

THE LEGAL FORCE AND EFFECTIVENESS OF THE AARHUS CONVENTION IN THE POLISH LEGAL SYSTEM

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I.

The issue of the effectiveness of obligations incurred under international law is becoming one of increasing importance considering the growing tendency to use international norms in the regulation of internal relations within states. The timeliness of this issue is rooted in the development of new international law regulations, particularly concerning the broadly-understood economic law, environmental protection law, and international human rights protection law. It leads to a growth in the number of international legal norms referring, not so much to relations between states limiting their jurisdictional competences, but primarily to relations within states; that is, to the network of dependencies between the state and the individual, or state and non-governmental actors.

Environmental protection in international law constitutes a complex, multi-faceted task. As civilization advances, a stronger dependency is emerging between phenomena and the comprehensive nature of fundamental human needs, which leads to the continual expansion of the very concept of "environment requiring protection".¹ A very important element in the process of environmental protection is that of the right to information about the environment and the participation of society in taking decisions concerning the environment.

Without doubt, from among the many theoretical and practical issues associated with the development of international environmental law, one of particular importance is the question of ensuring the necessary effectiveness of that law in the domestic legal order. The growing international law-making activity in respect of environmental protection renders it necessary to deal now with the need to create conditions for ensuring this law achieves the appropriate level of effectiveness.²

It should be emphasized that, in the international sphere, every state is obliged to adhere to general international legal norms, as well as international

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¹ See K Wolfke, *Międzynarodowe prawo środowiska (Tworzenie i egzekwowanie)* (1979) 6.

² *ibid* 148.

covenants to which it is a party. In accordance with accepted standards, a state may not invoke its own internal legal system in disputes with other states (including provisions of its constitution) with the aim of avoiding obligations incurred under international law or treaties in force (this norm found its expression in Art. 27 of the Vienna Convention on the Law of Treaties). It is a universally acknowledged rule of the law of nations that a state which has entered into a valid international obligation should introduce the necessary changes into its domestic law to ensure the performance of that obligation. It is incumbent on every state, therefore, to align the activities of its organs with international obligations; but the manner in which those obligations are performed, and in particular the selection of the method for aligning domestic law with international law, is left to the discretion of states. "The performance of international law obligations can, in the simplest situations, consist in an organ of the state acting in its official capacity to execute a specific norm of international law through concrete behaviours"³. The development of the rules on which the relation of international law norms to domestic ones are based is primarily a task for lawmakers responsible for drafting constitutional and statutory regulations capable of establishing the relevant norms. A significant role in forming practice in this area also belongs to the rulings of domestic courts.

II.

The Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters ("Aarhus Convention", "Convention") was concluded on 25 June 1998 and ratified in the name of the European Communities by decision of the Council 2005/370/EC of 17 February 2005⁴.

The Convention is designed to allow public authorities and citizens to take collective and individual responsibility for the protection and improvement of the condition of the natural environment in the interests of present and future generations, and thus for the promotion of sustainable development. The Convention's objective is to contribute to the legal protection of the right of every person to live in an environment that benefits their health and development through ensuring the presence of three pillars of social participation in matters concerning the environment: the right to access to information, participation of society in decision-making, and access to justice⁵.

In the Polish domestic legal order the Aarhus Convention was ratified by the President of Poland on 31 December 2001, pursuant to the Act of 21 June 2001 on ratification of the Convention on Access to Information, Public Participation in Decision-making

³ W Czapliński, A Wyrozumska, *Sędzia krajowy wobec prawa międzynarodowego* (2001) 106.

⁴ OJ L 124 1.

⁵ Resolution of the European Parliament of 22 May 2008 concerning the strategy of the EU at the third sitting of the parties to the Aarhus Convention in Rome, OJ C 279E 98 of 19 November 2009; compare: J Ciechanowicz-McLean, *Międzynarodowe prawo ochrony środowiska* (2001) 191.

and Access to Justice in Environmental Matters⁶. It entered into force on 16 May 2002 and was promulgated in the Official Journal of Laws on 9 May 2003.⁷

The Aarhus Convention is an international agreement ratified following prior consent expressed in an act of parliament. In legal scholarship and case-law there have been expressions of doubt as to whether the application of the provisions of that agreement is dependent on the passage of a parliamentary act, or whether its provisions can be applied directly, and thus whether they are self-executing norms.

