

AARHUS CONVENTION IMPLEMENTATION REPORT
CERTIFICATION REPORT

This report is submitted on behalf of the Republic of Poland in line with I/8 decision.

Full name of an officer responsible for submission of the domestic report submitting:	<u>Maciej Nowicki – Minister of the Environment</u>
Signature:	
Date:	

IMPLEMENTATION REPORT

Write the following details concerning the origin of this report

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<u>Party</u>	<u>Poland</u>
<u>National Contact Point</u>	
<u>Institution's name</u>	<u>Ministry of Environment</u>
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Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (

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1. Provide brief information on the process by which this report has been prepared, including information on which types of public authorities were consulted or contributed to its preparation, on how the public was consulted and how the outcome of the public consultation was taken into account and on the material which was used as a basis for preparing the report.

During the preparation of this report, public consultations with the general public, nongovernmental organizations (NGOs) and authorities were conducted at three stages.

First, the Ministry for the Environment (MoE) announced on its webpage on initiating preparations of the report and invited any comments on the implementation of the Convention in Poland. Two NGOs submitted their elaborated comments.

Second stage included designing two questionnaires on the practical implementation of the Convention: one addressed to 28 most active national NGOs and one to 49 public authorities at various levels and institutions having public environmental functions.

Both questionnaires were also made available on the MoE's website. Altogether 35 authorities and 2 NGOs filled in the questionnaires, which were used to prepare a draft report. Other sources of information were also used, including legislation implementing the Convention, the Statistical Yearbook and the websites of different authorities.

At the third stage the draft report was made the object of subsequent public consultation via the MoE's website. Three comments were received from NGOs, which were taken into consideration in the final report.

2. Report any particular circumstances that are relevant for understanding the report, e.g. whether there is a federal and/or decentralized decision-making structure, whether the provisions of the Convention have a direct effect upon its entry into force, or whether financial constraints are a significant obstacle to implementation (optional).

Poland ratified the Convention on 31 December 2001 (Journal of Laws no. 78, item 706 of 9 May 2002). Since then, it has become part of national law and is directly applicable pursuant to article 91 of the Constitution. Recently steps to ratify the GMO Amendment have been taken.

From 27 April 2001, the Law on Environmental Protection (POŚ) has played a crucial role in transposing the Convention into national law. The Code of Administrative Procedure (Kpa) and the Law on Public Access to Information (Dip) have also played an important role.

Governmental regional representatives (voivode) or local authorities (governmental and selfgovernmental) are competent with regard to administrative decisions in individual matters (e.g. on development or pollution permits, including integrated ones). The MoE does not issue

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individual permits (except for those concerning genetically modified organisms (GMOs)) but is responsible for preparing the majority of normative acts and national plans, programmes and policies related to the environment. Such plans are also prepared by regional authorities (16 regions - voivodships), district authorities (there are approximately 380 districts - poviats) and communal authorities (there are approximately 2,500 communes - gminas).

ARTICLE 3

3. List legislative, regulatory and other measures that implement the general provisions in paragraphs 2, 3, 4, 7 and 8 of article 3.

(a) The obligation to assist and provide the required guidance is of a general nature.

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According to Article 9 of the Code of Administrative Procedure, “*public administration bodies are obliged to inform the parties correctly and thoroughly about actual and legal circumstances which may influence their rights and obligations subject to the administrative proceedings*”. The authorities shall ensure that persons participating in the proceedings will not suffer due to lack of legal knowledge and shall therefore assist them;

The MoE established Environmental Information Center (CIOS) responsible for the flow of information at the central level, including administering internet portal Ekoportal, which role is to distribute environmental information and to carry on e-learning projects.

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(b) Articles 77 and 79 of the Law on Environmental Protection require different entities to promote environmental education. To this end they prepare various plans, programs and strategies, including, prepared by MoE in cooperation with the Education Ministry: the national strategy for environmental education and the implementation programme, as well as curriculums for various schools.

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The questionnaires filled by public authorities show that most of them undertake a number of educational projects, often in cooperation with NGOs. For example MoE organized a big awareness raising campaign on climate change and issued a number of guidelines including on the protection of Natura 2000 sites, on public participation in water management plans, on SEA. Moreover, there are ongoing trainings, both e-learning and traditional, on Natura 2000 protection, on packaging waste managements and on integrated permits.

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Financial support for promotional and educational activities of various institutions and organizations is secured by the National Fund for Environmental Protection and Water Management. It supports the activities of ecological education centres, including regional ones, so-called “green schools”, thematic conferences and workshops, various competitions to propagate environmental awareness, as well as production of various educational means like films, publications, webpages, and alternative education programs.

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(c) The Constitution guarantees the freedom of association (art. 58, para. 1). The Code of Administrative Procedure and the Code of Civil Procedure award NGOs some rights related to participation in judicial and administrative proceedings. Special rules concern “ecological NGOs”, i.e. NGOs whose statutory aim is to protect the environment. They are awarded special rights, such as the right to act as a party in administrative proceedings requiring public participation and the right to file public interest lawsuits in civil court concerning environmental damage (see answer to question 28 (c)).

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¶ Over 40 nature-related films have been produced and a number of television and radio programmes subsidized. About 50 educational aids have been prepared and over 500 books published.¶

The MoE’s website provides e-training on environmental impact assessment (EIA) and integrated permit procedures, including their public participation elements:¶

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The Act of April 24th 2003 on Public Benefit and Volunteer Work envisages that public authorities may perform public functions, including environmental, in cooperation with NGOs having the status of public benefit organizations. Such cooperation may involve joint activities or even delegating certain task to NGOs.

The National Fund for Environmental Protection and Water Management has a special grant line totalling PLN 1 million yearly to support NGOs with core grants. NGOs have the right to elect their representatives to the supervisory boards of national and regional environmental funds and to steering committees overseeing the disposal of various European Union (EU) funds, as well as to various advisory bodies including the GMO Commission, national and regional EIA commissions and the National Council of Eco-Management. The procedure for electing NGO representatives is defined in laws or regulations, or in the internal rules of these bodies.

The MoE has nominated a NGO liaison person; some other authorities have also established certain mechanisms to this end (for example the State Forrest Enterprise has established a special Forrest Forum).

