Access to justice in environmental matters

Estonia

To find more national information about access to justice in environmental matters, please click on one of the links below:

Last update: 23/07/2021

Access to justice at Member State level

1.1. Legal order – sources of environmental law

1) General introduction to the system of protection of environment and procedural rights of persons (natural, legal, NGOs) in the specific national order

Environmental issues are primarily regulated by acts of Parliament, regulations of the central government and ministerial regulations. Regulations of local governments play a minor role. Environmental law in Estonia has undergone significant codification since accession to the EU in 2004. Since 2014, the General Part of the Environmental Code Act (GPECA) acts as a framework law for the environmental law as whole. Sectoral legal acts (e.g. Water Act, Ambient Air Protection Act, Waste Act, Nature Conservation Act) make reference to the framework law and use the terms defined therein. GPECA also includes provisions on procedural (participation) rights related to environmental permits as well as specific provisions on the standing of environmental NGOs in environmental matters.

Environmental issues are within the competence of the Ministry of Environment at the national level. The most important agency within the area of governance of the Ministry is the Estonian Environmental Board, which has various functions in the field of nature protection, environmental protection, resource use and radiation. Importantly, most environmental permits are issued by the Board. The Board also reviews administrative appeals against the permits. The other notable agencies include the Environmental Inspectorate, which is the primary enforcement agency in environmental matters, and the Environmental Agency, which collects, processes and generalises data on Estonian nature, the state of the environment and factors influencing it. Note that the Environmental Inspectorate and the Environmental Board will be merged by January 2021 under the name of the Environmental Board.

2) Constitution – main (content of + including references) provisions on environment and access to justice in the national constitution (if applicable) including procedural rights

The Estonian Constitution provides that everyone is obliged to preserve the environment and compensate for damage caused to it (Section 53). Natural resources are considered to be national riches that must be used sustainably according to Section 5. Section 13 stipulates 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 as part of any court case 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 to which they are a party as well as the right to appeal to a higher court according to conditions provided by legislation.

3) Acts, Codes, Decrees, etc. - main provisions on environment and access to justice, national codes, acts

GPECA sets out the definition of “environmental NGO” and specifies special standing of such organisations for administrative matters. The provisions are relevant to all environmental administrative matters. There are very few access to justice provisions that are applicable only to sectoral environmental issues. For instance, the Environmental Liability Act, which transposes the Environmental Liability Directive, stipulates that administrative review is mandatory before court review. It should also be noted that the Planning Act provides exceptional access to justice with regard to certain spatial plans. The provisions are applicable to planning cases in general, not only to cases that constitute environmental matters. Generally, everyone is entitled to participate in the planning proceedings and, during those proceedings, express their opinion regarding the spatial plan; the law also provides rather wide opportunity to challenge the spatial plans. Anyone can challenge in court all spatial plans except the national spatial plan and county-wide spatial plans on the basis that it is contrary to public interest (not just environmental public interest).

Other than the relatively few specific provisions, the administrative review as well as court proceedings in environmental matters are subject to the general legal regime applicable in all administrative cases. This means that the rules on administrative review are found in the Administrative Procedure Act and rules on review by the courts are found in the Code of Administrative Court Procedure (CACP). In some instances, e.g. on the issue of recusal of judges, types of admissible evidence etc., the CACP refers to the rules of the (more detailed) Code of Civil Procedure.

4) Examples of national case-law, role of the Supreme Court in environmental cases

The Supreme Court of Estonia is the highest court in Estonia in all administrative matters, including environmental disputes. Although the court cannot establish new rules as such, it has had and continues to play an important role in interpreting the national laws. Such interpretations should, among others, ensure compliance with international law (e.g. the Aarhus Convention) as well as EU law (e.g. EIA Directive) that relates to access to justice in environmental matters, e.g. RKHKo 15.12.2014, 3-3-1-67-14, see 1.7.3.6. In the past, the Supreme Court has applied the Aarhus Convention directly to allow standing of environmental NGOs in administrative cases e.g. RKHKo 28.11.2006, 3-3-1-43-06.

5) Can the parties to the administrative procedure directly rely on international environmental agreements, or can only the national and EU transposing legislation be referred to?

As already evidenced by the above, parties to either administrative or court procedure can rely on provisions of international treaties (including the Aarhus Convention on environmental procedural rights), if:

these are sufficiently precise (provide all necessary details), and
there is no national legislation on the matter, or
national legislation contradicts the international agreement.

1.2. Jurisdiction of the courts

1) Number of levels in the court system

The Estonian court system has three levels (lower to higher):
administrative courts (two courts and four courthouses) and county courts (four courts and 15 court houses)
circuit courts (Tallinn and Tartu)
the 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 specialized courts: the administrative courts. Civil and criminal matters are heard by county courts. The circuit courts review judgments of administrative and county courts by way of appeal proceedings. Although circuit courts review all types of matters, the judges are specialized in a specific type of matter (administrative, civil and criminal). The highest-level court - the Supreme Court – reviews district court judgments by way of cassation proceedings. The Court has chambers for different types of matters, including the Administrative Chamber.[1] The Supreme Court also carries out constitutional review of legislation.

2) Rules of competence and jurisdiction – how is it determined if there is jurisdiction of the court, cases of conflict between different national tribunals (in different Member States)?

Jurisdiction between administrative courts is decided based on the location of the administrative body or place of work of the public servant against whom a case is brought. If a case is brought against a regional unit of the administrative body, the case should be brought to the court in whose territory the regional unit is located. If the case could be reviewed by multiple courts, the person bringing the case may decide which court to turn to.

3) Specialities as regards court rules in the environmental sector (special environmental tribunals), laymen contributing, expert judges

The 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.

Regarding the jurisdiction or composition of courts, there are no specific features that would apply to environmental matters - rules that apply to administrative, civil or criminal proceedings – apply as usual. Unlike some other countries, there are no specific environmental tribunals, expert judges or similar mechanisms. However, at least some courts, such as the Tallinn Administrative Court, have internal division of tasks, which effectively results in a certain degree of specialization.

4) Level of control of judges in case of administrative appeals, concept of own motion, what are its limits? Rules on court action on its own motion.

In administrative matters, the judges have a more proactive role than in civil or criminal matters, which have an adversarial nature. The administrative court review is based on principles of disposition, investigation and explanation. The court may only adjudicate a matter to the extent requested in the action or other declaration provided in the law. The filing of such declarations is at the discretion of the participants in the proceedings. The court must, on its own motion, make sure that facts are ascertained that are material to the matter dealt with, where necessary by gathering evidence itself, or by imposing the obligation of presenting evidence on participants of the proceedings. The court interprets and deals with declarations of participants in the proceedings according to the actual intention of the participant who made the declaration. At every stage of the proceedings, the court must provide sufficient explanation to participants in the proceedings to guarantee that no declaration or evidentiary item necessary to protect a participant's interests remains unrecognized because of the participant's lack of experience in legal matters and that any defects of form that would prevent a declaration from being heard are resolved. In relation to every issue material to determining the matter, the courts must guarantee participants of the proceedings an effective and equal opportunity to present their views and the grounds for those views, and to contest the other participants' views or to support the same.

Courts may include third parties to the dispute, if they find that the rights of such persons may be impacted by the judgment. Courts may also on their own motion change the deadlines 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 for injunctive relief.

1.3. Organisation of justice at administrative and judicial level

1) System of the administrative procedure (ministries and/or specific state authorities)

Environmental matters are dealt with by several state and local authorities. Environmental permits (permits for mining, use of water, waste management activities, pollution of ambient air) are issued by the Environmental Board. The Environmental Board is also responsible for management of all state nature conservation areas. Several other state authorities are also responsible for construction permits of infrastructure projects, e.g. Road Authority for construction of state roads, Consumer Protection and Technical Regulatory Authority for railroads etc. Local governments (municipalities) are in charge of all local-level spatial planning and construction permits.

The Environmental Inspectorate coordinates and executes supervision regarding the use of natural resources and the protection of the environment by applying the state´s coercive measures on the basis of and to the extent specified by law. The Environmental Inspectorate is an institution dealing with environmental violations and since 1 September 2011 also carries out investigations in criminal cases.

On 17 June, the Riigikogu (Parliament of Estonia) passed changes to the law that will result in the merger of the Environmental Board and the Environmental Inspectorate on 1 January 2021. The merged agency will go by the name of the Environmental Board.

The merger of the Environmental Board and the Environmental Inspectorate is part of the national reform plans approved by the government.

As regards their everyday work (administrative tasks), both agencies had to follow in general terms the Administrative Procedure Act (APA) and specific terms related to environmental laws and regulations. The administrative challenge procedure is described in the APA and generally foresees the right of a person to file a challenge if his or her freedoms are restricted by an administrative act or in the course of administrative proceedings. The challenge must be filed within thirty days from the day a person becomes or should become aware of the challenged administrative act or measure.

Unless otherwise provided for by law, a challenge must be adjudicated within ten days after the challenge is delivered to the administrative authority which reviews the challenge. If a challenge needs to be further examined, an administrative authority which reviews the challenge may extend the term for review of the challenge by up to thirty days. A notice concerning extension of the term must be sent to the person who filed the challenge. A decision on a challenge must be prepared in writing and must indicate the resolution concerning adjudication of the challenge.

A decision on a challenge must be delivered to the person who filed the challenge and to third persons. A person whose challenge is dismissed or whose rights are violated in challenge proceedings has the right to file an appeal with an administrative court under the conditions and pursuant to the procedure provided by the Code of Administrative Court Procedure. In some cases, the law provides for a compulsory administrative challenge procedure before the right to go to court also in environmental matters (for example in Environmental Liability Act).

2) How can one appeal an administrative environmental decision before court? When can one expect the final ruling?

Administrative environmental decisions can be appealed before administrative courts; there are no special environmental courts. Rules on standing in administrative courts depend on whether the case is brought by regular individuals (natural and legal persons) or environmental NGOs. Individuals only have standing to defend their subjective rights. The national concept of subjective right is similar with the concept of subjective right under German legal theory. Violation of subjective rights is understood in the light of the protective norm theory. According to this theory, a violation of a public law provision results in a violation of a person's subjective right only when the violated provision protects the person's interest. In deciding whether a person has a subjective right, both the aim of the violated norm and the weight of the person's interest must be considered, RKEKo 20.12.2000, 3-3-1-15-01. Technically, environmental NGOs also only have standing for the protection of their subjective rights. However, in practice the NGOs have very broad standing as the violation of such rights is presumed provided the organisation meets the national definition of "environmental organisation" (see 1.4.3 for the definition) and the challenged decision is related to the field of activity or environmental goal of the NGO. True *actio popularis* exists, both for individuals and organisations, only for challenging certain types of spatial plans.
There is no set deadline for the delivery of a judgment after challenging administrative decision in court. In practice, environmental cases at the court of first instance may take as little as a few months or as much as several years to process (depending on the complexity of the case as well as workload of the courts).

3) Existence of special environmental courts, main role, competence

There are no special environmental courts.

4) Appeal against environmental administrative decisions delivered by competent authorities and appeal against Court orders and decisions (levels)

Administrative review

Administrative review procedures are regulated by the Administrative Procedure Act. The only notable exception specific to environmental matters is the standing of environmental NGOs, which is stipulated by GPECA. An administrative challenge (*vaie*) is 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.
In environmental matters, most of the relevant decisions are made by the state environmental authority (Environmental Board) – which is supervised by the Minister of Environment - or the local municipalities, which do not have supervisory administrative bodies. Consequently, the same administrative bodies that made the initial decision are typically in charge of administrative review of environmental decisions.
The administrative review covers both procedural and substantive legality of the challenged decision. Also "purposefulness" of the challenged decision can be reviewed. (Unlike the court review, which cannot cover "purposefulness" due the principle of separation of powers.)