It should be pointed out that the self-execution of an international law norm is the product of two phenomena consistent with each other; the direct applicability of the norm, which is designated by the mechanism for inserting an international norm into the domestic legal order, and the direct effect of the norm, which results from its character. International law scholarship distinguishes the concept of direct application (*applicabilité directe*) from direct effect (*effet direct*) of international law norms. At the moment they are issued, norms subject to direct application automatically become part of the *corpus iuris* of a state. They are thus associated with the duty of the state to perform the obligation it has assumed. However, the concept of direct effect refers to the rights, freedoms and duties of the individual, particularly of natural and legal persons, which can be pursued through the courts or other organs of the state.⁸

The doctrine of direct effect of international law norms in domestic law also comes from judicial interpretation of the will of the legislator, who decides whether a given provision is of a programmatic nature or that it constitutes a clear directive for the relevant organ, or perhaps gives rights to, and imposes duties on, the individual⁹. The Permanent Court of International Justice in The Hague declared in its opinion of 23 March 1928 that 'it cannot be disputed that the very object of an international agreement, according to the intention of the contracting Parties, may be the adoption by the Parties of some definite rules creating individual rights and obligations and enforceable by the national courts. [...] The intention of the Parties, which is to be ascertained from the contents of the Agreement, taking into consideration the manner in which the Agreement has been applied, is decisive'¹⁰. The Court, in weighing the potential legitimacy of claims by individuals, did not make reference to the method of incorporation of an

⁶ OJ L No 89, item 970.

⁷ OJ L 2003 No 78, items 706 and 707.

⁸ See K Wójtowicz, 'Zasady stosowania prawa Wspólnot Europejskich w prawie wewnętrznym państw członkowskich' in J Kolasa (ed), *Wspólnoty Europejskie (Unia) Wybrane problemy prawne. Part Two* (1995) 113-120.

⁹ In Hartley's opinion, the rights conferred by a provision with direct effect must be acknowledged by a national court. With this in mind, a provision can be said to have direct effect when it meets two conditions. First, it must be a binding provision of law and on these grounds binding on national courts. In this sense, the issue is one of constitutional law. Second, the provision must endow the individual with rights. Here we are dealing with the interpretational aspect. See TC Hartley, *The Foundations of European Community Law. An Introduction to the Constitutional and Administrative Law of the European Community* (2nd ed 1992) 184.

¹⁰ *Jurisdiction of the Courts of Danzig*, PCIJ series B, no 15 (1928) 17-18.

agreement, but rather pointed out that the intention of the parties expressed by the text of the concluded agreement, together with practice later based on it are decisive in assessing direct effect.

If a contract can be held to be self-executing, this means it operates directly in the internal legal order of a given state without the necessity of being restated in that country's domestic law. We may perceive acceptance of the principle of direct application of ratified international treaties by Polish courts in respect of norms held as self-executing.

None of these generalizations is entirely correct, as so-called self-execution (capacity for direct application) cannot be examined and applied to analysis of an act as a whole, but rather only to particular provisions in it; the results of such an examination can differ, *id est* some provisions of an international agreement can be self-executing, while others may not.

III.

Under the Polish Constitution, the principle of the differentiated effect of international agreements on national law is established¹¹, and the nature of such effect depends on the manner in which a given agreement comes into force. The baseline criterion is ratification of the agreement (in conjunction with promulgation in the Official Journal of Laws), for only this type of agreement can contain provisions which are later incorporated into the system of universally applicable provisions of law (Art. 87(1)).

Among ratified agreements, a special place is assigned to those ratified with prior consent expressed by an act of parliament. Article 89(1) of the Constitution enumerates the types of agreements which require "full ratification", and Art. 91 states that the provisions of such agreements (to the extent that their application is not dependent on the passage of an act of parliament) are not only directly applicable, but also take precedence over standard acts of parliament. This group of agreements also includes older agreements ratified without parliament's consent insofar as they address the matters covered by Art. 89(1) (Art. 241(1)). All agreements must remain consistent with the Constitution, and it is the task of the Constitutional Tribunal to ensure that they do so (Art. 133(2) and Art. 188(1)).¹²

Ratified international agreements, under the Constitution, constitute a portion of the domestic legal order¹³. It thus results from Art. 91(1) that the method selected by the legislator for establishing the binding force of ratified international agreements is the so-called particular transformation, which consists in a two-stage process of incorporation of an international

¹¹ For more see A Wyrozumska, *Umowy międzynarodowe. Teoria i praktyka* (2006) 577-607

¹² Cf M Masternak-Kubiak, 'Miejsce i znaczenie międzynarodowych źródeł prawa praw człowieka w polskim porządku konstytucyjnoprawnym' in M Jabłoński (ed), *I Wolności i prawa człowieka w Konstytucji RP: Idee i zasady przewodnie konstytucyjnej regulacji wolności i praw jednostki w RP* (2010) 33-34.

