

Price of Justice

Estonia

Comparative Analysis on Costs of
Administrative and Judicial Remedies

Legal Analysis

Justice and Environment 2011

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I. Country information

Currency: *Euro (EUR – euro)*

GDP per capita: *EUR 13.28 (2010) – 65% of EU average*

Human Development Index: *0.812 (2010 – 34nd position in the list of countries)*

II. Administrative and judicial procedural costs

A) Administrative procedural costs

What is the amount of procedural duty or fee to be paid for an appeal (in EUR)?

There is no procedural duty or fee in case of administrative appeal.

The administrative appeal procedure in Estonia is very simple procedure, usually carried out by the same administrative body who made the administrative decision that was disputed (in environmental cases, the local government (planning and building issues) or Environmental Board (environmental permits and environmental impact assessment issues). The appeal must be solved within 10 days and there does not have to be hearing.

Who pays the procedural duty or fee for an appeal?

No procedural duty or fee.

Is there a waiver or an allowance, based either on the nature of the case or on personal characteristics of the appellant?

No procedural duty or fee.

Who bears the costs if the appeal was successful (is there a refund of procedural duty or fee)?

No procedural duty or fee.

Who bears the costs of evidence in an administrative procedure?

According to law, the costs for hearing an expert or witness shall be borne by person or administrative body, who requested for such hearing. There is no legal regulation about costs

of other kind of evidence – in practice the costs are borne by the party who presents the evidence.

However, in administrative procedure the administrative body has to follow the principle of investigation – so in case the administrative body itself gathers evidence, it should bear the costs as well.

How much is approximately the total cost of evidence in a typical environmental administrative procedure (in EUR)?

In EELC practice, the administrative appeal procedures have usually not involved any costs for evidence, because the reason for appeal has rather been misinterpretation of existing information, violation of legal norms (including formal mistakes in the administrative decisions).

In environmental cases, the evidence or information is gathered during administrative proceeding (including EIA or SEA, if such procedure was carried out). SEA can cost EUR 4.000-30.000 to the plan initiator; EIA is usually more expensive than SEA.

Therefore, we don't have much experience or knowledge about the cost of evidence in administrative proceedings. We have one example from administrative proceeding (not administrative appeal proceeding) where an expertise for measuring noise level in site cost about EUR 1.500 for the complainant (but in case it would have been proved that the developer violated noise standards, there would have been chance for reimbursement).

B) Judicial procedural costs

a) Administrative¹ judicial procedure

What is the amount of procedural duty or fee to be paid for the start of a procedure (in EUR)?

In administrative cases, the procedural fee when submitting the administrative complaint is EUR 15,97

In addition, in case submitting request for injunctive relief, the fee is EUR 12,78.

What is the amount of procedural duty or fee to be paid for an appeal (in EUR)?

For an appeal to district court, the cost is same as for first stage – EUR 1. For an appeal to Supreme Court (last stage in administrative court proceedings), the fee is about EUR 25.

¹ Administrative judicial procedures are court procedures where the procedural or substantive legality of an administrative decision is decided by a court of law, based on the motion of a plaintiff against the administrative body as a defendant.

Who pays the aforementioned procedural duty or fee?

The fee is paid by person who submits the administrative complaint or appeal (the complainant). As part of procedural costs, it can later be decided by court to be paid by whoever loses the case.

Is there a waiver or an allowance, based either on the nature of the case or on personal characteristics of the appellant?

In administrative cases, there is no fee for hearing of a protest or appeal against a ruling, according to State Fees Act (NB! Ruling in this sense is not a judgment, but a decision for solving procedural matters in court proceedings.). The exemptions that are related to the nature of case concern mainly civil cases, not administrative cases.

Also, on basis of State Fees Act, certain persons are exempt from the fee, like minors who have independent rights for appeal, natural persons upon filing an appeal against the decision of an election committee and diplomats of foreign states and representations of foreign organizations and intergovernmental co-operation programmes (not so relevant in environmental cases).

