EU FORUM OF JUDGES FOR THE ENVIRONMENT
UE FORUM DES JUGES POUR L'ENVIRONNEMENT

QUESTIONNAIRE ON "TRAINING AND SPECIALISATION OF MEMBERS OF THE JUDICIARY IN ENVIRONMENTAL LAW"
COUNTRY: BULGARIA
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I. INTRODUCTION.

A typical representative of the Romano – Germanic legal family, the Bulgarian legal system recognizes the Acts of Parliament as a main source of law. The Bulgarian jurisprudence does not regard the judicial precedent as a source of law. Nevertheless, the legal doctrine sometimes refers to the so called direct sources (Acts of Parliament and subordinate rules) and indirect sources (or "subsidiary" sources) of law such as: case law (the practice of the courts); the legal doctrine; the legal customs, moral rules, and equity ("justice").

"The Constitution is the supreme act and other acts may not contradict it", reads art. 5, para. 1 of the Bulgarian Constitution adopted on 12 July, 1991. The Constitution of the Republic of Bulgaria provides for the basic rights of the citizens as well as embeds the structure, functions and collaboration between the branches of government.

In the Bulgarian national legislation the right to a healthy and favourable environment is a fundamental constitutional right under Art 55 of the Constitution */Promulgated, State Gazette /SG/ No. 56/13.07.1991, effective 13.07.1991, amended and supplemented, SG No. 85/26.09.2003, SG No. 18/25.02.2005, SG No. 27/31.03.2006; Decision No. 7 of the Constitutional Court of the Republic of Bulgaria of 13.09.2006 - SG No. 78/26.09.2006; amended and supplemented, SG No. 12/6.02.2007, SG No. 100/18.12.2015/.*

The above provision establishes that citizens shall have the right to a healthy and favourable environment in accordance with the established standards and norms. They shall be obligated to protect the environment.

A main principle of the Constitution of Bulgaria is that the state has to ensure the protection and sustainability of the environment, the maintenance and diversity of wildlife and the rational utilisation of the natural wealth and resources of the country. This principle is further developed and implemented in sector-specific legislation regarding environmental law through different acts and regulations.

The Republic of Bulgaria signed an EU Accession Agreement on 25 April, 2005 in Luxembourg and the date for Accession of Bulgaria to the EU was 1 January, 2007. Upon accession the EU legislation has become an integral part of the Bulgarian legal system. The Bulgarian legal system evolved through a profound and strictly-monitored alteration in order to achieve coherence with the acquis communautaire.

The 2002 Environmental Protection Act /EPA/, SG No. 91, has been amended several times in order to fully comply with the international law and the acquis communautaire. EPA is the key framework law for environmental protection and regulates: • Environmental authorities and key areas of management of environmental protection; • Access to information on the environment; • Economic organization of environmental protection activities; • Key environmental strategies and programmes; • Environmental impact assessment (EIA) of

specific investment proposals; • Strategic environmental assessment (SEA) of plans and programmes; • Prevention and limitation of industrial pollution; • Prevention of major accidents involving hazardous substance and limitation of their consequences • The National Environmental Monitoring System. Among the key secondary legislation specifying the Environmental Protection Act includes the 2003 Ordinance on the conditions and procedure for carrying out environmental impact assessment, No. 25, the 2004 Ordinance on the conditions and the procedure for carrying out environmental assessment of plans and programmes (SEA Ordinance), the 2009 Ordinance on the conditions and procedures for issuing integrated permits, Ordinance on the conditions and procedures for determining the liability of the state and for eliminating damage to the environment resulting from past action or inaction prior privatization and the 2012 Ordinance on the procedures for registration, renewal of registration and control of the Community eco-management and audit scheme.

Waste

The Waste Management Act was first adopted in 2003. The 2012 version contributed to strengthening the regulatory framework for waste management by introducing the hierarchy of waste management and the "polluter pays" and "extended producer responsibility" principles. Targeted operational goals for recycling of household waste and for recycling and recovery of materials from construction and demolition waste were established for the first time. An economic instrument for stimulating the municipalities to improve preparation for reuse and recycling of waste and to reduce the amount of household waste going to landfill was introduced, as those who meet specified targets are exempt from 50 per cent of the charges due for waste disposal. The Act also includes a legal requirement for the administrative, economic and educational organizations, and businesses, to separately collect waste paper and cardboard, plastic, glass and metal. Nevertheless, it provides the opportunity for municipalities to use the accumulated amount of waste disposal charges (deduction paid by municipalities per ton of disposed waste) to finance investment costs for household waste recycling and other recovery facilities. The Act also defines a range of new obligations for municipal authorities and administrations, for example on separate waste collection and in terms of gradual achievement of municipal waste recycling and recovery targets, and on adoption of municipal waste management ordinances to specify the legal provisions of the Act for the waste generated on their territory. The responsibility for issuing waste permits and for their control shifted from the Ministry of Environment and Water to its regional inspectorates on environment and water (RIEWs). The Act also previews the implementation report for the National Waste Management Plan (NWMP) to be produced every three years.

The waste legislation was continuously strengthened/ developed in the period since 2007, for instance by adopting further specialized laws such as the Act for Ratification of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal as well as a range of secondary legislation. The Waste Management Act is currently specified in 22 ordinances. Four regulations, four instructions and a guide and checklist for inspection of facilities for treatment of biowaste were also issued. The Ordinance on Management of Construction and Demolition Waste and the Use of Recycled Building Materials was adopted in 2012 and a Manual for Construction and Demolition Waste Management was developed.

Climate Change

The 2014 Climate Change Mitigation Act, SG No. 22, is currently specified in 12 regulations and ordinances. Until 2014, the Environmental Protection Act provided the overall regulatory framework for climate action. The 2012 Carbon Dioxide Geological Storage Act regulates the geological storage of carbon dioxide in an environmentally safe manner. The Climate Change Mitigation Act contributed to establishing a coherent regulatory framework for climate protection, for example by further specifying the provisions regulating the administration of the National Registry for GHG Emission Allowance Trading and the institutional framework for climate protection. The implementation of the climate legislation is challenging due to the cross-sectoral nature of the issue and the lack of financial means. Since 2007, Bulgaria has achieved progress in terms of implementing the climate legislation. The National Green Investment Scheme was set up in 2010, which enabled government participation in the international mechanism for emissions trading by selling part of surplus assigned amount units. In 2007, Bulgaria joined ex officio in the European Emissions Trading Scheme.

Air quality

The 1996 Clean Ambient Air Act, SG No. 45, defines the regulatory framework to limit and better monitor the emissions into the air from stationary sources and to fulfil the quality requirements for liquid fuels. Bulgaria made some progress in terms of implementing the Act, for instance by adopting policy documents such as the 2007 National Programme to Reduce the Total Annual Emissions of Sulphur Dioxide, Nitrogen Oxides, Volatile Organic Compounds and Ammonia into the Air.

Water

The 1999 Water Act, No. SG 67, regulates water resources management including the ownership of water and water development systems and facilities. In 2014 the Act was amended to create a legal basis for implementation of the polluter-pays principle and the legal mechanisms for recovering the cost of resources and environmental costs for the widest possible range of services in the water sector. The 2005 Water Supply and Sewerage Services Regulation Act, No. 18, established the legal framework for the regulation of prices, accessibility and quality of water supply and sewerage services as provided by the water supply and sewerage service utility enterprises. The secondary legislation to the Water Act includes 16 ordinances and orders which aim to regulate and ensure the maintenance of water quantity and the appropriate water quality. Numerous further water-related provisions were adopted in the sectoral laws, such as the Spatial Planning Act.

