered from the inaction of the National Assembly. The awarded amount was a sum of the due indemnity, part of the interest on it and the incurred court costs of the three court instances. The court reasoned that the indemnity was due to the wrongful conduct of the Parliament, which firstly adopted a law declared as non-constitutional and secondly was inactive in addressing the consequences – in other words, it confirmed liability of the state in the event of failure to replace unconstitutional laws.

Last update: 08/04/2021

The national language version of this page is maintained by the respective Member State. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. The European Commission accepts no responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.