In addition, according to the Administrative Court Proceedings Act, if a court finds that a person is insolvent, the court may, at the request of the person, fully or partially release the person from payment of the state fee. The insolvency of a company or non-profit association shall be certified by a bankruptcy order or a court ruling whereby the bankruptcy proceeding is terminated because the assets do not cover even bankruptcy proceedings costs.

Who bears the costs of evidence in the procedure?

The costs of evidence, in case they are part of the costs of hearing the case (i.e. in case the court by itself or under a request of a party has invited witnesses, claimed for some documental proof or made observations on site) are to be borne by the person who must pay procedural costs according to the final judgment or ruling in the case (usually the person against whom the court decides).

However, in practice of the environmental court cases there are no examples of such costs to be borne by parties. In practice, such costs have not appeared, because the witnesses have not claimed for their costs and the expert opinions have been submitted (and financed, if necessary) by the parties themselves. The relevant Supreme Court practice rather deals with issues of costs for legal representation than costs of evidence.

How much is approximately the total cost of evidence in a typical environmental administrative judicial procedure (in EUR)?

There has been no such practice EELC is aware of, see the previous answer.

To what extent does the “loser pays principle” prevail in such procedures?

The “loser pays” principle, although it is a clear legal norm in administrative court procedure, prevails only to certain extent, especially regarding costs for legal representation. According to Supreme Court practice, the administrative bodies may use external legal help, but in order to justify the costs for external legal representation the case must exceed borders of daily main activities of the administrative body. So in cases where the issue is considered to be usual administrative matter for the authority, the legal representation costs are not claimed from the loser. However, the environmental cases may be of such complexity that hiring external legal help has been deemed justified.,

A bigger problem is that the costs of a third person (in environmental cases usually the project developer) should also be paid by the “loser” of the case. There is at least one example from 2011 where environmental organization, losing a case in argument about hydro-electric power plant, had to pay for attorney of the owner of the power plant (in sum of about 2000 EUR).

The courts have a possibility to decide that the costs must be fully or partly borne by the party at whom the costs incurred, if ordering payment by the loser would be extremely unfair or unreasonable, and in administrative cases courts have tended to use this possibility, in order to reduce costs, ordered from the loser. For example, in case of ‘Saaremaa harbor’ from 2004-2005, the courts ordered payment from environmental organizations, who lost the case, in sum of cca. EUR 2.250, whereas the opposite party, Ministry of Environment requested payment for their legal representation in sum of EUR 12.800.

b) Civil² judicial procedure

What is the amount of procedural duty or fee to be paid for the start of a procedure (in EUR)?

The amount of fee depends on the value of action (for example, if the value of action is under EUR 319,55, the fee is EUR 63,91 – there is specific table for calculation of the amount of fees) and there are also different fees for specific cases which can vary between EUR 12,78 and 319,55.

What is the amount of procedural duty or fee to be paid for an appeal (in EUR)?

The fee for an appeal to district court (second stage) is same as in first stage and for an appeal to Supreme Court (third and final stage) 1% of the value of action, but not less than EUR 25 and not more than EUR 2600.

Who pays the aforementioned procedural duty or fee?

The fee is paid by person who submits the action. As part of procedural costs, it can later be decided by court to be paid by whoever loses the case.

² Civil judicial procedures are court procedures where the legality of a natural or legal person’s conduct is decided by a court of law, based on the motion of a plaintiff against the natural or legal person as a defendant.

Is there a waiver or an allowance, based either on the nature of the case or on personal characteristics of the appellant?

The persons who are exempted from the fee are same as described under administrative judicial procedure. There are also certain cases where fee is not required (labor disputes, claims for support for maintenance of child, etc).

There is a possibility to apply for procedural assistance for bearing procedural expenses which means that person can request for release from payment of the state fee or other legal costs or can pay the fee or other costs in monthly installments. The person must prove that s/he cannot bear the costs himself or only in installments and there must be sufficient reason to believe that case would be successful.