Protected areas

The 1998 Protected Areas Act, SG No. 133, defines six categories of protected areas and regulates their ownership, the regime of their protection and use, designation and management, and the managing authorities. The Act is further defined in the secondary legislation, including the 2000 Regulation for elaboration of management plans of protected

areas, the 2000 Tariff for the fees in protected areas – exclusive state property and the 2000 Rules for Organization and Operation of the National Park Directorates. Since 2007, there has been an increase in the number of protected areas (chapter 9). Management plans for protected areas are obligatory for national parks, nature parks, and managed and strict reserves, and voluntary for protected sites and natural monuments. The first management plans for all three national parks were adopted – Central Balkan and Rila in 2001, and Pirin in 2004.

Biodiversity

The 2002 Biological Diversity Act, SG No. 77, sets the regulatory framework for conservation and sustainable use of biological diversity. It is further specified in secondary legislative acts, including the 2009 Ordinance on terms and procedure for elaboration and adoption of management plans of protected sites Natura 2000 and the 2007 Ordinance on conditions and procedures for assessing the compatibility of plans, programmes, projects and development proposals with the protection purposes of protected sites Natura 2000.

Genetically modified organisms

The 2005 Genetically Modified Organisms Act, SG No. 27, is in line with the EU legislation, and some parts of it even set stricter conditions. Initially, the Act prohibited several GM versions of crops important for Bulgaria (tobacco, oil-yielding rose, grapevines, all vegetables and fruits, cotton and wheat) from being released into the environment, while leaving the door open for the most common GM crops like maize, soybean and rapeseed. This changed in 2010, when Bulgaria adopted an official ban on GMO cultivation. Since 2011, Bulgaria also has an official ban on MON810, as a decision of the Government. The official confirmation of this decision by the Council of Ministers followed in June 2014. Non-governmental organizations (NGOs) were one of the key drivers behind the actual ban on GMOs in Bulgaria.

Chemicals

The 2000 Protection Against the Harmful Impact of Chemical Substances and Mixtures Act, SG No. 114, introduces procedures to reduce the risks of substance use to human health and to the environment. The responsibility to manage the risks from chemicals and to provide safety information on the substances was given to industry, which has to collect information on the properties of used chemical substances. The Act is accompanied by numerous secondary legislative acts including the Order on Guidelines for enforcement of Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) clarifying the target groups and the enforcement priorities, the coordination and cooperation of the enforcement authorities, the planning, performing, reporting and follow-up of the REACH inspections, as well as the penalty and administrative measures in case of non-compliance. An instruction for planning and reporting of the environmental inspections including REACH and EU Regulation on the Classification, Labelling and Packaging of Substances and Mixtures was issued in 2010. Since 2007, registration, evaluation, authorization and restriction of

chemicals were improved as required by the Act. Coordination mechanisms were strengthened, for instance by establishing the Standing Committee for Implementation of REACH in 2009. Early identification of the intrinsic properties of chemical substances was improved by increasing the number of controls of registrations of substances and of authorizations of substances. The control of the enforcement of the common system for the classification and labelling of such substances has increased and the number of cases of non-compliance has risen since 2011.

Noise

The 2005 Protection from Environmental Noise Act, SG No. 74, established the regulatory framework for assessment, management and control of environmental noise emitted by road, railway, air and water traffic, by industrial installations and facilities and by local noise sources. Bulgaria made progress in implementation, in particular in relation to development and approval of strategic noise maps and action plans to reduce noise pollution. From 2009 to 2014, such maps and action plans were assigned for development and approved for agglomerations with a population of more than 100,000 residents, including Sofia, Plovdiv, Varna, Burgas, Pleven, Ruse and Stara Zagora, and for the main traffic road sections with more than three million vehicles per year.

Soil

The 2007 Soils Act, SG No. 89, provides a regulatory framework for the protection of soils and their functions, and for their sustainable use and long-term restoration. It also determines management bodies, strategic documents and the monitoring and control process. The Environmental Protection Act, Agricultural Land Conservation Act, Waste Management Act and Protection against the Harmful Impact of Chemical Substances and Mixtures Act also include provisions on sustainable land management. The implementation of the Soils Act has been limited. Bulgaria has not yet adopted the National Programme for Soil Protection, Sustainable Use and Restoration, for example.

TRAINING AND INFORMATION

The National Institute of Justice (NIJ) is a public institution, which provides learning opportunities for the Judiciary. The National Institute of Justice became operational on January 1, 2004. It was built upon the achievements of the Magistrate Training Center, a nongovernmental organization established in 1999. Chapter 11 of the Judiciary System Act (promulgated, SG №64/07.08.2007) and the Regulation on the Organization of the Activities of the National Institute of Justice, adopted by the Supreme Judicial Council (promulgated, SG №76/21.09.2007, effective since September 21, 2007), provide the legal basis for the functioning of the NIJ.

The main goal of the National Institute of Justice is to improve the efficiency of jurisdiction through quality professional training and enhancement of qualification of Bulgarian magistrates and court clerks as well as to gather, process and disseminate information on training needs and to carry out the activities of a Documentation Center in EU Law for the Judiciary.

The National Institute of Justice implements the following activities:

Initial and Introductory Training:

- Compulsory initial training for junior magistrates;
- Continuing qualification - courses meant to further the qualification of the judges, prosecutors and investigators who are first-time appointees at the bodies of the Judiciary;
- Compulsory continuing training to further the qualification;
- Training for the mentor-magistrates.

Continuing Training and International Exchange of Magistrates:

- Instructor-led trainings on priority topics, in tune with the specifics of the target groups;
- Regional trainings;
- Interdisciplinary trainings;
- Train the trainers;
- International exchange of magistrates via the European Judicial Training Network activities;
- Organization and delivery of national and international events on the territory of the country and coordination of the activity, related to the NIJ participation in international programs, projects, forums and seminars in the area of judicial training.

Training of Court Administration:

- Training courses for court clerks under diverse curricula.

E-learning and Information Resources:

- electronization of the educational process

- organize applied research and analysis of practices in the field of justice;
- organize the publication of training materials;
- maintenance of the NIJ's library collection;
- perform the activities of the National Institute of Justice as a European Documentation Center;
- organize public presentations of books.

Initial and introductory training at the National Institute

Compulsory initial and introductory training is nine-month training under the art. 258, paragraph 1 and 2 of the Judicial system act (JSA) designed for the candidate junior magistrates who have successfully passed the competition and conducted immediately after their appointment at the respective judicial system bodies.

Programme for mentor-magistrates – upon completion of the compulsory initial training course at the NIJ, junior judges and prosecutors continue their professional development with the assistance of mentor-judges and mentor-prosecutors as per article 242 JSA. The NIJ programme includes coordination of the activity of the mentor magistrates and provision of methodological assistance in the performance of their functions.

Compulsory Initial qualification – training course as per article 259 JSA, for improving the qualification of judges and prosecutors, who are directly and for the first time appointed to the judicial bodies at regional and district levels.

Compulsory continuing qualification for judges and prosecutors – compulsory qualification course designated for judges and prosecutors who have been promoted from regional to district level, introduced by the Supreme Judicial Court pursuant to article 261 JSA.

Training for Judicial and prosecutorial assistants – in compliance with article 249, paragraph 1, sec. 2 JSA the National Institute of Justice is responsible for maintaining and improving the qualification of judicial and prosecutorial assistants.

