

Other relevant rules on appeals, remedies and access to justice in environmental matters

Ordinarily, the most easily available means for an individual to seek enforcement of environmental responsibilities against private entities is to approach the competent municipal or state authority with a request for enforcement measures. Private enforcement of public law is not possible, i.e. private individuals cannot take other private parties to court for breach of environmental responsibilities toward the public.

With regard to enforcement through a request to the competent supervisory authority, the correct authority to approach is generally identified in the applicable substantive law or, in the case of municipal authorities, in municipal regulations issued on the basis of this law. Hence the Environmental Protection Act (EPA), for example, identifies the competent state supervisory authority as well as requiring the municipality to assign one of its committees as local supervisory authority. At state level, the ETE Centre (Centre for economic development, transport and the environment) is typically the competent supervisory authority in environmental matters.

The substantive law defines the supervisory authority's powers of enforcement, i.e. the authority's competence to use administrative compulsion against someone breaching the provisions of the law. Depending on the case, this may for example entail orders to comply with a permit, prevent or remedy environmental damage or revocation of a permit. The supervisory authority can usually also reinforce the prohibition or order that it has issued with a notice of a conditional fine or a notice that the activity that has been neglected must be carried out at the expense of the negligent party according to the Act on Conditional Fines (see e.g. Section 184 of the EPA). In principle, anyone can approach the authority and inform it about possible breaches of environmental law. The right to request for enforcement measures depends on the applicable substantive law. As an example in EPA the right to initiate proceedings is granted to parties concerned, environmental NGOs, certain municipal and state authorities and the Sámi Parliament (Section 186).

In order to obtain a court ruling obliging a public authority to take action, a first instance decision from the authority itself is generally required. Only upon review of this decision, the administrative court is competent to find enforcement measures warranted. When directly challenging an administrative decision is not possible due to the silence of the administration, also the option of making an administrative complaint is available (Administrative Procedure Act, Chapter 8a). Complaints can be filed with municipal or state supervisory authorities, where relevant, or the two supreme overseers, the Parliamentary Ombudsman and the Chancellor of Justice. A supervisory authority may in its decision draw the attention of the supervised entity to the requirements of good administration or inform it of the authority's understanding of lawful conduct. If this is not found sufficient, the supervised entity may be given a warning, unless the nature or severity of the act forming the subject of the complaint requires measures to institute a procedure provided in another act. The supreme overseers deliver their opinion on complaints lodged with them and are also competent to issue official reprimands as well as initiating criminal prosecution for malfeasance. The overseers can also initiate investigations on their own initiative (for the supreme overseers see also section 1.3).

Regardless of whether a public liability or other matter of supervision or enforcement has been initiated through a private request or on the authority's own initiative, the final decision in the matter can usually be challenged through appeal in regular fashion. This means that a decision compelling an operator to remedy a situation that breaches its permit, for example, can be challenged by the operator in question, while a decision not to require measures from the operator can be challenged by an interested third party (e.g. an NGO that requested enforcement). As usual, the right of appeal is regulated by the applicable substantive law. In most situations, neighbours and NGOs are entitled to appeal, at least if they have been involved in the process earlier.

The supervisory authorities must report any act or omission in breach of the environmental law to the police for preliminary investigation, unless the illegal conduct can be considered minor in view of the circumstances. Penalties for environmental offences are stipulated in Chapter 48 of the Criminal Code of Finland (39/1889). Chapter 40 of the Criminal Code covers offences in office including a violation of official duty, which could be

relevant in connection with providing effective access to justice. There are no specific national rules on penalties to be imposed on the public administration for failing to provide access to justice.

If there is a decision of an authority or a judgement that is legally binding (meaning that it cannot be challenged by ordinary means of appeal), the police have an obligation to provide executive assistance to the environmental supervisory authorities so that the decision or judgement can be complied with.

Enforcement of private environmental liabilities is also possible. Compensation for damages resulting from environmental nuisance, such as property damage, health injuries or financial loss, can be sought in the general courts. There is a specific act regulating this type of private damages, the Act on Compensation for Environmental Damage (737/1994), which is complemented by the general Tort Liability Act (412/1974). The first-mentioned act also covers costs of measures to prevent environmental damage threatening the person undertaking the measures, as well as measures to reinstate damaged environment. This means that it is possible to seek a court judgment regarding costs to restore one's property directly against the liable party, without requesting an order for clean-up or suchlike from the public authorities. With rare exceptions, private individuals cannot otherwise pursue compensation for damage to public interests toward the environment. Certain activities and situations, such as nuisance due to land extraction or permit-authorized water pollution, are subject to specifically regulated compensation procedures, which bypass the general liability legislation. Injunctive orders cannot ordinarily be sought against operators directly in court; the competent administrative supervisory authority must be approached for such enforcement.

On the other hand, compensation for damages caused by exercise of public authority can, under certain conditions, be claimed directly in the general courts on the basis of the Tort Liability Act. Naturally, if claims are directed against the state or municipality in capacity of operator, for example, the same liability procedures as for private operators apply.

In the context of criminal proceedings, the public prosecutor is, upon request, required to pursue a private claim for damages on behalf of an injured party. This assistance is provided free of charge, and the prosecutor can refuse the request only if the claim is obviously ill-founded or its presentation would significantly impair the prosecution of the case. Injured parties also have a secondary right of prosecution. In other words, in a criminal case where the prosecutor has decided not to prosecute, an injured party is entitled to press criminal charges for the offence and have the case decided by the court. Nationally, there are a number of prosecutors specialised in environmental matters, who can be assigned, by special order, to cases outside their ordinary jurisdiction.

With regard to the Åland Islands, the state tort law applies in the autonomous region as well. Likewise, the principles for requesting authority enforcement correspond with what has been described above. The primary supervisory authorities on the Islands are the Environmental and Health Protection Authority of Åland, the regional government and municipal building supervision authorities.

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