EU FORUM OF JUDGES FOR THE ENVIRONMENT
UE FORUM DES JUGES POUR L'ENVIRONNEMENT

TRAINING AND SPECIALISATION OF MEMBERS OF THE JUDICIARY IN ENVIRONMENTAL LAW

In preparation of our first Annual Conference in The Hague, in December 2004, a questionnaire on these issues has been developed and our members have been invited to send in national reports. 19 such reports were received and the results were used to produce a general report, consisting of three parts, that you can find on our website:

http://www.eufje.org/index.php/en/conferences/the-hague-2004

Since 2004 much has happened and new member states have joined the EU. The time has come to take stock again and to assess the progress that has been made. The questionnaire has been modified only slightly in comparison with the 2004 questionnaire. Feel free to take the 2004 national report, if available, as a starting point and update it as appropriate. The candidate member states are also invited to submit a report.

You are invited to send in the national reports at the latest on ***September 15th*** *to* ***eufje.bogos@gmail.com*** *so that we can prepare the general report that will be presented at the Sofia Conference.*

I. INTRODUCTION

What is the general nature of the system of law in your country (e.g. civil, common law, codified etc.)?

Does it include -

- constitutional protection of the environment
- a general law protecting the environment
- a code or compilation encompassing all or a substantial part of the laws relating to provisions on environmental protection?

Estonia employs a civil law system and follows the legal traditions of continental Europe – there is a distinction between public and private law. The main source of law is written (statutory) law. Case law has no precedent value. However, the decisions of the Estonian Supreme Court are used as a subsidiary source of law in interpreting and founding the general principles of law.

The Constitution of the Republic of Estonia provides the legal bases for the system of laws and regulations concerning the protection of the environment. Section 5 of the Constitution stipulates that the natural wealth and resources of Estonia are national riches, which must be used economically. Section 53 of the Constitution further states that "everyone has a duty to preserve the human and natural environment and to compensate for harm that he or she has caused to the environment. The procedure for compensation is provided by law". However, the Constitution does not list the rights to a clean environment and to environmental information under the list of fundamental rights.

In Estonia, there is no single general law protecting the environment as it is divided amongst many different pieces of legislation. The General Part of the Environmental Code Act creates the basis for more detailed laws and regulations on environmental protection by providing the most important legal definitions[1] and by stipulating the principles and main duties of environmental protection, duties of the operator,[2] environmental rights[3] and the process of granting environmental protection permits. In addition to the General Part of the Environmental Code Act, there are numerous laws that regulate specific areas of environmental protection. The most important piece of legislation in this regard is the Nature Conservation Act (hereafter: NCA), which establishes the general principles, aims and objectives of nature conservation, the definitive list of protected natural objects, the process of placing natural objects under protection along with the organisation of said protection. Next to the NCA, the Water Act regulates the use and protection of water, the relations between landowners and water users and the use of public water bodies designated for public use. The Forest Act regulates the directing of forestry, forest survey and management and compensating the damage caused to the environment within the meaning of this Act. The Environmental Impact Assessment and Environmental Management System Act provides legal grounds and procedure for the

[1] E.g. the definitions of environmental nuisance, environmental risk, environmental threat, installation and operator, emission, emission limit value, limit value of quality of environment, pollution and contamination.

[2] Pursuant to Section 6(2) of the The General Part of the Environmental Code Act, an Operator is a person who operates or possesses an installation, controls the operations thereof and is responsible for the technical functioning of the installation.

[3] E.g. the right to environment that meets health and well-being needs, the environmental procedural rights (e.g. the right to request environmental information, the right to receive environmental information upon emergence of environmental threat etc.) and the rights to use plot of land and water body belonging to another person.

assessment of likely environmental impact, organisation of the environmental management and audit scheme and legal grounds for awarding the eco-label in order to prevent environmental damage and establishes liability for violation of the requirements of this Act. Lastly, it is important to note the Environmental Liability Act, which regulates the prevention and remedying of damage caused to the environment based on the polluter pays principle.

II. TRAINING AND INFORMATION

A - Training

1. General training arrangements

(a) Please describe the arrangements which exist in your country for training judges –

- for initial training before taking office?

There is no initial training programme designed for judges before assuming office. However, it is important to note that there is a special and mandatory training programme developed for newly appointed judges.[4] The term "newly appointed judge" refers to judges of the first instance or of the court of appeal, who have been in the position of a judge for less than three years. Additionally, as many of the judges in Estonia have come from within the Estonian court system, working previously as law clerks[5] or as judicial clerks,[6] they have had the opportunity to participate in the judicial training events conducted by the Legal Information and Judicial Training Department at the Supreme Court of Estonia (hereafter: the Department).

- for continued training?

According to Section 44 of the Courts Act (hereafter: CA), one of the judges' self-governmental bodies - the Training Council (hereafter: the Council) is responsible for the training of judges. The Council is comprised of two judges of a court of the first instance, two judges of a court of appeal, two justices of the Supreme Court, a representative of the Prosecutor's Office, a representative of the Ministry of Justice and a representative of the University of Tartu School of Law. The Department assesses the training needs of the judges, prepares training strategies and drafts the annual training programme. The Department also prepares the programme for judge's examination. The aforementioned training strategies, the annual training programmes and the programme for judge's examination must be approved by the Council.

The training programme for the next year must be submitted to the Council no later than 15th of August. Taking into consideration the training needs of judges and the state budget funds allocated for the training of judges, the training programme is then approved by the Council no later than by the 1st of October. The everyday training activities (e.g. the preparation of the

[4] Pursuant to Section 74(2) of the Estonian Courts Act (hereafter: CA), a judge of a court of the first instance and of a court of appeal who assumes office is required to undergo the professional skills training programme approved by the Training Council at the time determined by the Training Council.

[5] Pursuant to Section 31(1) of the CA, a law clerk is an official of the Supreme Court who generalises judicial practice and participates in the preparation of cases for proceeding.