Continuing Training and International Exchange of Magistrates' Department

According to article 249, para 1, tem 2 of the Judicial System Act /JSA/, the maintenance and improvement of the qualification of judges, prosecutors and investigating magistrates, state enforcement agents, registrars, judicial and prosecutorial assistants, inspectors at the Inspectorate with the Minister of Justice and other Ministry of Justice employees, is carried out by the National Institute of Justice/NIJ/.

The development and maintenance of continuing qualification of magistrates is not obligatory. It is a right, guaranteed by the law. Art. 261 of the JSA allows the relevant college of the Supreme Judicial Council to designate specific courses as mandatory for the judges, prosecutors and/or investigating judges, in the following cases:

1. Promotion
2. Appointment as administrative head
3. Specialization

The main functions of the department cover the planning and organization of the activity, related to the maintenance and improvement of the qualification of magistrates and the other persons under article 249, para 1, item 2 of the JSA, in the following areas:

- Instructor-led trainings on priority topics, in tune with the specifics of the target groups;
- Regional trainings;
- Interdisciplinary trainings;
- Train the trainers;
- International exchange of magistrates via the European Judicial Training Network activities; and
- Organization and delivery of national and international events on the territory of the country and coordination of the activity, related to the NIJ participation in international programs, projects, forums and seminars in the area of judicial training.

The European dimension of judicial training is presented in the majority of the National Institute of Justice training events. The Institute is led by the perception that the EU Law training is an integral part of civil, criminal and administrative law, thus the Community legislation and judicial practice are incorporated into the training curriculum content of the different national law areas.

The Exchange Programme is a key activity of the European Judicial Training Network /EJTN/. The exchange programme was initiated by the European Parliament and was carried out for the first time in 2005.

In 2006, the European Commission granted EJTN the leading position in the implementation of exchange programmes for judges, prosecutors and investigators. The main objective of the Exchange Programme is to enhance the practical knowledge of European magistrates on other judicial systems and on European legislation and human rights legislation through direct contacts, exchange of viewpoints and practices between magistrates and trainers from different EU member states.

The Exchange Programme working group ensures that the initiatives and projects related to the development of exchange between judges and prosecutors are carried out based on the magistrates' training needs. The main tasks of the working group are related to the development of new activities and training methods for e-learning, specialised seminars, discussion forums, internships, study visits, bilateral exchange between courts and prosecutor's offices. It is composed of training institutions from Belgium, Austria, Germany, Estonia, France, Portugal, Italy, Poland, Romania, Slovenia and Bulgaria

The Exchange Programme includes:

- Short-term exchange programmes between magistrates for one or two weeks in the respective EU member state, which could be individual and or/group exchanges;

- Long-term internships with duration of 3 to 12 months in judicial institutions, such as Eurojust, the European Court of Human Rights and the EU Court of Justice;

- Study visits of groups of magistrates to European institutions, such as Eurojust, the European Court of Human Rights, the EU Court of Justice, OLAF and others;

- Individual or group exchange of trainers in order to familiarise them with the training methods, instruments and programmes of the host country and also for exchange of good practices in the field of trainings for adults and magistrates;

- The AIAKOS programme, which is only designed for junior magistrates, is a group exchange of junior magistrates and prosecutors with duration of 2 weeks (1 week visit to an EU member state and 1 week of hosting), so that they could increase their level of knowledge about European legislation and exchange knowledge and experience with their colleagues from the host country;

- Bilateral group exchange between courts and prosecutor's offices and a one-week stay of 5 to 10 representatives of the respective authority in the host country. The exchange programme will start in autumn 2015 and the first visits will be conducted during the same year, whereas the reciprocal visits are planned for 2016;

- Specialised group study visit for one or two weeks in the respective EU member state for magistrates specialising in areas, such as competition law, environmental law, refugee law, labour law and mediation;

The exchange programmes are implemented in close cooperation with European associations, such as:

1. The Association of European Competition Law Judges (AECLJ)
2. The European Association of Judges for Mediation (GEMME)
3. The European Association of Labour Court Judges (EALCJ)
4. The International Association of Refugee Law Judges (IARLJ)
5. The European Union Forum of Judges for the Environment (EUFJE)
6. The European Network of prosecutors for the Environment (ENPE)

Training in environmental law

The training of judges includes special measures in the field of the environment both for initial and continuing training.

Trainings take place at the National Institute of Justice in Bulgaria and the European Law Academy in Trier, Germany /ELA/. The Association of Bulgarian Administrative Judges is a corporate member of the Association of European Administrative Judges and the Bulgarian magistrates are actively involved in the working group on environmental law and the seminars organized by it.

In 2012, the European Commission awarded ELA for the first time a Framework Contract "Co-operation with national judges in the field of environmental law" for the period 2012–2016. The programme was designed in close cooperation with individual judges, national judicial training centres, and judges' professional associations (the Association of European Administrative Judges and the EU Forum of Judges for the Environment), who are represented in the programme's Steering Committee.

The aim of the programme is to develop training materials on various sectors of EU environment policies and legal instruments, enrich the already existing material with new elements, extending its scope and enhancing the partnership with national judicial training centres with a view to ensure that the results of this project are multiplied at national level.

The Contract activities completed after the implementation of a series of workshops on EU Water Law in May 2017. Besides the production of an impressive number of training modules and e-learning tools as set out below, 495 national judges and prosecutors from 26 Member States have been trained on these so far. In January 2017, ELA was awarded a new Framework Contract for the implementation of the third phase of the programme (2017–2020), which foresees the development of various new modules as well as the revision and/or update of the existing ones.

Any magistrates may participate in such environmental education. The forms of training are different - seminars, conferences, summer academies, work shops. A lot of training materials prepared at EU level are used by Bulgarian magistrates.

There is a mechanism to assess the training needs of judges and periodically review it. The National Institute of Justice annually collects information from all the courts, which summarizes and analyzes. According to the magisterial wishes and the declared needs, the trainings for the next year are planned.

Availability of Information on environmental law

There are specialized collections of national or European legal practices relating to environmental legislation, both in paper form and on the Internet such as APIS and CIELA.

All judges are equipped with latest generation computers that give them free and up to date access to databases (with both case-law and literature) on environmental legislation, including national databases, European databases and international databases.

In all cases, general public databases (case law, laws and regulations, official reports, parliamentary debates, etc.) allows the one who is making the inquiry to identify environmental issues by key words.

There are specialised (private) law reviews in the area of environmental law, which publish the documents with comments and which are available in paper format, on-line or on CD-ROM.

Proposals for training or improving availability of information

In my opinion, it would be helpful to develop training materials by carrying out a comparative legal analysis of European environmental law covering the following specific aspects: Environmental Impact Assessment; Sustainable Development; Access to Justice and Standing (Aarhus Convention); Administrative and civil liability in environmental law; Criminal Liability of Corporations; The role of NGOs.

II. ORGANISATION OF COURTS AND ENFORCEMENT AGENCIES

Regulatory Authorities

In principle, the Minister of Environment and Water /MOEW/ is responsible for implementing the state policy for protection of the environment, as well as for introducing European Community regulations and other environmental legislative acts. The coordination, regulation and implementation of the state environmental policies are integrated within such sectors as transport, energy, construction, agriculture, industry, etc, and are carried out through different competent authorities.

The EPA specifies the competent authorities responsible for enforcement of the environmental law. On a national level, the MOEW and the Executive Environmental Agency are competent. On a regional level, the following authorities implement the environmental policies:

- the Regional Inspectorate of Environment and Water (RIEW) directors;
- the Basin Directorate directors;
- the National Park Directorate directors;
- the municipality mayors and, in the cities subdivided into wards, the ward mayors as well;
- the regional governors.