¹³ Cf A Wasilkowski, 'Prawo krajowe – prawo wspólnotowe – prawo międzynarodowe. Zagadnienia wstępne' in M Kruk (ed), *Prawo międzynarodowe i wspólnotowe w wewnętrznym porządku prawnym* (1997) 11; M Masternak-Kubiak, *Odesłania do prawa międzynarodowego* (2013) 58-61.

legal norm. The first stage is the consent of the state to incorporate the norms of international law contained in a specific agreement into domestic law (ratification, accession), while the second stage is official promulgation in the Journal of Laws¹⁴. However, ratified international agreements do not occupy one single position in the hierarchy of sources of law. An agreement ratified with the consent of parliament takes precedence over other acts of parliament (Art. 91(2)), whereas when ratified without that consent, it only comes before provisions of law below the level of parliamentary acts, issued by central organs of the state (Art. 188(3))¹⁵. In this manner the ratification act becomes an element in the transformation of the agreement into national law, and can be considered a form of law-making. Thus a ratified international agreement thereby contributes to the creation of the state's legal system, as it has been transformed into national law based on the activity of state organs in order to carry out international obligations taken on by the state. It has binding force within the system of law as an act of domestic law – it constitutes an element of the internal legal order.

In the Constitution there is a distinction made as to the effectiveness of international agreements in the Polish legal order. Pursuant to the provisions of Art. 91(2), "An international agreement ratified upon prior consent granted by statute shall have precedence over statutes if such an agreement cannot be reconciled with the provisions of such statutes." This constitutes both confirmation and concretion of the principle of deference to international law, as well as creating the constitutional principle of the

¹⁴ This was emphasized in the verdict of the Supreme Administrative Court of 29 December 1999 (I SA/Po 3057/98, ONSA 2001, No. 1, item 34): "The force of the treaty on grounds of international law is insufficient for a national court to apply it. The treaty should not only be ratified, but also promulgated in the Official Journal of Laws (art. 91(1) Constitution of Poland - OJ L 1997, No. 78, item 483)". Later the Court held that "[...] The obligation for a ratified international agreement to be promulgated in the relevant journal of laws is a necessary and constitutional condition for its incorporation into the domestic legal order [...] The key moment of every international agreement is its entry into force. It is only from that moment on that the agreement becomes a fully valid legal document, and it is at that moment the State which has expressed consent to be bound by the agreement can begin to make reference the rights arising out of the international agreement, and is bound to perform the duties placed on it by the agreement [...]". In addition, in its ruling of 11 April 2000 (Akz 52/00, OSA 2000 r., No. 10, item 71), the Court of Appeals in Warsaw ruled that "The Strasbourg Convention on the transfer of sentenced persons of 21 March 1983 was ratified by Poland and published in the relevant promulgation journal, and is binding in Poland with all legal consequences, including the right of the Minister of Justice to determine the mode of exequatur in a particular case".

¹⁵ In its verdict of 29 November 2000 (I PKN 107/00, OSNAP 2001, No 5, item 162) the Supreme Court held that it could not apply the contract made on 30 January 1990 between the governments of Poland and Germany on delegation of Polish workers to perform contracts for a specific work, as in the light of "[...] Art. 87 of the Polish Constitution, sources of generally applicable law in Poland are only ratified international agreements; the intergovernmental contract of 31.01.1990 has not been ratified. In consequence, it is also not subject to Art. 91(1) of the Constitution, under which a ratified international agreement, following promulgation in the Official Journal of Laws, constitutes a part of the national legal order and is applied directly insofar as its application is not dependent on an Act of Parliament. Because the intergovernmental contract of 31 January 1990 was not ratified, it does not constitute part of the national legal order as understood by Art. 91(1) of the Constitution...".

presumption of national law's compliance with international law¹⁶. This provision constitutes *lex specialis* in respect to the principle expressed in Art. 9. Interpretation of the norm contained in Art. 91(2) leads to the conclusion that only international agreements ratified with prior authorization expressed in an act of parliament and enumerated in Art. 89(1)(1-5) and Art. 90(2) and additionally, agreements ratified prior to the Constitution entering into force to the extent they relate to matters set forth in Art. 89(1) will enjoy constitutionally guaranteed precedence over acts of parliament if they cannot be interpreted in a manner compatible with such an agreement. Based on the provisions of Art. 91(2) it is clear that ratified international agreements (as sources of law) are divided into two categories, *id est* those taking precedence over acts of parliament and those subordinate to acts of parliament.

