Access to justice in environmental matters

Estija

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I. Constitutional Foundations

The Estonian Constitution does not provide a right to environment with a certain quality that could be relied on by individuals in courts or in administrative proceedings. It states, however, that everyone is obliged to preserve the environment and compensate damage caused to it (Section 53). Natural resources are considered to be national treasures and, as such, must be used economically according to Section 5. The Constitution states that everyone has the right to be protected by the state and its laws. According to Section 15, everyone has the right to access to justice if their rights and freedoms are being violated. Legislation and different actions may be challenged as unconstitutional and the courts are obliged to review such challenges. Section 24 provides more detailed rules for judicial (court) proceedings. Court hearings are generally open to the public and decisions are made publicly available. Proceedings cannot be transferred to a court other than that prescribed by the law if one of the parties to a dispute does not agree with it. Everyone has the right to attend court proceedings they are a party to as well as the right to appeal to a higher court according to conditions provided by legislation.

Parties to administrative or judicial procedure may rely directly on international agreements, if:

these are sufficiently precise (provides all necessary details), and;

there is no national legislation on the matter, or;

national legislation contradicts the international agreement.

Administrative bodies and courts have also applied the Aarhus Convention and its rules on access to justice directly in the absence of national legislation on a certain issue (e.g. standing). This has been done by the Supreme Court (decision No 3-3-1-43-06) as well. New Code of Administrative Court Proceedings (applicable as of 1 January 2012) contains rules on access to justice (particularly standing) by environmental protection NGOs based on court practice in the matter.

II. Judiciary

Estonian court system has three levels (lower to higher):

administrative courts and county courts;

district courts (Tallinn and Tartu);

Supreme Court.

On the lowest level, administrative cases, i.e. cases against activities of public administration (this includes the majority of disputes in environmental matters) are discussed in a specialized court. On the next two levels, the same courts hear administrative, civil, disputes based on private law, and criminal cases. District court and Supreme Court judges, however, specialize in one of the three fields (i.e. administrative, civil or criminal law). On the lowest level of courts (administrative and county courts), the courts are divided into courthouses – there are 4 courthouses for administrative courts and 15 for county courts (one for each county in Estonia). Constitutional Review Chamber of the Supreme Court reviews the constitutionality of legislation and the decisions of:

the Parliament (*Riigikogu*);

Board of the Parliament;

President of Estonia and

electoral committee

Review of constitutionality of legislation or above-mentioned decisions can be initiated by:

any court;

President of Estonia;

Chancellor of Justice (ombudsman);

a council of a local government (municipality), or

Parliament.

Individuals do not have the right to directly initiate the constitutional review of legislation. They can, however apply for review in a court case in another court proceeding or individuals can turn to the Chancellor of Justice. Constitutionality of the above-mentioned decisions, on the other hand, may be challenged directly by individuals whose rights are affected by the decisions. Courts are the main independent bodies for dispute resolution; there are only a limited number of arbitral tribunals in addition to them. There are no tribunals or other bodies of dispute resolution in environmental matters other than courts. The Estonian judiciary is independent. Judges of administrative courts, county courts and district courts are appointed by the President of Estonia based on

proposals made by the judges of the Supreme Court. Judges of the Supreme Court are appointed by the Parliament. Dispute resolution in Estonian courts is mostly adversarial, i.e. the court will decide that one of the parties is (at least partly) right and the other has (at least partly) done something illegal. In civil and administrative matters, parties can also reach an agreement in the court. Mediation by court is also an option for administrative matters (not available in criminal matters) if all parties to a dispute agree to use it.

There are no special courts, tribunals etc. that would specialize in environmental matters. Mostly, environmental disputes involve an activity of some public administration body and are therefore heard firstly in administrative courts and then by specialized judges in district courts and the Supreme Court. If a person or company has seriously damaged the environment or breached important obligations aimed at protecting the environment (e.g. has illegally handled waste and created a danger to the environment by it), criminal charges can be brought by the Prosecutor’s Office. Criminal cases are first heard in county courts, then in district courts and finally in the Supreme Court by judges that have specialized in these matters. Forum shopping, i.e. choosing a court most favorable to the person who files an action with a court, is limited in environmental matters in Estonia. An administrative case is heard by the court in whose jurisdiction the administrative body whose activity is challenged (the respondent) is located. If there are two or more respondents located in the jurisdiction of different courts, the person filing the action is allowed to freely choose between these courts, unless rules for exclusive jurisdiction favoring one of the courts are found in the Administrative Court Proceedings Act. Administrative court that receives an action by a person must firstly check whether the action has been filed with the right court. If the action was brought to a wrong court, that court will transfer it to the correct one.

If the person who files an action or the respondent is not satisfied with the judgment (*kohtuotsus*) of the administrative court (1st instance court) it may appeal to the district court (2nd instance). The right to appeal to district court can also be used by a person who did not file the initial action, but to whose rights the decision of court of first instance has an impact. The same persons have the right to appeal to the Supreme Court (3rd and final instance) if they are not satisfied with the judgment made by the district court. For appealing, the person filing an appeal must reason it by demonstrating that the lower court has:

applied (substantive) legislation incorrectly;

significantly breached rules of the court procedure, or

not made proper use of evidence (this can be used for reasoning an appeal to district court, but not to the Supreme Court).

In some situations a court may end the proceedings with a court ruling (*kohtumäärus*) instead of a judgment. In such a situation, an appeal on court ruling may be filed by the person affected by the ruling with the court which made it. That court will consider the appeal and may satisfy it; if it finds the appeal to fulfill all requirements, but does not agree with its content, appeal on court ruling will be transferred to the district court for review. In this case, appeals on court rulings of the first instance courts (administrative courts) are resolved by a court ruling of the district court. Appeal on such court ruling as well as other court rulings by district courts (2nd instance courts) may be filed with the Supreme Court by persons affected by the court rulings.