Generally, the administrative agency's power, such as issuing permits and imposing sanctions, is allocated both on the national and regional levels; thus, the directors of each respective authority are responsible.

With respect to environmental subsidies, applications and grants are made through the respective departments of the MOEW.

Investigation

The regulatory authorities are entitled to control compliance with the environmental legislation. The control function includes preventive measures (to prevent violations of regulations or other laws), current measures (to suspend an ongoing violation) and follow-up measures (to remedy the negative consequences of violations, which may be implemented as an administrative penalty liability). For the effective implementation of controlling functions, the authorities are empowered to investigate any potential breaches of the environmental requirements. If violations are ascertained upon inspection, the competent administrative

authority may (depending on the ascertained violation) draw up written statements for the administrative violations and subsequently issue penalty decrees thereto, as well as issue various written prescriptions and orders imposing coercive administrative measures.

Powers of regulatory authorities

The control powers granted to the competent regulator under the EPA are broad. The competent authority can:

- enter and access a site in order to conduct an inspection;
- require submission of environmental information, documents and written explanations by the inspected entities (eg, operators); and
- make measurements or perform laboratory examinations (or both) and perform analysis (eg, taking samples from the sources of pollution).

When investigating, the competent authorised persons may request and obtain assistance from the state and municipal authorities and other entities. The competent bodies may also impose financial sanctions and coercive administrative measures. Furthermore, the executive authorities and the respective administrations, the organisations, the entities and natural persons are obliged to provide assistance to the regulatory authorities exercising control in performance of the above-mentioned functions.

At a national level the said powers are implemented by the MOEW or by authorised officials; and at a regional level by the regional inspectorates of environment and water directors, the basin directorates directors, the national parks directors, the district governors and municipality mayors, or by persons thereby authorised.

Administrative decisions

Within the procedure for making administrative decisions, the competent regulator affords the parties an opportunity to inspect the documents under the case file, to take notes and obtain excerpts. The parties have the opportunity to express an opinion on the evidence collected, to submit written requests and objections, to present evidence and to assist the regulator with the collection of further evidence. Furthermore, the law provides parties participating in the proceedings with an opportunity to be heard, if necessary for clarification of the case.

During the decision-making stage, the regulator may:

- require any additional documentation or information by the parties and by any third party not participating in the process;
- assign an expert examination where the clarification of certain matters that have arisen requires special expertise in a sphere that the authority does not possess; and
- conduct an inspection only where the case cannot be clarified through the use of other means for the collection of evidence, etc.

Ultimately, the administrative act should be issued after clarification of all facts and circumstances relevant to the case and consideration of the explanations and objections of the

individuals and organisations concerned, should any such explanations and objections have been lodged.

Sanctions and remedies

Bulgarian environmental legislation provides strict sanctions and remedies if entities cause pollution to any of the environmental components, do not observe the limitations and prescriptions given in the permits issued or do not perform their activity in line with the environmental requirements. In principle, any breach of the environmental legislation is associated with the creation of the following types of liability:

- coercive administrative measures;
- administrative penalty measures;
- civil liability; and
- criminal liability.

Imposition of sanctions or liabilities aim at deterring polluters, encouraging them to observe the legal provisions and remedying any pollution or contamination caused. Depending on the breach, the competent administrative authorities may impose financial sanctions (eg, fines, including permanent fines) and/or coercive administrative measures (eg, revocation of the environmental permit, closure of installations or activities, limitation of access to the land by the owners and property users).

JUDICIAL PROCEEDINGS

General provisions

In accordance with Constitutional court act, the Constitutional Court shall guarantee the supremacy of the Constitution. The Constitutional Court shall be independent from the Legislature, the Executive and the Judiciary. In its work the Constitutional Court shall be guided exclusively by the provisions of the Constitution and this Act.

According to “Chapter four” from the Judiciary System Act the courts in the Republic of Bulgaria shall be district, regional, administrative, military, appellate, a specialised criminal court, an appellate specialised criminal court, a Supreme Court of Cassation and a Supreme Administrative Court. The courts shall have competent jurisdiction in civil, criminal and administrative cases. A case examined by a court may not be examined by another body. The areas of district, regional, administrative, military and appellate courts may not necessarily coincide with the administrative division of the country's territory. The district, regional, administrative, the specialised criminal court and the military courts shall examine at first instance the cases specified by law. The regional courts shall examine at second instance the appealed acts in cases of the district courts, as well as other cases assigned to them by law. The administrative courts shall act in cassation when examining the administrative cases specified by law. The appellate courts shall examine at second instance the appealed acts in cases of the regional courts, as well as other cases assigned to them by law. The appellate specialised criminal court shall examine as second instance the appealed acts in cases of the specialised criminal court. The appellate military court shall examine at second instance the appealed acts in cases of the military courts. The Supreme Court of Cassation shall act in

cassation in respect to judicial acts specified by law and shall also examine other cases specified by law. The Supreme Administrative Court shall examine at first instance the acts specified by law and act in cassation in respect to the appealed acts in cases of the administrative courts and to acts in cases of Supreme Administrative Court three-member panels. Jurisdiction disputes between the Supreme Court of Cassation and the Supreme Administrative Court shall be resolved by a panel to be composed of three representatives of the Supreme Court of Cassation and of two representatives of the Supreme Administrative Court whose ruling shall be final.

The nature of environmental law court proceedings depends on the object or type of the proceedings. Thus, court proceedings may be administrative, civil or criminal.

SPECIALIZED JURISDICTION

In the Republic of Bulgaria there is no specialized jurisdiction such as tribunals or senates in terms of environmental law cases rather than these cases shall be brought in front of either civil, criminal, or administrative court depending on the law either the Act Criminal Code, the Civil Code or one of the special environmental acts that is applicable for the given case.

ADMINISTRATIVE VIOLATIONS/CASES

1. Administrative courts in Bulgaria and administrative procedure in terms of administrative acts and ordinances regarding environmental law according to the Environmental Protection Act (EPA) is referring to the Code of Administrative Procedure

a) Administrative courts and the Supreme Administrative Court are part of the ordinary courts system in Bulgaria that are competent in cases related to administrative acts issued by administrative authorities that have the power or the obligation given to them by number of different environmental legislations to enact them.

- How is the extent of the jurisdiction defined?

According to the EPA the competent authorities can issue different individual administrative acts such as: 1) Environmental Impact Assessment (EIA); 2) Environmental Assessment; 3) Compatibility Assessment. These administrative acts can be contested before the Administrative courts or the Supreme Administrative Court (SAC), depending on the public authority that issued them.

In case that the Minister of Environment and Water is the public authority that passed an administrative act competent to handle the case is the Supreme Administrative Court (SAC) as a first instance, occupied by three judges according to Art. 132, para. 2, p. 2 from the Code of Administrative Procedure (CAP). This provision declares that the contestations of acts of the Council of Ministers, the Prime minister, the Deputy Prime Ministers and the government ministers shall be cognizable in the Supreme Administrative Court. As a second and last instance a five-judge panel of the Supreme Administrative Court shall fall a decision according to Art. 217, para. 1 CAP, where the judgment has been rendered by a three-judge panel of the Supreme Administrative Court.

If an ordinance has been issued concerning environmental law regulations according to Article 185 of CAP any statutory instruments of secondary legislation shall be contestable before a court of law and they may be contested in whole or in separate parts thereof. The right to contest a statutory instrument of secondary legislation shall vest in the individuals, the organizations and the authorities whereof the rights, freedoms or legitimate interests are affected or may be affected by the said instrument or in respect of whom the said instrument gives rise to obligations. In this case statutory instruments of secondary legislation shall be contested before the Supreme Administrative Court, which shall examine the case sitting in a panel of three judges as a first instance and in a panel of five as a last level of jurisdiction. During this administrative court procedure a prosecutor is participating ex lege in the trial according to Art. 192 CAP.