With these deliberations in mind, the legal force of the Aarhus Convention in the Polish legal system is related both to the fact that it is an international agreement ratified with prior consent in an act of parliament, promulgated in the Official Journal of Laws, and the fact of the European Union's accession to the Convention¹⁷.

The view has been expressed in rulings of administrative courts that the Convention under consideration here is not an international agreement that can be applied directly without the necessity of making changes to the legal system of a state which has signed and ratified it, but rather its provisions are merely an obligation placed on the leaders of a state having ratified the convention, to engage in legislative activity and adopt regulations that will implement those provisions.¹⁸ An opposing position has been taken by M. Woźniak, in whose opinion the Aarhus Convention, on the subjective side, fulfils all the conditions for it to be applied directly as it is comprised of legal norms that endow citizens with clearly specified rights and impose precisely formulated obligations on public administration authorities.¹⁹

¹⁶ Cf C Banasinski, 'Pozycja prawa międzynarodowego w krajowym porządku prawnym (w świetle Konstytucji z 1997 r.)', (1997) 2 Przegląd Prawa Europejskiego 15-16.

¹⁷ The European Union ratified the Aarhus Convention on 17 February 2005. In order to reinforce the entry into force of the Convention's provisions, the Parliament and the Council adopted three implementing acts: Directive 2003/4/EC on public access to environmental information and repealing Council Directive 90/313/EEC (OJ L 41 26 of 14 February 2003); Directive 2003/35/EC providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment (OJ L L 156 17 of 25 June 2003); Regulation (EC) No. 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ L L 264 13 of 25 September 2006).

¹⁸ See verdict of the PAC of Warsaw of 8 October 2010, IV SA/Wa 72/10, in: CBOSA; also, verdicts of the PAC in Warsaw of 10 April 2006, VII SA/Wa 16/06; 5 November 2010, IV SA/Wa 1582/10; of 17 December 2010, IV SA/Wa 410/10, in: CBOSA.

¹⁹ Cf M Woźniak, *Miejsce i stosowanie umów międzynarodowych w polskim prawie administracyjnym* (2005) 158–159.

IV.

Of significant importance in assessing the effectiveness of the Aarhus Convention in the Polish legal order is the issue of the potential for resolving environmental issues with the participation of society, directly on the basis of the Convention. Article 9 of the Aarhus Convention is titled “Access to justice”. It regulates access to judicial, administrative and review procedures separately in respect of three categories of decisions, acts or admissions, i.e. concerning:

- 1) public authorities’ failure to deal with or inadequately dealing with a request for information about the environment (Art. 9(1) Convention);
- 2) decisions, acts and omissions by public authorities in matters requiring the participation of society in making decisions about specific undertakings (Art. 9(2) Convention);
- 3) other acts and omissions of private individuals and/or public authorities violating the provisions of a given national law concerning the environment (Art. 9(3) Convention).

Under Art. 9(2) of the Convention each party ensures under its national law that members of the public concerned:

- (a) having a sufficient interest, or, alternatively,
- (b) maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition, have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 and, where so provided for under national law and without prejudice to paragraph 3 below, of other relevant provisions of this Convention. What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention. To this end, the interest of any non-governmental organization meeting the requirements referred to in article 2, paragraph 5, shall be deemed sufficient for the purpose of subparagraph (a) above. Such organizations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above.”

The provisions of para. 2 do not exclude the possibility of a review procedure held before an administrative body, and they do not affect the necessity of exhausting administrative review procedures before making use of judicial review procedures to the extent that such an obligation is present in national legislation.

Article 6(3) of the Convention holds that procedures facilitating the participation of the public shall include reasonable timeframes for the different phases which will ensure sufficient time for informing the public, and for members of the public to participate effectively in taking decisions in matters regarding the environment in an appropriate, timely and effective manner.

