



Barriers of Access to Justice

Estonia

Clarification and assessment of status quo regarding barriers of access to justice in the Member States

Country Study

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I. INTRODUCTION

There are a number of barriers in front of effective access to justice (legislative and practical) in each Member State. The current survey is supposed to produce a clear, first-hand information from practitioners from the EU MS on the range and gravity of barriers of effective access to justice in environmental matters. For this, we are using a combination of research and polling to identify and categorize the barriers of access to justice. There will be 5 major blocks identified by the objectives of regulation and there will be 3 types of questions in each block, i.e. legislative, practical and scoring. Within each type, there may be more questions depending on the number of issues analyzed.

II. THE BARRIERS IN DETAIL

Objective	Indicator (example)
Sufficient legal standing	conditions of standing for individuals (e.g. affectedness) conditions of standing for eNGOs preconditions of access (e.g. prior participation)
a) legislation	<ul style="list-style-type: none">- what are the criteria of legal standing for individuals in environmental matters? <p>Access to justice is provided to all persons whose rights, including for example the right to the environment meeting the health and well-being needs or right to use and enjoyment of private property, has been violated.¹ Rights-based approach applies. You can challenge administrative body's final decisions (acts), exceptionally also procedural steps (e.g. when they obviously lead to an unlawful decision).</p> <ul style="list-style-type: none">- what are the criteria of legal standing for eNGOs in environmental matters? <p>ENGOS also have access to justice but 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 organization.² Environmental organizations are non-profit associations and foundations whose purpose under its articles is environmental protection and who promotes environmental protection in its activities;</p>

¹ General Part of the Environmental Code Act subsection 30 (1)

² General Part of the Environmental Code Act subsection 30 (2)

	<p>associations that are not legal persons, but they promote environmental protection and represent the opinions of a significant portion of the local community on the basis of a written agreement between its members.³ ENGOs have legal standing if its interest is reasoned and its rights have been violated (see more specifically below).</p> <ul style="list-style-type: none"> - are there preconditions of access to justice in environmental matters (besides of course fulfilling the criteria of legal standing)? <p>No such preconditions.</p>
b) practice	<ul style="list-style-type: none"> - do the criteria of legal standing for individuals in environmental matters pose a barrier to access to justice? <p>Somewhat, as you can challenge only acts that violate your own rights. In theory this is not a big problem, as there is an additional right to environment meeting the health and well-being of persons' needs, but its scope of application is still unclear.</p> <ul style="list-style-type: none"> - do the criteria of legal standing for eNGOs in environmental matters pose a barrier to access to justice? <p>No, as they're standing is presumed and courts have been liberal in the implementation of the rules.</p> <ul style="list-style-type: none"> - do the preconditions of access to justice in environmental matters (if they exist) pose a barrier to access to justice? <p>Not applicable.</p> <ul style="list-style-type: none"> - cite one or two court cases where either the criteria of standing or preconditions of access meant a barrier to access to justice, etc. <p>Not applicable.</p>
c) scoring	<p>On a scale of 1 to 5 please score the following in terms of how strongly they mean a barrier to access to justice in environmental matters:</p> <p>1: very weak, 2: weak, 3: intermediate, 4: strong, 5: very strong</p> <ul style="list-style-type: none"> - criteria of legal standing for individuals in environmental matters: 2 - criteria of legal standing for eNGOs in environmental matters: 1 - preconditions of access to justice in environmental matters: 1

³ General Part of the Environmental Code Act subsection 31 (1)