Other competent authorities according to the EPA that can issue individual acts are as follows:

1. the Executive Director of the Executive Environment Agency; 2. the Regional Inspectorate of Environment and Water (RIEW) directors; 3. the Basin Directorate directors; 4. the National Park Directorate directors; 5. the municipality mayors and, in the cities subdivided into wards, the ward mayors as well; and 6. the regional governors.

The acts of the above mentioned authorities shall be subject to appeal in accordance with the procedure established by the Administrative Procedure Code and in that scenario the competent court shall be one of the 28 Administrative courts in the Republic of Bulgaria and according to Art. 133 CAP proceedings on contestation of individual administrative acts shall be heard by the administrative court at the seat of the territorial structure of the administration of the authority, which issued the contested act, in the area of which the permanent or current address or seat of the appellant is located, which makes the general rule in terms of determining the local jurisdiction of the court.

For example according to Art. 93, para 10 (New, SG No. 76/2017) EPA the decisions for the need of conduct of Environmental Impact Assessment (EIA) shall be subject to appeal in accordance with the procedure established by the Code of Administrative Procedure. The rulings of the court of first instance on complaints against decisions of the Minister of Environment and Water on development proposals, any extensions or modifications thereof, which have been designated as works of national importance by an act of the Council of Ministers and are strategic projects, shall be final. Furthermore, according to para. 11 of the same article the court shall consider the complaints under the second sentence of Paragraph (10) and shall make a ruling, and the proceedings shall be concluded within 6 months of the submission of the complaints. The court shall announce the ruling within one month of the hearing at which the examination of the case was concluded.

Penal decrees (Criminal orders) issued in cases of violations of environmental regulations according to the Administrative Violations and Sanctions Act can be appealed before the Regional courts as a first instance and before the Administrative courts as a court of last resort.

According to Article 63 para. 1 of the Administrative Violations and Sanctions Act (Supplemented, SG No. 28/1982, amended, SG No. 59/1998, SG No. 30/2006, supplemented, SG No. 10/2011) a regional court consisting of a judge alone shall hear the case upon its merits and pronounce a judgement which may endorse, amend or rescind a penal decree or the electronic ticket. The ruling shall be subject to cassation appeal before the respective administrative court on the grounds, provided in Criminal Procedure Code, and Chapter Twelve of Administrative Procedure Code.

• Administrative courts and SAC have exclusive competence deciding upon cases regarding administrative acts either individual administrative acts or statutory instruments of secondary legislation (ordinances) issued by the administrative authority in matters concerning environmental law.

• Conflicts of jurisdiction are solved either by the Supreme Administrative Court alone or by the Supreme Court of Cassation and the Supreme Administrative Court as a panel between the two. According to Art. 135 CAP:

(1) Each court shall have discretion to determine whether a case brought before it is cognizable therein.

(2) Should the court find that the case is not cognizable therein, the court shall transmit the said case to the competent court. In such case, the case shall be considered instituted as from the day on which the case is brought before the non-competent court, and the actions performed by the said court shall retain the force thereof.

(3) Any cognizance disputes between administrative courts shall be settled by the Supreme Administrative Court or, should a three-judge panel of the Supreme Administrative Court be party to any such dispute, by a five-judge panel of the said Court.

(4) Any cognizance disputes between the ordinary and the administrative courts shall be settled by a panel consisting of three representatives of the Supreme Court of Cassation and two representatives of the Supreme Administrative Court.

(5) If the court whereto the case has been transmitted finds that the said case is not cognizable therein, the said court shall transmit the said case to the court referred to in Paragraph (3) or in Paragraph (4), as the case may be, for determination of cognizance.

(6) Where the court whereto the case has been transmitted according to the procedure established by Paragraph (2) finds that the said case is cognizable in a third court, the said court shall transmit the said case to the court or panel referred to in Paragraph (3) or (4), depending on the position of the third court, for determination of cognizance.

(7) Any rulings rendered on cognizance disputes shall be unappealable.

• The judicative is independent according to Art. 117 paragraph 2 of the Constitution of the Republic of Bulgaria: The judiciary shall be independent. In the performance of the functions thereof, all judges, jurors, prosecutors and investigating magistrates shall be subservient only to the law, so in conclusion the administrative, civil and criminal courts are independent of the executive.

(b) How and by whom are members of such courts recruited? Is knowledge or experience in environmental law a specific requirement?

According to Art. 160 of the Judiciary System Act (JSA) all judges are appointed, promoted, demoted, transferred and released from office by decision of the chamber of judges of the Supreme Judicial Council.

The general requirements for appointing judges in the Republic of Bulgaria are according to Art. 162 of the Judiciary System Act the following:

It is generally limited to persons who hold Bulgarian citizenship only and:

1. hold a university degree in law;

2. have undergone the internship provided for in this Act and is licensed to practice law;

3. (amended, SG No. 33/2009, SG No. 1/2011, effective 4.01.2011) possess the required moral integrity and professional standing complying with the Code of Ethical Conduct of Bulgarian Magistrates;

4. have not been sentenced to deprivation of liberty for an intentional criminal offence, notwithstanding any subsequent rehabilitation;

5. (new, SG No. 103/2009, effective 29.12.2009) are not elective member of the Supreme Judicial Council who have been released from office on disciplinary grounds for damaging the prestige of the Judiciary;

6. (renumbered from Item 5, SG No. 103/2009, effective 29.12.2009) do not suffer from a mental illness.

According to Art. 161 JSA:

(1) (Amended, SG No. 28/2016) After the entry into force of the decision on the appointment, promotion, demotion and transfer of a judge, prosecutor and an investigating magistrate, the respective chamber of the Supreme Judicial Council shall inform the person who shall occupy the position within one month.

(2) Entry into office shall be certified in writing before the administrative head of the judicial authority concerned.

(3) (Supplemented, SG No. 28/2016) On the basis of the decision of the respective chamber of the Supreme Judicial Council on the appointment, promotion, demotion and transfer of a judge, prosecutor and an investigating magistrate the administrative head shall issue an act on the occupancy of the position which shall contain:

1. the name of the judicial authority in which the position is occupied;
2. the legal basis for occupying the said position;
3. the name of the position and the rank;
4. the amount of the basic and supplementary remuneration;
5. the date of entry in office.

(4) A judge, prosecutor and an investigating magistrate shall commence discharging the official duties thereof as of the date of entry into office.

(5) A person appointed as a military judge, military prosecutor or military investigating magistrate shall be admitted to permanent military service and be given a title as a commissioned officer.

JUDGES THAT ARE APPOINTED AT ADMINISTRATIVE COURTS

There are special requirements besides the general ones for judges that are appointed as magistrates at the administrative courts. According to Art. 164, paragraph 4 of the Judiciary System Act Eligibility they shall have a service record of at least eight years and judges appointed at the SAC shall have a service record of at least 12 years.

POWERS OF THE ADMINISTRATIVE COURTS

According to Art. 172 of CAP the court may declare the nullity of the contested administrative act, may revoke the said act in whole or in part, may modify the said act, or may reject the contestation or where a tacit refusal or a tacit consent is revoked, an express refusal or an express consent succeeding prior to the judgment on revocation shall likewise be considered to be revoked.

So in general administrative courts have the exclusive jurisdiction to annul unlawful regulations or individual act.