When making a judgment about administrative decisions, Estonian courts are entitled to review the legality of an administrative decision and annul the decision as a whole or a part of it. The courts are not entitled to change the content of administrative decisions; this can be done by the administrative bodies if they decide to make a new decision in the matter. The court may also require the administrative body to undertake a certain activity or make a decision, but cannot prescribe the exact content of such activity or decision if there is room for discretion on behalf of the administrative body. There are a few specificities in environmental matters compared to judicial procedures in other administrative law cases, concerning:

access to justice (legal standing) and

right to challenge procedural acts (*menetlustoimingud*) of administrative bodies.

Firstly the Code of Administrative Court Procedure contains a special provision (Section 292) on the standing in environmental matters. According to the rules contained in that provision, legal standing of environmental NGOs is presumed, if the activity of the administrative body challenged is related to the environmental protection goals or previous activity of such NGO. According to the definition, an environmental NGO is:

a non-profit organization, for which environmental protection is a statutory goal and whose activities are aimed at promoting environmental protection;

an association of persons that is not a separate entity that according to a written contract of association is promoting environmental protection and represents the views of a substantial proportion of local people.

Promotion of environmental protection is used in a wider sense, including protection of elements of nature for the purposes of protection of human health and research and education in the field of natural cultural heritage. Secondly, the opportunity to challenge procedural acts of administrative bodies is wider in environmental matters. Procedural acts (*menetlustoimingud*) are activities of administrative body carried out in preparation of the final decision – administrative act (*haldusakt*), e.g. EIA screening decisions. You can challenge procedural acts in two cases according to Section 45(3) of the Code of Administrative Court Procedure:

your rights (other than procedural rights) are infringed independently of the final decision;

illegality of the procedural act would unavoidably lead to a final decision or other activity infringing your rights

Earlier practice of the Supreme Court recognized that environmental law is an area of law where procedural rules have a significant role in reaching a lawful decision; therefore procedural acts can in principle be challenged. Whether one of the two conditions necessary for challenging procedural acts is fulfilled will be decided on case-by-case basis.

In administrative matters (including environmental matters) courts may take a number of actions from their own motion. Firstly, courts are obliged to ensure that all circumstances relevant to the case shall be investigated. If necessary, the court may gather evidence on own motion. Courts may include third parties to dispute, if they find that the rights of such persons may be impacted by the judgment. Courts may also from their own motion change the due dates for procedural acts that have to be undertaken by parties (e.g. provide a translation of a document, reply to the action etc.), make an additional judgment that specifies or supplements the initial judgment or apply injunctive relief.

III. Access to Information Cases

If an administrative body refuses to disclose information requested by you, it must notify you of its decision and its reasoning within 5 working days. This period can be extended to 15 days if your request must be specified or gathering information is time-consuming. Refusals to disclose information on request are considered to be administrative acts and must contain information on the possibilities, place, time and procedure for challenging the refusal, according to the Administrative Procedure Act Section 57(1). In case you request access to environmental information and are refused of access or you are wrongfully /inadequately answered, you have the right to:

a) file a challenge with the Estonian Data Protection Inspectorate or;

b) file an action with the administrative court.

In both proceedings, you have the right to challenge the legality of the refusal or deficient answer and seek the annulment of the decision and/or request to make a new decision. Filing a challenge with the Estonian Data Protection Inspectorate does not prevent you from later filing an application with the court to challenge either the initial refusal or wrongful/inadequate answer or the decision taken by the Inspectorate on your challenge. In order to file a challenge with the Estonian Data Protection Inspectorate, you have to make an oral or a written statement within 30 days of the date you were informed of the refusal etc. Oral challenges will be recorded by the Estonian Data Protection Inspectorate. The challenge must include a number of elements, e.g. name and contact information of the person filing a challenge, reasoning of the challenge, clear claim etc. (full list of elements required is found in Section 76 of the

Administrative Procedure Act). You may file an action with the administrative court by mail, by bringing the written action to the courthouse or via electronic means (e-mail or electronic information system (E-toimik)). Different deadlines apply depending on the remedy sought:

30 days in case a person seeks annulment of the decision to deny the request;

1 year if the person seeks an answer because of delay by the administrative body;

3 years if the person wants the court to declare the activity of the administrative body illegal (declaration of illegality, however, does not lead to automatic annulment of the decision).

For both challenges with Estonian Data Protection Inspectorate and actions with administrative courts, you may use a legal representative (or counsel) but this is not required. Courts (as well as the Estonian Data Protection Inspectorate) have access to information that is the object of dispute. This is necessary for evaluating the legality of the activities of the administrative body in question. Courts can not disclose such information on their own but they can require the information to be disclosed if no grounds for restrictions (e.g. threat to national security or protected species) exist.

IV. Access to Justice in Public Participation

Administrative procedures in environmental matters are usually held as open proceedings. This means that the general public will be informed of such proceedings and the application for an administrative act and the draft act will be made available to the public. In cases of environmental permits and EIA proceedings, everyone is entitled to make oral or written comments. In other proceedings, you have the right to make comments if you have a legitimate interest in the matter or your rights may be affected by the administrative act. In more important cases, a public hearing will also be organized. General rules of open administrative proceedings are found in Sections 46-50 in the Administrative Procedure Act. Further specifications of administrative procedures in environmental matters are found in many special Acts which concern environmental permits, environmental impact assessment and spatial planning, e.g. Ambient Air Act, Water Act, Environmental Impact Assessment and Environmental Management Systems Act, Spatial Planning Act etc.

If you are not satisfied with an administrative decision, you may either file an action with a court or file an administrative challenge (*vaie*). Administrative challenges are reviewed by the supervisory administrative body of the initial decision-maker. In some cases, the appeals are reviewed by the same body that made the initial decision, namely if:

the administrative body is under direct control of a minister;

the law does not provide a supervisor to that administrative body.

Administrative challenges are optional, i.e. you do not need to submit them in order to be allowed to file an action with the court later. You are, however, entitled to still file an action with the court after the administrative challenge has been reviewed and you are not satisfied with the decision made. Courts review both the substantive as well as procedural legality of administrative decisions. Review of procedural legality means that courts will check whether your procedural rights have been infringed. This can in some cases be also the basis for annulment of decisions made in the end of such proceedings (if procedural irregularities may have influenced the decision). Review of substantive legality means that courts check whether laws were correctly applied by the administrative body when making the challenged decision. Courts are also entitled to check whether the data used by the administrative bodies as the basis for their decisions was correct and whether the administrative bodies had gathered all information necessary. Additionally, courts can review whether the decisions are proportional and no evident errors of discretion have been made, e.g. priority is given to economic interests without any or almost no regard to conflicting social or environmental interests. On the other hand, if no evident errors of discretion are made, the court cannot decide whether discretion was used in the best (most purposeful, efficient etc.) way.

You can challenge spatial plans of different levels (national, county, comprehensive and detailed plans) in administrative courts. All members of the public have standing in courts to challenge them; additional criteria usually applicable in administrative court proceedings (most importantly infringement of your rights) are not applied. To challenge a decision you must file an action with an administrative court, where the usual administrative court proceedings will be carried out. You may use a representative (or counsel) in the court proceedings, but this is not compulsory. When reviewing a spatial planning decision, the courts will check whether the decision was lawful, i.e. administrative procedure was carried out correctly and all other (substantive) laws were applied correctly. Courts shall also evaluate whether the administrative body had all necessary data and took all relevant considerations into account. As administrative bodies have a wide margin of discretion in spatial planning matters, the courts cannot annul a decision on the grounds of efficiency, purposefulness etc. unless an evident mistake of discretion was made. This would for example be the case when the administrative body gives priority to economic considerations without any or almost no regard to nature protection needs without proper explanation.

Injunctive relief (provisional protection of persons' rights) can be applied by the court at any stage of the court proceeding. Only general rules on injunctive relief apply to cases concerning spatial plans. Courts may apply injunctive relief based on an application of one of the parties to a dispute but also from own motion. At the same time it is only applied cases where the enforcement of the judgment is threatened, e.g. the activity of the permit holder would change /damage the environment irreversibly. No special rules apply for injunctive relief in cases concerning IPPC permits.

EIA screening decisions (decisions on whether or not to initiate EIA process) are considered to be procedural acts (*menetlustoimingud*).This means you can only challenge them separately from final decisions (e.g. environmental permits), if:

they infringe your rights (other than procedural rights) independently of the final decision;

illegality of the procedural act would unavoidably lead to a final decision or other activity infringing your rights.

According to recent case law of the Supreme Court (e.g. cases 3-3-1-63-11 and 3-3-1-101-09) EIA screening decisions can be separately challenged only if the administrative body had a legal obligation to initiate the EIA process. If the screening decision was based on discretion (i.e. administrative body had the option to initiate the process) it cannot be challenged separately from the final decision (e.g. ambient air pollution permit or IPPC permit). For challenging an EIA screening separately, you must file an action with an administrative court, where the usual administrative court proceedings will be carried out. To have standing in the court, you must demonstrate that your rights are infringed or your legitimate interests are directly concerned. Infringement of the rights of environmental protection NGOs is presumed. Courts will check if the procedure was carried out correctly and the decision was made in accordance with the law. Courts are limited in their review of discretion of administrative bodies to evident misuses only.

EIA scoping decisions (decisions about content and extent of EIA) are considered to be procedural acts (*menetlustoimingud*). This means you can only challenge them separately from final decisions (e.g. environmental permits), if:

they infringe your rights (other than procedural rights) independently of the final decision;

illegality of the procedural act would unavoidably lead to a final decision or other activity infringing your rights

For challenging EIA scoping separately, you must file an action with an administrative court, where the usual administrative court proceedings will be carried out. To have a standing in the court, you must demonstrate that your rights are infringed or your legitimate interests directly concerned. Infringement of the rights of environmental protection NGOs is presumed. Courts will check if the procedure was carried out correctly and the decision was made in accordance with the law. Courts are limited in their review of discretion of administrative bodies to evident misuses only.

Final EIA decisions (approval of the EIA statement by administrative body) are considered to be procedural acts (*menetlustoimingud*). This means you can only challenge them separately from final decisions (e.g. environmental permits), if:

they infringe your rights (other than procedural rights) independently of the final decision;

illegality of the procedural act would unavoidably lead to a final decision or other activity infringing your rights
Development consents are issued separately from approval of EIA statements and are considered administrative acts that can be challenged in courts if they infringe your rights. To challenge the EIA decisions separately or to challenge the final development consent, you must file an action with an administrative court, where the usual administrative court proceedings will be carried out. To have a standing in the court, you must demonstrate that your rights are infringed or your legitimate interests directly concerned. Infringement of the rights of environmental protection NGOs is presumed. You may use a representative (or counsel) in the court proceedings, but this is not compulsory. You do not need to actively participate in the public consultation, make comments etc. to have a standing, if your rights are being infringed directly. However, in practice, active participation in the proceedings might be important to challenge smaller, less evident deficiencies with the EIA procedures and EIA statement. Therefore, you should participate as early in the decision-making as possible. Infringements of procedural rights do not, however, give you the right to challenge EIA screening, scoping or approval decisions, as these are procedural acts (*menetlustoimingud*). Courts will check if the procedure was carried out correctly and the decision was made in accordance with the law. Courts are limited in their review of discretion of administrative bodies to evident misuses only. When reviewing EIA decisions separately or with the development consents, courts are also allowed to verify the material and technical findings. However, they cannot replace the content of the administrative act but are only allowed to annul it if these findings are considered to be incorrect.
Injunctive relief (provisional protection of persons' rights) can be applied by the court at any stage of the court proceedings and, in principle, also in cases concerning EIA according to the general rules. Courts may apply injunctive relief based on an application of one of the parties to a dispute but also from own motion. However, courts apply injunctive relief only in cases where the enforcement of the judgment is threatened, e.g. irreversible harm caused to the environment. As final EIA decisions do not allow a person to start with a development that might harm the environment (for carrying out activities, a permit has to be issued based on the final EIA decision), courts do not usually apply injunctive relief in such proceedings.
You can challenge decisions to issue IPPC permits by the Environmental Board (*Keskkonnaamet*) in administrative courts. To have a standing in court, you must show that the decision infringes your rights; for environmental protection NGOs, infringement of rights is presumed. To challenge a decision you must file an action with an administrative court, where the usual administrative court proceedings will be carried out. You may use a representative (or counsel) in the court proceedings, but this is not compulsory. You do not need to actively participate in the public consultation, make comments etc. to have a standing, if your rights are being infringed directly by the decision. On the other hand, if you do and your procedural rights are infringed, this would be a separate ground for having a standing in Estonian courts. Also, in practice, participation in administrative proceedings might be important to challenge smaller, less evident breaches of law. Therefore, you should participate as early in the decision-making as possible. Courts will check if the procedure was carried out correctly by the Environmental Board and the decision to issue the IPPC permit was made in accordance with the law. Courts are also allowed to verify the material and technical findings etc. However, they cannot replace the content of the decision to issue permit or the permit itself but are only allowed to annul the decision if they consider it to be unlawful. Annulment of the decision would also make the issued permit invalid. Injunctive relief (provisional protection of persons' rights) can be applied by the court at any stage of the court proceeding. Only general rules on injunctive relief apply to cases concerning IPPC permits. Courts may apply injunctive relief based on an application of one of the parties to a dispute or from its own motion. At the same time it is only applied in case the enforcement of the judgment is threatened, e.g. the activity of the permit holder would change/damage the environment irreversibly. No special rules apply for injunctive relief in cases concerning IPPC permits.