[6] Pursuant to Section 125^1 (1-2) of the CA, a judicial clerk is a court official who participates in the preparation for proceeding and in proceeding of cases to the extent prescribed in the court procedure law either independently or under the supervision of a judge. A judicial clerk is also competent to perform the acts and make the judgements, which an assistant judge or another court official is competent to perform or make pursuant to the court procedure law.

study and methodological materials, agreements with trainers, the assessment of the training needs etc.) are conducted by the Department under the supervision of the Council. Judges' training includes mostly legal training and skills training. Legal training is divided into training events for civil judges, criminal judges and administrative law judges. If judges are interested, they can participate in trainings of other areas as well. The Department also provides the opportunity to participate in training events abroad. Judges have the opportunity to participate in numerous training events conducted by our partners[7] in addition to *ad hoc* training events abroad.

(**b) How is initial training arranged?**
See answer II A 1. (a)

Where and by whom is it conducted, for example –
- universities,
- other specialised training establishments
- organised by government or by judicial bodies?

Does it include stages or similar arrangements (e.g. internships, pupillages, apprenticeships) -
- with courts
- with lawyers
- with government departments
- with other agencies?

(c) How is continuing training organised? For example –

Where and by whom is it conducted?

The continued training is organised by the Department, see answer II. A. 1. (a)

Is it compulsory (for all or some categories of judges), or voluntary?
Pursuant to Section 74(1) of the CA, a judge is required to develop knowledge and skills of his or her speciality on a regular basis and to participate in training events. Pursuant to Section 74(2) of CA, a judge of a court of the first instance and of a court of appeal who assumes office is required to undergo the professional skills training programme approved by the Council at the time determined by the Council.[8] In addition, all judges have to participate in certain training events set out in the annual training programme on the basis of an annual training plan. Such training plan for every court is approved annually by the full court of that court. [9] The chairman of every court is in charge of monitoring the compliance with the training plan. Other than that, participation in training events is voluntary.

[7] E.g. the European Judicial Training Network and the Academy of European Law.
[8] I.e. the aforementioned training programme for the newly appointed judges, see question II A 1. (a).
[9] Pursuant to Section 35 of the CA, a full court is a self-governing body of a court, that is comprised of all the judges of that court.

Is there a regular programme of continuing training? If so, how often? What is the average period in a year? Are there special requirements, for example on a change of office?

As mentioned in part II. A. 1. (a) of this questionnaire, the training programme is drafted annually. The exact content of the training programme varies from year to year, depending on the judges' training needs. The training programme for the next year must be submitted to the Council no later than 15th of August and said programme must be approved by the Council no later than the 1st of October. The judicial training calendar is divided into two halves – the first lasts from January to June, followed by a two-month summer break. The second half of the training year lasts from September to December. There are no special requirements to participate in training events, other than those mentioned in the previous question.

Is it supervised? If so, by whom? Who determines the content of the courses (e.g. government, judicial bodies, individual judges)?

The judicial training programme is executed by the Department under the supervision of the Council. The Department, who is in charge of assessing judges' training needs throughout the training year, determines the exact content of the training events set out in the annual training programme.

Are the training fees paid for? Are judges entitled to leave from work for the training?

All the training events are free of charge for all participants – judges along with legal and judicial clerks. Funds for judicial training events are allocated directly from the state budget. As judges are required by law to develop their knowledge and skills, they are entitled to leave from work to participate in training events.

Is such training given weight in decisions on career choices or appointments to particular responsibilities?

Active participation in judicial training events can be considered as a positive when it comes to career choices or appointments to particular responsibilities. However, participation in judicial training events is not a mandatory prerequisite for such appointments.

2 Training in environmental law

Do the training arrangements for judges include special arrangements for training in environmental law –

- for initial training
- for continuing training?

There are no special arrangements for conducting training events in the field of environmental law. Training events in this field are conducted (semi)annually, based on the assessment of

judicial training needs. The Department also provides the opportunity to participate in training events on the subject of environmental law abroad.[10]

If so, please describe the arrangements, covering the same points as for general training.

In particular –

- is such training in environmental law given to all judges or only those with specific functions in that field?
- on average, how many judges receive such training in every year?
- what form does it take and for what periods?

Is there a mechanism for assessing the training needs of judges and periodically reviewing this?

The Department assesses the training needs of judges annually. To assess the exact training needs and the effects of the past training events, all available sources of information are used. Above all, the main source of information comes in the form of active communication throughout the year with judges and court officials, along with other persons and institutions, which have active contact with the courts. Additionally, after every training event, the Department collects anonymous feedback from all the participants, that helps to assess both the effectiveness of past training events along with the future training needs of Estonian judges.

Besides the aforementioned methods, the Department also keeps up to date with changes in legislation, develops and distributes questionnaires and carries out case law analyses. A case law analysis is a process of studying judgments (and if necessary, other court documents as well) in all of its aspects in order to identify problems in the uniform application of law by the courts. In the course of such research, the case law analyst ascertains the scope of problems that exist in the field of application of material and/or procedural norms.

After having concluded the assessment of judicial training needs, the Department drafts a training programme for the next year. The first draft must be completed by May, which is then presented to the Council. With the Council's approval, the draft programme is sent out in June to all the relevant institutions for assessment.[11] Depending on the feedback, the Department may amend the draft programme. The amended draft programme is then resubmitted to the Council no later than by 15th of August. Taking into consideration the training needs and the state budget funds allocated for the training of judges, the final training program is approved by the Council no later than by the 1st of October.

Have you already made use of training material prepared at EU level (e.g. within the framework of DG ENV programme for cooperation with national judges and prosecutors: http://ec.europa.eu/environment/legal/law/judges.htm). Do you have any suggestions for improvements?

[10] See answer II. A. 1. (a).

[11] Those institutions are the Estonian Ministry of Justice, the Estonian Bar Association, the Estonian Prosecutor's Office, the Chancellor of Justice and the University of Tartu School of Law along with the County and Administrative Courts, Courts of Appeal and the Supreme Court of Estonia.

The aforementioned training materials have previously been used in judges' training events on environmental law. Said materials have also been made available for all members of the judiciary on the Department's homepage. As for improvements, it would be useful if these materials were periodically updated to reflect changes in legislation and especially case law.

B – Availability of Information on environmental law

(a) Are there any specialised collections of national or EU case law relating to environmental law -

- in paper form
- on the Internet?

There are no specialised collections of national or EU case law relating to environmental law. However, the website of Riigi Teataja (https://www.riigiteataja.ee/en/) provides an opportunity to search national case law on the aforementioned subject by the type of the proceeding, annotation, keyword and content.