Furthermore, according to Art. 173 of CAP where the matter does not lay within the discretion of the administrative authority, after declaring the nullity or revoking the administrative act, the court shall adjudicate in the case on the merits. Paragraph two of the

same article says that outside the cases referred to in Paragraph (1), as well as where the act is null by reason of lack of competence or if the nature of the said act precludes adjudication in the matter on the merits, the court shall transmit the case file to the relevant competent administrative authority with mandatory instructions on the interpretation and application of the law.

According to paragraph 3 of the same norm the court shall order the administrative authority to issue the said document without giving instructions as to the content thereof in case of a wrongful refusal to issue a document. In case of a refusal by a non-competent authority to issue an administrative act, the court shall declare the refusal null and shall transmit the case as a case file to the relevant competent authority (paragraph 4).

As a conclusion administrative courts have a limited competence to substitute a decision for that of the government agency, in cases where the power of decision of the administrative authority lays in its exclusive estimation given to the authority by law.

According to Article 208 CAP the first-instance judgment of a court shall be subject to cassation contestation in whole or in separate parts thereof before the Supreme Administrative Court and the case shall be examined in public session with the participation of a prosecutor. The Supreme Administrative Court while acting as cassation jurisdiction has the following powers according Article 221 and Article 222 CAP:

(1) The Supreme Administrative Court shall render judgment within one month after the hearing in which the examination of the case was completed.

(2) The Supreme Administrative Court shall leave in effect the judgment or shall reverse the judgment in the contested part thereof if the said judgment is incorrect.

(3) Where the judgment is inadmissible, the Supreme Administrative Court shall invalidate the said judgment in the contested part and thereupon shall dismiss the case, shall refer the case back for re-examination, or shall forward the case to the competent court or authority.

(4) Where the administrative authority, acting with the consent of the rest of the respondents, withdraws the administrative act or issues the act which the said authority has refused to issue, the Supreme Administrative Court shall invalidate the judgment of court rendered on the said act or refusal as inadmissible and shall dismiss the case.

(5) Where the judgment is null, the Supreme Administrative Court shall declare the nullity thereof in whole and if the case is not dismissible, shall refer the said case back to the court of first instance for rendition of a new judgment.

(6) Where settlement has been reached before the Supreme Administrative Court, the court shall confirm the said settlement by a ruling whereby the judgment of court shall be invalidated and the case shall be dismissed.

POWERS OF SUPREME ADMINISTRATIVE COURT UPON REVERSAL OF JUDGMENT

Article 222. (1) When reversing the judgment, the Supreme Administrative Court shall adjudicate in the case on the merits.

(2) The Supreme Administrative Court shall refer the case for re-examination by another panel of the court of first instance where:

1. the Supreme Administrative Court finds a material breach of the rules of court procedure;

2. facts must be established, for which collection of written evidence is not sufficient.

In terms of the question who and how is decided on the choice of administrative vs. criminal enforcement it shall be pointed out that the distinction is made in the legislation and regulations.

ENVIRONMENTAL LAW CASES HANDLED BY AN ADMINISTRATIVE COURT

There is a huge number on trials handled by the administrative courts and SAC in environmental law especially concerning administrative acts such as Environmental Impact Assessment (EIA) or the need to conduct an Environmental Impact Assessment, Environmental Assessment and Compatibility Assessment. Each case is decided on the given proof, materials and circumstances.

A recent case with decision № 10238/27.07.18 by the Supreme Administrative Court, where it ruled out that a decision (administrative act) signed by the Council of Ministers is in violation of the provisions of the Environmental Protection Act and the Biological Diversity Act. The decision of the Council of Ministers concerned changes in Programme for exploitation of Natural Park Pirin whereas it was stated that an Environmental Impact Assessment (EIA) and Environmental Assessment where supposed to be conducted before taking the decision for changes in the Programme for exploitation of Natural Park Pirin, which is in breach with the requirement for plans, programs and investment proposals for construction, activities and technologies, or modifications or extensions, where significant environmental impacts are likely to occur. The three-member panel of SAC considered further that the administrative act is inconsistent with the main objective of the Protected Areas Act, namely: preservation and conservation of the protected territories as national and universal human wealth and property and as a special form of protection of the native nature contributing to the development of the culture and science and the well-being of society. Art. 2, para. 2 of the Protected Areas Act explicitly states that nature conservation in the protected territories takes precedence over the other activities in them. The decision of the Supreme Administrative Court is not yet final.

CIVIL RESPONSIBILITY

Within the civil law proceedings the court determines the existence and the amount of any damages caused by the breach of the environmental provisions and awards the respective damages to the aggrieved parties.

According to Art 170 - 172 from EPA, who guiltily inflicts to other man damages from pollution or damaging of environment, shall be obliged to indemnify him. In the cases, when is damaged property – state ownership, authorised to present a claim of para 1 shall be: 1. the Minister of Environment and Waters – if the damages have occurred on the territory of more than one region; 2. the regional governor – If the damages have occurred on the territory of more than one municipality. In the cases, when the damaged property is considered municipal ownership, the mayor of the municipality shall be authorised to present the claim of para 1. The damaged persons and the persons of art. 170, para 2 and 3, can present claim against the violator for terminating the violation and for removal of the consequences from

pollution. According to Art. 172 of the same Act the liquidation of the consequences, caused by cross-border pollution of environment, shall be implemented on the basis of international agreement, to which the Republic of Bulgaria is a party.

Both contractual and non-contractual civil claims regarding breaches and infringements of environmental law are allowed in Bulgarian courts when damage or a nuisance is caused by such a breach or infringement. The environmental liability concept restates the tort's general principle: the polluter should compensate aggrieved third parties for damages caused by such pollution. Furthermore, it should be obliged to reduce and eliminate the environmental harm at its own expense.

CIVIL CASES

According to Art. 170 EPA who guiltily inflicts to other man damages from pollution or damaging of environment, shall be obliged to indemnify him. The damaged persons and the persons of art. 170, para 2 and 3, can present claim against the violator for terminating the violation and for removal of the consequences from pollution. Both contractual and non-contractual civil claims regarding breaches and infringements of environmental law are allowed in Bulgarian courts when damage or a nuisance is caused by such a breach or infringement. The environmental liability concept restates the tort's general principle: the polluter should compensate aggrieved third parties for damages caused by such pollution. Furthermore, it should be obliged to reduce and eliminate the environmental harm at its own expense. Claims for damages under civil law are subject to a five-year statute of limitation period, beginning as of the knowledge of the damage and the polluter. As shown before there are no civil courts specialised in environmental law.

For example decision № 2189 from 14.12.2016, trail № 3565/2012 by the Sofia Civil Court states that a company with its investment project has caused damages to an investor who made an eco-village for health and healing purposes. In its decision the Court ruled that the company has to pay to the other party indemnity for the damages for impairment and pollution of the environment caused by it.

Further a collective claim has been brought before the Sofia Civil Court for the damages caused to the people of Sofia by the polluted air in the city, but this case is still in progress.

CRIMINAL LAW

Non-compliance with the environmental law, intentionally or negligently, may trigger criminal liability and proceedings in the criminal court. Under the Criminal Code of Republic Bulgaria, Section III „Crimes Against the People's Health and the Environment“ *(Heading supplemented, SG No. 26/2004)* the following offenses have been identified as criminal:

Article 352

(Last Amendment – SG No. 33/2011 in force as of 27.05.2011)

(1) *(Last Amendment – SG No. 33/2011 in force as of 27.05.2011)* A person who pollutes or allows the pollution of the soil, air, water floods, basins, ground waters and the territorial or inland sea waters within zones marked by an international agreement to which the Republic of Bulgaria is a party, and thereby renders them hazardous to people or to animals and plants, or makes them unfit for use for cultural and everyday, health, agricultural,

and other economy purposes, shall be punished by deprivation of liberty for one to five years and a fine from BGN five thousand to BGN thirty thousand.