Court review of administrative decisions

In general, administrative decision can be contested in court without the need to undergo mandatory administrative review. Judicial review covers both procedural and substantive legality of the challenged administrative decision. The courts are not allowed to reconsider value judgments of the administrative authorities. The review of legality by courts, however, also includes the review of whether the discretionary powers were correctly used by the authority (e.g. whether all relevant facts were identified and no manifest errors were made in weighing different interests).

Appeal against court orders and decisions

If the party to the case or third party is not satisfied with the judgment of the administrative court (1st instance court) it may appeal to the district court (2nd instance). Note that right is conferred upon all entities that are participants of the proceedings (parties and third persons) or could become a party in the appeal case if the judgment of the administrative court affects that person's rights and freedoms which are protected by the law. Thus, the broad standing of NGOs also effectively applies in appeals. 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 circuit court. For an appeal, the person filing an appeal must justify 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.
In some situations, a court may end the proceedings or decide key issues (including application of injunctive relief, inclusion of third parties to the proceeding) with a court ruling (*kohtumäärus*) instead of a judgment (*kohtuotsus*). In such a situation, an appeal on the court ruling may be filed by the person affected by the ruling to the higher level court.

5) Extraordinary ways of appeal. Rules in the environmental area. Rules for introducing preliminary references.

There are no extraordinary ways of appeal that would apply to environmental cases.
Preliminary references may be submitted to the CJEU by any court (i.e. courts of any instance). In practice, most references for preliminary ruling are made by the Supreme Court or circuit courts.

6) Are there out of court solutions in the environmental area as regards solving conflicts (mediation, etc.)?

There are no official out of court conflict resolution mechanisms, e.g. mediation in environmental matters, which of course does not preclude parties to a conflict from trying to find such solutions. In practice, out of court solutions are discouraged by short deadlines for filing claims for review to the administrative court (a case must be brought to the court within 30 days of notification of the applicant to claim the annulment of an administrative decision). At the same time, after the acceptance of an action during preliminary proceedings, judges should ascertain whether it is possible to resolve the matter by compromise or otherwise by mutual agreement and it is possible to initiate conciliation procedure headed by the specially trained and appointed judges.

7) How can other actors help (ombudsperson (if applicable), public prosecutor), accessible link to the sites?

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 resulting in an environmental danger), criminal charges can be brought by the Prosecutor's Office. Misdemeanours in the environmental field are handled by various agencies but primarily by the Environmental Inspectorate. These authorities also receive and investigate complaints by individuals.
If a person finds that a legislative act is unconstitutional or some activity, inactivity or omission of a public authority infringes the person's constitutional rights, the person 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.

1.4. How can one bring a case to court?

1) Who can challenge an environmental administrative decision (relevance of the concept of concerned public and NGOs)?

Environmental administrative decisions may be challenged in administrative courts by both natural persons and legal entities, including environmental NGOs. The difference lies in the grounds of standing – for individuals it would be the breach of subjective rights whereas environmental NGOs can effectively bring actions to protect public interests as well.

2) Are there different rules applicable in sectoral legislation (nature conservation, water management, waste, EIA, IPPC/IED, etc.)?

Rules on standing are the same for all environmental decisions with no sectoral differences.

3) Standing rules applicable for NGOs and individuals (in administrative procedure and at judicial level, for organisations with legal personality, ad hoc groups of representatives of the public, standing for foreign NGOs, etc.)

Standing rules for court review and administrative review are the same, both for individuals and NGOs.

Standing for natural persons and legal entities is rights-based, i.e. you can only challenge an environmental administrative decision (e.g. air pollution permit) if and to the extent it breaches your individual rights. The courts make an initial assessment of standing based on the presumption that the applicant's arguments are valid; however, the courts may review the issue of standing up to the moment of issuing a judgment. In administrative review, where deadlines are short, the challenge will be reviewed as a whole within those deadlines.

Standing of environmental NGOs is broader for both court proceedings as well as administrative review. An environmental organisation is defined as follows in the GPECA:

§ 31. Non-governmental environmental organisation

(1) For the purposes of this Act, a non-governmental environmental organisation (hereinafter environmental organisation) is:

1) a non-profit association and foundation whose purpose under its articles of association is environmental protection and who promotes environmental protection by its activities;

2) an association that is not a legal person, but that promotes environmental protection and represents the opinions of a significant portion of the local community on the basis of a written agreement between its members.

(2) For the purposes of subsection 1 of this section, the promotion of environmental protection also means the protection of the elements of the environment for the purpose of ensuring human health and well-being as well as the research and introduction of the nature and natural cultural heritage.

(3) Upon assessment of the promotion of environmental protection, the association's ability to attain its goals set out in the articles of association must be considered, taking into account the activities of the association to date or, upon absence thereof, its organisation structure, number of members and the requirements of becoming a member as laid down in the articles of association.

Any NGO that meets the definition may effectively challenge environmental administrative decisions for the protection of public interests - a presumption of their standing is made if the challenged decision is related to their field of activity or environmental goals of the NGO.

Note that *ad hoc* groups that are not registered as legal persons can be environmental NGOs if they satisfy the following conditions:

a written contract of partnership has been signed by the members of the group,

according to the contract, the partnership aims to promote the protection of the environment,

the group represents the opinion of a significant proportion of its community.

The national law does not explicitly stipulate the non-discrimination clause of foreign environmental NGOs. However, there also are no clauses that would prevent foreign NGOs from relying on the same provisions on standing as national NGOs. The national law also does not explicitly stipulate that access to justice provisions need to be interpreted consistently with the objective of giving the public concerned wide access to justice. If one disregards the overall purpose of the regulation, then the abstract wording of the national provisions may be interpreted restrictively. For instance, an NGO has standing if it can demonstrate that the challenged administrative act is related to their field of activity or environmental goals. It could be argued that a Swedish NGO dedicated to protecting the grey wolf in Sweden would not have standing to challenge wolf hunting permits in Estonia as these two wolf populations are not connected. In other words, the implementation of the national law requires courts to recognize the special status of NGOs in defending public environmental interest. In general, the national courts have not interpreted standing restrictively but the court practice is limited. e.g. there is no practice on recognizing standing of foreign environmental NGOs.

4) What are the rules for translation and interpretation if foreign parties are involved?

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 and the court 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 for you to arrange for its translation. The 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 arrange for 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 an interpreter in the proceedings on your application or on its own motion. 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 an interpreter itself. In any case, you will have to pay for the associated costs. If the court organizes interpretation of proceedings, court translators are used, if possible.

1.5. Evidence and experts in the procedures

Overview on specific rules in administrative environmental matters, control of judge, calling for an expert in the procedure

1) Evaluation of evidence – are there any limits in obtaining or evaluating evidence, can the court request evidence on its own motion?

The administrative court review is based on the principle of investigation. The court must, on its own motion, make sure that facts are ascertained that are material to the matter dealt with, where necessary by gathering evidence itself, or by imposing the obligation of presenting evidence on participants of the proceedings.

In administrative environmental matters, all rules on evidence applicable to other administrative matters apply, without any distinctive features. In principle, any evidence relevant to arguments of the parties can be submitted and will be evaluated by the courts. If the courts find that there is not enough evidence, they may either ask you to provide it or gather it on their own. In principle, no type of evidence is preferred by the court. Also, parties may not limit the types of evidence admissible or give priority to some type of evidence.

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. This can be done based on an application of a party to the proceedings or on the court's own motion. 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.

2) Can one introduce new evidence?

New evidence, i.e. evidence not gathered or used in the administrative proceedings, may be introduced in the administrative courts. Such evidence is evaluated in a similar manner to evidence gathered or used in the administrative proceedings.

3) How can one get expert opinions in the procedures? Publicly available lists and registries of experts.

If you want to use an expert opinion in court proceedings as evidence you may contract an expert and provide his/her opinion as documentary 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. The court will use either experts working in a state forensic institution, officially certified experts or other persons with expert knowledge on the issue as experts. If an officially certified expert is available, other persons are appointed as experts only in exceptional cases, where there is some good reason to do so. A list of officially certified experts is available here.

3.1) Is the expert opinion binding on judges, is there a level of discretion?

Expert opinions are treated as all other types of evidence, i.e. they are evaluated together with other relevant information to determine whether an argument has been proven or not. Therefore, they are not directly binding on judges.

3.2) Rules for experts being called upon by the court

Experts are treated in a similar manner, regardless of who applied for their inclusion in the proceedings. As a rule, they are obliged to give an expert assessment. The latter is, as a rule, a written document, in which the expert describes in detail the studies made, the results of studies and provides answers to the questions posed by the court. The expert may also be called to the hearing of the case, where they are obliged to provide answers to the questions of the parties and the court.

3.3) Rules for experts called upon by the parties

Experts are treated in a similar manner, regardless of who applied for their inclusion in the proceedings. As a rule, they are obliged to give an expert assessment. The latter is, as a rule, a written document, in which the expert describes in detail the studies made, the results of studies and provides answers to the questions posed by the court. The expert may also be called to the hearing of the case, where they are obliged to provide answers to the questions of the parties and the court.

3.4) What are the procedural fees to be paid and when in relation to expert opinions and expert witnessing?

Expert's hourly fees are limited by a Regulation of the Government. As a rule, the hourly fee should be between 10 and 40 times the minimum hourly wage (as of March 2020 – 3.48 €/h). The court will decide upon the exact fee. Expert fees have to be paid only based on a claim by the expert, after the expert assessment has been given. As a rule, the expert fees must be paid by the losing party. If a prepayment is necessary, this will have to be paid by the party who applied for the inclusion of the expert or by both parties in equal sums, if the expert was included on the court's own motion.

1.6. Legal professions and possible actors, participants to the procedures

1) Role of lawyers, compulsory or not, how to contact, publicly accessible internet link to registry or website of the bar, perhaps of specialised lawyers in the environmental field

In environmental administrative matters, anyone is entitled to represent themselves in the court if they wish to, i.e. it is not mandatory to engage a professional lawyer to represent you However, if you do wish to be represented by a lawyer, you may contract someone with the following qualifications:

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.

There are no registries of lawyers specialised in the environmental field, but most of the prominent law offices also list environmental law as a field in which they offer legal services and employ lawyers with relevant experience, including:

Ellex Raidla
Sorainen
Cobalt
TGS Baltic
Derling
PWC Legal Estonia
Nove
Fort

Legal assistance (including representation) in environmental matters is also provided by the Estonian Environmental Law Centre which is a public interest NGO. Therefore, it does not provide legal assistance in cases where this would be contrary to public interests.

1.1 Existence or not of pro bono assistance

In recent years, the Ministry of Justice has organised for limited availability of pro bono and low-cost legal assistance in all legal matters. Legal assistance has been provided by private companies that have successfully competed in the tender proceedings for such assistance. Currently (until 2021) such aid is offered by HUGO.legal (previously known as Eesti Õigusbüroo).

Several private law firms offer pro bono assistance as part of their corporate social responsibility (CSR) activities in practice; however, the availability and extent of the assistance is subject to their discretion only.

Pro bono legal assistance is also given by 2nd and 3rd year legal students under the guidance of the Estonian Lawyers Union. Ad hoc legal aid days are arranged regularly in Tallinn in cooperation with the city government.

1.2 If pro bono assistance does exist, what are the main elements of the procedure to receive it (perhaps links to forms, court or agency in charge, address, telephone, email, ways to contact, etc.)?

To apply for the state-sponsored pro bono legal assistance, you would have to fill in the contact form found on the web page of HUGO.legal.

According to the scheme, any individual living in Estonia whose monthly total income is below €1,700 may apply for pro bono assistance and will receive legal advice in the amount of 2 hours for free. After the first two hours, the next 3 hours of legal aid would be €20/h and after these anyone is still entitled to 10 more hours of assistance with the hourly fee of €40/h. In practice, such volume of free and subsidised legal aid would be sufficient to only clarify legal remedies available. In the simplest of cases, the time may be sufficient to also prepare a draft claim to be submitted to the court. Several of the lawyers that offer such pro bono assistance also do it in English. However, none of the lawyers is member of the bar association. Also, none of them is specialised in environmental law.

