"The Recognition of Foreign Environmental NGOs in Germany – Requirements and Procedure pursuant to Art. 3 of the Environmental Appeals Act”

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I. Introduction

Current environmental law in Germany provides for specific litigation rights for Environmental NGOs. The Environmental Appeal pursuant to Art. 2 Umwelt-Rechtsbehelfsgesetz – Environmental Appeals Act (EnvAppA) enables Environmental NGOs to bring to court violations of environmental provisions. Furthermore, legal standing is afforded to associations active in the field of nature conservation claiming the infringement of nature conservation and landscape preservation law, e.g. provisions of the Federal Nature Conservation Act or the nature conservation legislation of the German States (Länder). The requirements and restrictions applying to these specific NGO litigation rights were addressed in the presentation of Ms. Schlacke.

Both types of litigation rights require a formal administrative recognition to be granted before an NGO is entitled to file a lawsuit. The administrative recognition for both – the Environmental Appeal as well as the Nature Conservation lawsuit – is granted through a single administrative act and procedure. This paper describes the recognition requirements and the procedure pursuant to Art. 3 EnvAppA – with a special view on the application of these provisions to foreign NGOs.
II. Recognized NGOs
Since the EnvAppA came into force 78 domestic NGOs have been recognized for the Environmental Appeal pursuant to Art. 2 EnvAppA. 23 domestic NGOs have been granted the additional litigation rights existing at federal level in the field of nature conservation. More associations have been recognized at Land level. The Federal Environment Agency maintains a list of recognized associations on its website (see http://www.umweltbundesamt.de/umweltrecht-e/verbandsklage/index.htm). Foreign environmental associations have not been recognized yet. To date, no foreign association has applied for recognition at the Federal Environment Agency, which is one of the competent authorities for granting recognition (see next chapter).

III. Competence and Procedure
Pursuant to Art. 3 paras. 2 and 3 EnvAppA the competence for granting recognition is shared between the Federal Environment Agency at federal level and the competent authorities of the Länder. For a domestic association with an area of activity not exceeding the territory of one German State (Land), the recognition is pronounced by the competent authority of this state. A foreign association or an association with an area of activity exceeding the territory of one Land is recognized by the Federal Environment Agency.

As mentioned above the administrative recognition for both types of NGO litigation rights is granted through the same procedure and administrative act. The recognition for the first, the Environmental Appeal pursuant to Art. 2 EnvAppA, is legally designed as “basic” recognition, the recognition for the second as a “supplement”. As a consequence the litigation rights for nature conservation cannot be granted without recognition for the Environmental Appeal (see below).

IV. Requirements for recognition
The requirements for granting recognition are subdivided into general recognition criteria and an additional criterion that applicant NGOs must meet to be entitled to also make use of the NGO litigation rights in the field of nature conservation. An NGO which meets the general criteria is granted recognition for the Environmental Appeal pursuant to Art. 2 EnvAppA (“basic” recognition). The general recognition criteria must, however, also be fulfilled by an NGO which is only interested in obtaining the NGO litigation rights in the field of nature conservation. In order to be also conferred these additional litigation rights it must meet an additional criterion (“supplement” recognition).
If an applicant NGO fulfils the requirements pursuant to Art. 3 EnvAppA, the recognition authority will be obligated to pronounce recognition. The recognising authority may not exercise discretion.

The general recognition criteria are stated in Art. 3 para. 1 sentence 2 EnvAppA.

According to the general recognition criteria an association shall be recognized if it

- predominantly promotes the objectives of environmental protection according to its bylaws
- has corresponding activities;
- has existed for at least three years;
- guarantees proper performance of its duties;
- pursues public-benefit purposes;
- allows any person who supports its objectives to become a member with full voting rights (Everybody Principle); an exemption exists for umbrella organizations.

Most importantly an association which applies for recognition must predominantly and permanently promote the objectives of environmental protection. *Predominant promotion* signifies that environmental protection must be the main and distinctive purpose of the association as laid down in its bylaws and as shown in its activities.

Other, minor purposes of an association are not excluded, if they do not conflict with the purpose of environmental protection. The activities in the field of environmental protection must have been pursued at least over the last three years. Excluded are environmental NGOs with interests other than idealistic. The objectives and activities of the association in the field of environmental protection must be non-commercial.

In order to demonstrate its activities to the recognition authority, the Environmental NGO must submit appropriate supporting documents, such as annual reports, press releases, member periodicals or circular letters.

Furthermore, to gain recognition, an NGO must be able to perform its duties properly, i.e. it must have the capacities – in terms of experience, expertise and other resources - needed to participate in administrative and judicial proceedings. It is worth mentioning that there is no general limitation in regard to the size of an association, e.g. number of members. Also a small NGO can be granted recognition as long as it gives reason to expect that it performs its duties properly. The recognising authority will take the association’s past activities into account for its assessment.

Promotion of public-benefit purposes is evaluated on the basis of the German Tax Code (Abgabenordnung). An association promotes public-benefit purposes if it acts in
a disinterested way, meaning that it does not pursue any commercial goals. The association can demonstrate the promotion of public-benefit purposes by submitting a certificate of tax exemption issued in Germany by tax offices. For a foreign NGO such proof will not be available. A foreign NGO, and also a domestic NGO, can present instead any other documents that show its pursuit of the public good, for example its bylaws and accounting books.

According to the so called Everybody Principle an association must allow any person who supports its objectives to become a member. The term member is defined in the law as a person with full voting rights in the general meeting of the association. An exemption exists for umbrella organizations, i.e. associations whose membership consists predominantly of associations. Umbrella organizations must demonstrate that its member associations fulfil the requirement of the Everybody Principle.

As mentioned above an NGO which meets the general criteria is granted recognition for the Environmental Appeal pursuant to Art. 2 EnvAppA.

To be granted recognition also for the NGO litigation rights in the field of nature conservation associations must fulfil an additional criterion. Pursuant to Art. 3 para. 1 sentence 3 EnvAppA the main emphasis of an association must be on encouraging the objectives of nature conservation and landscape preservation. The criterion will be met if the organization demonstrates that among its environmental protection objectives it is specialized or has at least a major part of its activities in the field of nature conservation.

The Federal Environment Agency may issue the recognition for the specific litigation rights in the field of nature conservation only in agreement with the Federal Agency for Nature Conservation.

V. Statements in the administrative recognition decision pursuant to Art. 3 para. 1 sentence 3 EnvAppA

In the administrative recognition decision the competent authority must state whether the association has a main emphasis on encouraging the objectives of nature conservation and landscape preservation. With that statement the NGO is granted recognition also for the NGO litigation rights in the field of nature conservation.

Furthermore the competent authority must indicate the field of activity according to the bylaws to which the recognition applies. That statement determines the area of
application of the recognition. Legal action by a recognized NGO on the basis of either type of NGO litigation rights - pursuant to Art. 2 EnvAppA or nature conservation law - will only be admissible if an administrative decision affects the NGO in a field of activity (of environmental protection or nature conservation) which is referred to in the recognition.

VI. More Information
More English-language information on these issues is available on the website of the Federal Environment Agency:


Aarhus-Convention National Implementation Report Germany: