I. THE SOURCES OF THE ENVIRONMENTAL LAW

1. What are the national sources of environmental law (government, parliament, State governments, agencies, ...)? Which authorities are competent for enacting them?

The system of legislative acts, which formed in Poland over the last decade, containing the provisions associated with environmental protection, includes several dozen acts of statutory rank and over one hundred executive acts.

The acts of statutory importance associated with environmental protection may be divided into several groups. First – the general and horizontal acts which regulate the legal institutions which are crucial for the whole system of legal protection of the environment – the Environmental Protection Law\(^1\) Act, the Act on Prevention of Environmental Damage and its Repair\(^2\) and the Act on Access to Information, Participation of the Society and on the Environmental Impact Assessments\(^3\). Second – “sector”-related acts. That broad category includes the acts whose regulations cover the respective elements of the environment/ specified types of activities that influence the

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\(^1\) Consolidated text - Journal of Laws of 2008, No. 25 item 150 as amended
\(^2\) Journal of Laws of 2007, No. 75, item 493 as amended
\(^3\) Journal of Laws No. 199, item 1227 as amended
environment, such as the Environmental Protection Act\textsuperscript{4}, the Water Law\textsuperscript{5}, the Geology and Mining Law\textsuperscript{6}, The Waste Act\textsuperscript{7}, etc.

The third group entails various acts which are not directly associated with the issues of environmental protection, but whose structures and legal institutions are used for reaching the goals of environmental protection. Those regulations include in particular the Provisions on Planning and Land Development\textsuperscript{8} and the Construction Law\textsuperscript{9}.

Taking into consideration the above-mentioned list of legislative acts, it must be borne in mind that in the issues associated with environmental protection what is especially visible is the co-existence of two legal orders – the EU and the domestic legal order. On the one hand, the provisions of the directives as a rule need to be implemented by introducing the suitable provisions at the domestic law level. On the other, from the treaty regulations there follows the obligation to apply the correct interpretation of the law introduced at the level of the member state, in order to provide the effectiveness of the directives.

In the Polish legal order the courts are bound by statutory law and may not refrain from applying it, or remove it and in the case of doubt through interpretation. What is more, the interpretation should also take into account the rules resulting from the EU law and international law. What is more, those rules should be of main significance.

If that interpretation does not allow to remove the doubts in that regard, then the only legal instrument left at the disposal of the courts is the submission of a legal query to the Court of Justice of the European Union.

However, as regards the matters of environmental protection, so far Polish administrative courts have not exercised that right.

\textsuperscript{4} Consolidated text - Journal of Laws of 2009, No. 151, item 1220 as amended
\textsuperscript{5} Consolidated text - Journal of Laws of 2012, item 145 as amended
\textsuperscript{6} Consolidated text - Journal of Laws of 2012, No. 163, item 981 as amended
\textsuperscript{7} New Waste Management Act of 14 December 2012 (Journal of Laws of 2013 r. item 21).
\textsuperscript{8} Consolidated text - Journal of Laws of 2012, No. 647.
\textsuperscript{9} Consolidated text - Journal of Laws of 2010, No. 243, item 1623 as amended
2. What are the supranational sources concerning environmental law that judges must enforce (public opinion, international law, regional conventions...)?

Poland, as a member of the European Union, is obliged to transpose and implement the whole legislation of the European Union into its domestic law. Most of the domestic legal regulations presented above had been amended and adapted to the EU law before Poland joined the EU in 2004.

It needs to be emphasized that the issues of environmental protection have also been included in detail in the Treaty on the Functioning of the European Union, in art. 191 – 193 of the TFUE (former articles 174-176 of the TFUE), i.e. in title XX “Environment” (former title XIX of the TFUE) located in the third part of the TFUE, entitled “Union Policies and Internal Actions”. Art. 191(2) of the TFUE (former art. 174(2) of the TFUE) includes the five fundamental rules of the European environmental protection law: the rule of prevention, the rule of prudence, the rule that the polluter should pay, the rule of high level of protection, and the rule of rectifying the damage at the source.