(b) Are judges equipped with computers giving them free access to databases (with case law and literature) on environmental law, including

- national databases
- European databases
- international databases?

Estonian judges are equipped with computers that give them access to national case law (*e.g.* Riigi Teataja) and literature (*e.g.* Juridica[12]) concerning environmental law. Said computers also provide the opportunity to use all open access journals and databases.

C – Proposals for training or improving availability of information

In this section, we have underlined all the areas where the development of additional training materials or organising future training sessions would be most welcome.

(a) In what areas would it be helpful to develop training materials and organise training sessions, for example –

General principles of law, e.g. –
International environmental law
European environmental law
Comparative environmental law

Particular aspects of environmental law, e.g –
Environmental Impact Assessment – this is a topic that needs constant updating of knowledge, since it is very prevalent in Estonian court practice.
Sustainable Development
Access to Justice and Standing (Aarhus Convention)

[12] "Juridica" is an Estonian law journal.

Administrative and civil liability in environmental law
Criminal Liability of Corporations
The role of NGOs

Role of environmental inspectors, police officers and others on evidence collection
Language training (e.g. judicial terminology)?

Technical issues, e.g. -
Evaluation of ecological damage, including use of forensic methods
Measures to restore the environment

Specific topics, e.g. -
Freshwater Pollution,
Protection of the Seas
Nature Protection
Landscape and Monuments – Natural Sites
Air pollution
International trade in protected species
International transfer of waste
Genetically modified organisms
Polluting or Dangerous Industries
Environmental procedural requirements, in particular impact assessments relevant for spatial planning, energy and transport

Other topics?

III. ORGANISATION OF COURTS AND ENFORCEMENT AGENCIES

A – Courts or tribunals responsible for environmental law

(a) Please describe the arrangements in your country for determining environmental law disputes, criminal, administrative and civil. In particular -

Are there separate courts or tribunals for civil and criminal matters?

Yes. Pursuant to Section 9(1) of the CA a county court hears civil, criminal and misdemeanour matters as the court of first instance. Judges specialize either in civil or criminal matters. Circuit courts[13] are the courts of appeal which review the decisions of the county and administrative courts by way of appeal proceedings (Section 22(1) of the CA). Circuit courts are comprised of civil, criminal and administrative chambers. The highest court in the state – the Supreme Court of Estonia, which reviews decisions by way of cassation proceedings is comprised of the Civil Chamber, Criminal Chamber and Administrative Chamber (Section 28(1) of the CA). Each justice of the Supreme Court is a member of only one Chamber.

[13] Pursuant to Section 22(2) of the CA Estonia has two circuit courts –Tallinn Circuit Court and Tartu Circuit Court.

Are there special constitutional or administrative courts or tribunals (for litigation involving government agencies or public bodies)?

There is no separate constitutional court in Estonia. Instead, the Supreme Court has been vested with the powers of constitutional review. The Supreme Court adjudicates constitutional review cases in the sessions of the Constitutional Review Chamber, consisting of the members of the administrative, criminal, and civil chambers or sitting *en banc*. Matters that involve disputes arising in public law relationships (e.g. litigation involving government agencies or public bodies) are in the competence of administrative courts, unless the law provides a different procedure for resolving such disputes (Section 4(1) of the Code of Administrative Court Procedure). Pursuant to Section 18(1) of the CA, administrative courts shall hear administrative matters within its jurisdiction as the courts of first instance. It is important to note that administrative courts, as the courts of first instance, are separate judicial institutions from the county courts.

Are there specialised courts or tribunals for environmental law (or particular aspects of environmental law, including town and country planning, energy, or transportation)?

There are no specialised courts or tribunals for environmental law matters in the Republic of Estonia.

What powers are available to the different types of court, for example -
- criminal penalties

For criminal offences, the courts can impose pecuniary punishment (Section 44 of the Penal Code, hereafter: PC) or imprisonment (Section 45 of the PC) as principal punishments. The range of pecuniary punishments in Estonia for natural persons is from thirty to five hundred daily rates, with the daily rate calculated on the basis of the average daily income of the offender, but no less than 10 Euros. The court may reduce the daily rate due to special circumstances or increase the rate on the basis of the standard of living of the offender. In case of a legal person, the court may impose a pecuniary punishment of 4,000 to 16,000,000 Euros (Section 44(8) of the PC). Imprisonment may be imposed for a term of thirty days to twenty years, or life imprisonment (Section 45 of the PC). For environmental offences, the maximum length of imprisonment is one, three or five years. For misdemeanours it is possible to impose a fine or a detention as principal punishments (Sections 47 and 48 of the PC).

As a supplementary punishment, it is possible for a criminal offence relating to violation of hunting or fishing rights to deprive the offender of the hunting and fishing rights for the term of up to three years (§ 52 of the PC). In addition, for commission of a prohibited act against an animal, a court may impose, as a supplementary punishment, a prohibition on the keeping of any animals or animals of certain species for up to five years in the case of a criminal offence and for up to three years in the case of a misdemeanour (§ 52^2 of the PC). Additionally, The court shall confiscate the assets (e.g. illegally caught fish) acquired through an intentional offence if these belong to the offender at the time of the making of the judgment or ruling. As an exception, assets belonging to a third person at the time of the judgment or ruling may be confiscated, if these were acquired, in full or in the essential part, on account of the offender, as a present or in any other manner for a price which is considerably lower than the normal market price, or if the third person knew that the assets were transferred to the person in order

to avoid confiscation (Section 83[1] of the PC). It is important to note, that the confiscation of objects and assets is a penal measure (i.e. confiscation is not an administrative sanction).

- orders or injunctions to remedy environmental damage

If the environmental damage was caused due to a criminal offence and the court decides to suspend the sentence on probation, among other supervisory requirements and obligations, the court may impose on the offender the obligation to remedy the damage caused by the criminal offence within a term determined by the court (Section 74(1) and Section 75(2)(1) of the PC). In other cases, the remedying of environmental damage is organised by the Environmental Board, using administrative measures (Sections 14 and 15 of the Environmental Liability Act, hereafter: ELA).