Directive 2011/92/of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and

private projects on the environment²⁰ holds in Article 11 that members of the interested public must be assured access to review procedures. It reads: “Member States shall ensure that, in accordance with the relevant national legal system, members of the public concerned: having a sufficient interest, or alternatively maintaining the impairment of a right, where administrative procedural law of a Member State requires this as a precondition; have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of this Directive”. The Directive assumes that permissibility of a legal remedy for members of the “public concerned” depends on the presence of a “sufficient legal interest” or the occurrence of an “impairment of a right”, subject to which of those two conditions is present in national legislation.²¹ It also holds that Member States will determine what constitutes a sufficient legal interest or impairment of a right, so as to provide the interested public with extensive access to justice. It should, however, be kept in mind that in the absence of EU-level regulations covering this issue, it is a matter for the Member States to designate the appropriate courts and define the relevant procedural rules guaranteeing protection of rights that are enshrined in EU law. These rules cannot be less beneficial than those referring to adequate measures foreseen in domestic law (the principle of equivalence) and cannot render it more difficult or impossible to enjoy the rights that result from EU law (the principle of effectiveness).²²

The wording of Art. 9(2) para. 2 of the Aarhus Convention and Art. 11 of Directive 2011/92 both lead to the conclusion that the scope of acknowledgement by Member States of what constitutes “sufficient legal interest” or “impairment of a right” is determined by the provision of the objective to ensure broad access to justice for the interested public. Following systemic and functional directives for the interpretation of the aforementioned norms it should be concluded that insofar as the national legislator may limit the rights available to the individual within the framework of an appeal for judicial review of a decision, act or omission to those belonging to the interested public, *id est* individual rights held by national law as public subjective rights, regulations addressing legal remedies available to the members of a given society cannot be subjected to a narrow interpretation.²³

V.

The Aarhus Convention affords a particular role to organizations engaged in environmental protection. The significant role of these environmental protection organizations is a counterweight to the decision to

²⁰ OJ EU L 2012.26.1.

²¹ Cf A Wilk-Ilewicz, ‘Udział społeczeństwa w procesie uzyskania decyzji środowiskowej’ (2015) 5 Zeszyty Naukowe Sądownictwa Administracyjnego 62.

²² Wilk-Ilewicz (n 21) 63.

²³ *ibid* 63-64.

not introduce a mandatory *actio popularis* for cases involving environmental protection.²⁴

Including non-governmental organizations concerned with the protection of the environment in the decision-making process at both the administrative and the judicial level improves the quality of decisions taken by public authorities, strengthens their legitimacy, and also boosts the effectiveness of procedures.

In its verdict of 8 March 2011 in case C-240/09 *Lesoochránárske zoskupenie VLK*²⁵ the Court of Justice held that it should be determined whether, in the material encompassed by the norm expressed in Art. 9(3) of the Aarhus Convention, the European Union exercised its powers and issued rules governing the performance of the obligations that result from it. If that was not the case, the duties resulting from Art. 9(3) of the Convention would still be subject to the national law of Member States. In this case, it would be up to the courts to determine on grounds of national law whether individuals can rely directly on the norms an international agreement that relates to a particular area, or whether courts should employ them *ex officio*.

However, if it were held that the EU had exercised its authority and issued regulations in the area covered by Art. 9(3) of the Aarhus Convention, EU law would apply and the Court of Justice would be the competent court for determining if a provision of the international agreement under discussion had direct effect. In this regard the EU enjoys clear external authority in respect of the environment under Art. 175 EC in conjunction with Art. 174(2) EC.

If a given regulation can be applicable both in situations covered by domestic law and those covered by EU law, it is undoubtedly of importance in avoiding future interpretative discrepancies to ensure that regulation is interpreted in a uniform manner, regardless of the conditions in which it will be applied.

In the judgement of the Court of Justice, Art. 9(3) of the Convention is devoid of direct effectiveness on grounds of EU law. The Aarhus Convention is an agreement of a hybrid nature. Its provisions constitute an integral portion of the legal system in the European Union. Hybrid agreements concluded by the EU, Member States and third-parties have the same status in the EU legal order as agreements of a *stricte* EU character within such scope as their provisions are covered by the European Union's competencies.

The task of a national court, however, is to perform - to such an extent as is possible - interpretation of the procedural rules concerning the conditions that should be met in order to initiate administrative and/or judicial proceedings in accordance with the objectives set forth in Art. 9(3) of the Convention, as well as to ensure effective judicial protection of the rights arising out of EU law, to facilitate an environmental protection organization desiring to contest in court a decision handed down following

²⁴ EU does not yet require Member States to facilitate *actio popularis*.