Another important article for environmental protection is art. 11 of the TFUE (former art. 6 of the TEC) which states that "environmental protection requirements must be integrated into the various sectors of Community policy in order to promote environmentally sustainable development of economic activity". Therefore, that provision introduces the rule of integration of the environmental policy with sector policies. Art. 144(3) of the TFUE (former art. 95(3) of the TEC) imposes the obligation on the Commission to adopt high level of protection in all its legislative proposals associated, among others, with environmental protection.

It is not possible to list all the sources of the international law. The international environmental protection law is considered as the part of the international law that develops most dynamically.

Depending on the problem, the following conventions may apply in the given case: the Aarhus Convention on Access to Information, Public Participation in Decision-
making and Access to Justice in Environmental Matters\textsuperscript{10}, the Convention of 1992 on the Protection of the Marine Environment of the Baltic Sea Area,\textsuperscript{11} the Vienna Convention for the Protection of the Ozone Layer\textsuperscript{12}, the United Nations Framework Convention on Climate Change\textsuperscript{13} and the Convention on Environmental Impact Assessment in a Transboundary Context\textsuperscript{14}.

As regards the cases examined by Polish administrative courts, an important role is played by the international law acts without binding force, i.e. which belong to the so-called \textit{soft law} – the Stockholm Declaration (the Declaration of the United Nations Conference of 14 June 1972 on the Human Environment) and the Rio Declaration. The rules of environmental protection indicated in those documents boil down to restrictions of the use of own sovereignty in favour of sovereign equality and co-existence within the international relationships. In its judgment of 24 November 2009 (case file No. II OSK 1759/08) the Supreme Administrative Court, justifying the necessity to pay the fee for making use of the environment, indicated that it is a system that is also regulated within the EU legislature and in other domestic legal orders. The court emphasized that the basis for the system of fees for making use of the environment is the general rule of the environmental protection law, i.e. the rule that “the polluter pays”. “It is one of the oldest general rules of the environmental protection law which applies based on the international and community law. It is, among others, listed in the Rio Declaration (rule 16) of 1992”.

\textsuperscript{10} The Aarhus Convention of 25 June 1998 is an international agreement ratified by the President of the Republic of Poland on 31 December 2001 under the Act of 21 June 2001 on the Ratification of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, (Journal of Laws No. 89, item 970) which came into effect as regards Poland on 16 May 2002, and was published in the Journal of Laws on 9 May 2003 (Journal of Laws of 2003 No. 78, item 706).

\textsuperscript{11} Journal of Laws of 2000, No. 28, item 346.

\textsuperscript{12} Journal of Laws of 1992, No. 98, item 488.

\textsuperscript{13} Journal of Laws of 1996, No. 53, item 238.

\textsuperscript{14} Journal of Laws of 1999, No. 96, item 1110.
3. Does the administrative judge enforce the general principles of environmental law? Has he/she contributed to developing them?

The general legal norms associated with environmental protection comprise *ex definitione* a component part of the legal system of environmental protection and must be applied directly. The rules of the environmental protection law (such as the rule of prevention, the rule of prudence (carefulness), the rule that “the polluter should pay”, the rule of high level of protection, the rule of rectification (i.e. damage removal) at the source, the rule of complex protection) also, without a doubt, provide the guidelines that are helpful for the judges as regards the application and interpretation of the legal norms of environmental protection. For example, the judgment of the Province Administrative Court of 30 June 2009 (case file No. II SA/O1 542/09) reminded that one of the fundamental rules of environmental protection, resulting from articles 6 and 8 of the Environmental Protection Law Act is, respectively, the rule of sustainable development and the rule of planning the operations with regard to environmental protection. Its aims are executed, among others, by the necessity to conduct the proceedings into the environmental impact assessment for both individual enterprises, and draft documents.

4. Is the right of environmental protection considered as one of the human rights or as one of the fundamental rights in the constitutional or general sense?