1.3 Who should be addressed by the applicant for pro bono assistance?

Queries for pro bono assistance offered under the scheme subsidised by the Ministry of Justice should be made to the service provider – HUGO.legal.

2) Expert registries or publicly available websites of bars or registries that include the contact details of experts

A list of officially certified experts that can be used as expert witnesses in court proceedings is available here.

3) List of NGOs who are active in the field, links to sites where these NGOs are accessible

There are a number of national and local environmental NGOs. On the national level, the Estonian Council for Environmental NGOs (EKO) is an umbrella organisation for some of the largest and most active environmental organisations. In addition to members of EKO, Eesti Metsa Abiks is currently an active and fast-growing citizens' movement mostly dealing with issues related to protection of forests. Estonian Society for Nature Conservation also is a national umbrella organisation, with local chapters of varying degree of activity.

4) List of international NGOs, who are active in the Member State

International environmental NGOs are not active in Estonia, although several Estonian organisations are either members of international networks or in close cooperation with them (e.g. Estonian Green Movement is a member of FoEE, Estonian Ornithological Society a member of BirdLife, Estonian Fund for Nature cooperates with the WWF etc.).

1.7. Guarantees for effective procedures

1.7.1. Procedural time limits

1) Time limit to challenge an administrative environmental decision (not judicial) by an administrative body (either superior or same level)

Administrative review

According to the Administrative Procedure Act, administrative challenges must be brought within 30 days of the day when the person either became aware or should have become aware of the challenged administrative act or measure.

Judicial review

Different time limits are applied to different actions that can be brought to the administrative court against environmental decisions. Annulment of an administrative environmental decision must be filed within thirty days after the date on which the administrative act was notified to the applicant. Notification within this context can also refer to public notification of issuing the environmental act. If the administrative decision was not notified to the applicant, yet the applicant learns of the administrative act in some other way, it should be challenged without unreasonable delay. What constitutes unreasonable delay will be decided on a case-by-case basis by the court. Usually it is up to 2 months from the learning of the existence of administrative decision.

If the option of administrative review was used before judicial review, you have 30 days from announcement of the review decision to challenge both the decision of the administrative review as well as the initial administrative decision in the administrative court.

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 the administrative act to be declared illegal (without its annulment).

A prohibition action may be filed without a time-limit.

2) Time limit to deliver decision by an administrative organ

Administrative review decisions must be made within 10 days of delivery of the challenge. This term may be extended by up to thirty days if the challenge needs to be further examined.

3) Is it possible to challenge the first level administrative decision directly before court?

Generally, yes. The administrative review procedure is optional as a rule; i.e. administrative decisions may be challenged directly in court. However, there can be exceptions to that rule, for example the administrative review is obligatory before filing a court case in environmental liability issues that pertain to the national law transposing the ELD. Note that administrative decisions in Estonia do not have ‘levels’.

4) Is there a deadline set for the national court to deliver its judgment?

There is no general deadline set for courts to deliver their judgment, i.e. a deadline that would apply to the whole of court proceedings, beginning with bringing of the action by a party. However, as a rule, a judgment should be made and pronounced within 30 days after holding the last court hearing (or the due date for submissions if written proceedings are used). In practice this means that after the case has been studied and heard by the court, the judgment follows rather quickly.

5) Time limits applicable during the procedure (for parties, submitting evidence, other possible deadlines, etc.)

Administrative review

Due to the short time limits for making a decision (10 days + option to extend it by up to 30 days) and relatively low level of formality, there are no internal deadlines for administrative review procedures.

Judicial review

The most important time limit during the procedures concerns the submission of evidence. As a rule, the court of first instance should set the final deadline for bringing new evidence. If this has not been set, the deadline to bring any new evidence is the same as bringing any new arguments, i.e. 7 days before the court hearing or 7 days before the due date for submissions. In any case, all evidence and factual claims should be brought as early in the proceedings as possible.

The time limit for bringing the appeal to circuit courts (2nd instance) and bringing the cassation action to the Supreme Court (3rd and final instance) is 30 days from the pronouncement of the judgment of the court of lower instance.

1.7.2. Interim and precautionary measures, enforcement of judgments

1) When does the appeal challenging an administrative decision have suspensive effect?

None of the appeals to administrative decisions have an automatic suspensive effect. To suspend the validity and performance of administrative acts, injunctive relief must be applied for.

2) Is there a possibility for an injunctive relief during the administrative appeal by the authority or the superior authority?

During the administrative review procedures, the administrative authority may decide to suspend the validity of the decision being challenged on its own motion according to the general provisions of the administrative procedure act.

3) Is there a possibility to introduce a request for such a measure during the procedure and under what conditions? Possible deadline to submit this request?

A request for injunctive relief may be made by the person who has brought the administrative challenge to the administrative court also during administrative review procedures. In that case the court will decide whether to suspend the validity of the decision, but the legality of the decision will still be decided by the administrative authority carrying out the review procedures.

4) Is there immediate execution of an administrative decision irrespective of the appeal introduced? Under what conditions?

Without the introduction of injunctive relief, all administrative decisions remain valid and may be executed according to the decision irrespective of the appeals. As an exception to this rule, the administrative decision itself may foresee certain restrictions to the validity or performance of rights. In practice, this is very rare: in most cases, environmental administrative decisions become valid and may be acted upon immediately after proper notification.

5) Is the administrative decision suspended once challenged before court at the judicial phase?

Not automatically. In order to suspend the validity of the decision, injunctive relief must be provided by the court.

6) Is there a possibility for the national tribunals to provide injunctive relief (conditional upon a financial deposit)? Is there separate appeal against this order on the injunctive relief or the financial deposit?

Courts may provide injunctive relief in different forms, including suspending the validity or enforcement of the decision challenged, prohibiting the addressee of the decision from engaging in the activity regulated in the decision (e.g. construction of a building, logging, mining etc.). Injunctive relief may be granted either based on the court’s own motion or based on the application of one of the parties.

Courts must assess whether injunctive relief is truly necessary for the protection of the applicant's rights or to achieve the aim of the action, weigh different interests affected by injunctive relief measures and should apply only such measures that are proportional. However, there are no financial obligations attached to applying for injunctive relief (no deposit or similar instruments) and no claims for damages may be brought against a person who has applied for injunctive relief even if they lose the case.
Injunctive relief decisions are court orders, which can be appealed in higher courts. The deadline for appealing a court order is 15 days from the delivery of the court order. Only the state fee in the amount 15 euros is applied to the application of the injunctive relief.

1.7.3. Costs - Legal aid - Pro bono assistance, other financial assistance mechanisms

1) How can one calculate what costs will be involved when one intends to initiate a procedure - administrative costs, judicial costs, costs for filing a case, experts' fees, lawyers' fees, cost of appeal, etc.

Administrative review

Administrative review is a no-cost or low-cost procedure. There are no administrative fees imposed on administrative challenges, nor will there be costs imposed to the challenger related to experts, other parties' lawyers or anything else. On the other hand, if you use a lawyer to represent or assist you in administrative review procedures, you cannot ask those costs to be paid by the administrative authority or any other party, i.e. you must pay for them yourself even if the challenge is found to be justified. Neither can you be compensated for expenditures during the administrative review proceedings if you win the case at the next stage - in court.

Judicial review

If you bring an action to the administrative court, there are several costs that may be involved. Possible costs are divided into two general groups: court expenses (*kohtukulud*) and extrajudicial expenses (*kohtuvälised kulud*).
Court expenses are costs that are essential for hearing the matter:
state fee (riigilõiv). These are very low in administrative matters, e.g. €15 for submitting an annulment action and €15 for application of injunctive relief,
security for bringing cassation procedures in the Supreme Court (€ 25), and
costs essential to the proceeding (e.g. costs related to witnesses, experts, interpreters and translators, obtaining evidence etc.). These can vary to a large degree, depending on the case. The costs may be substantial but usually the costs are modest.
Extrajudicial costs include 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.
In most cases, fees for contractual representatives (lawyers' fees) are the largest cost that may arise in environmental matters. Depending on the complexity of case, amount of evidence etc., lawyers' fees may be from around a five hundred euros to tens of thousands of euros in the court of first instance. According to the general court practice, compensated costs of the appeal and cassation proceedings cannot be higher than those in the first level proceedings.

2) Cost of injunctive relief/interim measure, is a deposit necessary?

If you apply for injunctive relief, a state fee of €15 must be paid. No deposit is required for applying for injunctive relief.

3) Is there legal aid available for natural persons?

In addition to pro bono legal aid subsidised by the Ministry of Justice (see 1.6.), state legal assistance (provided by members of the Bar association) is awarded to those natural persons who would not otherwise be able to afford legal aid. Whether the person is able to afford legal aid or would be subject to state legal assistance is decided by a court ruling, based on an application of the person asking for assistance. There are certain conditions for qualifying for assistance, based on the financial status of the person. The conditions for assistance are rather restrictive. For instance, the aid is not provided if the applicant could bear the costs of legal services at the expense of their existing property that can be sold without any major difficulties, except at the expense of certain assets specified in law. State assistance is also not provided if there are sufficient reasons to believe that the person's participation in the court proceedings will not be successful.
Application for state legal assistance should include:
proceedings for which exemption is applied for,
applicant's role in these proceedings as well as their main claims,
basis for applicant's claim or objection.
Natural persons also need to include a statement on their financial situation (as well as their family's) and other documents proving that statement.
State legal assistance is not always for free; depending on the financial situation of the person, they may be required to partially cover the costs and/or cover the costs in instalments.

4) Is there legal aid available for associations, legal persons, NGOs with legal personality and without legal personality? If yes, how to request legal aid? Is there pro bono assistance?

In addition to natural persons, environmental NGOs (either from Estonia or other EU countries) may also receive state legal aid provided that:
they apply for the aid in relation to their field of activity and aims,
they would be unable to cover the costs on their own or do so in full amount.
Applying for and deciding if and to what extent the aid is given is similar to natural persons. Instead of statements of financial situation, a copy of the statute of that organization and the certified copy of the previous year's annual report should be added to the application.

5) Are there other financial mechanisms available to provide financial assistance?

No.

6) Does the 'loser party pays' principle apply? How is it applied by courts, are there exceptions?

In principle, the 'loser pays' principle is applied. However, in administrative matters the courts generally do not require the costs of the administrative authority to be paid because the authority is expected to be able to handle typical disputes by itself using its own resources. Thus, if an administrative authority were to use attorneys from private law offices for representation, their costs would be in most cases ineligible. Only if the case is not related to the main field of activity and is very complicated can the costs of legal representation be imposed on the losing applicant. Nonetheless, the legal fees of third persons have to be borne. Typically, the addressee of an environmental decision (the developer) is a private company, which participates in the proceedings by way of a legal representative. If a natural person or an environmental NGO loses the case, they would have to, in principle, pay the legal fees and other court expenditures of the developer.
Administrative courts have discretionary powers to decide, which cost are "reasonable". The court also may reduce the cost if bearing the cost would be manifestly unreasonable or unjust for the losing party. The national provisions do not specifically refer to environmental matters. However, the Supreme Court has ruled (starting with the judgment in case 3-3-1-67-14) that this discretion must be used, bearing in mind the obligations arising from Art 9(4) of the

Aarhus Convention and relevant EU legislation (e.g. the EIA Directive). Case 3-3-1-67-14 concerned the mining of shale oil. The court found that it would be unjust to require full compensation of the legal fees of the developer by natural persons who challenged the administrative decision. This would also constitute a barrier to access to justice. According to court, the individuals requested a court review of an act that intensively interferes with their basic rights (right to property, right to respect to private life and home, right to health), the individuals did not act in bad faith and the complaints were not manifestly unfounded. Mining activities have a significant impact on the environment and developers of such activities must "bear the necessity of the court review of environmental administrative acts". RKHKo 15.12.2014, 3-3-1-67-14.