The Environmental Board first supervises the preparation of the remedial action plan by the person who has caused the damage. The Environmental Board will then approve the remedial action plan, by a precept, if the taking of the remedial measures planned therein allow for the remedying of the environmental damage and the remedial measures are selected and justified in accordance with Section 19 of the ELA. Remedial measures are divided into three categories: restorative remedial measures (Section 16(2) of the ELA), substitutive remedial measures (Section 16(3) of the ELA) and compensatory remedial measures (Section 16(4) of the ELA).[14]

On the failure to comply with the precept (i.e. the remedial action plan), the Environmental Board can issue a coercive penalty payment (multiple times, if necessary) or perform the obligation at the expense of the addressee. Disputes arising from remedying environmental damage are first resolved by the Ministry of Environment in compulsory challenge proceedings. After the challenge proceedings have been concluded on the conditions and in accordance with the procedure set out in Chapter 5 the Administrative Procedure Act, a party may file an appeal with the administrative court (Section 33 of the ELA). The administrative court then decides on the lawfulness of the administrative act (e.g. the prescript). However, it is important to note that the court does not engage in the exercise of the discretionary power in the place of administrative authority – the Environmental Board, when resolving such disputes.

- awards of financial compensation or compensation in kind?

Different environmental laws, e.g. Forest Act, Fishing Act, Nature Conservation Act, Earth's Crust Act, Water Act, Hunting Act etc., include provisions on compensation for damaging the environment. For example, according to Section 67(12) of the Forest Act, environmental damage shall be collected by the Environmental Inspectorate and the compensation for damage shall be transferred to the state budget. The compensation of damages is not a penal measure, but a measure similar to a civil tort remedy, which is solved by civil courts, based on the Environmental Liability Act, Law of Obligations Act (chapter 53 – unlawful causing of damage) and the provisions on compensation for damaging the environment found in specific environmental law.[15]

When a court is discussing an environmental offence, the monetary compensation for the damage caused to the environment will also be an issue adjudicated by the court, but the

[14] It is important to note that these measures do not include financial compensation to the public (see the following question – awards of financial compensation).

[15] See the judgment of the Criminal Law Chamber of the Supreme Court in case no. 3-1-1-67-14, 13.11.2014 and the judgment of the Civil Law Chamber of the Supreme Court in case no. 3-2-1-158-16, 15.02.2017.

compensation may also be adjudicated separately, in civil procedure. In cases of misdemeanour proceedings, the compensation is always adjudicated in a separate civil procedure pursuant to Section 7 of the Code of Misdemeanour Procedure. The claim regarding compensation for environmental damages must be filed by the Environmental Inspectorate – the criminal court cannot impose the compensation for environmental damages *ex officio*. The compensation awarded by the courts is only monetary, and not in kind. The compensation for damage is always transferred to the state budget.

- Others?

(b) Please give examples of typical environmental law cases handled –

(i) By civil courts or tribunals;

- Disputes concerning neighbourhood rights. E.g. damaging nuisances (gas, smoke, steam, odour, soot, heat, noise, vibrations etc.) coming to an immovable from another immovable;
- Disputes concerning the protection of ownership in cases of violation unrelated to loss of possession, meaning negative nuisances that do not qualify as damaging nuisances (e.g. blocking of sunlight);
- Monetary compensation for environmental damages;

(ii) By criminal courts or tribunals;

- Environmental misdemeanours:
  - Use of prohibited fishing gear, catching of undersized fish;
  - Violation of requirements for sale, purchase and handling of fish;
  - Violations of the rules regarding waste management (E.g. handling of waste without a waste permit or in violation of the requirements set out in the permit);
  - Violation of protection requirements of protected natural objects.

- Environmental criminal offences:
  - Violation of the requirements for catching or utilisation of wild fish;
  - Illegal cutting of trees or shrubs.

(iii) By administrative courts or tribunals;

- Environmental impact assessment/ strategic environmental assessment/ appropriate assessment under habitats/ birds directive – should it have been carried out; if it was carried out, did it fulfil all legal requirements;
- Designation of Natura 2000 areas and/or changing their borders;
- Water protection; achieving the aims of the water framework directive (including many cases concerning dams - maintaining the existing ones, building new ones);
- Cases concerning windmills/ wind parks (their impact on wild fauna and local inhabitants);
- Mining permits, the impact of mining on local inhabitants;
- Planning/ building cases concerning urban environment;
- Infrastructure cases (environmental impact of new highways and railways);
- In many cases the question of standing of the applicant (the person who has brought an environmental action to an administrative court) also comes up.

(iv) By the constitutional court

- The constitutionality of specific provisions found in different environmental laws. *E.g.* the constitutionality of Section 10(1)[16] of Nature Conservation Act,[17] the second sentence of Section 20(3) and Section 34(2) of the Earth's Crust Act[18] and Section 66(1^1) of the Waste Act;[19]
- The constitutionality of the rate of the renewable energy charges; [20]
- The constitutionality of environmental charges;[21]

(v) By specialist environmental tribunals.

There are no specialist environmental tribunals for environmental law matters in the Republic of Estonia.

(c) Are there available statistics on environmental cases handled by the different categories of court and tribunal? If so, please summarise the figures for the most recent year available.

We are able to provide statistics on environmental cases handled by the Estonian administrative courts in 2017.

In the year 2017, the administrative courts made 53 (see: Table 1), circuit courts 29 (see: Table 2) and the Supreme Court 5 (see: Table 3) decisions in environmental matters. Most disputes – 28, concerned nature conservation (e.g. placing natural objects under protection, acquisition of an immovable containing protected natural object, building within the building exclusion zone etc.). The environmental cases presented in Tables 1-3 are divided into seven following categories:

1. **Hunting.** This category covers the disputes which concern the provisions of the Hunting Act;[22]
2. **Nature Conservation.** This category covers the disputes which concern the provisions of the Nature Conservation Act;[23]