V. Access to Justice against Acts or Omissions

In environmental matters, you can submit a claim to court directly against private individuals or legal entities only for compensation of damages or to protect your property rights. These claims are regulated by acts of private law, mainly the Law of Obligations Act and Law of Property Act. Claims for damages and protection of property are in the first instance heard by the county courts. If damage is caused to you by environmentally hazardous activities, you can claim compensation for:
damages to yourself (health damages etc.);
damages to your property;
damages caused by deterioration in environmental quality;
expenses related to containing the damage;
expenses related to mitigation of consequences of damage;
damage arising from application of mitigating measures.
You are entitled to non-contractual damage if damage was caused unlawfully and the person is culpable, i.e. damage was caused by negligence or intentionally. In some cases, strict liability is applied, i.e. damages are awarded even if the person did not cause damages negligently or intentionally. To protect your property, you may claim elimination of any breach of your property rights.
If an environmental matter is related to an administrative decision, you may submit a claim (an action) to an administrative court directly against the state body that made the decision (e.g. Environmental Board). In such procedures, you may claim:
annulment of the whole or part of the administrative act (final decision);
issuing of an administrative act or performance of an activity;
prohibition of issuing an administrative act or performance of an activity;
damages caused under public law;
elimination of unlawful consequences of an administrative act or activity;
establishment of nullity of an administrative act, unlawfulness of an administrative act or activity or other factual circumstances related to a public law relationship.
It is important to note that annulment of an administrative act by a court terminates it and therefore it will no longer create rights and obligations. Establishment of unlawfulness of an administrative act by court, on the other hand, does not terminate it automatically – the act must be repealed by the administrative body itself.
In environmental liability matters the authority that identifies the damage and persons responsible and is entitled to take necessary measures, is the Environmental Board. The Ministry of Environment is responsible for notifying authorities of other Member States of the EU in cases where the damage has a cross-border nature. To enforce environmental liability you should first file a request for action to the Environmental Board. Requests for action may be submitted if:
you are affected or may be affected by the damage to the environment;
you have legitimate interest in the matter; or
your rights are infringed by the damage to environment or threat thereof.
For environmental NGOs, infringement of rights and legitimate interests are presumed. If the Environmental Board refuses to take action and you want to enforce environmental liability in courts, you must first exhaust all administrative proceedings. This means that you must submit an administrative challenge (*vaie*) to the Ministry of Environment within 30 days. The Ministry will give its decision on your challenge within 30 days. After you have exhausted the

administrative challenge proceedings you may submit a claim to the administrative court. In order to challenge the decision made on your request for action, the decision must either infringe your rights or concern your legitimate interests. The courts are entitled to demand that the Environmental Board enforces your request for environmental liability.

VI. Other Means of Access to Justice

If a person breaches environmental law, criminal proceedings may be initiated by the state authorities. Penalized acts are divided into two categories:
misdemeanors; and
criminal offences.

Misdemeanors in environmental matters handled by the Environmental Inspectorate (*Keskkonnainspektsioon*) whereas criminal charges are brought to courts by the Prosecutor's Office (*prokuratuur*). If you wish to challenge activity, inactivity or omission of a public authority, you have the right to file an administrative challenge (*vaie*). Administrative challenges are mostly an optional alternative to actions with courts; they do not have to be exhausted before filing an action. In some cases, however, e.g. in the field of environmental liability, administrative challenges must be used before you may file an action with the court. If you find that a legislative act is unconstitutional or some activity, inactivity or omission of a public authority infringes your constitutional rights, you may also file an application with the Chancellor of Justice (*õiguskantsler*). The Chancellor of Justice reviews the constitutionality of the legislative act or activity of a public authority and is entitled to make recommendations and proposals aimed at solving the situation.

The Chancellor of Justice is an independent official who performs two functions: he is both the general body of petition (against public authorities) and the guardian of constitutionality, reviewing legislative acts. If you find a legislative act (either national or local government's) to be unconstitutional, you may submit an application to the Chancellor of Justice. The Chancellor is entitled to:
propose that the issuer of legislation brings it into conformity with the Constitution;
submit a memorandum to the preparer of legislation (if the legislation is still being drafted);
submit a report to the Parliament (Riigikogu) to bring out the problems.

If you find that your constitutional rights have been infringed by a public authority, you may also submit an application to the Chancellor of Justice. The Chancellor is entitled to make:
a recommendation to act in a legal way and follow the principles of good administration;
a suggestion to eliminate the violation.