In the Polish legal system, the basic standards associated with environmental protection are included in articles 5, 74 and 86 of the Polish Constitution, which describe the general rule of environmental protection. Under art. 5 of the Constitution “The Republic of Poland shall safeguard the independence and integrity of its territory and ensure the freedoms and rights of persons and citizens, the security of the citizens, safeguard the national heritage and shall ensure the protection of the natural environment pursuant to the principles of sustainable development.” In turn, art. 74
provides the legal basis for the state introducing the environmental protection policy. Under that provision, the public authorities conduct the policy that provides the ecological safety for the contemporary and the future generations, environmental protection is the obligation of public authorities, everyone has the right to information on the state and the protection of the environment, and finally, public authorities support the citizens’ activities aimed at protecting and improving the state of the environment. Therefore, the obligation to take care of the state of the environment is the general obligation resulting from the Constitution. The state assumes the obligation to maintain the environmental protection at the level suitable to allow the citizens to benefit from it. Art. 86 of the Constitution imposes the obligation on the citizens to take care of the state of the environment, and the responsibility for the detriment they cause to it. The rules of that responsibility are described by the above-mentioned Act on Prevention of Environmental Damage. Therefore, the environmental protection law without a doubt constitutes a constitutional standard.

As regards the issue of the right of environmental protection as one of the human rights, it should be noted that those rights have recently been overlapping. And, although there is no direct provision associated with environment for example in the European Convention for the Protection of Human Rights, nowadays nobody doubts that each person has the right to live in a clean and pleasant environment. The judicial decisions of administrative courts clearly emphasize the role of environmental protection for the lives of all the people. For example, the Supreme Administrative Court indicated, in its judgment of 2 October 2012 (case file No. II OSK 1631/12) in the case of establishing a limited use area for the Warsaw Chopin Airport, that the European Convention on Human Rights obliges the state authorities to undertakes the actions for the purpose of ensuring that private life is respected and that there is a proper balance between the interests of individuals and the interests of the society as a whole. However, the Supreme Administrative Court emphasized that even the provisions of the Convention do not preclude the interference of state authorities into the issues of environmental protection in the public interest. “That is why the Tribunal has often decided that the states should limit their interference to the minimum as far as possible, search for alternative solutions and try to reach the aims in the manner that is least detrimental from the point of view of human rights (e.g. the decision of 2 October 2001 in the case of Hatton and others against Great Britain, appeal No. 36022/97). Moreover,
every project should be preceded with proper research for the purpose of finding the best solution that allows to preserve the balance of interests (decision of the European Court of Human Rights of 2 November 2006 in the case of Giacomella against Italy, appeal No. 59909/00). That is why, even in the situations of the positive obligations resulting from art. 8 of the Convention (right to respect private life) while searching for the required balance, what may be significant is the aims listed in art. 8(2) of the Convention (state security, public safety or economic well-being of the country, public order and prevention of crimes, protection of health and morality, protection of rights and freedoms of other persons – the decision of the European Court of Human Rights of 21 February 1990 in the case of Powell and Rayner against Great Britain, appeal No. 9310/81). For those reasons, the Tribunal is of the opinion that, in the case of appearance of complicated issues associated with environmental protection, the procedure according to which the state is to make a decision should include the suitable research and studies that allow the determination and assessment, in the proper period, of the potential disadvantageous effects of specific operation on the environment and the rights of individuals, and of the preservation of the suitable balance between competing interests. This means that in the subject case these conditions have been fulfilled. This is because it follows from the case files, and in particular from the prepared eco-audit, that the operation of the airport causes the failure to meet the environmental standards as regards the admissible average long-term level of noise during the day and at night, and the exposure levels of noise for individual aviation operations (at night) despite the introduction of the organizational and technical solutions that reduce the emissions and effects of noise. For that reason, it was necessary to establish, on the area on which the noise standards have been exceeded to various degrees, the legal measure in the form of a limited use area whose fundamental aim is to limit the negative effect of the operation of the airport on the environment, including on the persons residing in the area, among others through increased technical requirements for the buildings situated on that area.
II. THE COMPETENCE OF THE ADMINISTRATIVE JUDGE IN THE ENVIRONMENTAL FIELD

1. Do the environmental cases fall totally or partially within the competence of the administrative judge? Are the judiciary courts also competent? Are there specialized courts?