7) Can the court provide an exemption from procedural costs, duties, filing fees, taxation of costs, etc.? Any other national characteristics linked to this topic?

In addition to state legal aid, administrative courts can exempt you from paying state fees and security as well as costs essential for the proceedings (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 instalments.

Applications for such exemption from costs and their review by courts is similar to applications for state legal assistance.

Cost-capping or similar instruments that would pre-emptively limit the amount of costs awarded to the winning side are not available in Estonia.

1.7.4. Access to information on access to justice - provisions related to Directive 2003/4/EC

1) Where are the national rules on environmental access to justice available? Internet link to be provided. Are there other forms of structured dissemination?

National rules on environmental access to justice are mostly found in the Administrative Procedure Act , the Code of Administrative Court Procedure and the General Part of the Environmental Code Act, available in the online State Gazette.

Easy-to-read information on how to access judicial review procedures in administrative matters (including environmental matters) is available on the web page of Estonian Courts. Several other organisations also have materials and guidance available, including the provider of subsidised pro bono legal aid (HUGO.legal) and NGO Estonian Environmental Law Centre.

2) During different environmental procedures how is this information provided? From whom should the applicant request information?

Both administrative authorities as well as administrative courts are obliged to assist individuals and organisations if this would be necessary for protection of their rights. For example, if a person is making claims that the court considers ineffective for the achievement of their objective, the court may suggest making different claims. In practice, courts limit their guidance and assistance if applicants use professional legal aid.

3) What are the sectoral rules (EIA, IPPC/IED, regarding plans and programmes, etc.)?

The rules on information regarding access to justice are not specific to such sectors.

4) Is it obligatory to provide access to justice information in the administrative decision and in the judgment?

Both in administrative decisions as well as judgments (other than judgments of the Supreme Court) a reference to the ways and due dates for appeal must be indicated.

5) Is translation, interpretation provided to foreign participants? What are the rules applicable?

The language of administrative proceedings is Estonian. Participants in proceedings may request involvement of an interpreter or translator at their own expense unless an administrative authority resolves that they do not have to bear the cost. The administrative authority may establish a condition that the right granted to the person by an administrative act does not arise before the costs of involvement of the interpreter or translator are paid. In oral communication with officials a foreign language may be used by agreement of the parties. If an application, request or other document is submitted in a foreign language, the agency has the right to require translation. In principle, the agency has to respond in Estonian to the document in a foreign language. The reply is translated at the request of the person who submitted the document at the expense of the person. On agreement, the response to the document may be given in a foreign language understood by both parties.

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 the court accepts it.

If you present a written statement or a document in a foreign language, the court will require it to be translated by you or arrange for 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 arrange for 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 an interpreter in the proceedings on your application or on its own motion. 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 deadline set by the court, your action may be disregarded. If this is unreasonably complicated or impossible, the court may look for an interpreter itself. In any case, you will have to pay for the associated costs. If the court organizes interpretation of proceedings, court translators are used, if available.

1.8. Special procedural rules

1.8.1. Environmental Impact Assessment (EIA) - provisions related to Directive 2003/35/EC

Country-specific EIA rules related to access to justice

1) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)

EIA screening decisions (i.e. decisions whether to carry out an EIA or not) is considered to be a 'procedural act' (*menetlustoiming*) in a permitting procedure. Possibilities to bring an action against procedural acts is severely limited. In general, such acts can only be challenged together with the administrative act issued at the end of administrative procedure (e.g. environmental permit). Standalone challenges to procedural acts can exceptionally be brought if:

it independently infringes your substantive rights (e.g. right to protection of health or property), or

the unlawfulness of the procedural act would inevitably lead to an administrative act that infringes your rights.

EIA screening decisions do not, as a rule, fall under these exceptions. According to the case law of the Supreme Court, the screening decisions cannot be independently challenged in the court of law as they do not bring about independent infringement of rights nor would inevitably lead to an administrative act. The effect that the screening decision had on anyone's rights should be evaluated together with the final administrative decision. Consequently, generally there is no standing to challenge screening decisions independently.

2) Rules on standing relating to scoping (conditions, timeframe, public concerned)

Similar to EIA screening decisions, scoping decisions are procedural acts and cannot be challenged independently.

3) At what stage(s) can the public challenge the administrative decisions on environmental projects? Deadline to challenge decisions?

Administrative decisions on environmental projects can be challenged if these are considered to be administrative acts, i.e. individual (final) decisions that create, alter or end rights and obligation of persons. In a permitting procedure, where an EIA would be carried out, this would mean that decisions can be challenged after the permit has been issued – all of the decisions made within the permitting procedures can be questioned in such an action.

Regular deadlines apply for challenging administrative acts to which EIA requirements are applied. Administrative challenges must be brought within 30 days of the day when the person either became aware or should have become aware of the challenged administrative act or measure. Different time limits are

applied to different actions that can be brought to the administrative court against environmental decisions. Annulment of an administrative environmental decision must be filed within thirty days after the date on which the administrative act was notified to the applicant. Notification within this context can also refer to public notification of issuing the environmental act. If the administrative decision was not notified to the applicant, yet the applicant learns of the administrative act in some other way, it should be challenged without unreasonable delay. What constitutes unreasonable delay will be decided on a case-by-case basis by the court but usually it is up to 2 months from the moment of getting information about the administrative decision.
If the option of administrative review was used before judicial review, you have 30 days from announcement of the review decision to challenge both the decision of the administrative review as well as the initial administrative decision in the administrative court. 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 the administrative act to be declared illegal (without its annulment).

4) Can one challenge the final authorisation? Under what conditions, if one is an individual, an NGO, a foreign NGO?

Final authorisations can be challenged. In principle, only final authorisations may be challenged (procedural decisions made during the course of the administrative procedures prior the final decisions can be independently challenged on a very limited grounds). Conditions to challenge such a final authorisation (e.g. environmental permit) are the same as for all environmental administrative acts.

5) Scope of judicial review – control on substantive/procedural legality. Can the court act on its own motion?

Judicial review of EIA-related decisions covers both substantive as well as procedural legality. However, the courts do not independently re-evaluate the conclusions of EIA experts. If a judge or a panel of judges have doubts about the conclusions presented in the EIA report, they can include an expert in the proceedings, either on the application of parties or on their own motion.
Courts are not allowed to change the claims or arguments brought by the parties on their own motion, however they are obliged to draw parties' attention to situations where they make claims that are not coherent with their objectives or fail to make claims that would be necessary for reaching such objectives. Sometimes courts do interpret unclear claims but in these cases the court asks the parties to confirm the court's interpretation.

6) At what stage are decisions, acts or omissions challengeable?

Decisions, acts or omissions are, as a rule, challengeable together with the final administrative act (e.g. permit), after this has been issued.

7) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

No, administrative review is usually optional and only in few cases law provides it before the right to court proceedings is granted.

8) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc., not meaning the requirement determined under point 12?

No. Participation in administrative procedures is not a precondition to have standing to challenge the administrative act in national courts.

9) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

General requirements apply. In administrative matters, the judges have a more proactive role than in civil or criminal matters, which have an adversarial nature. The administrative court review is based on principles of disposition, investigation and explanation. The court may only adjudicate a matter to the extent requested in the action or other declaration provided in the law. The filing of such declarations is in the discretion of participants of the proceedings. The court must, on its own motion, make sure that facts are ascertained that are material to the matter dealt with , where necessary by gathering evidence itself, or by imposing the obligation of presenting evidence on participants of the proceedings. The court interprets and deals with declarations of participants in the proceedings according to the actual intention of the participant who made the declaration. At every stage of the proceedings, the court must provide sufficient explanation to participants in the proceedings to guarantee that no declaration or evidentiary item necessary to protect a participant's interests remains unrecognized because of the participant's lack of experience in legal matters and that any defects of form that would prevent a declaration from being heard are resolved. In relation to every issue material to determining the matter, the courts must guarantee participants of the proceedings an effective and equal opportunity to present their views and the grounds for those views, and to contest the other participants' views or to support the same.

10) How is the notion of "timely" implemented by the national legislation?

There are no specific rules in the national legislation to ensure that judicial remedies are "timely" in EIA cases. In essence, the rather wide margin of discretion given to the judges in administrative matters to carry out procedures should ensure that the procedures are carried out with as little time and cost as possible, while at the same time ensuring proper review of challenged decisions, acts and omissions. In practice, the timeliness of judicial review is dependent on the workload of judges and their use of the discretion awarded by the Administrative Court Procedure Act. The court has a general obligation noted in law to deal the administrative matter within a reasonable period of time.

11) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to this sector apart from the general national provisions?

Injunctive relief is available according to rules that are generally applicable to administrative court procedures; no special rules apply to EIA-related court cases.
Request for injunctive relief may be made by the person who has brought the administrative challenge to the administrative court also during administrative review procedures. In that case the court will decide whether to suspend the validity of the decision, but the legality of the decision will still be decided by the administrative authority carrying out the review procedures. Courts may provide injunctive relief in different forms, including suspending the validity or enforcement of the decision challenged, prohibit the addressee of the decision to engage in the activity regulated in the decision. Injunctive relief may be granted either based on the court's own motion or based on the application of the applicant.
Courts must assess whether injunctive relief is truly necessary for the protection of the applicant's rights or to achieve the aim of the action, weigh different interests affected by injunctive relief measures and should apply only such measures that are proportional. There are no financial obligations attached to applying for injunctive relief (no deposit or similar instruments) in administrative court procedure (here is a difference with the civil procedure) and no claims for damages may be brought against a person who has applied for injunctive relief even if they lose the case.
Injunctive relief decisions are court orders, which can be appealed in higher courts. The deadline for appealing a court order is 15 days from the delivery of the court order.

1.8.2. Integrated Pollution Prevention and Control (IPPC)/Industrial Emissions Directive (IED) - provisions related to Directive 2003/35/EC

1) Country-specific IPPC/IED rules related to access to justice

There are no rules on access to justice in Estonia that would be specific and unique to the decisions made under the IPPC/IED Directives. Therefore, all of the rules applicable to environmental decisions apply.

2) Standing rules, at what stages can one challenge decisions (if one is an NGO, a foreign NGO, a citizen)? Is the final decision challengeable?

Standing rules for IPPC/IED cases are the same as for any other environmental decisions.

Standing rules for court review and administrative review are the same, both for natural and legal persons. Standing is rights-based, i.e. you can only challenge an environmental administrative decision if and to the extent it breaches your individual rights. Standing of environmental NGOs is also technically based on the violation of subjective rights of the environmental NGO but the violation is presumed provided the contested administrative decision is related to the environmental protection goals or the current environmental protection activities of the NGO. See 1.4.3 for the national definition of "environmental NGO". It should be noted that as a rule only the final decision (issuing of the integrated environmental permit) can be challenged. Procedural steps preceding the permits may not be individually challenged. Instead, the legality of procedural steps is assessed in the administrative or judicial review of the final decision.

3) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)

Screening decisions are considered to be a "procedural acts" (*menetlustoiming*) in a permitting procedure. Possibilities to bring an action against procedural acts is limited. In general, such acts can only be challenged together with the administrative act issued at the end of administrative procedure (permit). Standalone challenges to procedural acts can exceptionally be brought if:

it independently infringes your substantive rights (e.g. right to protection of health or property), or

the unlawfulness of the procedural act would inevitably lead to an administrative act that infringes your rights.