[16] The provision delegating authority which gives rise to the competence of the Government of the Republic to decide on placing limited-conservation areas under protection.
[17] See the judgment of the Supreme Court *en banc* in case no 3-3-1-85-10, 31.05.2011. Available in English: https://www.riigikohus.ee/en/constitutional-judgment-3-3-1-85-10
[18] See the judgment of the Constitutional Review Chamber of the Supreme Court in case no. 3-4-1-9-09. 30.09.2009. Available in English: https://www.riigikohus.ee/en/constitutional-judgment-3-4-1-9-09
[19] See the judgment of the Constitutional Review Chamber of the Supreme Court in case no. 3-4-1-23-15, 14.10.2015.
[20] See the judgment of the Supreme Court *en banc* in case no. 3-2-1-71-14, 15.12.2015. Available in English: https://www.riigikohus.ee/en/constitutional-judgment-3-2-1-71-14
[21] The rates of water abstraction charges and the rates of charge for extraction of mineral resource reserves belonging to the State. See the judgment of the Constitutional Review Chamber of the Supreme Court in case no. 3-4-1-27-13, 16.12.2013. Available in English: https://www.riigikohus.ee/en/constitutional-judgment-3-4-1-27-13
[22] Hunting Act. Available online: https://www.riigiteataja.ee/en/eli/510072018003/consolide
[23] Nature Conservation Act. Available online: https://www.riigiteataja.ee/en/eli/505022018002/consolide

3. **Water.** This category covers the disputes which concern the provisions of the Water Act[24] and Public Water Supply and Sewerage Act;[25]
4. **Earth's Crust.** This category covers the disputes which concern the provisions of the Earth's Crust Act;[26]
5. **Waste.** This category covers the disputes which concern the provisions of the Waste Act;[27]
6. **Forestry.** This category covers the disputes which concern the provisions of the Forest Act;[28]
7. **Other.** This category covers the disputes that do not fall under the six aforementioned groups (e.g. environmental impact assessments, land improvement etc.)

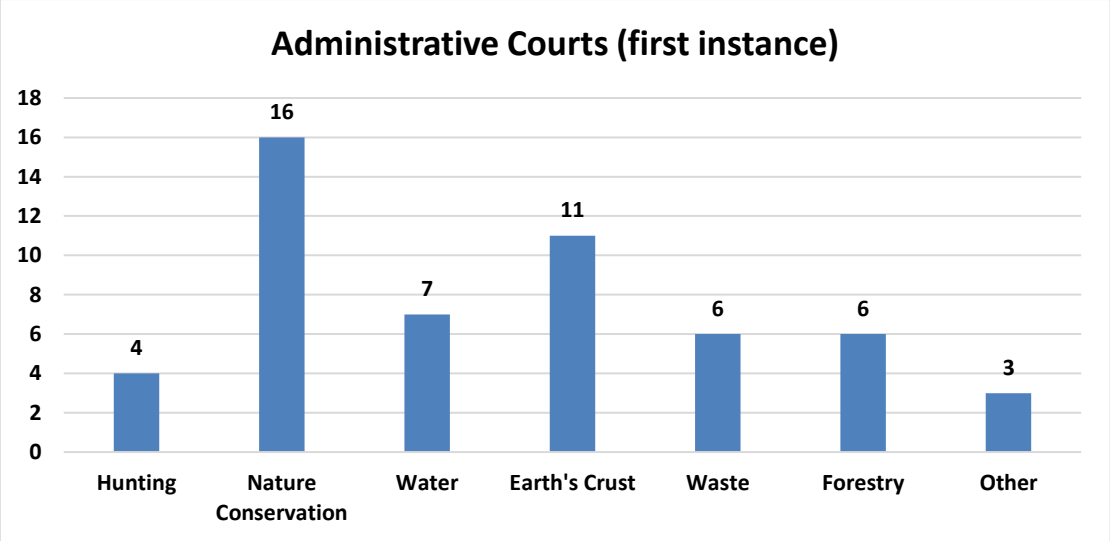

Table 1: *environmental cases handled by administrative courts (courts of first instance) in 2017.*

[24] Water Act. Available online: https://www.riigiteataja.ee/en/eli/510102017003/consolide
[25] Public Water Supply and Sewerage Act. Available online: https://www.riigiteataja.ee/en/eli/506072018002/consolide
[26] Earth's Crust Act. Available online: https://www.riigiteataja.ee/en/eli/510012018001/consolide
[27] Waste Act. Available online: https://www.riigiteataja.ee/en/eli/512102017001/consolide
[28] Forest Act. Available online: https://www.riigiteataja.ee/en/eli/528062018009/consolide