The Polish legal order does not provide any courts or divisions that would handle the cases associated with environmental protection, or the specific procedural solutions associated with such cases. The main task of administrative courts remains to inspect the work of public administration, conducted from the point of view of compliance with the law (art. 1 of the Law on the System of Administrative Courts act of 25 July 2002 (Journal of Laws of 2002 No. 153 item 1269 as amended)). Thus, the task consisting in protecting the environment may only be performed by these courts indirectly, by taking into consideration that aspect of the case while interpreting the law during an inspection.

The composition of a court ruling the cases connected with environmental protection is in no manner different from the composition that rules in other cases. As per the rule resulting from art. 16 § 1 of the Law on Proceedings before Administrative Courts, an administrative courts rules in the composition of three judges. In the province administrative courts these cases are examined in the divisions to which they have been assigned with order No. 15 of the President of the Supreme Administrative Court of 17 September 2010 on establishing the adjudicating divisions in province administrative courts and the scope of their operation. In the Supreme Administrative Court the cases associated with environmental protection are settled in the General Administrative Chamber which, under art. 39 § 4 of the Law on the System of Administrative Court act, conducts, within the limits and according to the procedure specified by the suitable provisions, the supervision over the judicial decisions of province administrative courts, among others in the cases associated with environmental protection.

As regards the issue of examinations by common courts, what should be noted is their growing role in the law on environmental protection. The tasks of those courts may be divided into three groups of issues. First, solving the claims resulting from restrictions of the constitutional right of ownership, through the environmental
protection provisions. Second, the execution of the civil-legal liability in the law on environmental protection. And thirdly, the execution of penal liability for endangering or violating the environment.

2. What are the criteria of competences between administrative courts, judiciary courts and specialized courts?

Under Art. 175(1) of the Constitution, the judicial system of the Republic of Poland is composed of the Supreme Court, common courts, administrative courts and military courts. The common courts administer justice in all the cases with the exception of those that, under statutory law, are reserved for the jurisdiction of other courts (art. 177 of the Constitution).

The Supreme Administrative Court and other administrative courts conduct, within the scope provided for by statutory law, the inspection of the operations of public administration. That inspection also includes adjudicating on the compliance of resolutions of local self-governments and normative acts of local government administration bodies with the statutory law (art. 184 of the Constitution).

The rule is that the administrative courts are absolutely prohibited from adjudicating in the civil cases falling under the jurisdiction of common courts (art. 58 § 1 point 1 of the Law on Proceedings before Administrative Courts).

3. In cases of administrative courts competence, which is the competent court in the first instance? And on appeal?

The administrative courts belong to the state bodies that administer justice in Poland. The administrative courts perform that obligation by inspecting the activities of public administration and adjudicating in competence disputes, including the ones between the bodies of local self-government units, self-government appeal committees
and between other bodies and government administration bodies (art. 1 of the Law on the System of Administrative Courts act of 25 July 2002\textsuperscript{15}).

The organization activities of the administrative courts in Poland are regulated by three legal acts:

1. the Constitution of the Republic of Poland (art. 10, art. 45, art. 77-79, art. 165(2), art. 166(3) and articles 173-187),
2. the Law on the System of Administrative Courts act of 25 July 2002
3. the Law on Proceedings before Administrative Courts\textsuperscript{16} of 30 August 2002

At present there are the following administrative courts: province administrative courts adjudicating in the first instance and the Supreme Administrative Court. The rule is that appeals are submitted in a province administrative court, and only its decisions are inspected by the Supreme Administrative Court. Both before the province administrative court, and before the Supreme Administrative Court, there exists the rule of requirement of an appeal that prohibits the court to initiate judicial proceedings ex officio, and an administrative judicial proceeding may only be initiated by a party by submitting (accordingly) an appeal (to a province administrative court), a cassation appeal or a complaint (to the Supreme Administrative Court), a petition to settle a competence dispute or a jurisdictional dispute (to the Supreme Administrative Court).