If the recommendations or suggestions are not taken into account, the Chancellor of Justice may submit a report to the supervisory authority of the agency in question, the Government of the Republic and the Parliament (*Riigikogu*). Recommendations and suggestions are final and cannot be challenged in courts. Although they are not legally binding to the authority in question, they are usually taken into account by either public authorities addressed or their supervisors.

Environmental Inspectorate is the main state agency responsible for enforcement of environmental law. This includes investigation of misdemeanors and criminal offences committed by persons or companies in the field of environmental law. In the case of misdemeanors, the Environmental Inspectorate also has the right to impose fines. For misdemeanors, detention (*arest*) may also be imposed by the courts on the applications by the Environmental Inspectorate. If you detect environmental pollution or incident, you should notify the Environmental Inspectorate, who will then investigate the matter.

Prosecutor's Office has the exclusive right to bring charges for criminal offences committed by persons or companies to courts. This is also the case for environmental crimes; the investigation of such crimes is carried out by the Environmental Inspectorate. For criminal offences, financial penalties (*rahaline karistus*) or imprisonment may be imposed by the courts. Private prosecution is not available in Estonia; criminal charges may only be brought to courts by the Prosecutor's Office. This applies also in the field of environmental law.

VII. Legal Standing

According to the Administrative Procedure Act and Code of Administrative Court Procedure, the following general rules are used to determine who is entitled to challenge activities of public authorities. These rules do not apply to challenging spatial planning decisions, which can be challenged by anyone on the grounds of illegality.

Legal Standing	Administrative Procedure	Judicial Procedure
Individuals	Breach of individual rights or restriction of individual freedoms by activity of public authorities. Rights or freedoms may arise directly from the constitution or other laws.	Breach of individual rights by activity of public authorities. In environmental matters, persons being directly concerned by the administrative activity may also file an application. Direct concern must be related to the legitimate interests of the person; activity of the public authority must have a significant and real impact on such interests.
NGOs	Breach of individual rights or restriction of individual freedoms by activity of public authorities. Rights or freedoms may arise directly from the constitution or other laws. For NGOs in the field of environmental protection, breach of rights or freedoms should be presumed.	Breach of individual rights by activity of public authorities. In environmental matters, persons being directly concerned by the administrative activity may also file an application. Direct concern must be related to the legitimate interests of the person; activity of the public authority must have a significant and real impact on such interests. For NGOs in the field of environmental protection, breach of rights or direct concern is presumed.
Other legal entities	Breach of individual rights or restriction of individual freedoms by activity of public authorities. Rights or freedoms may arise directly from the constitution or other laws.	Breach of individual rights by activity of public authorities. In environmental matters, persons being directly concerned by the administrative activity may also file an application. Direct concern must be related to the legitimate interests of the person; activity of the public authority must have a significant and real impact on such interests.
Ad hoc groups	Ad hoc groups are only entitled to challenge administrative activity in environmental matters and if they are active in the field of environmental protection. Breach of rights or freedoms is required, but also presumed for such ad hoc groups to have standing in administrative challenge procedures.	Ad hoc groups are only entitled to file actions with courts in environmental matters and if they are active in the field of environmental protection. Breach of rights or direct concern is required, but also presumed for such ad hoc groups to have standing.
foreign NGOs	Breach of individual rights or restriction of individual freedoms by activity of public authorities. Rights or freedoms may arise directly from the constitution or other laws.	Breach of individual rights by activity of public authorities. In environmental matters, persons being directly concerned by the administrative activity may also file an application. Direct concern must

			be related to the legitimate interests of the person; activity of the public authority must have a significant and real impact on such interests. For EU-based NGOs in the field of environmental protection, breach of rights or direct concern is presumed in fields regulated by EU law (e.g. IPPC, EIA) according to the non-discrimination principle.
Any other	State authorities may not challenge the activity of other state authorities, as they are not separate legal entities. At the same time, local municipalities may challenge activity of other public authorities if their rights are breached or freedoms restricted. Same applies for other public legal persons (e.g. universities, public foundations etc.)	State authorities may not challenge the activity of other state authorities, as they are not separate legal entities. At the same time, other public legal persons (e.g. universities, public foundations etc.) may challenge activity of other public authorities if their rights are breached. Local municipalities may also challenge activity of other public authorities if their rights are breached or the challenged activity hinders of impairs the fulfillment of their functions.

Most of sectoral and procedural legislation in the field of environmental law does not contain special provisions on legal standing. This is also the case in the field of environmental impact assessment and integrated pollution prevention and control. Therefore, you are eligible for filing an action according to general rules found in the Code of Administrative Court Procedure. Special rules are, however, found in the field of spatial planning. In spatial planning matters, legal standing rules are different than in other areas of administrative law, including environmental laws. According to the Spatial Planning Act, you are entitled to file an action with the administrative court to challenge the decision to establish a spatial plan if:

your rights have been infringed or your liberties restricted;

you consider the decision to be contrary to laws or other legal acts.

This means that you can challenge the final administrative decision regarding a spatial plan on the grounds of legality, without demonstrating concern. The Chancellor of Justice is considered to be a separate legal entity; therefore it has the right to challenge activity of public authorities to protect its own rights by means of both administrative challenges and by filing an action with the court. In addition to it, the Chancellor of Justice has the right to initiate disciplinary proceedings against judges. Disciplinary proceedings may be brought if the judge has unlawfully not fulfilled its professional duties or has fulfilled them inappropriately. Disciplinary proceedings are discussed by a Disciplinary Chamber consisting of judges from different levels of the court system. Public prosecutors have exclusive standing in criminal proceedings, i.e. only they may bring charges for criminal offences (*kuriteod*). The Environmental Inspectorate has legal standing in courts in case of environmental misdemeanors (*väärteod*). For misdemeanors, the Inspectorate may impose fines on their own; detention on the other hand can only be imposed by courts on the application of the Inspectorate.

VIII. Legal Representation

In court proceedings on environmental matters you may choose to represent yourself, or use a professional legal representative. You may contract the following persons to represent you in courts:

advocates (*advokaat*) who belong to the Estonian Bar Association;

persons with higher legal education, i.e. persons who have obtained at least a Masters' degree in Law or equal qualification.