Who bears the costs of evidence in the procedure?

The situation is same as in administrative court proceedings, except for the fact that in civil proceedings, the court does not have to fulfill the investigation principle.

How much is approximately the total cost of evidence in a typical environmental civil judicial procedure (in EUR)?

No data.

To what extent does the “loser pays principle” prevail in such procedures?

The “loser pays” principle usually prevails. However, in case the party winning the case had also claims that were eventually not awarded, the ratio of bearing the costs shall reflect the ratio of win and lose. If such ratio is approximately even between the parties, the court may order that both sides bear their own costs.

Also, there is limit to the costs of legal representation – the court may order to pay only such costs in amount that is “reasoned and necessary”. There are also limits of sums that can be ordered to pay for legal representation (it depends on the value of the action); in cases with value under EUR 640 the costs can be maximum EUR 320.

c) Legal aid (optional questions)

Is there a state supported scheme in your country for providing legal assistance in administrative or judicial procedures?

Yes, according to State Legal Aid Act (2005). (Starting ~1st January 2012, there will be also a possibility to apply for procedural aid in administrative court proceedings, but this could cover also all other costs like state fees, costs of translation or other procedural costs.)

If your answer is yes, please detail briefly:

Who can use such legal aid?

In brief, the persons who can use such legal aid are:

- 1) a natural person whose financial situation at the time of need of legal aid does not enable him or her to pay for competent legal services;*
- 2) in criminal proceedings, a suspect or accused who has not chosen a criminal defense counsel and such counsel is required by law (in case of natural persons, regardless of his or her financial situation, in case of legal persons, if the legal person is insolvent);*
- 3) a non-profit association or foundation which is insolvent and applies for legal aid in the field of environmental protection or consumer protection or in another issue that is related to predominant public interest related to rights of a large number of people.*

What kind of procedures is eligible for legal aid?

The categories of state legal aid are:

- 1) appointed defense in criminal proceedings;*
- 2) representing a person in pre-trial proceedings in a criminal matter and in court;*
- 3) defending a person in extrajudicial proceedings in a misdemeanor matter and in court;*
- 4) representing a person in pre-trial proceedings in a civil matter and in court;*
- 5) representing a person in administrative court proceedings;*
- 6) representing a person in administrative proceedings;*
- 7) representing a person in enforcement proceedings;*
- 8) preparing legal documents;*
- 9) providing other legal counseling to a person or representing a person in another manner.*

To what extent does legal aid cover full costs of legal assistance in the procedures?

The state legal aid could be provided as legal aid in full extent, without obligation to compensate the costs, but also as legal aid with obligation to compensate the costs later in full or partial extent. It depends on the decision of the court.

In that case the court shall take into consideration circumstances, for example taking account of the nature of the matter, the category of state legal aid applied for and the estimated time of providing state legal aid.

Furthermore, when assessing the financial situation of an applicant many relevant circumstances shall be taken into consideration: his or her assets and income and the assets and income of family members who live together with the applicant, the number of persons maintained by the applicant, reasonable housing expenses and other circumstances.

NEW

Who can provide legal aid (e.g. can NGOs be legal aid providers)?

*The provider of **state legal aid** can only be an advocate³. The Estonian Bar Association shall appoint an advocate who provides state legal aid upon receipt of an application from a court, Prosecutor's Office or investigative body. In general, a person cannot choose the provider of state legal aid. However, a person has the right to apply for the provision of state legal aid by a particular advocate, if such advocate has granted his or her consent regarding provision of state legal aid to the applicant. In that case the name of the advocate who has granted his or her consent shall immediately be indicated in the application for state legal aid.*

However, it is not forbidden for NGOs to provide legal aid as such. On basis of Section 31 of the State Legal Aid Act, a support mechanism has been set up for NGOs, whose activity is important for accessibility of general legal counseling and who can guarantee quality of the legal aid. In practice, this support has involved NGOs who provide legal aid for economically less insured persons. Attempts to apply for support for environmental legal aid have not been successful though.⁴

NGOs cannot be the representatives in a court. However, there is no requirement that the person representing in court should be an advocate (except in criminal cases and in Supreme Court). In administrative court proceedings in lower court stages, a person representing the complainant must only have certain legal education (law degree from university).