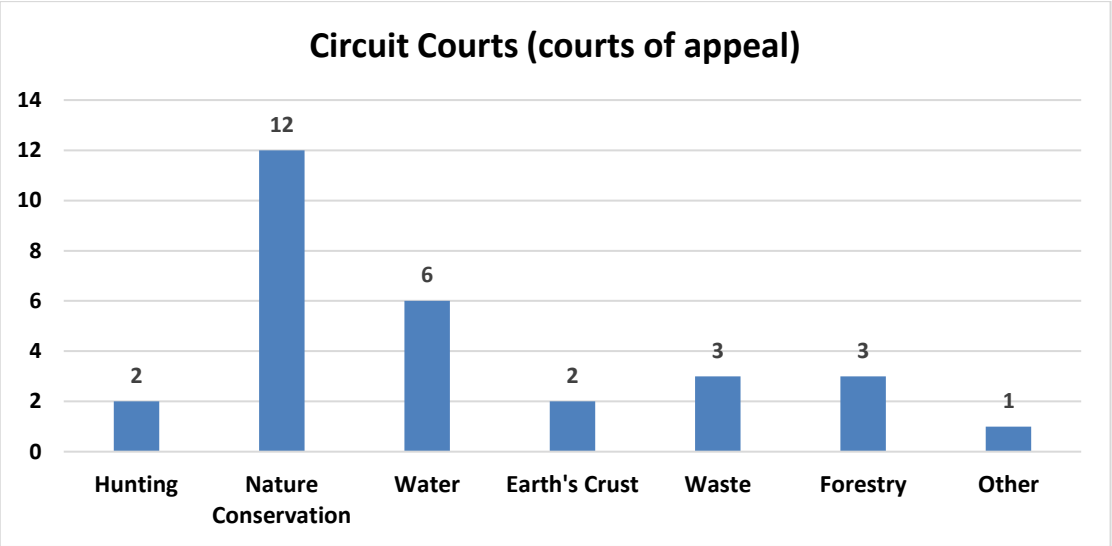

Table 2: *environmental cases handled by circuit courts in 2017.*

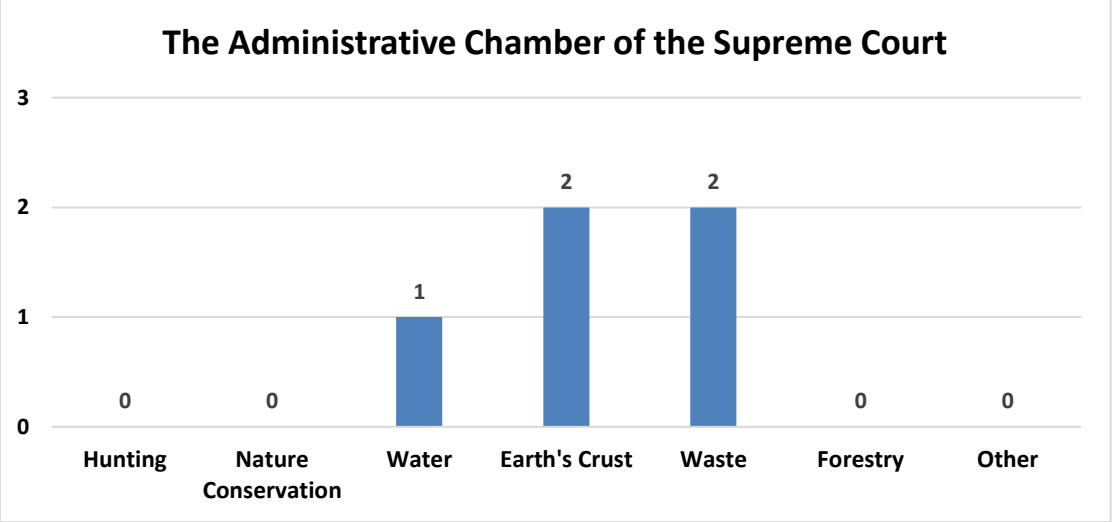

Table 3: *environmental cases handled by the Administrative Chamber of the Supreme Court in 2017.*

B – Specialised jurisdictions

There are no specialised courts or tribunals for environmental law matters in the Republic of Estonia.

(a) If your system has specialised courts relevant to environmental law, please describe the nature of their jurisdiction (so far as not covered under A above), for example –

- **how is the extent of the jurisdiction defined?**
- **is it exclusive, or concurrent with that of the ordinary courts?**
- **how, and by whom, are conflicts of jurisdiction resolved?**
- **are they independent of the executive?**

(b) How, and by whom, are members of such courts recruited? Is knowledge or experience in environment law a specific requirement?

(c) What powers do the specialised courts have, for example -

- **annulment of regulations or individual acts**
- **orders to enforce environmental laws**
- **power to substitute a decision for that of the government agency**
- **orders for financial compensation or compensation in kind**
- **other (e.g. granting environmental licences or consents)**

(d) How and by whom are conflicts of jurisdiction with other courts resolved?

C - Criminal violations

(a) In your country which agency or agencies have responsibilities for investigating and prosecuting criminal violations of environmental law –

- **the police, or a particular branch of the police (national or local)**
- **customs authorities**
- **local authorities**
- **one or more specialised environmental agencies**
- **other bodies (public or private)**

According to Section 31(1) of the Code of Criminal Procedure (hereafter: CCP), amongst others, the Environmental Inspectorate performs the functions of an investigative body within the limits of its competence. The limits of its competence are provided for in Section 212(2)(7) of the CCP, according to which the Environmental Inspectorate conducts pre-trial proceedings in the case of criminal offences[29] relating to violation of the requirements for the protection and use of the environment and the natural resources. This means that the Environmental Inspectorate plays a significant role in gathering evidence and providing professional expertise for the prosecution. This also means that courts have access to this professional expertise through the evidence presented to the court. All criminal offences, including those against the environment set out exhaustively in Chapter 20 of the Penal Code, are prosecuted by the Prosecutor's Office.

The Code of Misdemeanour Procedure provides a regulation in Section 52, according to which the Environmental Inspectorate is also the body that conducts extra-judicial proceedings concerning environmental misdemeanours (i.e. minor crimes) provided for in the Penal Code (for example, Section 352 of the Penal Code, which penalizes causing the risk of fire in nature or Section 366 of the Penal Code, which penalizes the violation of procedure for utilization of natural resources or procedure for maintenance of records on pollution). In addition, special environmental laws provide that the Environmental Inspectorate is the body that conducts extra-judicial proceedings (for example Section 72(2) (1) of the Forest Act; Section 38^{14}(2) of the Water Act). This means that the Environmental Inspectorate conducts the first instance proceedings and imposes the punishment (only a fine) for environmental misdemeanours. The Environmental Inspectorate will also be a party to court proceedings and execute the functions of the prosecution in misdemeanour cases.

[29] All criminal offences are provided in the Penal Code. Minor environmental offences (misdemeanours) are not all codified in the Penal Code. In addition to the Penal Code, these provisions are mostly included in different environmental laws.

Other institutions, such as the Police, the Estonian Tax and Customs Board along with the rural municipalities or city governments have a rather narrow role in investigating and prosecuting offences against the environment, as their competence is limited to specific misdemeanour cases. For example, pursuant to Section 75(3) of the NCA, the rural municipality or the city government is the extra-judicial body that conducts proceedings in the misdemeanour matters that involve the violation of protection requirements of protected natural objects (Section 71 of the NCA), unlawful cutting of trees in densely populated areas (Section 73 of the NCA) and the violation of requirements for the use or protection of shores and banks of bodies of water (Section 74 of the NCA).

(b) What special arrangements do the police or customs have for ensuring that those involved have expertise in environmental law? Do they have specialised units, organised locally or nationally?

The Police and the Estonian Tax and Customs Board have no specialization in this field.

(c) If a specialised environmental agency is responsible for prosecutions –

- how is it organised, and under what authority

- is it independent of government

- how are its officers recruited and trained

- does it have similar powers to those of the police for investigating and prosecuting?