(d) Poland supports initiatives at the international level which promote the Convention’s principles in other regions (United Nations Environment Programme (UNEP) and the Commission on Sustainable Development (CSD)).

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NGO representatives have been part of governmental delegations in international processes such as the 2000 Conference of the Parties to the United Nations Convention on Climate Change, the 2002 Earth Summit in Johannesburg and sessions of the Polish-German Environment Protection Council;

(e) Pursuant to article 225, para. 1, of the Code of Administrative Procedure, “No person should suffer any damage whatsoever or be accused due to submitting a complaint or a motion or providing a text for publication bearing characteristics of a complaint or a motion, should they have acted within the legal framework”. Pursuant to paragraph 2, “Governmental authorities, local governmental authorities and other local authorities as well as social organizations’ bodies shall prevent criticism, restrictions and other activities limiting the right to submit complaints and motions or providing information to be published as a complaint or a motion.”

4. Describe any obstacles encountered in the implementation of any of the paragraphs of article 3 listed above.

The biggest obstacle in environmental education mentioned in questionnaires is insufficient funding for the purpose. NGOs indicate a trend to limit rights of NGOs to challenge permits. The trend was caused by some instances of abuses of the right of access to justice (see answer to question 28), despite the fact that abuses were condemned by a majority of NGOs. The restrictions were intended to limit rights extending beyond the scope of obligations arising under the Convention. However, in the opinion of NGOs they infringe upon the rights protected under it.

5. Provide further information on the practical application of the general provisions of the Convention.

While most Aarhus-related rights apply to any member of the public, some of them are applicable only to the “public concerned”.

The constitutional prohibition of discrimination applies hereto. All rights apply regardless of nationality and citizenship (registered office or registration).

6. Give relevant web site addresses, if available:

www.cios.gov.pl, www.ekoportal.pl - MoE Environmental Information Centre
www.mos.gov.pl - MoE
www.mos.gov.pl/aarhus - MoE - about the Convention
www.mos.gov.pl/l szkolenia - MoE - e-learning
www.mos.gov.pl/sip/index.htm - MoE - legal acts
www.wrotapomorza.pl, www.woj-pomorskie.pl, www.um.gniezno.pl,
info.fundusze@mos.gov.pl, www.sejmik.kielce.pl, www.warmia.mazury.pl,
www.mg.gov.pl, www.zgora.pios.gov.pl, www.wrotamalopolski.pl, www.ciechanow.powiat.pl -
links to chosen governmental and self-governmental authorities

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ARTICLE 4

7. List legislative, regulatory and other measures that implement the provisions on access to environmental information in article 4.

The legal framework concerning access to environmental information includes constitutional provisions; provisions of the Law on Environmental Protection; provisions on public access to information in the Law on Public Access to Information; the Code of Administrative Procedure; and provisions of various laws on secrecy.

There is no specific definition of environmental information, and therefore the scope of accessible information must be determined on the basis of various provisions. Article 19, para. 2, of the Law on Environmental Protection enumerates a few dozen types of documents to be made available through publicly accessible records (see answer to question 11 (b)). In addition, article 19, para. 3, of the Environmental Protection Law provides that is available “any other information in the form of documents or data in written, visual and aural form, or databases stored on other carriers, regarding:

- The state of the natural elements and their interactions;
- Emissions as well as activities and measures that have or are likely to have adverse effects on the environment;
- The effects of the state of the environment on human health, the quality of human life and cultural heritage;
- Activities and measures, in particular administrative and economic ones, designed to protect the environment.”

This provision should be read in the light of the definitions of “emission” (art. 3, para. 4, of the Law on Environmental Protection) and “environment” (art. 3, para. 39).

(a) Article 74, para. 3, of the Constitution reads: “*Any person shall have a right to information on the state of the environment and on environmental protection*” .

Article 19, para. 1, of the Law on Environmental Protection requires authorities to make publicly available the environmental information they hold or which is hold for them. Article 2, para. 1, of the Law on Public Access to Information reads: “*Any person exercising the right to public information shall not be required to prove any legal or actual interest*” . Article 14 provides: “*Public information shall be made available in the manner and form requested, unless the entity holding the*

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information is unable for technical reasons to make the information available in the manner and form requested. If the public information cannot be made available in the manner and form requested, the entity holding the information shall inform the applicant in writing of the reasons for not making the information available in the manner and form requested and shall inform the applicant of the manner and form in which the information can be made available immediately. In such a case, if within 14 days of being informed the applicant does not submit a request for the information to be made available in a manner or form indicated in the notice, the procedure for making the information available will be terminated” ;

(b) Article 21 of the Law on Environmental Protection requires the information to be made available (or refused) immediately, and at the latest within one month after the request has been submitted. In complex cases, this period may be extended up to two months. The applicant shall be informed of any extension. Documents found in publicly accessible records shall be made available on the day of submission of the request;

(c) Pursuant to art. 20, para. 1, of the Law on Environmental Protection, authorities shall refuse to disclose:

- Information on matters which are *sub judice* or subject to criminal or disciplinary enquiry, if the disclosure disturbs the course of the proceedings;
- Information on matters which are covered by copyrights and patent rights, if the disclosure violates these rights;
- Documents or data supplied by a third party without that party being under a legal obligation to do so, and where that party does not consent to the release of the documents or data (unless the information relates to emissions) ;
- * Information on activities carried out on restricted access areas like military zones (unless the information relates to emissions);
- Documents or data the disclosure of which would adversely affect the environment to which they relate (unless the information relates to emissions);
- Individual data gathered for public statistics and protected by statistical secrecy provisions and personal data protected by personal data protection provisions.

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Article 2, para. 3, of the Law on Environmental Protection also exempts from disclosure state and official secrets.

Moreover, pursuant to art. 20, para. 2, information may be refused where it would require the provision of documents or data in the course of completion or intended for internal communication, or where the request is manifestly

unreasonable or formulated in too general a manner, or if the third party which has supplied the information has submitted a justified request to exempt commercially valuable data from disclosure, especially technological data, where making it available could infringe on its competitive position.