Objective	Indicator (example)
Availability of legal remedies and adequacy	<p>review against administrative acts or omissions</p> <p>review against actions or omissions of private persons</p> <p>scope of challenges brought in a review (review of substantive issues, of formal issues, of discretionary decisions, standard of review, general court competence to hear claims, etc.)</p> <p>availability of injunctive relief</p> <p>effective remedies available when challenges are successful</p>
a) legislation	<ul style="list-style-type: none"> - is there a review of administrative acts by the court? - is there a review of administrative omissions by the court? <p>In Estonia, you can file a claim in court procedure if there has been:</p> <ul style="list-style-type: none"> - an infringement of procedural rights; - a misapplication of the substantive law. <p>This means that court may review claims filed to them in regarding environmental matters, for example, if:</p> <ul style="list-style-type: none"> - the public had to be involved and informed effectively at an early stage (for example, in drawing up plans), but this was not done; - materials of importance were not available; - short deadlines were given for public participation; - the public opinion was not taken into account, but should have been; - the public was not informed of the decision, but should have been; - someone's personal rights and interests have been disturbed. <p>The right to appeal to environmental protection issues should not be based only on the violation of rights, but also on the complainant's contiguity to the administrative act or procedure complained of. The complainant must indicate that the contested activity concerns his or her interests. Contiguity does not simply mean that the activity or the intended activity affects the person, but that effect must be significant and real. The administrative court must check the complainant's such contiguity in the contested activity on a case-by-case basis. The requirement of substantial and actual contiguity also excludes the filing of complaints in environmental matters in the public interest (i.e., actio popularis), unless the law expressly provides for such a right;</p> <ul style="list-style-type: none"> - an obvious mistake against the principle of discretion is made; - there is an error against some of the key principles or obligations of environmental protection (for example, the precautionary principle; see Chapter 2 of the General Part of the Environmental Code Act).

- is there a review of acts of private persons by the court?

In Estonia, you can't challenge private persons' actions that contravene national laws relating to the environment in administrative court. The only way to challenge private persons relating to environmental issues is in county courts. The right of action is granted to private persons (and to eNGOs, but only if their individual rights are concerned) whose rights have been infringed. One of the most relevant issues that can be challenged is noise.

- is there a review of omissions of private persons by the court?

Yes (only in circuit court and for your own personal rights).

- what is the scope of challenges brought in a review?

Mentioned before.

- what kind of injunctive reliefs are available in environmental matters?

Injunctive relief is ruled when on the contrary case the protection of the applicant's rights by the judgment may be rendered significantly more difficult or impossible. In the case of a person who by virtue of the law enjoys the right to bring an action in the administrative courts on grounds other than the protection of his or her own rights, injunctive relief measures may be applied provided that, on the contrary case, attainment of the aim of the action by means of the judgment may be rendered significantly more difficult or impossible. An application for injunctive relief may be made to the administrative court also during administrative challenge proceedings.

If challenges are successful the court may :

- fully or partially annul the administrative act (annulment action);
- order to issue an administrative act or take an administrative measure (mandatory action);
- declare nullity of an administrative act, declare unlawfulness of an administrative act or measure, or declare ascertaining other facts of material importance in a public law relationship (declaratory action).

If the applicant so wishes, the action may include several related claims (compound action). The claims of a compound action may be alternative. The administrative court assesses the admissibility of a compound action with respect to each of the claims separately. A ruling ordering interim relief may⁴:

⁴ Code of Administrative Court Procedure subsection 251 (1) 1), 2), 3), 5)

	<ul style="list-style-type: none"> - suspend the validity or enforcement of the administrative act contested; - prohibit the issue of the contested administrative act or the taking of the contested measure; - order the administrative authority to issue the administrative act take the administrative measure applied for or to discontinue a measure which is in progress; - prohibit the addressee of the administrative act from engaging in the activity regulated in the administrative act or order such activity to be performed, or establish conditions for such activity, including demanding a security to be given in favor of the applicant. <p>The court may, in a ruling ordering interim relief, apply several measures at the same time.⁵</p> <ul style="list-style-type: none"> - what are the conditions of applying an injunctive relief by the court? <p>Mentioned before.</p>
<p>b) practice</p>	<ul style="list-style-type: none"> - <u>what is the scope and depth of review by the courts in practice?</u> <p>Court checks both substantive and procedural legitimacy.</p> <p>According to the Supreme Court, an environmental decision can be legitimate only if the previous procedure has been lawful.⁶ Ignoring the mandatory procedural requirements is unacceptable and may, on its own, be the basis for the annulment of the decision.⁷</p> <p>In matters where the law doesn't very clearly define the procedural rules, the administrative authorities have a wide discretion.⁸</p> <ul style="list-style-type: none"> - <u>what is the practice of courts in applying injunctive relief in environmental cases?</u> <p>In general, injunctive relief is given when there is an immediate danger, not just in case. If there are many successive decisions made, it can be complicated to get injunctive relief (e.g. when detailed spatial plan has been established and building permit has not been issued, it is difficult to get injunctive relief to detailed spatial plan because it does not confer a building right).</p> <p>Tallinn Circuit Court has stated that if a challenged administrative act does not directly result in the initial application for legal protection there is no need for injunctive relief.</p>