Is legal aid frequently used in environmental cases?

Estonian Bar Association statistics state that in 2011 has provided state legal aid more than 9000 times – 1/10 more than 2010. The percentage of legal aid of civil cases is increasing and in criminal cases it is decreasing (in 2010 77%, years before approximately 95%).

There is no data available about environmental cases.

III. Country evaluation

Which are the most significant [a) administrative, b) administrative judicial, c) civil judicial] procedures in your country in the protection of the environment?

The main administrative procedures concern:

- 1) spatial planning procedures (usually establishment of big infrastructure objects (factories, landfills, harbors, bridges) or replacement of green areas with real estate developments);*
- 2) environmental permit procedures, including EIA (mainly mining permits, but also water use permits in case of mining);*
- 3) procedures for establishment of nature protection areas.*

³ In Estonian legal system, an advocate is a member of the Bar Association who has passed specific exams. Advocates can provide legal service only via advocate's law office; whereas persons who are not members of the Bar Association, may not provide legal service through advocate's law office.

⁴ Estonian Fund for Nature has applied for this support in 2004 and 2005.

The administrative judicial procedures in environmental cases mainly concern requests for annulment of administrative acts (planning decisions or environmental permits or decisions to establish nature protection areas).

Civil judicial procedures only concern claims for damages (so far not very actively used for environmental damages) or issues of neighboring rights and are not significant in the protection of the environment.

According to your evaluation, does your country meet the requirements of the Aarhus Convention regarding expenses of seeking administrative and/or judicial remedies?

Estonia meets the requirements of the Aarhus Convention only partially. The fees are not prohibitively expensive, but the same cannot be said for the “loser pays” principle and amount of costs for legal representation.

There are some assistance mechanisms, but they cannot be considered to be appropriate to remove or reduce financial and other barriers to access to justice, as required by Art 9.5 of the Convention.

What arguments support your above position?

The amount of costs for legal representation and implementation of “loser pays” principle is a financial barrier to access to justice. Although courts have reduced the possible costs in their practice, the law allows to order to pay the costs in full extent. The court practice reduces the possibility of a complainant bearing the costs of administrative body in case of loss, but the rule for paying the costs of third party still is threatening for the possible complainants.

There is legal assistance mechanism, but compared to other countries, it is related to quite harsh criteria (basically the condition is insolvency, which must be proved). The state legal aid is available to NGOs only in case they prove to be insolvent.⁵ There is also a support mechanism in State Legal Aid Act for non-profit organizations that provide free legal help, but in practice this support has not involved organizations that provide free environmental legal help, because the purpose of support is supposedly help to people in unfavorable financial situation.

What recommendations can you formulate in this matter?

There should be at least a special provision in law that would make an exemption in “loser pays” principle for NGOs: in case the party of dispute is an NGO, it should not have to pay procedural costs for the opposite party and third person even in case the decision is not made in favor of it. An exception from this rule could be made, in case the NGO has misused its rights, including if it malevolently caused extension of the court proceedings. Also, a provision

⁵ See the research that was ordered by the European Commission from Milieu Ltd: http://europa.eu.int/comm/environment/aarhus/pdf/accesstojustice_final.pdf (p xviii and 15).

should be added to law that establishes Supreme Courts practice about costs for legal representation of administrative bodies as legal norm.

As for assistance mechanisms, there should be possibility for NGOs to get legal assistance in environmental matters, without obligation to prove insolvency.

The support mechanism for non-profit organizations that provide free legal help should extend also to organizations that provide free legal environmental help, or the state should set up mechanisms for such assistance itself.

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