(2) *(Amended, SG No. 26/2004)* The same punishment shall also be imposed on the official who has failed in designing, constructing or operating drainage or irrigation systems to take the necessary measures for prevention of hazardous pollution of potable water supply zones, or for raising of ground water levels in residential and resort areas.

(3) *(Last Amendment – SG No. 33/2011 in force as of 27.05.2011)* For acts under Pars. 1 and 2 which have led to:

1. death or severe bodily injury to one or more persons, the penalty shall be deprivation of liberty for five to twenty years and a fine from BGN ten thousand to BGN fifty thousand;

2. non-insignificant damages to the environment, the penalty shall be deprivation of liberty for two to eight years and a fine from BGN ten thousand to BGN fifty thousand.

(4) *(Last Amendment – SG No. 33/2011 in force as of 27.05.2011)* For acts under Pars. 1 and 2 committed through negligence, the punishment shall be by deprivation of liberty for one to three years and a fine from BGN two thousand to BGN twenty thousand.

Article 352a

(Last Amendment – SG No. 33/2011 in force as of 27.05.2011)

(1) *(Last Amendment – SG No. 33/2011 in force as of 27.05.2011)* A person who pollutes or allows the pollution by petrol products or derivatives of territorial and inland sea waters in zones, established by international agreement to which the Republic of Bulgaria is a party, shall be punished by deprivation of liberty from one to six years and a fine from BGN ten thousand to BGN fifty thousand. When such act is committed by a captain of a ship, the court shall also impose deprivation of right under Art. 37 (1), Item 7.

(2) *(Last Amendment – SG No. 33/2011 in force as of 27.05.2011)* The punishment under Par. 1 shall also be impose on a person who pollutes or allows the pollution of the waters referred to under Par. 1 by noxious liquid substances in bulk as set forth by an international agreement to which the Republic of Bulgaria is a party.

(3) *(Last Amendment – SG No. 33/2011 in force as of 27.05.2011)* For acts under Pars. 1 and 2 performed by negligence, the punishment shall be deprivation of liberty for up to three years and a fine from BGN two thousand to BGN fifteen thousand.

(4) *(Amended, SG No. 10/1993)* The master of a ship or another vessel who fails to inform immediately the nearest port about dumping into the waters, indicated in paragraph (1), of petrol products or derivatives, or of other substances hazardous to people, animals or plants, shall be punished by a fine of up to BGN five hundred.

(5) *(SG No. 28/1982, amended, SG No. 10/1993)* The master or another commanding officer of a vessel, who fails in his obligation to enter in the vessel documents operations with substances hazardous to people, animals or plants, or who enters therein untrue information about such operations, or who refuses to present such documents to the respective officials, shall be punished by a fine from BGN one hundred to three hundred, imposed by administrative procedure.

Article 353

(1) *(Amended, SG No. 95/1975, SG No. 86/1991)* An official who puts or orders an enterprise or thermal power station to be put into operation before putting into operation the

necessary water-treatment equipment, shall be punished by deprivation of liberty for up to three years and a fine from BGN one hundred to three hundred.

(2) The same punishment shall be imposed on officials who fail to fulfil their obligations for construction of water-treatment equipment, as well as for securing the good condition and uninterrupted proper functioning of such equipment; as a result of which the latter has been unable to start operation, fully or in part, or has ceased to operate.

(3) *(Amended, SG No. 10/1993)* For acts under the preceding paragraphs committed through negligence, the punishment shall be probation or a fine from BGN one hundred to three hundred.

(4) *(New, SG No. 95/1975, amended and supplemented, SG No. 28/1982, amended, SG No. 10/1993)* For minor cases the punishment shall be: under paragraphs (1) and (2) - a fine from BGN one hundred to three hundred, and under paragraph (3) - a fine from BGN one hundred to three hundred imposed by administrative procedure.

Article 353a

(New, SG No. 86/1991, amended, SG No. 85/1997)

An official who, within the sphere his official duties conceals or distributes untrue information about the state of the environment and the components thereof - atmospheric air, water, soil, sea areas - causing thereby significant damages to the environment, human life and health, shall be punished by deprivation of liberty for up to five years and a fine from BGN one hundred to one thousand.

Article 353b

(Last Amendment – SG No. 33/2011 in force as of 27.05.2011)

(1) A person who manages waste in violation of the law and, thus, poses threat to the live and health of other person or may cause non-insignificant damage to the environment, shall be punished by deprivation of liberty for one to five years and a fine of BGN five thousand to BGN thirty thousand.

(2) For acts under Par. 1 which caused:

1. death or severe bodily injury to one or more persons, the punishment shall be deprivation of liberty for five to twenty years and a fine from BGN ten thousand to BGN fifty thousand;

2. non-insignificant damages to the environment, the penalty shall be deprivation of liberty for two to eight years and a fine from BGN ten thousand to BGN fifty thousand.

(3) A person who violates or does not fulfill its duties for ensuring the good working order and proper functioning of an installation or facility for recovering or reclaiming of waste and, in such a way, causes death or severe bodily injury to one or more persons, shall be punished by deprivation of liberty for five to twenty years and a fine from BGN ten thousand to BGN fifty thousand, and where non-insignificant damages to the environment resulted, the penalty shall be deprivation of liberty for two to eight years and a fine of BGN ten thousand to BGN fifty thousand.

(4) For acts under Pars. 1 - 3 committed by negligence, the punishment shall be deprivation of liberty for up to three years and a fine from BGN two thousand to BGN fifteen thousand.

Article 353c

(Last Amendment – SG No. 33/2011 in force as of 27.05.2011)

(1) A person who manages hazardous waste in violation of the law, shall be punished by deprivation of liberty for up to five years and a fine of BGN two thousand to BGN twenty thousand.

(2) When the act under Par. 1 poses threat to the live and health of other person or may cause non-insignificant damage to the environment, the penalty shall be deprivation of liberty for one to six years and a fine of BGN ten thousand to BGN thirty thousand.

(3) When the act under Par. 1 causes death or severe bodily injury to one or more persons, the punishment shall be deprivation of liberty for ten to twenty years and a fine from BGN fiften thousand to BGN fifty thousand, and if such act causes non-insignificant damages to the environment, the punishment shall be deprivation of liberty for three to ten years and a fine from BGN twenty thousand to BGN fifty thousand.

(4) An official who violates does not fulfill its duties related to hazardous waste management, shall be punished by deprivation of liberty for up to three years.

(5) For acts under Pars. 1 - 3 committed by negligence, the punishment shall be deprivation of liberty for up to three years and a fine from BGN three thousand to BGN twenty thousand.

Article 353d

(New – SG No. 33/2011 in force as of 27.05.2011)

(1) A person who in violation of the order provided for by the law carries waste over the state border, where the act does not account to minor offence, shall be punished by deprivation of liberty for up to four years and a fine from BGN two thousand to BGN five thousand.

(2) A person who, in violation of international treaties to which the Republic of Bulgaria is a party, carries over the state border hazardous waste, toxic chemical substances, biological agents, toxic and radioactive substances, shall be punished by deprivation of liberty for one to five years and a fine from BGN five thousand to twenty thousand.

(3) For acts under Pars. 1 and 2 committed by negligence, the punishment shall be deprivation of liberty for up to two years and probation.