Screening decisions do not, as a rule, fall under these exceptions. According to the case law of the Supreme Court, the screening decisions cannot be independently challenged in the court of law as they do not bring about an independent infringement of rights nor would inevitably lead to an administrative act. The effect that the screening decision had on anyone's rights should be evaluated together with the final administrative decision. Consequently, generally there is no standing to challenge screening decisions independently.

4) Rules on standing relating to scoping (conditions, timeframe, public concerned)

Scoping decisions are procedural acts in a permitting procedure. Possibilities to bring an action against procedural acts is limited. In general, such acts can only be challenged together with the administrative act issued at the end of administrative procedure (permit). Standalone challenges to procedural acts can exceptionally be brought if:

it independently infringes your substantive rights (e.g. right to protection of health or property), or

the unlawfulness of the procedural act would inevitably lead to an administrative act that infringes your rights.

Scoping decisions do not, as a rule, fall under these exceptions.

5) At what stage(s) can the public challenge the administrative decisions on environmental projects? Is there a deadline to challenge decisions?

In most cases, the public can challenge the administrative decisions after they are finalized. General deadlines apply. Administrative challenges must be brought within 30 days of the day when the person either became aware or should have become aware of the challenged administrative act or measure. Different time limits are applied to different actions that can be brought to the administrative court against environmental decisions. Annulment of an administrative environmental decision must be filed within thirty days after the date on which the administrative act was notified to the applicant. Notification within this context can also refer to public notification of issuing the environmental act. If the administrative decision was not notified to the applicant, yet the applicant learns of the administrative act in some other way, it should be challenged without unreasonable delay. What constitutes unreasonable delay will be decided on a case-by-case basis by the court.

If the option of administrative review was used before judicial review, you have 30 days from announcement of the review decision to challenge both the decision of the administrative review as well as the initial administrative decision in the administrative court. 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 the administrative act to be declared illegal (without its annulment).

6) Can the public challenge the final authorisation?

General rules apply. The final authorisation can be challenged. In principle, only the final authorisation may be challenged (procedural decisions made during the course of the administrative procedures prior the final decisions can be independently challenged on very limited grounds).

7) Scope of judicial review – control on substantive/procedural legality. Can the court act on its own motion? Is it possible to challenge decisions, acts or omissions?

Judicial review of IPPC/IED-related decisions covers both substantive as well as procedural legality. The permit may be annulled both for significant procedural errors as well as if it breaches substantive legal norms.

Courts are not allowed to change the claims or arguments brought by the parties on their own motion, however they are obliged to draw parties' attention to situations where they make claims that are not coherent with their objectives or fail to make claims that would be necessary for reaching such objectives.

8) At what stage are these challengeable?

As a rule, only final decisions may be challenged. Procedural steps (acts and omissions) can usually be challenged together with the final decision and will be reviewed together with the latter.

9) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

No, administrative review is optional.

10) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc., not meaning the requirement determined under point 12?

No. Participation in administrative procedures is not a precondition to have standing to challenge the administrative act in national courts.

11) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

General requirements apply. In administrative matters, the judges have a more proactive role than in civil or criminal matters, which have an adversarial nature. The administrative court review is based on principles of disposition, investigation and explanation. The court may only adjudicate a matter to the extent requested in the action or other declaration provided in the law. The filing of such declarations is at the discretion of participants in the proceedings. The court must, on its own motion, make sure that facts are ascertained that are material to the matter dealt with, where necessary by gathering evidence itself, or by imposing the obligation of presenting evidence on participants of the proceedings. The court interprets and deals with declarations of participants in the proceedings according to the actual intention of the participant who made the declaration. At every stage of the proceedings, the court must provide sufficient explanation to participants in the proceedings to guarantee that no declaration or evidentiary item necessary to protect a participant's interests remains unrecognized because of the participant's lack of experience in legal matters and that any defects of form that would prevent a declaration from being heard are resolved. In relation to every issue material to determining the matter, the courts must guarantee participants of the proceedings an effective and equal opportunity to present their views and the grounds for those views, and to contest the other participants' views or to support the same.

12) How is the notion of "timely" implemented by the national legislation?

There are no specific rules in the national legislation to ensure that judicial remedies are "timely" in IPPC/IED cases. In essence, the rather wide margin of discretion given to the judges in administrative matters to carry out procedures should ensure that the procedures are carried out with as little time and cost

as possible, while at the same time ensuring proper review of challenged decisions, acts and omissions. In practice, the timeliness of judicial review is dependent on the workload of judges and their use of the discretion awarded by the Administrative Court Procedure Act. The court has a general obligation noted in law to deal the administrative matter within reasonable period of time.

13) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to this sector apart from the general national provisions?

Injunctive relief is available, general rules apply. Request for injunctive relief may be made by the person who brought the administrative challenge to the administrative court also during administrative review procedures. In that case the court will decide whether to suspend the validity of the decision, but the legality of the decision will still be decided by the administrative authority carrying out the review procedures. Courts may provide injunctive relief in different forms, including suspending the validity or enforcement of the decision challenged, prohibit the addressee of the decision to engage in the activity regulated in the decision. Injunctive relief may be granted either based on the court's own motion or based on the application of the applicant.

Courts must assess whether injunctive relief is truly necessary for the protection of the applicant's rights or to achieve the aim of the action, weigh different interests affected by injunctive relief measures and should apply only such measures that are proportional. However, there are no financial obligations attached to applying for injunctive relief (no deposit or similar instruments) and no claims for damages may be brought against a person who has applied for injunctive relief even if they lose the case.

Injunctive relief decisions are court orders, which can be appealed in higher courts. The deadline for appealing a court order is 15 days from the delivery of the court order.

14) Is information on access to justice provided to the public in a structured and accessible manner?

No special arrangements have been made to provide information on access to justice for IPPC/IED cases.

National rules on environmental access to justice are mostly found in the Administrative Procedure Act , the Code of Administrative Court Procedure and the General Part of the Environmental Code Act, available in the online State Gazette.

Easy-to-read information on how to access judicial review procedures in administrative matters (including environmental matters) is available on the web page of Estonian Courts. Several other organisations also have materials and guidance available, including the provider of subsidised pro bono legal aid (HUGO.legal) and NGO Estonian Environmental Law Centre.

1.8.3. Environmental liability[2]

Country-specific legal rules relating to the application of the Environmental Liability Directive 2004/35/EC, Articles 12 and 13

1) Which requirements need to be fulfilled for natural or legal persons (including environmental NGOs) to have the decision taken on environmental remediation by the competent authority reviewed by a court or another independent and impartial body in accordance with Article 13(1) ELD?

Decisions made under the ELD rules may be challenged like any other environmental decisions.

Standing rules for court review and administrative review are the same, both for natural and legal persons. Standing is rights-based, i.e. you can only challenge an environmental administrative decision if and to the extent it breaches your individual rights. Standing of environmental NGOs is also technically based on the violation of subjective rights of the NGO but the violation is presumed provided the contested administrative decision is related to the environmental protection goals or the current environmental protection activities of the NGO. See 1.4.3 for the national definition of "environmental NGO".

2) In what deadline does one need to introduce appeals?

General deadlines apply. Administrative challenges must be brought within 30 days of the day when the person either became aware or should have become aware of the challenged administrative act or measure. Different time limits are applied to different actions that can be brought to the administrative court against environmental decisions. Annulment of an administrative environmental decision must be filed within thirty days after the date on which the administrative act was notified to the applicant. Notification within this context can also refer to public notification of issuing the environmental act. If the administrative decision was not notified to the applicant, yet the applicant learns of the administrative act in some other way, it should be challenged without unreasonable delay. What constitutes unreasonable delay will be decided on a case-by-case basis by the court.

If the option of administrative review was used before judicial review, you have 30 days from announcement of the review decision to challenge both the decision of the administrative review as well as the initial administrative decision in the administrative court. 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 the administrative act to be declared illegal (without its annulment).

3) Are there requirements for observations accompanying the request for action pursuant to Article 12(2) ELD and if yes, which ones?

There are no specific requirements as to the content of request for action. The request should include 'relevant information' on environmental damage or threat of damage. The national law does not define the information further.

4) Are there specific requirements regarding 'plausibility' for showing that environmental damage occurred, and if yes, which ones?

No, there are no specific requirements regarding plausibility of the request for action.

5) Is a certain manner required and/or time limits set, and if yes, which ones, as regards the notification of the decision by the competent authority to the entitled natural or legal persons (including the entitled environmental NGOs)?

The Environmental Board must notify the person who requested action immediately of their justified decision on the request and include a copy of its decision. The generally applicable time limit for making such a decision is 30 days from receiving a request. If this time limit cannot be followed because the authority has not received a necessary expert assessment or similar (objective) reason, the Board will notify the person who requested action of the delay, including information on what steps have been taken to review the request and when the decision will be made and communicated.

6) Does the MS apply an extension of the entitlement to request action by competent authority from damage to the environment in cases of imminent threat of such damage?

Action may be requested both in case of damage as well as imminent threat of damage. The same rules apply to both the requests as well as how they are handled by the competent authority.

7) Which are the competent authorities designated by the MS?

The Environmental Board (*Keskkonnaamet*) is the competent authority as regards rules for environmental liability.

8) Does the MS require that the administrative review procedure be exhausted prior to recourse to judicial proceedings?

According to the Environmental Liability Act, an administrative challenge must be submitted to the Ministry of Environment before an action can be brought in the administrative court. The Ministry has 30 days to review the challenge. In other aspects, general rules for administrative review procedures apply, see 1.7. for the details of the general rules.

1.8.4. Cross-border rules of procedures in environmental cases

1) Rules on involving other countries? At which stage of the procedure is there a possibility to challenge environmental decisions?

Based on the non-discrimination principle provided in EU law, Estonian rules on access to justice on environmental matters do not discriminate against natural or legal persons from other EU countries. This means that essentially the same rules apply as regards standing – both personal (who can challenge) as well as material (which decisions and when can be challenged) for other countries. (For more information on standing, see 1.4.). Special rules apply to notifying the other countries in the case of projects subject to EIA that may have significant transboundary effects. In such a case, the affected country's authorities will be notified by the Ministry of Environment and if the affected country deems it necessary, details of public participation will be agreed upon. In the case of projects that are subject to integrated environmental permits (under the IED Directive) and have transboundary effects, the affected state's government has to be notified and consulted.

As a rule, only administrative acts, i.e. final decisions such as environmental permits, may be challenged. Therefore, administrative decisions made in the course of administrative proceedings, such as the decisions regarding the EIA procedures, may be challenged only together with the final decision.

2) Notion of public concerned?

The notion of "public concerned" is applied to natural and legal persons from other countries in the same manner as they are applied to Estonian natural and legal persons. Essentially that means that administrative procedures are either open to everyone (in case of open proceedings) or at least those persons whose rights or obligations would be affected by the administrative decision must be included in the proceedings.

3) Do NGOs of the affected country have standing? When and to what court should they submit their appeals? What procedural assistance are they eligible for (legal aid, request for injunctive relief, interim measures, pro bono)?

Foreign NGOs have standing against decisions made by Estonian authorities in Estonian administrative courts (as the 1st instance). The standing of NGOs, including foreign NGOs, that meet the national definition of environmental NGO is presumed if the decision is related to their environmental aims or field of activity. See 1.4.3 for the national definition of "environmental NGO".

An action should be brought to the administrative courts within 30 days of the delivery of the administrative act (or without unreasonable delay if the act was not delivered but the NGO learnt of its existence in some other way).

Legal aid, injunctive relief and pro bono assistance to foreign NGOs are available according to the same conditions that would be applicable to Estonian NGOs, see 1.7.2 and 1.7.3.

4) Do individuals of the affected country have standing? What procedural assistance are they eligible for (legal aid, request for injunctive relief, interim measures, pro bono)?

Individuals of the affected country have standing against decisions made by Estonian authorities in Estonian administrative courts (as the 1st instance) if the decision breaches their individual rights (e.g. right to ownership, protection of health or similar).