²⁵ OJ EU C 130 4 of 30 April 2011.

administrative proceedings that may contradict European environmental protection law.²⁶

In the absence of EU regulation in a given area, it is the task of the internal legal order of every Member State to set out procedural rules concerning the legal remedies which are supposed to ensure protection of the rights that legal subjects derive from EU law; Member States are responsible, in every case, for guaranteeing the effective protection of those rights.

It is the job of the national court to fashion an interpretation of procedural regulations concerning the conditions that should be fulfilled to initiate administrative or judicial proceedings in accordance with the objectives of Art. 9(3) of the Convention and with the goal of effective protection of the right to justice enshrined in EU law.²⁷ However, it should be noted that the foregoing is essentially a concretization of the requirement to identify a pro-European interpretation of national law provisions (an interpretation consistent with the content and objectives of Directives and other EU acts); it is commonly held that such an interpretation cannot lead to conclusions that contradict national law in force – the limits of pro-European interpretation of national law are set by the overriding principle of not interpreting *contra legem*.²⁸ Thus it is the job of national courts to determine whether Art. 9(3) of the Convention should be interpreted as having direct effect, under the conditions set out in the legal order of a given Member State. In such scope as Art. 9(3) of the Convention obliges Member States, adherence to those duties is a matter of international law, that is to say performing international obligations in good faith.

The Aarhus Convention does not contain any regulations clearly and precisely indicating an obligation to directly regulate the legal situation of individuals. It should be kept in mind that only “where they meet the criteria, if any, laid down in its national law, members of the public” enjoy the rights set out in Art. 9(3) of the Convention.

Analysing the legal force and effectiveness of the Aarhus Convention in the Polish legal order, we arrive at the conclusion that the Polish legislator in its Act of 3 October on information about the environment and its protection, the participation of society in environmental protection, and environmental impact assessments²⁹ took account of the participation of society, represented by ecological organizations, in proceedings, and also the possibility of reviewing administrative decisions. The position of ecological organizations is a privileged one, *id est* it may appeal decisions (both to authorities of a higher instance and to administrative court) to a broader degree than can other social organizations. Informing the public of an issued decision in the mode set out under Art. 85(3) of the Act on information about the environment and environmental protection fulfils the informational requirements defined in provisions from

²⁶ J Ebbesson, ‘Access to Justice at the National Level’ in M Pallemerts (ed), *The Aarhus Convention at Ten*, (2011) 263; J Szuma, ‘Prawo do zaskarżenia planów miejscowych przez organizacje ekologiczne’ in M Rudnicki, K Haładaj, K Sobieraj (eds), *Europeizacja prawa ochrony środowiska* (2011) 179–181.

²⁷ Cf verdict in C-240/09.

²⁸ Cf A Cieśliński, *Wspólnotowe prawo gospodarcze* (2003) 17.

²⁹ OJ L of 2013, item 1235 with amendments.

the international agreement, as well as European law. Informing is not equivalent to, nor does it trigger the legal effects of serving a decision. This interpretation is not, however, in conflict with the provisions of the Aarhus Conventions.³⁰

CONCLUDING REMARKS

The Polish legislation is an implementation of the Directives derived from the provisions of the Convention. It should be noted that the provisions of the Act on information about the environment and environmental protection, the participation of society in environmental protection and environmental impact assessments provide for the obligation of informing the public not only about a decision taken, but also e.g. of initiating environmental impact assessments, initiating proceedings, and the potential to review case documents as well as the location where they can be accessed (Art. 33(1) Act on information). It has provided detailed regulations for the procedural position of ecological organizations. Privileging this type of organization consists in allowing them to submit appeals to decisions handed down in proceedings requiring the participation of the public, including when such an organization did not participate in proceedings in the first instance. Submission of an appeal is treated as equivalent to informing of the desire to participate in such proceedings. During the appeals process the organization is considered a party to the proceedings (Art. 44(2) Act on information). Other social organizations do not enjoy such prerogatives. They may join to proceedings in progress and obtain the rights afforded to a party, but when they do not file the relevant application and proceedings before the authorities in the first instance have concluded, they are unable to appeal against a decision unless the appeals proceedings have been initiated by another party with standing. Then such a social organization can join the appeal proceedings pursuant to general principles.

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³⁰ Cf verdict of SAC of 12 May 2015, II OSK 2036/13, in CBOSA.

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