Under art. 3 of the Law on the System of Administrative Courts and articles 4 and 15 of the Law on Proceedings before Administrative Courts act of 30 August 2002, the Supreme Administrative Court:

- examines the cassation appeals and complaints against the decisions and judgments of province courts,
-settles the above-mentioned competence disputes and jurisdictional disputes, and
-adopts the resolutions that clarify the legal provisions that are interpreted divergently by the administrative courts, and the resolutions that settle the legal issues that raise serious doubts in specific administrative-judicial cases.

This means that the Supreme Administrative Court, as the court of second instance, examines the cassation appeals and complaints against the decisions of Province

\textsuperscript{15} Journal of Laws of 2002 No. 153 item 1269 as amended
\textsuperscript{16} Journal of Laws of 2012 item 270, consolidated text
Administrative Courts, while in the remaining cases the Supreme Administrative Court adjudicates as the court of the first and only instance.

III. THE PROCEEDINGS

1. Access to justice

1.1. Which are the admissibility criteria of the proceedings initiated by a natural person (infringement of a subjective right or an own interest, actio popularis, ...)?

The conditions of admissibility of an appeal, as a rule, are the same as the general rules that generally apply in that scope.

Under art. 50 § 1 of the Law on Proceedings before Administrative Courts (LPAC) act of 30 August 2002, the following are entitled to submit an appeal: every person with legal interest, the public prosecutor, the Ombudsman, the Ombudsman for Children, and a social organization – within the scope of its statutory activities, in the cases connected with the legal interests of other persons – if it participated in the administrative proceedings. Art. 50 § 2 of the LPAC indicated that also other entities who are granted the right to submit appeals under statutory law, are entitled to submit them.

The “legal interest” in the meaning of art. 50 § 1 of the LPAC is to be understood as a situation when it is based on the legal provisions. Therefore, in other words, the provisions of the law determine whether the specific entity has a protected legal interest in the given case.

As follows from art. 50 § of the LPAC, also a social organization is entitled to submit an appeal. It may also occur in the cases associated with environmental protection pertaining to other persons, if it is within the scope of its statutory activities (that organization has been established for the purpose of protecting the environment) and if it participated in the earlier administrative proceedings. The condition for a social organization to participate in administrative proceedings is met if that organization took part in the proceedings as a participant, with the rights of a party.
Under art. 44(3) of the Act on Access to Information on the Environment and its Protection, on the Participation of the Society in its Protection, and on Environmental Impact Assessments\textsuperscript{17}, an ecological organization is entitled to an appeal to an administrative court against a decision issued in such proceedings if it is justified with the statutory purposes of that organization, also in the case if it had not participated in the specific proceedings that required the participation of the representatives of the society. It needs to be explained that an “ecological organization” is a type of “social organizations”. This is because art. 3(1) point 10 of the above-mentioned act, an ecological organization needs to be understood as a social organization whose statutory aim is environmental protection.

The potential future changes of the legal status are always difficult to predict. However, in the light of the effective provisions, the comments from representatives of the doctrine, and the consolidated judicial decisions of administrative courts, it may be assumed the social organizations should not be expected to receive the *locus standi* status.

It follows from art. 20 of the above-mentioned Act on Access to Information on the Environment and its Protection, on the Participation of the Society in its Protection of 3 October 2008 that the provisions of the Law on Proceedings before Administrative Courts act of 30 August 2002 apply to the appeals examined in the proceedings to make available the information on the environment, provided that:

1) the submission of files and answers to an appeal occurs within 15 days of the day of receiving an appeal (while art. 54 § 2 of the LPAC provides, as a rule, for the period of 30 days);

2) an appeal is examined within 30 days of receiving the files together with the answer to an appeal (while the generally binding provisions do not provide for the time limit within which the court should examine the appeal submitted).