Procedural assistance is according to the same rules as it is available to Estonian citizens, see 1.4. Additionally, residents of other countries wishing to be provided with state legal aid, must provide a statement of their last three years' income from a competent authority of the country of their residence (unless it cannot be reasonably acquired, in which case the court may decide on the provision of state legal aid without the statement).

5) At what stage is the information provided to the public concerned (including the above parties)?

According to the national EIA rules, the country concerned is informed by the scoping phase of the procedure by the Estonian Ministry of the Environment. The national law is based on the presumption that the involvement of the public of another country and the specific arrangements for the involvement are within the discretion of the other country. The public of another country will not be involved if the other country informs the Ministry that it does not intend to participate or the country does not respond. If the other country gives notice of the intention to participate, then the Ministry of Environment is required to reach an agreement on:

the procedure and actual schedule of the consultations,

provision of information to the public and agencies of the affected state and allowing them sufficient time for the submission of opinions on the environmental impact assessment programme and report,

the time when the proposals, objections and questions received in the course of the environmental impact assessment are submitted to the affected state for obtaining an opinion,

the drafts of the decisions which must be submitted to the affected state for obtaining an opinion.

6) What are the timeframes for public involvement including access to justice?

The national law does not specify the timeframes for public involvement of another country because the national law is based on the presumption that the specific arrangements for the involvement are within the discretion of the other country. Note, however, that the national law stipulates that the agreement with the other country on consultations has to foresee sufficient time to the public of the affected state for submission of opinions on the environmental impact assessment programme and report. It should also be noted that anyone can participate in the relevant national EIA procedures, including members of the public of another country.

The national law does not set out access to justice rules specific to cross-boundary impact assessment. In principle, members of the public of another country have standing on the same grounds as members of the public of Estonia, see 1.4.

7) How is information on access to justice provided to the parties?

There are no special rules nor practice on providing information on access to justice to foreign parties. As a general rule, any administrative act must also include a reference to how it can be challenged either by means of administrative review or in courts.

8) Is translation, interpretation provided to foreign participants? What are the rules applicable?

The national law does not specifically regulate translation and interpretation in the context of cross-boundary impact assessment. According to the general rules the language of administrative proceedings is Estonian. Participants in proceedings may request involvement of an interpreter or translator at their own expense unless an administrative authority resolves that they do not have to bear the costs. The administrative authority may establish a condition that the right granted to the person by an administrative act does not arise before the costs of involvement of the interpreter or translator are paid. In oral communication with officials a foreign language may be used by agreement of the parties. If an application, request or other document is submitted in a foreign language, the agency has the right to require translation. In principle, the agency has to respond in Estonian to the document in a foreign language. The reply is translated at the request of the person who submitted the document at the expense of that person. On agreement, the response to the document may be given in a foreign language understood by both parties. According to the representative of the Ministry of the Environment, relevant documents are translated in cross-border EIA in practice (into English, Latvian or Russian).

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 and the court permits it.

If you present a written statement or a document in a foreign language, the court will require it to be translated by you or arrange for 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 arrange for 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 an interpreter in the proceedings on your application or on its own motion. 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 deadline set by the court, your action may be disregarded. If this is unreasonably complicated or impossible, the court may look for an interpreter itself. In any case, you will have to pay for the associated costs. If the court organizes interpretation of proceedings, court translators are used, if possible.

9) Any other relevant rules?

There are no other relevant rules.

---

[1] Note that references to the Supreme Court decisions begin with capital letters RK (meaning the Supreme Court, *Riigikohus* in Estonian) followed by a certain combination of capital letters, which denote the Chamber that made the decision. For instance, the decisions of the Administrative Chamber are referred to as RKHK.

[2] See also case C-529/15

Last update: 23/07/2021

Access to justice falling outside of the scope of EIA, IPPC/IED, access to information and ELD

1.1. Decisions, acts or omissions concerning specific activities falling within the scope of EU environmental legislation outside the scope of the EIA and IED Directives[1]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedures for adopting the decision, act or omission and its content (in particular, the conditions to be fulfilled and any time-limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

Standing rules are the same for administrative review and administrative court review and for all environmental decisions, regardless of which exact legal act was the basis for the decision. Spatial planning (including challenges to the SEAs related to such plans) is an exception. Certain spatial planning decisions may be challenged by anyone on the grounds of being contrary to public interests (*actio popularis*). The plans include local (municipal level) spatial plans as well as the national designated plans. The latter type is used for building construction work, which has significant spatial impact and whose chosen location or whose functioning elicits significant national or international interest. A national designated spatial plan is prepared, above all, to express interests which transcend the boundaries of individual counties in the fields of national defence and security, energy supply, the transport of gas, waste management or for the expression of such interests in public water bodies and in the exclusive economic zone.

The general standing rules can be summarized as follows:

Standing of natural persons and private legal entities other than environmental NGOs, e.g. regular NGOs, companies etc. Standing is based on violation of subjective rights including the right to an environment that meets health and well-being needs, as provided by the General Part of the Environmental Code Act.

Standing of environmental NGOs, i.e. the NGOs that meet the national definition. Standing is based on the violation of subjective rights but the violation is presumed provided the contested administrative decision is related to the environmental protection goals or the current environmental protection activities of the NGO, see 1.4.3 for the national definition of “environmental NGO”.

Ad hoc groups (groups that are not legal entities). In general, ad hoc groups do not have standing. However, certain ad hoc groups qualify as environmental NGOs, see 1.4.3 for the national definition of “environmental NGO”.

Foreign NGOs. General criteria apply, that is, the criterion is violation of subjective rights but the violation of rights is presumed if the NGO meets the national definition of environmental NGO and provided that the contested administrative decision is related to the environmental protection goals or the current environmental protection activities of the organisation.

Other. State authorities may not challenge the activity of other state authorities, as they are not separate legal entities. However, local municipalities may challenge activities of other public authorities if their rights are violated. The same applies to other legal persons under public law, e.g. universities, public foundations etc.

General deadlines apply. Administrative challenges must be brought within 30 days of the day when the person either became aware or should have become aware of the challenged administrative act or measure. Different time limits are applied to different actions that can be brought to the administrative court against environmental decisions. Annulment of an administrative environmental decision must be filed within thirty days after the date on which the administrative act was notified to the applicant. Notification within this context can also refer to public notification of issuing the environmental act. If the administrative decision was not notified to the applicant, yet the applicant learns of the administrative act in some other way, it should be challenged without unreasonable delay. What constitutes unreasonable delay will be decided on a case-by-case basis by the court.

If the option of administrative review was used before judicial review, you have 30 days from announcement of the review decision to challenge both the decision of the administrative review as well as the initial administrative decision in the administrative court. 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 the administrative act to be declared illegal (without its annulment).

Access to national courts is effective if the national law is applied by reviewing bodies in a manner which takes into account the principles (e.g. non-discrimination) and the overall purpose of the regulation. In practice, the complexity of the environmental cases and the cost of legal representation are significant hurdles for typical members of the public and environmental NGOs.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

General rules apply. Both administrative review as well as judicial review cover procedural and substantive legality of challenged decisions, acts or omissions. The administrative review also covers “purposefulness” of the challenged decision. The courts are not allowed to reconsider value judgments of

the administrative authorities. The review of legality by courts, however, also includes the review of whether the discretionary powers were correctly used by the authority (e.g. whether all relevant facts were identified and no manifest errors were made in weighing different interests).

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

As a general rule, administrative review procedures are not compulsory, i.e. they are not required to be exhausted before filing an action in the court.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

Participation in the administrative procedures is not a precondition to have standing in national courts.

5) Are there some grounds/arguments precluded from the judicial review phase?

As noted above, judicial review of discretionary decisions is limited. The court cannot start to use the discretion given to authorities by laws but can only check whether these discretionary powers were used lawfully. This means that if significant mistakes in using discretion were made, the court cannot rectify this and make a new, fair and lawful decision itself. The court is also barred from re-evaluating value judgments of authorities.

6) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

General rules apply. In administrative matters, the judges have a more proactive role than in civil or criminal matters, which have an adversarial nature. The administrative court review is based on principles of disposition, investigation and explanation. The court may only adjudicate a matter to the extent requested in the action or other declaration provided in the law. The filing of such declarations is in the discretion of participants in the proceedings. The court must, on its own motion, make sure that facts are ascertained that are material to the matter dealt with, where necessary by gathering evidence itself, or by imposing the obligation of presenting evidence on participants in the proceedings. The court interprets and deals with declarations of participants in the proceedings according to the actual intention of the participant who made the declaration. At every stage of the proceedings, the court must provide sufficient explanation to participants in the proceedings to guarantee that no declaration or evidentiary item necessary to protect a participant's interests remains unrecognized because of the participant's lack of experience in legal matters and that any defects of form that would prevent a declaration from being heard are cured. In relation to every issue material to determining the matter, the courts must guarantee participants of the proceedings an effective and equal opportunity to present their views and the grounds for those views, and to contest the other participants' views or to support the same.

7) How is the notion of "timely" implemented by the national legislation?

There are no rules specific to the decisions, acts or omissions concerning specific activities falling within the scope of EU environmental legislation outside the scope of the EIA and IED Directives. In essence, the rather wide margin of discretion given to the judges in administrative matters to carry out procedures should ensure that the procedures are carried out with as little time and cost as possible, while at the same time ensuring proper review of challenged decisions, acts and omissions. In practice, the timeliness of judicial review is dependent on the workload of judges and their use of the discretion awarded by the Administrative Court Procedure Act. The court has a general obligation noted in law to deal the administrative matter within reasonable period of time.

8) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

Injunctive relief is available, general rules apply. Request for injunctive relief may be made by the person who brought the administrative challenge to the administrative court also during administrative review procedures. In that case the court will decide whether to suspend the validity of the decision, but the legality of the decision will still be decided by the administrative authority carrying out the review procedures. Courts may provide injunctive relief in different forms, including suspending the validity or enforcement of the decision challenged, prohibit the addressee of the decision to engage in the activity regulated in the decision. Injunctive relief may be granted either based on the court's own motion or based on the application of the applicant.

Courts must assess whether injunctive relief is truly necessary for the protection of applicant's rights or to achieve the aim of the action, weigh different interests affected by injunctive relief measures and should apply only such measures that are proportional. However, there are no financial obligations attached to applying for injunctive relief (no deposit or similar instruments) and no claims for damages may be brought against a person who has applied for injunctive relief even if they would lose the case.

Injunctive relief decisions are court orders, which can be appealed in higher courts. The deadline for appealing a court order is 15 days from the delivery of the court order.

9) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive, and do these include express statutory reference to a requirement that costs should not be prohibitive?

General rules apply. Administrative review is a no-cost or low-cost procedure. Everyone bears their own costs. For instance, if you use a lawyer to represent or assist you in administrative review procedures you must pay for the service yourself even if the challenge is found to be justified.

If you bring an action to the administrative court, there are several costs that may be involved. Possible costs are divided into two general groups: court expenses (*kohtukulud*) and extrajudicial expenses (*kohtuvälised kulud*). In practice, the greatest expense are fees for legal advisers and contractual representatives (which are classified as extrajudicial expenses). The loser pays principle applies. There is no cost capping. There is no express statutory reference to a requirement that cost should not be prohibitive. In administrative matters the courts generally do not require the costs of the administrative authority to be paid because the authority is expected to be able to handle typical disputes by itself using its own resources. Also, the courts also may reduce the cost of third parties (e.g. permit holder) that have to be compensated. For more details on the general rules, see 1.7.3.