According to article 20, para. 3, of the Law on Environmental Protection, information on emissions and types and amounts of waste can never be classified as a commercial secret. because of certain general interpretation rules in Polish law there is no clear requirement for, a restrictive interpretation of the grounds for refusal nor to balance in each case the arguments for and against disclosure;

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(d) Article 65 20, para. 6, of the Law on Environmental Protection, reads: "If the request relates to the information which not held by or held for the public authority which has received the request, it shall forward the request, immediately to a competent body notifying the applicant accordingly. If the competent authority can not be established the request is returned to the applicant."

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(e) Pursuant to article 22 of the Law on Environmental Protection, if information exempted from disclosure can be separated, the remainder of the information requested should be made available;

(f) Pursuant to article 20, para. 4, of the Law on Environmental Protection, the refusal of a request for information is made in the form of a decision which triggers relevant provisions of the Code of Administrative Procedure. Under article 109 of the Code, the decision is delivered in writing, unless its oral presentation is in the applicant's interest. The decision must be reasoned and include instructions on the appeals procedure (see answer to question 15 (i));

(g) Pursuant to article 24 of the Law on Environmental Protection, no charge shall be made for retrieving and consulting on the premises of the administrative authority the documents contained in publicly accessible records. The authority shall make a charge, in the amount corresponding to the related justified costs, for retrieving information and making copies of or forwarding documents or data. A schedule of charges for retrieving, copying and forwarding documents is found in a MoE regulation. Preferential rates (50 per cent) apply if the information is requested for educational purposes.

The Law on Public Access to Information (Dip) does not provide for any charges for disclosure of information unless there are additional costs related to special form or way of making information available.

8. Describe any obstacles encountered in the implementation of any of the paragraphs of article 4.

Lack of clear definition of environmental information results sometimes in the misunderstanding that only documents enumerated in article 19, para. 2, of the Law on Environmental Protection are accessible and therefore requests are often refused if they do not concern such documents but other environmental information pursuant to paragraph 3 of the provision.

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Authorities indicate problems with requests involving production of summaries or tables which far extends beyond retrieving existing information and involves in fact labour-intensive producing new information. In such cases the time-limit envisaged in the law is not sufficient and sometimes is not met.

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NGOs report cases of authorities requesting the applicant to demonstrate a legal interest or refusing requests on the basis of misinterpretation of copyright laws. Also the fees, although generally limited, may be an obstacle in case of certain large scale monitoring research involving hundreds of local authorities.

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9. Provide further information on the practical application of the provisions on access to information, e.g. are there any statistics available on the number of requests made, the number of refusals and their reasons?

Most authorities established internal procedures for access to information. Often they have also special officers designated to handle requests for information. They participate regularly in trainings on various aspects of information flow.

Few authorities keep statistics on requests for environmental information. Many local offices (gmina) lack technical and human resources, and a number of them have reported to have received no or few requests for environmental information.

MoE attempts to monitor practice of access to information. The surveys show that most requests are submitted to central authorities (on average about 300 yearly), to regional authorities about 50 yearly, while to local authorities it is usually up to 10 requests yearly. Quite a number of requests is also addressed to institutions with environmental functions (for example yearly about 300 to State Forrest Enterprise and 100 to State Geological Institute). The above figures do not include instances (most often in practice but usually

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not reported) whereby providing information do not involve retrieving information (i.e usually information provided orally).

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10. Give relevant web site addresses, if available:

www.cios.gov.pl - MoE Environmental Information Centre,

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ARTICLE 5

11. List legislative, regulatory and other measures that implement the provisions on the collection and dissemination of environmental information in article 5.

(a) (i) The basic source of information on the state of the environment consists in measurements, assessments and forecasts conducted within the framework of the National Environmental Monitoring System run by the Environmental Inspectorate, which collects information on the quality of the environment, the state of natural resources, emissions, and waste generation and management. The obligation to collect environmental information is often combined with other tasks, e.g. to collect fees for the use of the relevant environmental documents; Information is also collected within the framework of E-PRTR.

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(ii) The National Environmental Monitoring System ensures the flow of information. The authorities responsible for monitoring forward the results to each other free of charge.

“Polluters’ are bound under articles 147-151 of the Law on Environmental Protection to monitor their emissions and conserve them for inspection for a period of five years.

Some results are routinely forwarded to the authorities. Article 286 of the Law on Environmental Protection requires information on the use of the environment for which fees are collected (air and water emissions, water collection and waste storage) to be forwarded to voivodeship marshals quarterly.

Information on high-risk installations is maintained by the national Fire Department (art. 250 of the Law on Environmental Protection). They must prepare a programme for preventing accidents, a safety report and an integral emergency plan submitted to the Fire Department and to the provincial units of the Environmental Inspectorate.

They must also report on stored hazardous substances.

The Waste Act requires waste holders to monitor waste and conserve the results for inspection for a period of five years. They must submit a collective waste report to voivodeship marshals annually;

(iii) Provisions concerning emergencies are included in several legal acts. They provide for cooperation between the relevant authorities with overall coordination by the Voivod. The Law of 2003 on Natural Disasters requires him to notify the public immediately via public notice, mass-media and other appropriate means.

In emergencies, the MoE and other responsible services inform the public at press conferences, disseminate information through the mass media and place it on the Internet immediately.

The Environmental Inspectorate is responsible for establishing an emergencies register. Information is disseminated after the launch of the Global Monitoring for Environmental and Security system. Other authorities must contact the mass media immediately and forward information by using for example loudspeakers in fire engines and police cars.

The Voivods are required to promptly inform the public if the acceptable concentration of hazardous substances in the air has been or is threatened to be exceeded (so-called smog alert);

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(b) Publicly accessible records are the main source of environmental information. They are maintained by the competent authorities and include for example applications for, and texts of, the decisions subject to article 6 of the Convention; EIA documentation containing the information referred to in article 6, paras. (a)- (e); drafts and adopted texts of policies, strategies, plans or programmes which are subject to article 7; registers of hazardous substances; decisions concerning environmental fees and fines; the results of environmental research and studies; accident registers; GMO registers; and the environmental declarations of companies participating in the EU Eco-Management and Audit Scheme (EMAS). Authorities may include any other information (art. 19 of the Law on Environmental Protection).