In turn, under the provisions of the Law on Proceedings before Administrative Courts act, as a rule, in all the cases filed to an administrative court upon the request of the applicant or the body, submitted before setting a hearing, there may be conducted mediation proceedings, the purpose of which is to explain and consider the factual and legal circumstances of the case, and for the parties to agree on the manner of settling it within the limits of the effective law. That possibility only occurs in proceedings before

\textsuperscript{17} Journal of Laws No. 199, item 1227 as amended
province administrative courts. However, based on the previous experience as regards the judicial decisions of those courts, it must be stated that the system of mediation proceedings finds little practical use. There are many reasons for such state of things, one of the most important of which is – it seems – the circumstance that the Polish « model » of judicature is based solely on cassations. Also, we should not forget the fact that the subject of the dispute between the parties is usually the interpretation of the mandatory provisions, which interpretation is not well suited to mediation proceedings.

In their justifications, administrative courts emphasize the importance for ecological organizations to have open access to the proceedings associated with the environment, guaranteed by the Aarhus Convention. It should be emphasized that that participation had already been provided for by the above-mentioned Act on Access to Information on the Environment and its Protection, on the Participation of the Society in its Protection, and on Environmental Impact Assessments of 3 October 2008, which largely corresponds with the solutions assumed in that convention. In the case of doubts as to the manner of understanding the provisions of that act, the administrative courts interpret them taking into account the provisions of the Aarhus Convention. This is because under art. 91 of the Polish Constitution, an international agreement ratified upon the prior consent expressed in statutory law has priority over statutory law, if that statutory law is inconsistent with the agreement.

The cases in which the provisions associated with environmental protection apply should be largely classified as the cases with high level of difficulty. They require both the extensive knowledge of the complicated substantive law (including the domestic law, the law of the European Union, and the judicial decisions of the Court of Justice) and the regard for particular information associated with technological processes and technical issues.

However, the parties to the proceedings in the examined cases are usually highly specialized entities, with complex organizational structure, acting mainly within the disciplines in which any activities would not be possible without the proper application of the law associated with environmental protection. That is why the submissions from those parties are usually of high substantive level, which also applies to the allegations of violation of the law which are formulated in a precise and correct manner. It should also be mentioned that the Polish law requires that a cassation appeal filed to the
Supreme Administrative Court be prepared by a professional attorney (an advocate or a legal counsel).

2. The procedure

2.1. Is there a preliminary administrative appeal procedure (optional or mandatory)?

Under art. 15 of the Code of Administrative Procedure\textsuperscript{18}, the administrative procedure consists of two instances, which means that all the decisions that are not final and valid may be, upon the request of the entitled person, complained against to the public administration body of the degree higher than the body which had issued the complained decision. That rule refers also to the decisions issued as a result of extraordinary proceedings. Moreover, it expresses the admissibility of verifications of the decisions that are not final and valid, through the use of standard legal resources by the entitled entities. Each administrative case examined and settled with a decision of a body of the first instance is subject, as a result of submission of an appeal by the entitled subject, to judicial review and resolution by a body of the second instance. Therefore, an administrative issue is examined and resolved twice.

The rule is that an appeal may be submitted by a party (every subject whose legal interest or obligation is connected with the proceedings or who demands the activity of a body due to their legal interest or obligation, as well as a public prosecutor, an ombudsman, and an organization allowed to participate in the proceedings) within 14 days of delivering the decision to the party, and if the decision has been announced orally – of the day of announcing it to the party; the specific provisions, however, may provide for other time limits for submitting appeals. Such an appeal is entered through the body that issued the decision, to the body of higher level or to the self-government appeal committee. It should also be noted that an appeal does not require special justification, and it is sufficient if it clearly follows from it that the party is dissatisfied with the decision and moves that the case be resolved differently. The specific provisions may determine other requirements for the contents of appeals.

\textsuperscript{18} Journal of Laws of 2000, No. 98, item 1071 as amended
The submission of an appeal within the designated time limit suspends the execution of the decision. The exception is a decision that was granted the clause of immediate enforceability, a decision that is subject to immediate execution under the statutory law, and a decision that is consistent with the requests of all the parties. It should be added that a party is entitled to withdraw the appeal before the issuance of the decision by an appellate body, but the appellate body will not take into consideration the withdrawal of the appeal if it led to upholding a decision that violates the law or the social interest.