1.2. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with national implementing legislation for the Strategic Environmental Assessment (SEA) Directive 2001/42/EC[2]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedures for adopting the decision, act or omission (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

Standing (both for administrative review as well as judicial review) related to procedures subject to the SEA Directive depends on the nature of the plan or programme for which the SEA was carried out:

If the SEA was carried out for a local (municipal) spatial plan or national designated spatial plan, anyone can challenge the spatial plan adopted together with its SEA on the grounds that it contravenes public interests (*actio popularis*);

In all other cases, the plan or programme and its SEA can only be challenged if a) the decision is considered to be an individual administrative act, i.e. it creates, terminates or changes subjective rights, and b) it breaches the right of the person bringing the challenge (breach of rights is presumed for environmental NGOs). The overwhelming majority of plans and programmes outside the above-mentioned spatial plans that are subject to SEA are not individual administrative acts and therefore cannot be challenged in administrative review or judicial review procedures.

Challenging omissions to adopt a plan or programme that is an administrative act follows a different logic. In such cases, the standing is firstly dependent on whether the omission could have breached a subjective right – this may also be theoretically relevant as regards those plans and programmes which are not administrative acts. Secondly, standing would be dependent on whether the authority had a clear obligation to act (or act in a certain manner).
General deadlines apply. Administrative challenges must be brought within 30 days of the day when the person either became aware or should have become aware of the challenged administrative act or measure. Different time limits are applied to different actions that can be brought to the administrative court against environmental decisions. Annulment of an administrative environmental decision must be filed within thirty days after the date on which the administrative act was notified to the applicant. Notification within this context can also refer to public notification of issuing the environmental act. If the administrative decision was not notified to the applicant, yet the applicant learns of the administrative act in some other way, it should be challenged without unreasonable delay. What constitutes unreasonable delay will be decided on a case-by-case basis by the court.
If the option of administrative review was used before judicial review, you have 30 days from announcement of the review decision to challenge both the decision of the administrative review as well as the initial administrative decision in the administrative court. 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 the administrative act to be declared illegal (without its annulment).
Access to national courts is effective to the extent that the plans are administrative acts and provided that the national law is applied by reviewing bodies in a manner which takes into account the principles (e.g. non-discrimination) and the overall purpose of the regulation. In practice, the complexity of the environmental cases and the cost of legal representation are significant hurdles for typical members of the public and environmental NGOs.
2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?
General rules apply. Both administrative review as well as judicial review cover procedural and substantive legality of challenged decisions, acts or omissions. The administrative review also covers “purposefulness” of the challenged decision. The courts are not allowed to reconsider value judgments of the administrative authorities. The review of legality by courts, however, also includes the review of whether the discretionary powers were correctly used by the authority (e.g. whether all relevant facts were identified and no manifest errors were made in weighing different interests).
3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?
As a general rule, administrative review procedures are not compulsory, i.e. they are not required to be exhausted before filing an action in the court.
4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?
Participation in the administrative procedures is not a precondition to have standing in national courts.
5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?
Injunctive relief is available, general rules apply. Request for injunctive relief may be made by the person who has brought the administrative challenge to the administrative court also during administrative review procedures. In that case the court will decide whether to suspend the validity of the decision, but the legality of the decision will still be decided by the administrative authority carrying out the review procedures. Courts may provide injunctive relief in different forms, including suspending the validity or enforcement of the decision challenged, prohibit the addressee of the decision to engage in the activity regulated in the decision. Injunctive relief may be granted either based on the court’s own motion or based on the application of the applicant.
Courts must assess whether injunctive relief is truly necessary for the protection of applicant’s rights or to achieve the aim of the action, weigh different interests affected by injunctive relief measures and should apply only such measures that are proportional. However, there are no financial obligations attached to applying for injunctive relief (no deposit or similar instruments) and no claims for damages may be brought against a person who has applied for injunctive relief even if they would lose the case.
Injunctive relief decisions are court orders, which can be appealed in higher courts. The deadline for appealing a court order is 15 days from the delivery of the court order.
6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive, and do these include express statutory reference to a requirement that costs should not be prohibitive?
General rules apply. Administrative review is a no-cost or low-cost procedure. Everyone bears their own costs. For instance, if you use a lawyer to represent or assist you in administrative review procedures you must pay for the service yourself even if the challenge is found to be justified.
If you bring an action to the administrative court, there are several costs that may be involved. Possible costs are divided into two general groups: court expenses (*kohtukulud*) and extrajudicial expenses (*kohtuvälised kulud*). In practice, the greatest expense are fees for legal advisers and contractual representatives (which are classified as extrajudicial expenses). The loser pays principle applies. There is no cost capping. There is no express statutory reference to a requirement that cost should not be prohibitive. In administrative matters the courts generally do not require the costs of the administrative authority to be paid because the authority is expected to be able to handle typical disputes by itself using its own resources. Also, the courts may reduce the cost of third parties (e.g. permit holder) that have to be compensated. For more details on the general rules, see 1.7.3.

1.3. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with the public participation requirements of Article 7 of the Aarhus Convention in respect of plans and programmes not submitted to the procedures set out in the Strategic Environmental Assessment (SEA) Directive 2001/42/EC[3]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedures for adopting the decision, act or omission (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?
Standing related to administrative and judicial review of adopted plans and programmes depends on the nature of the plan or programme:
For plans and programmes that are considered administrative acts, i.e. which create, terminate or change the individual rights of any person, standing is awarded to those persons whose individual subjective rights have been breached (breach of rights is presumed for environmental NGOs). Plans and programmes may also be considered to be administrative acts only in part. Plans and programmes related to environment belonging to this category include spatial plans for small areas (detailed spatial plans) which are not subject to SEAs and protection rules for conservation areas, for example. The following questions and answers are relevant only for this category of plans and programmes.
The majority of plans and programmes that are subject to Article 7 of the Aarhus Convention are not considered administrative acts but internal administrative documents. As these plans and programmes do not have a direct effect on anyone’s rights, they can also not be challenged either by means of administrative nor judicial review. Therefore, the following questions and answers are not relevant to this category.

Challenging omissions to adopt a plan or programme that is an administrative act follows a different logic. In such cases, the standing is firstly dependent on whether the omission could have breached a subjective right – this may also be theoretically relevant as regards those plans and programmes which are not administrative acts. Secondly, standing would be dependent on whether the authority had a clear obligation to act (or act in a certain manner).
General deadlines apply. Administrative challenges must be brought within 30 days of the day when the person either became aware or should have become aware of the challenged administrative act or measure. Different time limits are applied to different actions that can be brought to the administrative court against environmental decisions. Annulment of an administrative environmental decision must be filed within thirty days after the date on which the administrative act was notified to the applicant. Notification within this context can also refer to public notification of issuing the environmental act. If the administrative decision was not notified to the applicant, yet the applicant learns of the administrative act in some other way, it should be challenged without unreasonable delay. What constitutes unreasonable delay will be decided on a case-by-case basis by the court (usually up to two months).
If the option of administrative review was used before judicial review, you have 30 days from announcement of the review decision to challenge both the decision of the administrative review as well as the initial administrative decision in the administrative court. 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 the administrative act to be declared illegal (without its annulment).
Access to national courts is effective to the extent that the plans are administrative acts and provided that the national law is applied by reviewing bodies in a manner which takes into account the principles (e.g. non-discrimination) and the overall purpose of the regulation. In practice, the complexity of the environmental cases and the cost of legal representation are significant hurdles for typical members of the public and environmental NGOs.
2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?
General rules apply. Both administrative review as well as judicial review cover procedural and substantive legality of challenged decisions, acts or omissions. The administrative review also covers “purposefulness” of the challenged decision. The courts are not allowed to reconsider purposefulness and value judgements of the administrative authorities. The review of legality by courts, however, also includes the review of whether the discretionary powers were correctly used by the authority (e.g. whether all relevant facts were identified and no manifest errors were made in weighing different interests).
3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?
As rule, administrative review procedures are not compulsory, i.e. they are not required to be exhausted before filing an action in the court.
4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?
Participation in the administrative procedures is not a precondition to have standing in national courts.
5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?
Injunctive relief is available, general rules apply. Request for injunctive relief may be made by the person who has brought the administrative challenge to the administrative court also during administrative review procedures. In that case the court will decide whether to suspend the validity of the decision, but the legality of the decision will still be decided by the administrative authority carrying out the review procedures. Courts may provide injunctive relief in different forms, including suspending the validity or enforcement of the decision challenged, prohibit the addressee of the decision to engage in the activity regulated in the decision. Injunctive relief may be granted either based on the court’s own motion or based on the application of one of the applicant.
Courts must assess whether injunctive relief is truly necessary for the protection of applicant’s rights or to achieve the aim of the action, weigh different interests affected by injunctive relief measures and should apply only such measures that are proportional. However, there are no financial obligations except state fee 15 euros attached to applying for injunctive relief (no deposit or similar instruments) and no claims for damages may be brought against a person who has applied for injunctive relief even if they would lose the case.
Injunctive relief decisions are court orders, which can be appealed in higher courts. The deadline for appealing a court order is 15 days from the delivery of the court order.
6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?
General rules apply. Administrative review is a no-cost or low-cost procedure. Everyone bears their own costs. For instance, if you use a lawyer to represent or assist you in administrative review procedures you must pay for the service yourself even if the challenge is found to be justified.
If you bring an action to the administrative court, there are several costs that may be involved. Possible costs are divided into two general groups: court expenses (*kohtukulud*) and extrajudicial expenses (*kohtuvälised kulud*). In practice, the greatest expense are fees for legal advisers and contractual representatives (which are classified as extrajudicial expenses). The loser pays principle applies. There is no cost capping. There is no express statutory reference to a requirement that cost should not be prohibitive. In administrative matters the courts generally do not require the costs of the administrative authority to be paid because the authority is expected to be able to handle typical disputes by itself using its own resources. Also, the courts also may reduce the cost of third parties (e.g. permit holder) that have to be compensated. For more details on the general rules, see 1.7.3.
1.4. Decisions, acts or omissions also concerning plans and programmes required to be prepared under EU environmental legislation[4]
1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the content of the plan (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?
For plans and programmes that are considered administrative acts, i.e. which create, terminate or change the individual rights of any person, standing is awarded to those persons whose individual subjective rights have been breached (breach of rights is presumed for environmental NGOs). Plans and programmes may also be considered to be administrative acts only in part. Plans and programmes that are not administrative acts do not have a direct effect on anyone’s rights. Such plans and programmes cannot be challenged. Therefore, the following questions and answers are not relevant for this category.
Challenging omissions to adopt a plan or programme that is an administrative act follows a different logic. In such cases, the standing is firstly dependent on whether the omission could have breached a subjective right – this may also be theoretically relevant as regards those plans and programmes which are not administrative acts. Secondly, standing would be dependent on whether the authority had a clear obligation to act (or act in a certain manner). Note that the obligation may arise also from the Community law, as was provided by CJEU in case C-237/07 (*Janecek*).
General deadlines apply. Administrative challenges must be brought within 30 days of the day when the person either became aware or should have become aware of the challenged administrative act or measure. Different time limits are applied to different actions that can be brought to the administrative court against environmental decisions. Annulment of an administrative environmental decision must be filed within thirty days after the date on which the administrative act was notified to the applicant. Notification within this context can also refer to public notification of issuing the environmental act. If the