The records are structured in a user-friendly way. Information is made available on the same day as the submission of the request (art. 21, para. 3, of the Law on Environmental Protection), and retrieving and examining information on location is free of charge (art. 24, para. 1, of the Law on

Environmental Protection). The records are accessible via Internet (art. 19, para. 7a, of the Law on Environmental Protection).

The Law on Public Access to Information requires all public authorities and other entities performing public functions or disposing of public funding to make available information and documents found on the Internet through the Public Information Bulletin;

(c) The environmental legal acts are published on the MoE' s website, and a database containing all legal acts published after 1995 is available on the Sejm' s website. Policy guidelines, as well as environmental plans and programmes (or their executive summaries) are often available on the websites of competent authorities.

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The Public Information Bulletin and some publicly accessible records of documents are available on the Internet.

Article 30 of the Law on Environmental Protection requires certain authorities to maintain electronic databases on the Internet concerning the state of the air, soil and earth, noise levels and electromagnetic fields, as well as data on emissions and on water abstraction (see answer to question 11 (a)(ii)).

The GMO register is found on the MoE' s website with applications and text of decisions on GMOs, as well as opinions of the GMO Commission.

The National Geological Institute maintains the Central Geological Database available on the Internet, the HYDRO Geological Data Bank and the MIDAS Computing System of Economy and Mineral Resources Protection;

(d) The Environmental Inspectorate prepares reports on the state of the environment (a national report every four years and voivodeship reports yearly or biannually). They are available both in hard and electronic copies and widely disseminated;

(e) Policies, plans and programmes subject to strategic environmental assessment (SEA) are made available through publicly accessible records. Plans, programmes and policies are available on the websites of relevant ministries. International agreements ratified by Poland are published in the Journal of Laws;

(f) Environmental declarations accompanying applications for EMAS certificates are made available through publicly accessible records;

(g) The websites of the Sejm, Senate and MoE contain the reasoning and regulatory impact statements concerning draft legal acts, as well as other relevant analyses, including experts' opinions. The Public Information Bulletin contains information referred to in article 5, para. 7 (c), of the Convention;

(h) The Law on Environmental Protection requires products to be labelled with information on the consumption of fuel or other materials, emissions related to product use and the environmental impact of use and disposal. The salesperson must also make available information at the point of sale (art. 167). Advertisement may not endorse unsustainable consumption models, in particular through the use of nature imagery, to promote harmful products (art. 80 of the Law on Environmental Protection). Product labelling is legally required for chemicals, cosmetics, pesticides, fertilisers, etc.;

(i) Poland has signed the Protocol on Pollutant Release and Transfer Registers (PRTRs) and aims to ratify it soon. Since 2007 Polish installations will report its emissions and waste within the framework of E-PRTR Regulations of 2006. The information will be submitted to European Commission but also available within the National Register.

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The Law on Environmental Protection requires authorities to collect data on emissions subject to a fee (see answer (b) to question 12) and make them available through publicly accessible records.

12. Describe any obstacles encountered in the implementation of any of the paragraphs of article 5.

Deleted: Poland has signed the Protocol on Pollutant Release and Transfer Registers (PRTRs), but no decision has been taken to date on the compatibility of this database with the Protocol's obligations. ¶

Authorities report problems with proper collection and dissemination of information caused by insufficient technical equipment and shortage of staff. NGOs report cases of authorities lacking the information they should have or having information outdated or inaccurate.

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There is no general obligation for the immediate notification of the public about imminent threats to human health or the environment. ¶

13. Provide further information on the practical application of the provisions on the collection and dissemination of environmental information in article 5, e.g. are there any statistics available on the information published?

The most widely used means of dissemination of environmental information is via Internet, in particular via Ekoportal: it host about 77000 entries concerning documents maintained in publicly available records (see 11 b) above) of about 700 authorities (central, regional and local). Many authorities make special arrangements to disseminate information: establish special information units, create special telephone infoline or active webpages for dissemination and exchange of information, some provide support and information to thematic media, including internet services.

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14. Give relevant web site addresses, if available:

www.cios.gov.pl, www.ekoportal.pl - Environmental Information Centre
www.mos.gov.pl - MoE
www.gmes.info - Global Monitoring for Environment and Security.

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www.gios.gov.pl (Environmental Inspectorate, with reports on the state of the environment (1996 to 2001) and information on the National Environmental Monitoring System). ¶

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www.wroclaw.pios.gov.pl (Wroclaw Environmental Inspectorate, with reports on the environmental state of the Lower-Silesia province for individual years). ¶

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www.mos.gov.pl/lakty_prawne/index.shtml (MoE website, with legal acts). ¶

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isip.sejm.gov.pl/prawo/index.html (Sejm website, with legal acts). ¶

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www.sejm.gov.pl (Sejm). ¶

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www.senat.gov.pl (Senate). ¶

ARTICLE 6

15. List legislative, regulatory and other measures that implement the provisions on public participation in decisions on specific activities in article 6.

Public participation in decision-making on specific activities is implemented through procedures based on the principle of “access of every person” ; special rights granted to the “public concerned” ; and NGO representation in collective bodies in an advisory or decisional capacity.

The scope of the right to participate in decision-making found in the law is broader than the one provided under article 6 of the Convention. It is granted to “everyone” (i.e. the “public” pursuant to article 2, para. 4, of the Convention), and not only to the “public concerned” . Pursuant to articles 10, 31, 53 and 218 of the Law on Environmental Protection, everyone can participate in decision-making procedures related to the preparation of EIA reports and permitting procedures.

Procedures apply with respect to decisions on all the activities listed in annex I to the Convention as well as to decisions on activities not listed. This right to participate implements the right of petition granted to any person under article 63 of the Constitution, i.e. natural or legal persons, organizational units without legal personality, and bodies, organizations or institutions. It can be exercised regardless of age, citizenship, domicile,

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registered office and any legal or actual interest in the matter. These rights, as implementing article 6 of the Convention, are defined in the Law on Environmental Protection (arts. 3, para. 19, 19, paras. 2 and 6, 21, para. 3, 24, para. 1, 31 and 32).

Public participation based on the principle of access of every person is required in certain decision-making procedures for issuing permits for the proposed activity. They are not required for all annex I activities, but in practice they all entail public participation during at least two stages of the procedure.