Only sworn advocates may represent you in the highest court – Supreme Court of Estonia. Legal representatives are entitled to act on your behalf and represent you even in your absence. At the same time you may also restrict the powers of your contractual representative. Restriction of powers is considered by the court only if you notify the court and other parties of it. Courts only take into account restrictions to:

end the proceedings with a compromise; or

waive an action.

You may also use counsels in court proceedings on environmental matters. Unlike legal representatives, legal counsels are generally not allowed to act on your behalf and without your presence. However, they are entitled to take part of the proceedings with you and also make statements and claims etc. Such statements, claims etc. are attributed to you, unless you immediately correct them. Courts will also explain this right to you if you decide to use a counsel. A list of all law offices associated with the Estonian Bar Association sorted by their location can be found here. Several more prominent law offices also list environmental law as a field in which they offer legal services (including representation), e.g.:

Glimstedt

Maria Mägi

Sorainen

Varul

Raidla Lejins & Norcus

Legal assistance (including representation) in environmental matters is also provided by Estonian Environmental Law Centre. The latter is a public interest NGO; therefore they do not provide legal assistance in cases where this would be contrary to public interests.

IX. Evidence

In environmental matters, just like in other administrative matters, you are supposed to provide evidence that supports your claims. You should provide evidence either with your action or in the preliminary proceedings (before hearing of the matter) the latest. If you are unable to provide evidence (e.g. when data is held by a private person who refuses to share it), you should explain why this is not possible and where the evidence could be found. If the courts find that there is not enough evidence, they may either ask you to provide it or gather it on their own. If you do not provide evidence to support a claim and the court is unable to gather evidence on its own, the court may decide that your claim is unsubstantiated. No type of evidence is in principle preferred by the court. Also, parties may not limit the types of evidence admissible or give priority to some type of evidence. All evidence is evaluated from all perspectives, as a whole and objectively, taking also into account the links between different evidence. Judges make the final decision on whether a claim has been proven by the evidence based on their conscience. You should provide evidence during the preliminary proceedings (before the hearing of the matter) at the latest. You may introduce new evidence after court has started the hearing only in the following exceptional cases:

the court does not organize a court session (e.g. in written proceedings) and no deadline for providing evidence was set before the hearing started;

providing new evidence does not delay the court proceedings; or

you can prove you had a good reason for delay.

Courts may request a party to the proceedings or its employee, any public authority, insurance company or credit institution (e.g. bank, investment fund) to provide information that is necessary for solving the dispute and is presumed to be in the hands of that person. Courts will set a deadline and the persons are obliged to provide information within that time. If they breach that obligation, the court may impose a fine. If you want to use an expert opinion in court proceedings as evidence you may contract an expert and provide his/her opinion as evidence. Alternatively, you may also ask the court to organize an expert opinion in the preliminary proceedings (before the court hearing). Courts may ask for an expert opinion to determine an issue that is important for the case

and requires expert knowledge. Expert opinions are treated as other types of evidence, i.e. they are evaluated together with other relevant information to determine whether a claim has been proven or not. Therefore they are not directly binding on judges. On the other hand, the courts may not challenge the results of the expert opinion on their own motion.

X. Injunctive Relief

If you challenge an administrative decision either in court or by means of administrative challenge (*vaie*), it does not automatically affect its legal effect. This means that despite the challenge, the decision may still be executed. For example, if the decision allows a company to emit pollutants in the ambient air, it may do so even if you have filed an action against the decision with a court. Administrative decisions may in principle be executed from the moment they become valid. If the decision does not have to be announced publicly, it will become valid as soon as the person to whom it is addressed is notified. If the decision has to be announced publicly, it usually becomes valid on the 10th day after publication. Challenging the act either by means of administrative challenge (*vaie*) or in court does not automatically affect the validity of the decision. This means that they can be executed immediately once they have become valid. If you challenge an administrative decision regarding and environmental matter in court you may apply for injunctive relief. At the same time, injunctive relief can at any time be applied by the court on its own motion as well. Injunctive relief can take many forms – you may apply for the court to:

suspend the validity or execution of the administrative decision;

prohibit the administrative body to make the challenged decision;

require the administrative body to make the challenged decision;

seize assets;

prohibit the person addressed by the decision (e.g. mining company that received a mining permit) to carry out activities regulated in the decision or oblige them to carry them out or set additional obligations to that activity, e.g. provide securities to you.

If you choose to challenge an administrative decision by means of administrative challenge (*vaie*), you may also apply for injunctive relief to be applied by the court. You can apply for injunctive relief at any time during court or administrative challenge proceedings (*vaie*), so there is no deadline. You do not have to provide any security for possible damages or economic loss that may result from application of the injunctive relief. At the same time, you have to pay a state fee for the application. In your application for injunctive relief you would have to provide at least the following:

object of the dispute;

reasons for applying (circumstances that necessitate it);

preferred measure of injunctive relief;

your personal identification and contact information.

Injunctive relief is only applied by the courts if protection of your rights or achievement of the goal of your challenge would otherwise be impracticable or impossible. Courts will make a decision on injunctive relief by a court ruling. You can challenge this court ruling by filing an appeal within 15 days of its delivery. You should address the appeal to the district court but file it with the administrative court that made the decision you are challenging. The administrative court will consider the admissibility of the appeal and prepare the review of it in the district court or satisfy it on its own.

XI. Costs

If you wish to file an action with the court you should take into account two categories of possible costs: court expenses (*kohtukulud*) and extrajudicial expenses (*kohtuvälised kulud*). Court expenses are costs that are essential for hearing the matter, i.e. state fee (*riigilõiv*), security and costs essential to the proceeding (e.g. costs related to witnesses, experts, obtaining evidence etc.). Extrajudicial expenses are costs that are not essential for hearing the matter, e.g. fees for legal advisers and contractual representatives, travel costs of participants of the proceeding, wages not received because of the dispute etc. If you wish to start a case against an administrative decision, you should pay the respective state fee. You should pay another fee for appealing to the district court on a judgment or court ruling of the administrative court. More information can be found here.