administrative decision was not notified to the applicant, yet the applicant learns of the administrative act in some other way, it should be challenged without unreasonable delay. What constitutes unreasonable delay will be decided on a case-by-case basis by the court.
If the option of administrative review was used before judicial review, you have 30 days from announcement of the review decision to challenge both the decision of the administrative review as well as the initial administrative decision in the administrative court. 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 the administrative act to be declared illegal (without its annulment).
Access to national courts is effective to the extent that the plans are administrative acts and provided that the national law is applied by reviewing bodies in a manner which takes into account the principles (e.g. non-discrimination) and the overall purpose of the regulation. In practice, the complexity of the environmental cases and the cost of legal representation are significant hurdles for typical members of the public and environmental NGOs.
2) Does the form in which the plan or programme is adopted make a difference in terms of legal standing (see also Section 2.5 below)?
The form for the plan or programme is immaterial. According to the long-established case law of the Supreme Court, classification of decisions as administrative acts is not dependent on what the act is called by the authorities but depends on their legal effects. As a practical example, detailed protection rules for nature conservation areas are adopted in the form of a Regulation (i.e. secondary legislative act), but they are considered to be at least in part administrative acts and can be challenged as such in courts or by means of administrative review.
3) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?
General rules apply. Both administrative review as well as judicial review cover procedural and substantive legality of challenged decisions, acts or omissions. The administrative review also covers “purposefulness” of the challenged decision. The courts are not allowed to reconsider value judgments of the administrative authorities. The review of legality by courts, however, also includes the review of whether the discretionary powers were correctly used by the authority (e.g. whether all relevant facts were identified and no manifest errors were made in weighing different interests).
4) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?
As rule administrative review procedures are not compulsory, i.e. they are not required to be exhausted before filing an action in the court.
5) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?
Participation in the administrative procedures is not a precondition to have standing in national courts.
6) Are there some grounds/arguments precluded from the judicial review phase?
Judicial review of discretionary decisions is limited. The court cannot exercise the discretion instead of the public authorities but can only check whether these discretionary powers were used lawfully. This means that if significant mistakes were made, the court cannot rectify this and make a new, fair and lawful decision itself. The court is also barred from re-evaluating value judgments of authorities.
7) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?
According to the general rules and principles of administrative court procedure, administrative courts have an obligation to offer necessary support and guidance to parties of the court procedures in order to ensure that all of the parties have an equal chance to present and explain their arguments and challenge the arguments brought by the other side. The courts are also obliged to guide the parties if it is evident that they lack the necessary knowledge and experience to make the necessary claims to reach their objectives.
8) How is the notion of “timely” implemented by the national legislation?
There are no rules specific to the present matters. In essence, the rather wide margin of discretion given to the judges in administrative matters to carry out procedures should ensure that the procedures are carried out in as little time and with as little cost as possible, while at the same time ensuring proper review of challenged decisions, acts and omissions. In practice, the timeliness of judicial review is dependent on the workload of judges and their use of the discretion awarded by the Administrative Court Procedure Act. Judges have general duty to deal the case within in reasonable time.
9) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?
Injunctive relief is available, general rules apply. Request for injunctive relief may be made by the person who has brought the administrative challenge to the administrative court also during administrative review procedures. In that case the court will decide whether to suspend the validity of the decision, but the legality of the decision will still be decided by the administrative authority carrying out the review procedures. Courts may provide injunctive relief in different forms, including suspending the validity or enforcement of the decision challenged, prohibit the addressee of the decision to engage in the activity regulated in the decision. Injunctive relief may be granted either based on the court’s own motion or based on the application of the applicant.
Courts must assess whether injunctive relief is truly necessary for the protection of applicant’s rights or to achieve the aim of the action, weigh different interests affected by injunctive relief measures and should apply only such measures that are proportional. However, there are no financial obligations attached to applying for injunctive relief (no deposit or similar instruments) and no claims for damages may be brought against a person who has applied for injunctive relief even if they would lose the case.
Injunctive relief decisions are court orders, which can be appealed in higher courts. The deadline for appealing a court order is 15 days from the delivery of the court order.
10) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?
General rules apply. Administrative review is a no-cost or low-cost procedure. Everyone bears their own costs. For instance, if you use a lawyer to represent or assist you in administrative review procedures you must pay for the service yourself even if the challenge is found to be justified.
If you bring an action to the administrative court, there are several costs that may be involved. Possible costs are divided into two general groups: court expenses (*kohtukulud*) and extrajudicial expenses (*kohtuvälised kulud*). In practice, the greatest expense are fees for legal advisers and contractual representatives (which are classified as extrajudicial expenses). The loser pays principle applies. There is no cost capping. There is no express statutory reference to a requirement that cost should not be prohibitive. In administrative matters the courts generally do not require the costs of the administrative authority to be paid because the authority is expected to be able to handle typical disputes by itself using its own resources. Also, the courts also may reduce the cost of third parties (e.g. permit holder) that have to be compensated. For more details on the general rules, see 1.7.3.
1.5. Executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts[5]
1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedure for adopting or the content of the decision, act or omission of the national regulatory act (in

particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

Executive regulations and/or generally applicable legally binding normative instruments which do not have a direct effect on anyone's rights are not considered administrative acts and thus cannot be challenged either by means of administrative review nor judicial review. However during a court review, a person may request a court to set aside a legislative act relevant to the specific case on the basis that the act contravenes the Constitution. Agreement of the court to the applicants' position also leads to constitutional review by the Supreme Court.

For so-called 'mixed acts', where part of the decision is substantively an administrative act and part of the decision not, the usual rules for standing apply. This means that they can be (partially) challenged by anyone whose rights they breach (breach of rights is presumed for environmental NGOs). The most relevant type of a mixed act is the detailed nature protection rules.

The detailed protection rules have to be provided for certain types of nature protection areas. The rules foresee zoning of the areas and specify the requirements for human activities in each zone. The Nature Protection Act sets out the framework for the rules and also the default regime for each type of zone. For instance, the act prohibits regeneration cutting (a type of forest felling) within limited management zones and the use of floating devices in conservation zones unless specified otherwise in detailed protection rules. The protection rules for Kõnnumaa landscape protection area specify that cutting of forest is allowed in the limited management zone of *Ohekatku* from August to January and that the use of engineless floating devices is allowed throughout the protected area. The Supreme Court has found that such acts have a mixed nature. The detailed protection rules are administrative acts in so far as they significantly affect specific plots of land. The cases concern rights of construction. However, in the example above the court would probably find that the provision on logging constitutes an administrative act and the provision on the use of engineless watercraft is a legislative measure. See RKHKm 07.05.2003, 3-3-1-31-03, RKÜKo 31.05.2011, 3-3-1-85-10.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

General rules apply. Both administrative review as well as judicial review cover procedural and substantive legality of challenged decisions, acts or omissions. The administrative review also covers "purposefulness" of the challenged decision. The courts are not allowed to reconsider value judgments of the administrative authorities. The review of legality by courts, however, also includes the review of whether the discretionary powers were correctly used by the authority (e.g. whether all relevant facts were identified and no manifest errors were made in weighing different interests).

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

As rule administrative review procedures are not compulsory, i.e. they are not required to be exhausted before filing an action in the court.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

Participation in the administrative procedures is not a precondition to have standing in national courts.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

Injunctive relief is available, general rules apply. Request for injunctive relief may be made by the person who has brought the administrative challenge to the administrative court also during administrative review procedures. In that case the court will decide whether to suspend the validity of the decision, but the legality of the decision will still be decided by the administrative authority carrying out the review procedures. The courts may provide injunctive relief in different forms, including suspending the validity or enforcement of the decision challenged, prohibit the addressee of the decision to engage in the activity regulated in the decision. Injunctive relief may be granted either based on the court's own motion or based on the application of the applicant.

Courts must assess whether injunctive relief is truly necessary for the protection of applicant's rights or to achieve the aim of the action, weigh different interests affected by injunctive relief measures and should apply only such measures that are proportional. However, there are no financial obligations attached to applying for injunctive relief (no deposit or similar instruments) and no claims for damages may be brought against a person who has applied for injunctive relief even if they would lose the case.

Injunctive relief decisions are court orders, which can be appealed in higher courts. The deadline for appealing a court order is 15 days from the delivery of the court order.

6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

General rules apply. Administrative review is a no-cost or low-cost procedure. Everyone bears their own costs. For instance, if you use a lawyer to represent or assist you in administrative review procedures you must pay for the service yourself even if the challenge is found to be justified.

If you bring an action to the administrative court, there are several costs that may be involved. Possible costs are divided into two general groups: court expenses (*kohtukulud*) and extrajudicial expenses (*kohtuvälised kulud*). In practice, the greatest expense are fees for legal advisers and contractual representatives (which are classified as extrajudicial expenses). The loser pays principle applies. There is no cost capping. There is no express statutory reference to a requirement that cost should not be prohibitive. In administrative matters the courts generally do not require the costs of the administrative authority to be paid because the authority is expected to be able to handle typical disputes by itself using its own resources. Also, the courts also may reduce the cost of third parties (e.g. permit holder) that have to be compensated. For more details on the general rules, see 1.7.3.

7) Is it possible to bring a legal challenge before a national court concerning any related EU regulatory act with a view to a validity reference under Article 267 TFEU, and if so how[6]?

Legal challenges cannot be brought directly against EU regulatory acts to national courts. However, if reaching a judgment in the case brought against a national measure would be dependent on first determining the validity of acts adopted by the institutions, bodies, offices or agencies of the Union, a request for preliminary ruling may be made by national courts. Making such a request and its contents are in any case at the discretion of the national court; although any party of the proceeding can apply for such a request to be made, there is no mechanism to force the court to do so.

---

[1] This category of case reflects recent case-law of the CJEU such as *Protect C-664/15, the Slovak brown bear case C-240/09, see as described under the Commission Notice C/2017/2616 on access to justice in environmental matters*

[2] The SEA Directive relates to plans and programmes. These are also covered by Article 7 and Article 9(3) of the Aarhus Convention.

[3] See findings under ACCC/C/2010/54 for an example of a plan not submitted to SEA but subject to the public participation requirements of Article 7 of the Aarhus Convention.

[4] These fall within the scope of both Article 7 and Article 9(3) of the Aarhus Convention. See also relevant case-law of the Court of Justice of the European Union such as Case C-237/97, Janecek and cases such as Boxus and Solvay C-128/09-C-131/09 and C-182/10, as referred to under the Commission Notice C/2017/2616 on access to justice in environmental matters.

[5] Such acts come within the scope of Article 8 and Article 9(3) of the Aarhus Convention. An example of such an act concerns the decision of the national administration that featured in Case C-281/16, *Vereniging Hoekschewaards Landschap*, ECLI:EU:C:2017:774

[6] For an example of such a preliminary reference see Case C-281/16, *Vereniging Hoekschewaards Landschap*, ECLI:EU:C:2017:774

Last update: 23/07/2021

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

Silence of the administration

Inactivity of the administration may be challenged both by means of administrative as well as judicial review. In both cases, a challenge can only be brought against an authority if the authority has a statutory obligation to act. If the obligation to act is subject to discretion, only cases where the rules on exercise of discretion have been breached may be challenged.

Personal standing rules are the same as for any other administrative or judicial review procedure, i.e. only those persons whose rights are being breached have a standing to challenge the silence, whereas standing is presumed for environmental NGOs in cases related to their previous activity or aims.

A complaint to initiate an administrative review should be brought against silence of the administrative authority within 30 days of the knowledge of the inactivity. An action against passivity can be brought to an administrative court within 1 year of the statutory deadline set for the authority to act; or if no statutory deadline exists for this specific activity, within 2 years of the application to act made by the person bringing an action to court.

If the passivity of the administration has resulted in material or immaterial damages, an action to compensate the damages can also be brought to the administrative court. The deadline for bringing such a case is 3 years from the date of learning about the damage.

Penalties for failing to provide effective access to justice

If the administrative authority fails to properly carry out the administrative review procedures, the decision can be reviewed and revoked by the administrative court. In addition to overturning the administrative review decision together with the initial administrative decision (e.g. an environmental permit) by the court, the administrative authority also risks claims for damages created by lack of effective access to justice.

Penalties for contempt of court

Failure to carry out an administrative court decision by either a private person or administrative body may result in a fine of up to €32,000. This penalty may be applied multiple times if the contempt of court continues even after a fine has been imposed.

Last update: 23/07/2021

The national language version of this page is maintained by the respective Member State. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. The European Commission accepts no responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.