

# **Transboundary Access to Justice for Env NGOs in Polish Law**

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Berlin 15 October 2010

# Scope of presentation

- Definition of NGOs under Polish Law - are foreign NGOs included?
- Rights of NGOs in administrative and judicial proceedings - are there any special provisions re foreign NGOs?
- Practice: any practical experience? problems concerning transboundary A2J

# Definition of environmental NGOs (1)

- The definition of “**environmental organisation**” - Art. 3.1.16 of EPLA: “*environmental organisation’ shall mean social organisation the statutory purpose whereof is to protect the environment*”.
  - Thus, “*environmental organisation*” is a kind of “*social organisation*” as referred to in APC
  - According to Art. 5.2.5 of APC “*social organisation*” is a “*professional, self-governmental or other social organisation*”; *such organisation has to formally exist (no ad hoc groups) - in practice - to be registered in court or in relevant authority*
- According to aforementioned definition of EPLA the only conditions to be regarded as env NGOs are:
  - to have env protection in its by-laws
  - to exist formally

# Definition of environmental NGOs (2)

- The above definitions do not directly mention, but also in any case do not exclude foreign NGOs
- The 'registration' of NGOs confirms its 'formal existence'; no additional registration required to take part in adm and judicial proceedings
- Interpretation of the above provisions of Polish law in line with the Aarhus Convention should definitely include foreign NGOs
- Practice??

# Rights of env NGOs under Polish law (1)

- Participation 'with the rights of a party' in administrative proceedings concerning certain decisions related to the environment
- Right to challenge those decisions before administrative authorities of 2nd instance and then before administrative courts (even if the organization did not take part in the proceedings on earlier stages)

# Rights of env NGOs under Polish law (2)

- Filing a civil lawsuit (to the civil court) against any entity (person) causing damage or threat of damage by impact its unlawful influence on the environment (Art 323 EPLA). In the lawsuit NGO may ask for restoration of the situation in compliance with the law or for undertaking relevant preventive measures

# Are foreign NGOs also granted the above rights? (1)

- Legal acts providing for rules of procedure (administrative (APC), judicial-administrative (PACLA) and civil (CPC)) do not preclude foreign persons (incl organisations) but not always provide for clear provisions on their participation
- CPC in its Art. 1117 provides that: Capacity of foreign persons to take part in civil proceedings (proceedings capacity) shall be assessed according to their domestic law = in case when an NGOs has a right to participate in its own country, enjoys that right also before Polish courts

# Are foreign NGOs also granted the above rights? (2)

- Art. 300 of PACLA refers to CPC provisions on participations of foreign persons (incl Art. 1117 CPC)
- APC does not contain any specific provisions re foreign persons incl NGOs (but: does not exclude them)

# Additional requirements

- Language: Art 4 of the Polish Language Act - all the proceedings before Polish authorities and courts are to be carried out in Polish = translation and interpreter needed
- According to PACLA - obligation to indicate a person in Poland entitled to pick up correspondence from the court

# Practical experience

- According to my knowledge (based on interviews with several NGOs incl big ones) - virtually none
- Authorities seem to be confused (no experience, not very clear provisions, lack of guidelines etc)

# Practical difficulties and barriers

- Polish NGOs abroad and foreign NGOs in PL
  - Lack of knowledge of foreign legal system (in NGOs)
  - Lack of awareness tranboundary access to justice could be possible (in NGOs)
  - Language
- Foreign NGOs in PL
  - Lack of guidelines by authorities
  - Lack of authorities' practical experience