

ACCC/C/2018/158 (Poland)

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(*Pracownia na rzecz Wszystkich Istot*)

Charge A.

Lack of public participation in preparation of farm and hunting plans

- Plans: multiannual (10 yrs) and annual
- Prepared and adopted by the State Forest Authorities
- Set i.a. number animals to be hunted in a given period
- No public participation for these plans, neither within SEA, nor separately
 - negative answers by the Forest Authorities to the Communicant questions about pp

= incompliance with Art. 7 of the Convention as these plans are 'relating to the environment'

Charge B.

Lack of / limited access to justice in relation to plans and programmes which “contravene provisions of [the Party’s] national law relating to the environment”

- Partial overlap with cases *ACCC/C/151* and *ACCC/C/2017/154*
 - more plans, also those adopted by governmental authorities (not only self-governmental)
 - focus also on access to justice by private individuals (not just NGOs)
- List of plans in the communication

- Allegation: incompliance with Art. 9(3)

Why are the plans subject to Art. 9(3)

- How they may “contravene provisions of [the Party’s] national law relating to the environment”:
 - Majority of the plans: relate to the environment themselves (= are adopted on the basis of environmental laws)
 - thus both the content of a plan and the procedure of its adoption may violate env law
 - Spatial development plans: although not typically „environmental”..
 - their provisions must not violate the environmental law requirements such as nature protection laws or water laws;
 - land development has an impact on the environment.
 - thus the plan may violate environmental law

Forms of plans – competent authorities

- Adopted by self-governmental authorities
 - Three levels - the ,procedural' basis for them are the 3 respective Acts on self-government
- Adopted by governmental authorities
 - On the voivodship (regional, province) level – the procedural basis for them is the Act on Voivod and Governmental Administration in the Voivodship
 - On the central level – adopted on the basis of ,substantial' laws; some of them have a form of Regulations by Ministers or the Council of Ministers; some are Resolutions by the Council of Ministers

Standing for NGOs

- For NGOs – no standing at all:
 - neither for the plans marked in blue
 - ⇒ limited jurisprudence
 - Civil claims – not enough
 - nor for the plans marked in orange
 - yes, some of them are regulations by Ministers
 - still plans
- non-compliance with Art. 9(3)

Standing for individuals

- In case of plans marked in blue – limited access to justice: the need to prove that ‘legal interest’ of the claimant is violated by the plan
 - = the bar is even higher than in case of individual decisions where it is sufficient to ‘have’ a legal interest (although also here limited to ‘rights in rem’ to the property)
 - = too **narrow**
- For plans marked orange (central):
- For Regulations - constitutional complaint only:
 - Two steps procedure (indirect): (a) court or authority issues a decision addressed to a person and based on a legal act (e.g. a Regulation) (b) the addressee of this decision may submit a complaint to the Constitutional Tribunal concerning the compatibility with the Constitution
- No access to justice re Resolutions by the Council of Ministers