In addition to the above-mentioned rights, further rights are granted to the "public concerned", i.e. natural or legal persons whose legal interests or obligations are affected by the proceedings concerned (according to article 28 of the Code of Administrative Procedure, they have the status of party to the proceedings), and NGOs, which can have the status of participants with the same rights as parties.

The law requires the appointment of NGO representatives to advisory bodies (see answer to question 3 (c)), including those involved in taking regulatory decisions on specific activities covered by article 6 of the Convention, such as the national and regional EIA Commissions and the national GMO Commission. In addition to regulatory decision-making, decision-making processes on the financing of such activities and the appointment of NGO representatives to bodies awarding public aid also play a vital role.

(a) (i) The categories of projects and installations for which public participation based on the principle of access of every person is required are listed in the relevant regulations as comprising projects for which an EIA report is always required and installations for which an integrated permit is required;

(ii) Public participation based on the principle of access of every person is also required for the decision-making process on projects which have been determined by the competent authorities, by way of individual selection, to have a significant effect on the environment and thereby to require EIA report;

Moreover, while issuing decisions on the location of development projects with a public purpose, the competent authorities are required to make public the initiation of the procedure and any decision taken. In practice, the right to submit petitions, complaints and motions under chapter VIII of the Code of Administrative Procedure guarantees any person the opportunity to participate

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in the procedure and not only persons with a legal interest (such as the parties);

(b) Under article 32, para.1, of the Law on Environmental Protection, the authority notifies the public about the initiation of the procedure, the possibility to examine the relevant documentation included in publicly accessible records, and the manner and deadline for submitting comments.

Under article 3, para. 19, of the Law on Environmental Protection, the public has to be notified in the following ways. The information is made publicly available at the seat of the competent authority, which usually involves placing it on the notice-board in the hall or entrance to the building. Notification is provided in the vicinity of the planned activity, which typically involves placing an announcement on a fence, gate or another object situated at the entrance to a given property and in locations frequented by local people (near shops, village bailiff's house, churches or at bus stops). A confirmation of the announcement is included in the procedural files.

In addition to the above means for disseminating the information, the Law on Environmental Protection requires that an announcement is placed on the competent authority's website, if it exists. Establishing their own website is now an obligation for public authorities under article 8, para. 3, of the Law on Public Access to Information, which requires them to maintain a Public Information Bulletin on the Internet.

In practice, public authorities usually comply with the obligation to inform in a adequate, timely and effective manner, because courts are very strict and quash decisions violating even one requirement on notification (e.g. revoking a decision about a waste incineration plant where the competent authority, while having made available the information in other required ways, did not publicize it on its website (provincial administrative court verdict z 8.09.2004 IISA/PO 807/02));

(c) The Law on Environmental Protection provides for a 21-day period to submit comments. The authority shall indicate in the notice the starting date allowing enough time to ensure effective notification in every required manner;

(d) Public participation is required for the first time in the decision-making process when the EIA decision is taken, which is an early stage of development where the future of the project and its basic parameters, as well

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as its environmental impacts, are determined; Later on, public participation is required when issuing an IPPC permit.

(e) Legal obligations relating to all aspects of public participation belong to the competent authority and not, in principle, to the developer. However, developers have to present in the EIA report an analysis of the project's potential social impacts (art. 52, para. 1.11 of the Law on Environmental Protection). The guidelines published by the MoE concerning public participation also encourage developers to actively provide the public with information on the project, in order to prevent conflicts, and lay out some principles on cooperation between authorities and developers;

(f) The application and accompanying relevant documentation can be found in publicly accessible records (see answer to question 11 (b));

(g) Pursuant to article 31 of the Law on Environmental Protection, any person can submit comments on a proposed project, in writing within the 21-day period and orally at the public hearing (if any). Parties and NGOs participating in the procedure with the same rights as the parties may submit comments and motions concerning additional witnesses or evidence during the entire procedure;

(h) Articles 46, para.10 and 56 para 1b, of the Law on Environmental Protection require that authorities when taking decisions take into account the results of public participation and provide reasoning in which i.a. they describe the way in which public comments have been taken into account;

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(i) Pursuant to article 32, para. 2, of the Law on Environmental Protection, the authority notifies the public of the decision and its availability through publicly available records.

Moreover, under article 53, para. 1, of the Act on Town and Country Planning, the public must be notified of all decisions on the location of public development projects in the usual manner.

Under article 107 of the Code of Administrative Procedure, the decision should include the identification of the administrative authority and of the parties; issuance date; legal basis; verdict; factual and legal reasoning; instructions on whether and how appeals can be lodged or challenges brought to court; and a signature with the name and position of the person entitled to issue the decision. Under article 107, para. 3, of the Code of Administrative Procedure, the factual reasoning for the decision should in particular include the proven

facts, the evidence accepted and the reasons for the refusal to rely on other evidence. The legal reasoning shall present the legal basis for the decision, with citations of the relevant legal provisions. Moreover, according to article 46, para. 10, of the Law on Environmental Protection, the reasoning for the decision should contain information on how public comments were taken into account;

(j) Public participation is required whenever an EIA report or integrated permit is required.

An EIA report is required in case of any changes to the installation that will cause an increase in emissions of no less than 20 per cent or an increase in the consumption of raw materials, other materials, or fuels and energy of no less than 20 per cent. Integrated permits have to be renewed periodically. Meanwhile, any significant changes to the installation also require the renewal of the permit. In both cases, public participation is obligatory;

(k) According to the Act on GMOs (arts. 29, 36, para.1, 41, para.1, and 51, para.1), the above-mentioned provisions implementing article 6 of the Convention also apply to all existing GMO control procedures, including permits for the contained use of GMOs, the deliberate release of GMO into the environment, marketing of a GMO product, and export and transit of GMOs.

16. Describe any obstacles encountered in the implementation of any of the paragraphs of article 6.

Authorities report abuses of procedural rights meant to serve public purpose by persons seeking to protect their purely private interests, which often lead to halting environmentally sound projects.