As a result of submitting an appeal, the second decision is issued in the same case, by a superior body. The appellate body may uphold the appealed decision if it deems it just and lawful. It may also overrule the appealed decision in full or in part, and issue a ruling in that scope as to the substance of the case, or by overruling the decision remand the case to re-examination by a body of the first instance/ discontinue the proceedings in the first instance.

2.2. Within what period after the enactment of the administrative decision does a legal action have to be taken? (common law time limits, specific time limits depending on the applicant, ...)?

An appeal to an administrative court of the first instance may be submitted within thirty days of the date of delivery of the resolution in the case (the decision or the ruling). There are no special provisions in that regard associated with environmental protection.

2.3. Does the appeal have a suspensive effect? If not, are there any summary proceedings (suspension, provisional measures, ...)?

The provisions associated with conducting the proceedings before administrative courts provide that the submission of an appeal to an administrative court does not stay
the execution of an act or an activity. However, the provisions provide for the possibility to stay the execution of an act or an activity by an administrative body or by a court, ex officio or upon the request of the appealing party.

Like an administrative body, a court may stay the execution of the appealed act or activity in full or in part. In the latter case, it should clearly indicate that it refuses to stay in the remaining part, unless the request from the appealing party applies to a part of the decision, and the court allows it in full.

While settling a case based on art. 61 § 3 of the LPAC, the court is bound by a closed catalogue of positive premises. The statutory provides for two premises connected with that provision: the threat of causing significant harm and the threat of causing results that are difficult to reverse.

The temporary measures provided in the Law before Administrative Courts act are applicable to the cases associated with the environment in line with general principles. The use of those measures in the cases associated with environmental protection is not different than in other cases. However, it seems that, especially in the cases which are associated with the acts or activities associated with an investment process, the circumstance in favour of staying the execution may especially be the irreversible character of the results of executing the appealed act or activity, i.e. in practice their influence on the state of the environment.

2.4. Are there any other specific procedural rules in the environmental field?

No.
3. The powers of the judge

3.1. What are the powers of the judge responsible for the investigations/during the preparation stage (assessment, amicus curiae, on-the-spot investigation, communication of data by the State or the economic operators, …)?

Under the provisions of the Law on Proceedings before Administrative Courts act, administrative courts issue ruling based on the case files. Therefore, the basis for issuing a ruling is the evidence material gathered by the public administration bodies over the course of the whole proceedings continuing before the listed bodies (including expert opinions, expert reports, etc.). Further, the court takes into account the generally known facts and may only examine the supplementary evidence from the documents (art. 106 § 3 of the LPAC). Therefore, an administrative court does not make factual findings regarding the scope of the administrative case, but examines whether the factual findings made by the public administration bodies, whose decisions have been appealed against, are consistent with the law. Taking into consideration the foregoing, it needs to be indicated the provisions associated with conducting the proceedings before administrative courts do not provide for additional instruments that would serve to explain the factual and technical issues of the examined case.

3.2. Is the legal control limited to the control of the regularity of the procedure? Does his/her control cover the substance of the decision?

Administrative courts (both the province administrative courts, and the Supreme Administrative Courts) are courts of cassation. This means that an administrative court of the first instance examines the appeals after the means of challenge are exhausted, only from the point of view of compliance with the law (criterion of legality). Therefore, judicial inspection based on the criteria of propriety, reliability or economy, is precluded. The administrative courts in Poland may not make a ruling as to the
substance, grant a specific right, or impose an obligation. As for the environmental protection law, an administrative court may not, for example, assess the substance of an environmental impact assessment or a construction project.

3.3. **Is the control exerted by the administrative judge a control of rights? Is it also a control of appropriateness?**

See considerations in point 3.2.

3.4. **Which is the degree of judicial review?**

See considerations in point 3.2.

3.5. **What are the measures that the judge can decide?**

- May the judge cancel only the decision or may he also alter the decision?

- Does he have a power of sanction? Can he use it on his own initiative or only if requested by one of the parties?

- Can he award damages? How does he calculate the quantum of the damages?