Article 353e

(New – SG No. 33/2011 in force as of 27.05.2011)

(1) A person who keeps in storage in violation of the law noxious substances or mixtures and, in such a way, poses threat to the live and health of another person or may cause non-insignificant damages to the environment, shall be punished by deprivation of liberty for up to four years and a fine from BGN two thousand to BGN five thousand.

(2) Any person who in violation of the law puts or orders an enterprise or installation to be put into operation, for the functioning of which noxious substances or mixtures are used and, in such a way, poses threat to the live and health of another person or may cause non-insignificant damages to the environment, shall be punished by deprivation of liberty for one to five years and a fine from BGN five thousand to BGN twenty thousand.

(3) The punishment under Par. 2 shall also be imposed to a person who in violation of the law puts or orders an enterprise or installation to be put into operation, the functioning of which may pose a threat to the live and health of other person or may cause non-insignificant damages to the environment.

(4) For acts under Par. 2 and 3 which cause death or severe bodily injury to one or more persons, the punishment shall be deprivation of liberty for eight to ten years and a fine from BGN ten thousand to BGN thirty thousand, and if such act causes non-insignificant damages to the environment, the punishment shall be deprivation of liberty for two to eight years and a fine from BGN fifteen thousand to BGN thirty thousand.

(5) For acts under Pars. 1 - 4 committed by negligence, the punishment shall be deprivation of liberty for up to two years and probation.

Article 353f

(New – SG No. 33/2011 in force as of 27.05.2011)

(1) A person who in violation of the order provided by the law manufactures, uses, distributes, imports or exports across the state border substances which are harmful to the ozone layer shall be punished by deprivation of liberty for up to four years and a fine from BGN one thousand to BGN five thousand.

(2) In case the act under Par. 1 is committed by negligence, the punishment shall be deprivation of liberty for up to one year or probation.

Article 353g

(Former Art. 353d – SG No. 33/2011 in force as of 27.05.2011)

The one who, in breach of a law, constructs water catchment equipment or equipment for the use of surface or groundwater shall be punished by deprivation of liberty of up to two years and a fine from BGN five thousand to fifteen thousand.

Article 353h

(Former Art. 353e – SG No. 33/2011 in force as of 27.05.2011)

The one who, in breach of a law, makes use of mineral water for economic operations shall be punished by deprivation of liberty of up to one year and a fine of up to BGN five thousand.

STANDING OF ENVIRONMENTAL NGOs IN COURT PROCEEDINGS

The right of association is stipulated in Article 44 of the Constitution of the Republic of Bulgaria and NGO's shall be registered under the Non-Profit Legal Entities Act (OJ, issue 81 of 6.10.2000).

Non-profit legal entities can take two legal organizational forms - associations and foundations. All non-profit legal entities in Bulgaria are subject to registration in the register of the district court by domicile and they shall be registered with the Central Register of Non-Profit Legal Entities at the Ministry of Justice as an organization of "public benefit".

Non-profit legal entities (NGOs) can freely determine their objectives and means of action, i.e., the specific activities through which they can attain their goals. The Constitution of the Republic of Bulgaria sets some limitations to the objectives of the NGOs. It stipulates that their activity shall not be contrary to the country's sovereignty and national integrity, or the unity of the nation, nor shall it incite racial, national, ethnic, or religious enmity or an encroachment on the rights and freedoms of citizens. Forbidden is also the establishment of clandestine or paramilitary structures or those which seek to attain its aims through violence.

All other objectives deriving from various spheres of public interest are in principle allowed even if they are not in accordance with the predominant public opinions and understanding, as long as these objectives are attained by legal activities.

The Non-Profit Legal Entities Act (NGOA) explicitly states that founders of a non-profit legal entity may be Bulgarian and foreign natural persons and legal entities regardless of whether the organization is an association or a foundation. Natural persons should be able-bodied who have come of age and are not under any judicial disability. Legal entities should be established under the current legislation of the country in which they are registered.

Article 19 of the Non-profit Legal Entities Act recognizes as associations, the organizations that are established by three or more persons united for performing activities that pursue non-profit objectives.

Article 33 envisages that foundations are created by a unilateral deed of establishment granting without compensation property for attainment of non-profit purpose.

Due to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), which has been ratified by the Republic of Bulgaria (SG No. 91/14.10.2003) and has become part of the Bulgarian national law according to Art. 5, para 4 of the Bulgarian Constitution (Any international treaty, which has been ratified according to a procedure established by the Constitution, which has been promulgated, and which has entered into force for the Republic of Bulgaria, shall be part of the domestic law of the land. Any such treaty shall take precedence over any conflicting standards of domestic legislation.), it has been granted standing to Bulgarian NGO's access in diverse legal proceedings regarding environmental law cases.

According to the settled case law in Bulgaria environmental protection NGOs and meeting all the requirements of national law have an interest/standing. For the purposes of the application of the Convention the Parties to the Convention have created/established a presumption of the legitimate interest of non-governmental organizations promoting environmental protection.

According to the prevailing judicial practice of Bulgarian courts the "non-governmental organizations engaged with environmental protection and meeting all the requirements of the national law" (the Convention), respectively "non-governmental organizations established in accordance with national law "(EPA), possess "the presumed interest".

The "presumed interest", however, does not refer to individuals (natural persons) or other subjects. The latter, in view of Art. 2, § 4 and 5 of the Convention and Paragraphs 1, items 24 and 25 of EPA, could undoubtedly qualify as "the public" or "the public concerned" but this should be established in each individual case – whether they are „affected or likely to be affected by, or having interest in, environmental decision-making" (according to the definitions of the Convention) or "has an interest in, the procedures for approval of plans, programmes, development proposals, and in the decision-making process on the granting or updating of permits according to the procedure established by EPA, or in the conditions set in the permits" (according to the definitions of the EPA).

Therefore, non-governmental organizations - non-profit-making legal entities, established either for public or private benefit, are presumed to have legal interest. But this presumed interest does not refer to any non-governmental organization engaged in promoting environmental protection but only to that one which meets the criteria laid down by national law. This means that the provision of Art. 9, § 3 of the Convention does not directly regulate the legal position of individuals but does so by the application of national law /see Dec.Lesoochranárske zoskupenie, C-240/09, EU:C:2011:125, p. 45, Judgment of the Court (Grand Chamber), in Joined Cases C-404/12 P and C-405/12, p.47/.

For an individual (natural person), such a presumption does not exist. Its interest in bringing proceedings before court must be established on a case-by-case basis in accordance

with the provisions of the domestic law. The rules which introduce a presumption can not be interpreted broadly, but only stricto sensu, as they establish an exception to the general one.

Resuming the aforesaid, it should be pointed out that in order to have the right of access to justice private complainants - non-governmental organizations, should satisfy/meet all the prerequisites set out in the legal norms: on the one hand, their legal status and their activities and, on the other hand, the subject matter regulated by the litigious action, omission or administrative act must violate the provisions of the national environmental protection legislation.

In order for a natural person to have the right of access to justice it is necessary to meet/satisfy the following prerequisites: on the one hand to have the quality of "the public concerned", t.e. to meet the criteria, if any, laid down in national law and, on the other hand, the subject matter regulated by the litigious action, omission or administrative act must violate the provisions of the national environmental protection legislation.

In conclusion, we would like to express our informal support on COUNCIL DECISION (EU) 2018/11 June/ of requesting the Commission to submit a study on the Union's options for addressing the findings of the Aarhus Convention Compliance Committee in case ACCC/C/2008/32 and, if appropriate in view of the outcomes of the study, a proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1367/2006.