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NGOs report problems with notifications to the public and access to documentation. Very often, EIA reports are not made publicly available because the authorities are afraid of violating copyright laws. Moreover, the fixed 21- day period for submitting comments is considered as too short in many cases and therefore not "reasonable". NGOs consider that possibilities for the public limited only to EIA decision and IPPC permit are too limited, in particular they consider it necessary to provide public participation procedure at the stage of construction permit.

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Deleted: Apart from the National Roads Directorate, and situations in which developers are obligated by international financial institutions such as the World Bank to cooperate, they hardly ever enter into discussions with the public before applying for a permit. ¶

Cooperation between authorities and developers on informing the public in order to prevent conflicts is very limited. NGOs report that even when developers

enter into discussions, they support their case with not always reliable data, in particular the data concerning impact on human health.

17. Provide further information on the practical application of the provisions on public participation in decisions on specific activities in article 6, e.g. are there any statistics or other information available on public participation in decisions on specific activities or on decisions not to apply the provisions of this article to proposed activities serving national defence purposes.

Public statistics do not include data on public participation. There are works in MoE to enhance the existing reporting systems to cover all EIA and IPPC procedures nationally and thereby to collect information on public participation.

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Independent research provides an estimation of the number of public participation procedures within EIA decision and IPPC permit at approximately several thousands annually. The number of projects exempted from the public participation obligation due to national defence issues is estimated to be rather insignificant. The questionnaires show increasing importance of negotiation and mediation, as well as use of other methods of actively involving the public. There is also steady grow of public hearings organised in addition to possibilities to submit written comments. This is particularly used in relation to highly controversial projects like cellular phones masts (for example City Council in Krakow organize about 40 public hearings yearly in relation to this issue).

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NGOs report problems with notifications to the public and access to documentation. Very often, EIA reports are not made publicly available because the authorities are afraid of violating copyright laws. ¶

18. Give relevant web site addresses, if available:

www.mos.gov.pl/aarhus/podreczniki.html (MoE, with a textbook on public participation).

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ARTICLE 7

19. List the appropriate practical and/or other provisions made for the public to participate during the preparation of plans and programmes relating to the environment.

Describe the transposition of the relevant definitions in article 2 and the nondiscrimination requirement in article 3, paragraph 9.

Public participation requirements in the preparation of plans and programmes relating to the environment are determined by obligatory procedures on certain categories of plans and programmes; obligatory procedures for public participation during SEA; voluntary practical arrangements undertaken by authorities within their general competence to carry out public consultations;

and NGO representation in collective bodies in an advisory or decisional capacity.

Art.34 of the Law on Environmental Protection lists certain most important environmental plans and programs which require public participation like National Environmental Policy, environmental protection programs, air management programs, noise combatting programs, waste management plans, and emergency plans for hazardous installations.

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Other laws provide for procedures on public participation in the preparation of a number of specific plans and programmes relating to the environment, e.g. for town and country planning schemes, plans and programmes connected to the National Development Plan, as well as plans and programmes concerning water management and national allocation plan for emission trading. A general authorization to conduct public consultations (see answer to question 24) also concerns plans and programmes.

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SEA is required for draft policies, strategies, plans or programmes in the fields of industry, energy, transport, telecommunications, water management, waste management, forestry, agriculture, fisheries, tourism and land use.

The majority of opportunities for public participation is open to any person and satisfies the requirements enumerated in article 6 of the Convention. Some of these procedures, however, concern only the “public concerned”, mainly NGOs interested in the given subject-matter. In order to identify NGOs having an interest, the MoE maintains a list of organizations willing to participate in consultations on certain issues (e.g. nature protection or waste management).

Organizations are informed individually about the possibilities to consult the drafts of relevant documents, in writing or during public debates.

The law requires the appointment of NGO representatives to advisory bodies, including those with an advisory role in the decision-making process on plans and programmes relating to the environment, such as the National Councils of Environmental and Nature Protection and the GMO Commission. The law also requires the appointment of NGO representatives to bodies taking decisions on funding concerning plans and programmes relating to the environment.

20. Explain what opportunities there are for public participation in the preparation of policies relating to the environment.

The obligation to undertake SEA, including related public participation procedures, and the general authorization to undertake public consultation, apply also to the preparation of policies.

The law also requires the appointment of NGO representatives to bodies taking decisions on funding concerning policies relating to the environment

21. Describe any obstacles encountered in the implementation of article 7.

Authorities do report any problems while NGOs complain about insufficient access to justice in the case of the preparation of plans and programmes.

Deleted: The common practice of subjecting drafts of plans, programmes, policies and other strategic documents to public consultation does not always mean that the results of consultations are taken into account. The decision-making process is heavily fragmented, and the deadlines for the preparation of documents often very short, which leads to very formal treatment of any public consultation.¶

22. Provide further information on the practical application of the provisions on public participation in decisions on specific activities in article 7.

The practice of undertaking public participation during the preparation of plans, programmes and policies is widely adhered to on the ministerial level, with practically all ministries (especially the MoE) customarily subjecting all documents to public consultation. I

The MoE ensures public participation in the preparation of plans, programmes and policies. Recently subject to public participation was the National Waste Management Plan 2010, the Implementation Report from the National Waste Management Plan 2006, Operational Program Infrastructure and Environment, and National Allocation Plan. Except for electronic commenting, consultations were conducted also with interested NGOs and with chambers of commerce. Reported comments were usually taken into account. Information on consultation procedures is made available on the MoE's website and sent by mail to the interested partners.

Deleted: The practice of undertaking public participation during the preparation of plans, programmes and policies is widely adhered to on the ministerial level, with practically all ministries (especially the MoE) customarily subjecting all documents to public consultation. It is not as well complied with at lower levels, where general consultation regulations are somewhat rarely applied and public participation often limited to situations where a particular piece of legislation requires it.¶

The public is intensively involved also in preparation of various plans, programs, policies and strategies relating to environmental education at various levels (see 1 b), as well as relating to management of Natura 2000 sites and to protection of endangered species.

Public participation in the preparation of different kinds of strategic documents is also ensured by, amongst others the Ministries of Economy and Labour, Infrastructure and Agriculture and Country Development, as well as the PP National Forests.

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23. Give relevant web site addresses, if available:

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www.mos.gov.pl/aarhus/podreczniki.html (MoE, with a textbook on public participation).