- May he order restoration? Is it an obligation for him to order it or is it only a possibility? What form can the restoration take (physical compensation, financial compensation, ...)?

The inspection of the legality of the activities of administrative bodies by an administrative court of the first instance, initiated with an appeal, may end up with
dismissing the appeal (if the substantial law or the procedural law has not been violated) or with allowing the appeal and overruling the decision of the body of the second instance (or of the first instance) in the case if there occurred a violation of procedural law which largely influenced the outcome of the case or if the substantive law was violated. Allowing an appeal may also lead to finding a decision invalid in the cases of the occurrence of one of the premises under art. 156 of the Code of Administrative Procedure.

The Supreme Administrative Court examines the cassation appeals against the resolutions of province administrative courts. In the case of allowing the charges, the classical cassation appellate measure results in overruling the resolution and remanding the case to the court of lower instance for re-examination or in ending the proceedings in a formal manner – if it is not possible to examine the case as to the substance. Under art. 184, the Supreme Administrative Court dismisses a cassation appeal if it has no justified grounds or if the ruling is consistent with the law, despite erroneous justification.

The first reason for dismissing a cassation appeal occurs if the Supreme Administrative Court arrives at a conclusion that the provisions of the law, mentioned by the appealing party, have not been violated, and that there are no grounds which the Supreme Administrative Court should take into consideration ex officio (invalidity of proceedings).

The second of the reasons for dismissing the case is based on the economics of trials, because the dismissal of a wrongly justified, but accurate ruling, would result in a situation when the role of the court which issued the appealed ruling, and to which the case was remanded for re-examination, was only limited to correcting the justification.

The dismissal of a cassation appeal results in a situation when the ruling of a province administrative court becomes final and valid.

As the name suggests, in cassation proceedings a court issues resolutions of cassation character as a standard procedure. However, the legislators have also provided for the possibility for the Supreme Administrative Court to examine the case as to the substance. Art. 188 of the LPAC provides that “if the provisions of the proceedings, which might have a crucial impact on the outcome of the case, have not been violated, and only the substantive law has been violated, the Supreme Administrative Court may
dismiss the appealed resolution and examine the appeal. In that case the Court issues a resolution based on the factual state assumed in the appealed judgment”. That provision provides for a certain compromise between the purely cassational system and the review-based system. The issue of a reformatory ruling is optional – the Supreme Administrative Court may, but does not have to, make use of that possibility. For example, in the case of finding that the state of the case, due to the necessity to make certain factual findings, does not substantiate a definitive resolution, the Supreme Administrative Court should remand the case to the court of the first instance for re-examination. The possibility to issue a reformatory ruling does not depend on the application from the party appealing in the case. Therefore, even if the appeal included the charges of violating the provisions of substantive law and procedural law, and the latter prove to be unjustified, the Supreme Administrative Court may issue the above-mentioned reformatory ruling. After overruling the appealed ruling and examining the case, the Supreme Administrative Court issues a ruling within the ruling competence of the province administrative court.

The questions about damages and restitutions indicated in the subsequent points, do not belong to the jurisdiction of administrative courts.

IV. THE ENFORCEMENT OF THE COURT DECISION

1. Are there any specific mechanisms for the execution of judicial decisions (power of injunction, periodic penalty payments, other measures of coercion against the administration or the economic operators)?

No suitable provisions.
2. What are the courses of legal action available against such decision? Are they appeal of common law?

A judicial-administrative issue is examined only during the proceedings by administrative courts. As mentioned above, a cassation appeal may be submitted to the Supreme Administrative Court against the resolution issued in judicial-administrative proceedings by the court of first instance (judgment or decision ending the proceedings in the case). The possibility to submit a cassation appeal depends on the existence of the premises for its admissibility and on supporting it with the premises described in statutory law (art. 174 of the LPAC). The idea of that appeal measure is for the Supreme Administrative Court to inspect the correctness of the application and interpretation of the provisions of the law by the court of the first instance.

Sub-themes:

1) Water
2) Waste
3) Industrial hazards / Forests / Biodiversity (fauna, flora, GMO)