XII. Financial Assistance Mechanisms

Administrative courts can exempt you from paying state fees and security as well as costs essential for the proceeding (e.g. costs related to witnesses, experts, obtaining evidence etc.). You can be exempted from these costs as a whole or only partially. Another option is that you do not have to pay them in advance at once (as is the rule), but can pay for them in installments. To receive an exemption you need to apply for it. In the application, you have to provide following information:

proceedings for which exemption is applied for;

your role in these proceedings as well as your main claims;

basis for your claim or objection.

If you apply for the exemption as a natural person (individual), you need to add a statement on your financial situation (as well as your family's) and other documents proving that statement. Forms for the statement and application for exemption together with additional information can be found on the web page of Ministry of Justice. The application must be written either in Estonian or in English. If you apply for the exemption as a representative of a legal person (organization) you need to add a copy of the statute of that organization and the certified copy of the previous year's annual report. After receiving the application and additional documents, the court will decide whether to exempt you from costs and to which extent. Exemption is granted only if you cannot pay for the costs due to your economic situation and your participation may be presumed to be successful. Exemptions will not be granted if:

you clearly do not have standing;

possible benefits to you from the judgment would not be proportional with the costs to the costs, or

your aims cannot be achieved with the challenge.

Direct financial assistance is not available for court proceedings. You can only be exempted from the costs that have to be paid in advance (see above) or receive state-funded legal assistance. In addition to being exempted from the costs you can also receive state-funded legal assistance. State legal assistance is provided by lawyers (Bar association members) who are initially paid by the state. This does not mean that the assistance would be unconditionally for free. In some cases, you still have to pay a part of the costs or do so in installments either before or after the judgment. The conditions to applications and review of applications are the same as for exemption of costs by court (see above). Additional forms and information can be found on the web page of Ministry of Justice. Law firms do not generally provide free legal aid, although there might be very exceptional cases. There are two main legal clinics where students of law provide legal assistance to the public for free – in Tallinn and Tartu. Neither of the legal clinics has defined the areas in which they provide assistance. At the same time, as students their knowledge of specific areas like environmental law might be restricted. In addition to students' legal clinics, "legal pharmacies" operate in Tallinn, Tartu and Jõhvi (currently known to do so until 15 December). Professional lawyers provide free legal assistance in them, but unfortunately none of them is specialized in environmental law. The Estonian Environmental Law Centre is a public interest environmental law organization that operates in Tartu. In the past they have provided free legal aid on a project basis to the public. In addition to it, they provide paid legal assistance in environmental matters to the public on a regular basis. More information on the conditions of the service can be found on their home page.

XIII. Timeliness

In Estonia, there is no generally applicable time limit for all administrative decisions. There are, however, specific deadlines for some types of decisions. For example, the Environmental Board is obliged to make a decision on application for integrated environmental permit within 120 days. If the administrative body sees that it cannot deliver its decision within the time provided in law, it should notify the requestor of the likely timeframe and give reasons for the delay. If your rights are infringed because of the delay, you are entitled to damages caused to you by delay or you may challenge the delay in an administrative court or by means of administrative challenge (*vaie*). In cases where this is so provided in the law, delay may be regarded as an implicit approval to an application for favorable decision (e.g. some permit). If you wish to file an action against an environmental administrative act, you should normally do this within 30 days. The deadline begins with the date on which you were notified of the decision. Exceptionally, the deadline in which you can file an action is three years, if:

you seek compensation for damages caused by an administrative body;

you seek elimination of illegal effects of an administrative act;

you wish that the administrative act would be declared illegal.

The court will firstly review the action and give you 15 days to amend or complete it if it contains minor shortcomings. When a court session is organized, the period between delivering you action to other parties and the session must be at least 30 days. You may submit new facts or requests after submitting an action only if they can be delivered to the other parties by the court at least 7 days before the court session. In case of written proceedings, they are allowed if they can be delivered to other parties at least 7 days before the due date for providing documents. The court must make and announce its judgment within 30 days of the last court session (of the due date for providing documents in case of written proceedings). In exceptional cases (e.g. when the volume of materials is exceptionally large or the case unusually complex) this deadline can be extended to 60 days. To file an appeal on the judgment made by the administrative court to the district court, you must do so in 30 days of its announcement. Appeals to Supreme Court on judgment of the district court also have to be submitted within 30 days. If you wish to challenge a court ruling, you must file an appeal within 15 days. As environmental matters can be quite different in their complexity, both factually and legally, it is hard to say how long the case will last. Another factor that makes it hard to assess how long environmental matters will take in a court is the limited practice in this field. However, average proceeding time in first instance courts in 2013 was following:

Civil cases – 168 days

Criminal cases – 262 days

Misdemeanour cases – 62 days

Administrative cases – 144 days

As environmental cases are rather complex compared to many other administrative law cases, they might take longer than the average brought out above. There is no particular deadline set for solving a case as such, only a very general requirement to solve it within “reasonable time”. However, there is a deadline for making a judgment after the court has gathered enough information. After the last court session or due date for presenting documents in case of written proceedings, the court is obliged to deliver its judgment within 30 days. Only exceptionally (e.g. when there is a large amount of materials or the case is extremely complex factually or legally), may this deadline be extended to 60 days. You may not appeal against a judgment only because it was delivered in delay. You also cannot apply for damages caused by the delay unless a judge has also committed a criminal offence (e.g. has accepted a bribe for delaying the judgment). However, disciplinary action may be taken against a judge, if it fails to deliver the judgment on time and does so either intentionally or out of negligence. Disciplinary action may be taken against a judge only by chairmen of administrative courts, district courts and Chief Justice of Supreme Court as well as Chancellor of Justice.