ARTICLE 8

24. Describe what efforts are made to promote effective public participation during the preparation by public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment. To the extent appropriate, describe the transposition of the relevant definitions in article 2 and the nondiscrimination requirement in article 3, paragraph 9.

Public participation during the preparation of normative acts is provided for by a number of legal acts as well as by voluntary practical arrangements connected with the general authorization to conduct public consultations at central administration bodies, local governmental bodies, and the Sejm.

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Public participation in the course of preparing government documents, including in particular draft normative acts, is provided for in the Act on lobbying in law making as well as in the regulations concerning the conduct of governmental work. Individual ministers have specified detailed procedures in this regard.

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Acts on territorial self-government respectively in provinces (article 10, para. (a)) and in communes (article 5, para. (a)) provide for an opportunity to consult inhabitants on matters vital to a given region and to define the principles and mode of such consultations.

- Prior to interdepartmental agreement, hard copies of draft acts are sent with a request for comment to interested entities (public authorities, trade unions, business associations and NGOs).
- Draft acts or their outlines are made available to the public on the MoE's website, with information regarding the possibility to submit comments, the submission deadline and the e-mail address of the responsible official. After considering the comments, the MoE prepares a chart with the comments that were not taken into account and the reasons for this.
- Other forms of consultation may also be used as needed, most often in the form of a public debate or seminar to which interested entities are invited and everyone can participate. In such cases, the MoE often provides the reimbursement of travel costs.

The standing orders of the Sejm make it possible for NGO representatives to participate in the sessions of the Sejm committees and sub-committees. NGOs known to be interested in the subject-matter are invited to provide representation and other organizations can request their representatives' participation in sessions. In practice, NGOs actively participate in the majority of Sejm sub-committees which work on draft legislative acts: they ask questions, report comments and even present suggestions for new provisions.

25. Describe any obstacles encountered in the implementation of article 8.

No problems were reported.

26. Provide further information on the practical application of the provisions on public participation in the field covered by article 8.

The MoE applies three main methods of consultations:

- Prior to interdepartmental agreement, hard copies of draft acts are sent with a request for comment to interested entities (public authorities, trade unions, business associations and NGOs).
- Draft acts or their outlines are made available to the public on the MoE's website, with information regarding the possibility to submit comments, the submission deadline and the e-mail address of the responsible official. After considering the comments, the MoE prepares a chart with the comments (commenting docket) that were not taken into account and the reasons for this.
- Other forms of consultation may also be used as needed, most often in the form of a public debate or seminar to which interested entities are invited and everyone can participate. In such cases, the MoE often provides the reimbursement of travel costs.

A group of NGO representatives regularly participate in the legislative works in Sejm. At their initiative, a number of provisions were included in the law.

27. Give relevant web site addresses, if available:

- www.mos.gov.pl/lprace_legislacyjne/index.shtml (MoE website, with information on public consultations).
- www.sejm.gov.pl/prace/prace.html (Sejm website, with draft acts).
- www.senat.gov.pl/k5/pos/prace.htm (Senate website, with draft acts).

ARTICLE 9

28. List legislative, regulatory and other measures that implement the provisions on access to justice in article 9.

The right of access to justice in environmental matters is guaranteed mainly in administrative proceedings, in subsequent judicial-administrative proceedings and in civil proceedings.

The Code of Administrative Procedure grants the right to appeal to the authority of second instance against administrative decisions. This right is granted to the parties to the proceedings, that is, any person whose legal interests or duties are affected by the proceedings, and to NGOs with

Deleted: During the negotiations on the PRTR Protocol, for example, two public debates were organized at the MoE in cooperation with the Regional Environmental Center (REC), which presented the subject matter of PRTRs, key issues in the negotiations and Poland's standpoint in this regard.

Deleted: Similar public debates are organized by the MoE on a regular basis, both on subjects related to international negotiations (e.g. during the negotiations of the Convention itself) and on domestic ones (e.g. on planned amendments to the Waste Act, in the Fall of 2004).

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parties' rights. NGOs may have parties' rights in environmental proceedings requiring public participation. The appeal is free of charge the decision of the authority of second instance can be challenged in provincial administrative court. Verdict of provincial court can be challenged at the Supreme Administrative Court which can annul it. Standing is granted to anyone having a legal interest and to NGOs which participated in the administrative proceedings.

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In case of challenges brought to administrative courts the fixed court fee is PLN 100 (* 25). The claim for annulment must be prepared by a solicitor or legal counsel. In civil cases the court fee in access to information cases is 30 PLN (7,5 EURO), in environmental cases it is 100 PLN (30 EURO).

Court verdicts and decisions not challenged in courts are binding in a given case. The above rules apply also to challenges brought against omissions by the authorities. A complaint to an administrative authority in the second instance may be filed by a person who requested that an activity be undertaken. If the authority considers the complaint as justified, it will set a further date for handling the case. If the deadline is missed, a complaint can be submitted to the provincial administrative courts.

All parties and persons with parties' rights have the right of equal access to appellate procedures (defined in articles 32 and 45, para.1, of the Constitution). The same rule also applies to criminal and civil proceedings.

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Any person whose request for information has been refused has the right to challenge the refusal before the authority of second instance and then to the court.

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The majority of environmental information is also considered "public information", which means that relevant provisions of the Law on Public Access to Information apply in cases of refusals of information requests.

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Articles 16 and 21 of the Law on Public Access to Information provide for the possibility to challenge refusals of requests for information in administrative proceedings similarly to the above-mentioned procedures regulated in the Code of Administrative Procedure and the Law on the Proceedings before Administrative Courts. However, the Law on Public Access to Information introduces some modifications: in particular, decisions on admissibility regarding appeals are taken within 14 days (under the Code of Administrative Procedure it is 30 days), and 15 days for complaints to

administrative courts (there is usually no deadline for courts to pronounce on admissibility).