The Environmental Inspectorate is a governmental agency within the area of government of the Ministry of the Environment. It exercises supervision in all areas of environmental protection, such as forest and mineral resources, the protection of fisheries, waste management, packaging, ambient air issues etc. The Inspectorate is comprised of seven departments, which are: Analysis and Planning Department, Environmental Protection Department, Nature Protection Department, Fisheries Protection Department, Investigation Department, Legal Department and Personnel Department. Pursuant to Section 19^1 of the Statute of Environmental Inspectorate, the main duties of the Investigation Department are the prevention and detection of criminal offences and the conduction of pre-trial proceedings in criminal offences within the limits of its competence. With the amendments to the CCP that entered into force in 2011, the Environmental Inspectorate now has the same powers as the Police when it comes to investigating the offences which fall within the limits of its competence. The Environmental Inspectorate also has the authority to impose administrative coercive measures as the result of administrative procedures. When the Environmental Inspectorate is conducting misdemeanour proceedings (i.e. a type of criminal procedure), it has the right to impose penalties (e.g. a fine) and other penal measures (e.g. confiscation of object used to commit offence and the object of offence – see Section 83(6) of the PC). The personnel of the Investigation Department who oversee the pre-trial proceedings in criminal offences have the equivalent educational background and level of expertise as the investigators employed by the Police.

(d) Which courts have power to impose criminal sanctions in environmental cases?

Pursuant to Section 9(1) of the Courts Act a county court hears both criminal and misdemeanour matters as the court of first instance. As it was mentioned in part (c), a body conducting extra-judicial proceedings conducts misdemeanour proceedings. However, there is a limited number of cases, where the county court conducts the first instance proceedings for misdemeanour matters. Firstly, pursuant to Section 81(1) of the Code of Misdemeanour Procedure the county court will conduct the first instance proceedings if the county court is competent to hear the misdemeanour matter or decide on confiscation pursuant to law. Secondly, pursuant to Section 81(2) of the Code of Misdemeanour Procedure, a county court will hear misdemeanour matters if the imposition of detention, sanction of a minor, or the prohibition to keep animals is to be decided in the hearing of the misdemeanour matter.

In the case of criminal offences, if a party to a court proceeding does not consent to the judgment of the court of first instance (i.e. the county court), the party has the right to file an appeal to the Circuit Court (Section 318(1) of the CCP). Furthermore, Section 344(1) of the CCP sets out that a party to court proceedings has the right of appeal in cassation to the Supreme Court on the grounds provided in Section 346 of the CCP,[30] if, first, the right of appeal has been exercised in the interests or against the party or, secondly, a circuit court has amended or annulled the judgment of a county court. However, in misdemeanour cases, a judgement of the county court[31] may be appealed directly in cassation. Section 157 of the Code of Misdemeanour Procedure stipulates that the grounds for cassation are either the incorrect application of substantive law or material violation of the law on misdemeanour procedure.

(e) Are there available reports or statistics of criminal sanctions imposed in environmental cases? If so, please give examples from recent cases.

There are no reports available on sanctions imposed in environmental cases. However, based on the statistics provided by the Environmental Inspectorate, the Inspectorate commenced 39 proceedings relating to criminal offences and 1186 proceedings relating to misdemeanour offences in 2017. The Environmental Inspectorate imposed fines in 876 cases, in the total sum of 320 409 euros. Most fines – 371, were imposed in misdemeanour offences relating to the violation of fishing rights set out in the Fishing Act. From the 39 criminal proceedings,[32] 25 were commenced due to the possible violation of Section 361 of the PC, which penalises the damaging of wild fauna. In all of the 25 cases, the damage was caused to wild fish. Seven proceedings concerned the illegal cutting of trees or shrubs (Section 356 of the PC), three proceedings concerned violation of requirements for protection of protected natural objects (Section 357 of the PC). The last four criminal proceedings concerned the violation of requirements for chemicals and waste management (Section 367 of the PC), violation of requirements for chemicals and waste management through negligence (Section 368 of the PC), violation of requirements for transboundary movement of waste (Section 368^1 of the PC) and operating without environmental a permit (Section 363 of the PC).

[30] Section 346 of the CCP stipulates that the bases for an appeal in cassation are: 1) incorrect application of substantive law; 2) material violation of criminal procedural law in the case specified in § 339 of the CCP.

[31] Section 132 of the Code of Misdemeanour Procedure stipulates that a county court may, by judgment:
1) refuse to amend a decision of a body conducting extra-judicial proceedings, and deny the appeal;
2) annul a decision of a body conducting extra-judicial proceedings in full or in part and make a new decision if this does not aggravate the situation of the person subject to proceedings;
3) annul a decision of a body conducting extra-judicial proceedings and terminate the misdemeanour proceedings on the bases provided for in § 29 or 30 of the Code of Misdemeanour Procedure.

[32] Most of the criminal proceedings commenced in 2017 are still ongoing.

Based on the data which is available in the Estonian Court Information System,[33] six judgements were made in 2017 concerning criminal offences. Three judgements concerned the violation of requirements for catching wild fish (Section 361 of the PC). In the first case, the offender received a pecuniary punishment in the sum of 800 euros.[34] In the second case, the offence was committed by a legal person (private limited company) and by a natural person. The natural person received a one-year prison sentence, which was suspended in full on probation, with a probation period of two years and six months. The legal person received a pecuniary punishment in the sum of 10 000 euros. Both offenders also had to pay monetary compensation for the damage caused to the environment in the sum of 90 650 euros. In the last case, the offender was sentenced to imprisonment for six months. As he had also committed other criminal offences (violation of restriction order (Section 331^2 of the PC) and threatening (Section 120 of the PC)), the execution of the judgment was not suspended. He also had to pay monetary compensation for the damage caused to the environment in the sum of 14 260 euros.

Two judgements concerned the Section 357 of the PC, which penalizes the violation of the requirements for the use or protection of a protected natural object. In the first case, all three of the accused were acquitted. In the second case, a person was accused of cutting trees, which were located in a landscape conservation area. The person was convicted and received a pecuniary punishment of 700 euros. The sentence was suspended on probation in full, with a probation period of one year. The convicted offender also had to pay monetary compensation in the sum of 7144,45 euros. The last judgment concerned the illegal cutting of trees (Section 356 of the PC).[35] The offender was convicted and received a pecuniary punishment of 610 euros, which was suspended, in part (392 euros) on probation, with a suspension period of one year. Again, the convicted offender had to pay monetary compensation for the damage caused to the environment in the sum of 14 162 euros.