XIV. Other Issues

As a rule, challenging environmental decisions is only possible after the final decision – administrative act (*haldusakt*), e.g. environmental permit, spatial plan etc. – has been issued. Therefore, environmental decisions are usually challenged after the administrative procedure aimed at making an administrative decision that would affect individuals’ rights is completed. Complete, detailed and easily understandable information on access to justice in environmental matters is not available. Additionally, most of materials available have been compiled before the adoption of the new Code of Administrative Court Procedure and some information might be outdated. There are, however, a few sources of information that might be of some use:

information on filing an action with an administrative court, procedural rules etc. As there are only a very limited number of specifics in the field of environmental law (mainly less strict rules on legal standing), most of it is applicable (in Estonian);

advice on access to justice to *ad hoc* groups in environmental matters (in Estonian)

some advice on access to justice in environmental matters (in Estonian)

There are two official methods of alternative dispute resolution you can use in environmental matters. Firstly a court case may be brought to an end by means of a compromise. Secondly, conciliation as a specific type of proceedings is available as of 1 January 2012 (since the entry into force of the new Code of Administrative Procedure). Parties can reach a compromise as a result of extrajudicial negotiations between them. If the compromise would affect rights of third parties, their approval is also needed. In order to bring a case to an end by compromise, the court must approve it. Courts may refuse the approval if it is illegal, impossible to fulfill or infringes rights of third persons that have not been included in the proceedings. Conciliation is a special type of administrative court proceedings in which the parties solve a dispute by means of negotiations under the direction of a judge. Conciliation proceedings are only used if parties and third persons agree with it. You may decide to quit conciliation proceedings at any time; in that case the usual adversary proceedings will be used to resolve the dispute. Conciliation is only available in administrative courts – courts of first instance.

XV. Being a Foreigner

In general, same procedural rules apply to you if you are a foreigner and want to challenge an administrative decision in Estonian administrative courts. If you wish to act as a representative of a foreign legal person (organization), you should additionally provide proof of its legal capacity and authorized representatives. Court proceedings are carried out only in Estonian, this means that all documents and statements must normally be translated or interpreted. Exceptionally, you may make statements in another language without translation or interpretation if you do not speak Estonian and all other parties understand your statements. If you present a written statement or a document in a foreign language, the court will require it to be translated by you or organize its translation. Court will not require you to translate the document if it is unreasonably complicated or impossible. If translation is required and you fail to provide a translation by the due date set by the court, the document or written statement may be disregarded. You may also ask the court to organize the translation (in that case you would still have to pay for the translation). If possible, court translators are used. For their services, you must pay a state fee. If you do not speak Estonian, the court will include a translator in the proceedings on your application or on his own behalf. If this cannot be done immediately, the court will require you to find an interpreter or a representative that speaks Estonian. If you do not do so within the due date set by the court, your action may be disregarded. If this is unreasonably complicated or impossible, the court may look for a translator itself. In any case, you will have to pay for the associated costs. If the court organizes translation, court translators are used, is possible.

XVI. Transboundary Cases

If you as a foreigner wish to challenge an administrative decision that has consequences to the environment in Estonia you may do so according to the same rules as Estonian nationals and companies do. Most importantly:

only activities of Estonian administrative bodies may be challenged in Estonian courts;
both procedural as well as substantive legality of administrative activities may be challenged;
as a rule, you are allowed to challenge an administrative act (*haldusakt*) if it infringes your rights;
in environmental matters, you may also challenge an administrative act that concerns your legitimate interests;
for environmental protection NGOs and associations of persons, infringement of rights and concern legitimate interests are presumed;
exceptionally you may also challenge administrative procedural acts (*menetlustoimingud*) of administrative bodies (if these infringe your rights independently of the final act or would definitely lead to an illegal final act);
both individuals and organizations (legal persons) may file an action; in environmental matters, an association of persons that is not a legal entity may exceptionally also file an action.
There are no specific rules on cases that involve environmental issues in another country. However, principles of non-discrimination are applied in EU law. This means that if a certain environmental issue is regulated by EU law (e.g. environmental impact assessment, ambient air quality etc.), access to courts of nationals of other EU countries must be equal to that of locals. Therefore, you as a foreigner from another EU country may file an action with an Estonian court in cases where an administrative activity (decision) results in environmental issues in your country. As usual, both the procedural as well as substantial legality of the activity may be challenged. To have a standing, you must prove that either your rights have been infringed or your legitimate interest concerned by the administrative activity. The principle of non-discrimination also applies to other procedural rules besides standing. You have the right to apply for state legal assistance (you may also fill in the application in English, more information available on the home page of the Ministry of Justice. You are also entitled to request for provisional protection of your rights. However, you should note that the court proceedings take place in Estonian; therefore you might need an interpreter if you do not speak the language. Costs for interpreter may also be covered by the state legal assistance. According to the non-discrimination principle, when challenged administrative activity is based on EU legislation, same rules as for locals are applied for determining which foreign persons may challenge it. This means that an activity may be challenged by foreign:
individuals (natural persons);
organizations (legal persons);
contractual associations of persons that are not legal entities (not registered as such),
in case:
their rights have been infringed, or
their legitimate interests are concerned.
In case of environmental protection NGOs and contractual associations, infringement of rights or concern of legitimate interests is presumed. You may not choose a country for filing your action in an environmental matter according to Estonian Code of Administrative Court Procedure. According to it, you cannot file an action against administrative bodies of other countries with Estonian courts. On the other hand, you may only file an action against an Estonian administrative body with the Estonian administrative court that has jurisdiction in the location of that administrative body.

Related Links

Legislation

Constitution of Republic of Estonia (in Estonian)
Constitution of Republic of Estonia (in English, as of 28.06.2007)
Code of Administrative Court Procedure (in Estonian)
Code of Administrative Court Procedure (in English, as of 1.01.2013)
Courts Act (in Estonian)
Courts Act (in English, as of 1.1.2012)
Chancellor of Justice Act (in Estonian)
Chancellor of Justice Act (in English, as of Jan, 2007)

Other information

http://www.envir.ee/et/kmh-litsentsikomisjon
Estonian Bar Association
Estonian Environmental Law Centre (EELC) – public interest environmental law NGO
Justice & Environment - European Network of Environmental Law Organizations, where EELC is a member
Chancellor of Justice – (acts in the role of ombudsman)
Webpage of Estonian Courts with information on administrative court proceedings

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