In cases where the request for information was refused due to personal data protection, the right to privacy or other statutory provisions on secrecy (such as commercial secrets), the Law on Public Access to Information provides that complaints are made to civil rather than administrative court;

(b) The decisions referred to in article 6 of the Convention are administrative decisions which may be appealed and challenged in court. Parties to the proceedings always have the right to challenge a decision as do NGOs in cases of decisions requiring public participation. Thus, while any person has the right to participate in proceedings on decisions under article 6, the right to challenge a decision under article 9, para. 2, is granted only to the “public concerned”, i.e. those with a legal interest in a given case and to NGOs;

NGOs participation in proceedings and consequently their right to access to justice is excluded where competent authority decides not to carry out full EIA procedure (including EIA statement). NGOs have therefore no right to challenge a decision on negative screening.

▲
→ (c) Challenges to acts or omissions of public authorities may be undertaken in administrative and judicial-administrative proceedings. The circle of parties may differ from case to case (for instance, in the case of a permit for wastewater discharges, the parties are those persons having a permit for water use; in the case of EIA decision, these will consist of neighbouring residents).

Proceedings related to acts or omissions of natural persons are undertaken in civil court. According to the general principles of civil law (as defined in the Civil Code), such proceedings may be initiated by persons whose legal interests have been violated (e.g. property owners affected by an enterprise). NGOs can file a civil claim asking for the restoration of the situation in compliance with the law and the institution of preventive means in the public interest (if the damage or threat concerns the environment as a common good). Civil proceedings take place in two instances, and in some cases it is also possible to appeal to a third instance, the Supreme Court. In civil environmental cases, court fees amount to PLN 100 (• 25). In the first and second instances, there is no obligation to be represented by a lawyer; this obligation only exists before the Supreme Court.

A person filing a civil claim may request of the court that the defendant prepare, at his own expense, the information necessary to establish the scope

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of his responsibility, such as for instance, to provide information on emissions (art. 327 of the Law on Environmental Protection).

According to the law, the circle of entities with the right to access to justice is identical under article 9, para. 2 and 3, of the Convention.

According to Art. 24 of the Environmental Liability Act of 13.04.2007, competent authority is obliged to accept everyone's notification on environmental damage or threat of damage. In case where a threat or damage concerns the environment as a common good, a notification may be submitted by an administrative authority or an environmental NGO. Refusal by competent authority to initiate proceedings resulting from the notification may be challenged to the authority of II instance and then to the court.

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(d) In administrative proceedings, filing an appeal to the authority of second instance automatically suspends the application of the decision subject to the appeal. In judicial-administrative proceedings, a person filing a complaint can simultaneously submit to the court a motion for suspension.

In civil proceedings, courts can issue so-called temporary dispositions (arts. 730 to 757 of the Code of Civil Procedure), which provide for protective measures such as abstaining from a particular act for the duration of the trial.

The costs of judicial environmental proceedings are very low and the court fee of PLN 100 cannot be regarded as an obstacle to the filing of a claim. Moreover, in administrative-judicial proceedings, the principle that the party having lost the case covers the costs of the successful party is only valid when the latter is the person challenging the decision; if this person loses the case, he or she does not bear the costs.

Decisions of the authority of second instance and court verdicts are delivered in writing (art. 14 of the Code of Administrative Procedure; arts. 137 and 141 of the Law on the Proceedings before Administrative Courts; arts. 324, para. 1, and 328 of the Code of Civil Procedure). Court decisions and administrative decisions are made available upon a motion with the reservation of personal data protection (in which cases relevant sections are blackened);

(e) Information on the appeals procedure is provided to the parties concerned, for instance during NGO training, of which part is financed by public resources and primarily from the national and provincial environmental protection funds. Moreover, persons whose request for information was refused

are provided with MoE publications on the legal provisions applicable to access to information.

29. Describe any obstacles encountered in the implementation of any of the paragraphs of article 9.

There are cases of misuse of the right of access to justice by NGOs. The press has documented instances where NGOs were paid by investors for withdrawing from appeal proceedings and making complaints against the enterprise in cause. Investors are indeed willing to avoid the huge losses connected with blocking construction. This gives rise to a tendency to limit scope of public participation and of access to justice in the course of investment process:

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- limiting scope of persons considered as parties to the proceedings, ie. having right to challenge decisions,
- limiting scope of cases in which NGOs may participate with the rights of a party and consequently have a right to challenge decisions
- introduction a requirement to file a deposit while requiring the court to apply injunctive relief - suspending a construction
- limiting time frames for NGOs to notify their participation in the proceedings with the rights of a party.

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The aforementioned amendments were aimed to remove provisions granting the public and NGOs more far-reaching rights than those provided for by the Convention.

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30. Provide further information on the practical application of the provisions on access to justice pursuant to article 9, e.g. are there any statistics available on environmental justice and are there any assistance mechanisms to remove or reduce financial and other barriers to access to justice?

The survey shows that cases of challenging to the court refusals to disclosure environmental information or breaches of provisions regarding public participation are rather rare.

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Public statistics do not reflect appeals to authorities of second instance and court proceedings, and there is no comprehensive database allowing for an assessment of the total number of such cases. The number of cases initiated by NGOs before administrative courts is estimated at a few hundred annually, which comprise primarily cases on new locations or the extension of existing investments.

Very few cases are brought before civil courts on the basis of damage to the environment as a common good.

The costs of administrative proceedings and court fees in environmental cases are low. In addition, a person or organization without sufficient means can request an exemption from proceedings costs before civil (art. 113 of the Code of Civil Procedure) or administrative courts (arts. 243 to 246 of the Law on the Proceedings before Administrative Courts). Such an exemption does not include the obligation to reimburse the costs to the opposite party when losing a civil trial.

31. Give relevant web site addresses, if available:

www.mos.gov.pl/aarhus/podreczniki.html (MoE website, with a textbook on legal avenues in case of refusal of information requests).

32. If appropriate, indicate how the implementation of the Convention contributes to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being.

The law does presently not contain provisions on the right of every person to the environment.

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, have led to restrictions on public participation and access to justice in development consent procedures, including limiting the number of persons acting as a party to the proceedings with the right to appeal against the decision; limiting the scope of issues where NGOs may appear as a party and appeal against decisions; and conditioning requests for interim injunctive relief on providing a bond.

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www.mos.gov.pl (MoE, including e-training).
www.mos.gov.pl/aarhus (MoE's website on the Convention).

www.cios.gov.pl

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