In summary, for environmental criminal offences, the typical punishments imposed on the accused are pecuniary in nature, which are often suspended, in part or in full, with a probation period, as the offenders had not committed any previous offences.

(f) The role of the public prosecutor's office

Does the public prosecutor's office have services specialising in environmental area?

- **Is this specialisation created by law or by internal organisational rules?**
- **Is its jurisdiction national or local?**
- **Does it relate to all environmental law violations or particular violations only?**
- **Is it exclusive or concurrent with the office's general jurisdiction?**
- **How are conflicts over jurisdiction resolved?**
- **Do members of the public prosecutor's office who specialise in environmental law have assistance from civil servants or experts appointed on a permanent basis to provide them with technical assistance? How are these assistants recruited?**

[33] A Court Information System is a database for the court documents of first, second and third instance courts in civil, criminal and administrative cases.
[34] The court adjudicated the criminal matter by way of settlement proceedings. No monetary compensation was awarded by the court. The convicted offender was a natural person.
[35] In this case the convicted offender violated the rules for improvement cutting set out in Section 31 of the Forest Act.

The Prosecutor's Office does not have specialization in this field. As the overwhelming majority of the environmental offences committed in Estonia are small-scale misdemeanours (e.g. catching undersized fish etc) that fall under extra-judicial misdemeanour proceedings, such specialization has not become necessary. However, the prosecution has the use of professional inspectors from the Environmental Inspectorate, who in their everyday work exercise supervision in all areas of environmental protection. As it was mentioned in the previous questions, the Environmental Inspectorate is a specialized institution that conducts pre-trial proceedings in the case of criminal offences relating to violation of the requirements for the protection and use of the environment and the natural resources along with extra-judicial misdemeanour proceedings.

D. Administrative violations/cases

See the questions in the previous section. Who and how decides on the choice of administrative vs criminal enforcement?

In Estonia, administrative enforcement (i.e. sanctions) can be taken alongside criminal enforcement. It is important to note that according to principle of legality set out in Section 6 of CCP, the investigative body is required to conduct criminal proceedings upon the appearance of facts referring to a criminal offence.[36] The decision to apply administrative sanctions lies with the competent administrative bodies (e.g. the Environmental Inspectorate). Administrative sanctions include issuing a precept and, on failure to comply with the precept, imposing a coercive penalty payment (multiple times, if necessary)[37] or performing the obligation at the expense of the addressee or organising the performance of the obligation by a third party. Applying administrative sanctions alongside criminal sanctions does not constitute a violation of the *ne bis in idem* principle.

E. Civil cases

In what circumstances are civil courts involved in environmental law cases? Can they award remedies other than orders for damages? Are there civil courts specialised in environmental law?

In Estonia there are no civil courts that specialize in environmental law. Civil courts are only involved in environmental law cases relating to matters that involve the compensation for damages (i.e. monetary compensation) caused by environmentally hazardous activities. Such actions against natural or legal persons may only be brought by the State, through the Environmental Inspectorate.[38] What constitutes as an "environmentally hazardous activity" is set out in numerous laws – e.g. Section 67(2) of the Forest Act, Section 2(1) of the Environmental Liability Act and Section 77(3) of the Nature Conservation Act. Environmental law may also come up in some disputes between neighbours (for example building or reconstructing a dam may influence the water levels etc for several neighbouring land owners).

[36] In environmental matters, the facts referring to a criminal offence principally appear during common verification visits and monitoring and trough reports of criminal offences submitted to the Environmental Inspectorate.

[37] Coercive penalty payment as a measure of administrative coercion is an amount determined in a warning, payable by the addressee if the addressee fails to perform the obligation imposed by a precept within the term indicated in the warning (Section 10 (1) of the Substitutive Enforcement and Penalty Payment Act).

[38] See Section 67(12) of the Forest Act; Section 77(2) of the Nature Conservation Act; Section 169(2) of the Atmospheric Air Protection Act; Section 73(7) of the Fishing Act etc.

As mentioned previously, when the court is discussing an environmental criminal offence, the monetary compensation for the damage caused to the environment will also be an issue adjudicated by the court, but the compensation may also be adjudicated separately, in civil procedure. In cases of misdemeanour proceedings, the compensation is always adjudicated in a separate civil procedure pursuant to Section 7 of the Code of Misdemeanour Procedure. Otherwise, the remedying of environmental damage is organised by the Environmental Board, using administrative measures.[39]

F. Standing

Do environmental NGOs have standing in the different courts?

-What requirements apply for the grant of standing?
- Must they have obtained formal recognition or accreditation by the authorities, or is the right to standing assessed on a case by case basis?

Since 01.08.2014, a special provision – Section 30 of the General Part of the Environmental Code Act, regulates the right of recourse to administrative courts in environmental matters.[40] Section 30(2) of the General Part of the Environmental Code Act stipulates that if an environmental organisation contests an administrative decision or a taken administrative step in accordance with the procedure provided for in the Code of Administrative Court Procedure or in the Administrative Procedure Act, it will be presumed that its interest is reasoned or that its rights have been violated if the contested administrative decision or step is related to the environmental protection goals or the current environmental protection activities of the organisation.

Section 31 of the General Part of the Environmental Code Act defines what constitutes a non-governmental environmental organisation for the purposes of this Act. A non-governmental 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.

[39] Pursuant to the regulation provided in the Environmental Liability Act.
[40] Before 01.08.2014, the aforementioned regulation (based on even earlier Supreme Court case law) was stipulated in Section 292 of the Code of Administrative Court Procedure. However, with the Codification of Estonian Environmental Law, this provision was moved from the Code of Administrative Court Procedure to the General Part of the Environmental Code Act.

As it can be seen from Section 31(3) of the General Part of the Environmental Code Act, the right to standing (i.e. if a specific entity constitutes an environmental NGO) is assessed on a case by case basis. In addition, recent case law of the Supreme Court specifies that the NGOs that have standing according to the Act can only use arguments that rely on environmental law (that includes both substantial and procedural rules).

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