⁵ Code of Administrative Court Procedure subsection 251 (2)

⁶ The Supreme Court case No 3-3-1-86-06

⁷ The Supreme Court case No 3-3-1-35-13

⁸ Administrative Procedure Act subsection 5 (1)

	<p>There is a dominant case-law view that it would be disproportionate to both the third party and the public interest applying injunctive relief “just in case”. If the risk of harmful consequences becomes clear, the applicants have the right to apply for legal protection.⁹</p> <ul style="list-style-type: none"> - <u>does this mean a barrier to effective access to justice?</u> <p>Yes</p> <ul style="list-style-type: none"> - <u>are the judicial remedies effective when challenges are successful?</u> <p>Yes</p> <ul style="list-style-type: none"> - <u>cite one or two court cases for any of the preceding issues, e.g. scope and depth of review, injunctive relief, effectiveness of judicial remedies, etc.</u> <p>Cited before.</p>
c) scoring	<p>On a scale of 1 to 5 please score the following in terms of how strongly they mean a barrier to access to justice in environmental matters:</p> <p>1: very weak, 2: weak, 3: intermediate, 4: strong, 5: very strong</p> <p>scope and depth of review by the courts: 3</p> <p>conditions of applying an injunctive relief: 3</p> <p>effectiveness of judicial remedies: 2</p>

⁹ Tallinn Circuit Court case No 3-16-715

Objective	Indicator (example)
Timeliness of access to justice	<p>deadline for submitting an administrative complaint: deadline for bringing a court action</p> <p>deadline set for administrative review</p> <p>deadline set for judicial review:</p> <p>deadline for requesting and granting an injunction</p> <p>average length of procedures: no general data available; for EIA procedures 18,4 months (median in 2016); 7 months from the time the authority has all necessary documents;</p>
a) legislation	<ul style="list-style-type: none"> - <u>what is the deadline for submitting an administrative remedy in environmental matters?</u> <p>30 days</p> <ul style="list-style-type: none"> - <u>what is the deadline for bringing a court action in environmental matters?</u> <p>30 days – 10 years (legislation stated before already)</p> <p>An annulment action may be filed within 30 days after the date on which the administrative act was notified to the applicant.</p> <p>A mandatory action may be filed within 30 days after the date on which the refusal to issue an administrative act or to take an administrative measure was notified to the applicant. In the event of an administrative authority's omission or delay, a mandatory action may be brought within 1 year after the time-limit for issuing an administrative act or taking an administrative measure has elapsed. If no such time-limit has been established, in the event of an administrative authority's omission or delay a mandatory action may be filed within 2 years after the administrative act or measure was applied for.</p> <p>A prohibition action may be filed without a time-limit.</p> <p>A compensation action or reparation action may be filed within 3 years after the day when the applicant became aware or should have become aware of the harm and of the person who caused the harm or of the consequences of the administrative act or measure the elimination of which the applicant seeks. Nevertheless, neither a compensation nor a reparation action may be filed later than 10 years after the issue of the administrative act or legislative act, the taking of the administrative measure or notification of the decision entered in relation to the administration of justice, which caused the damage or gave rise to the consequences.</p>

An action to determine the unlawfulness of an administrative act or measure may be filed within 3 years after the administrative act was issued or the administrative measure was taken. Other declaratory actions may be filed without a time-limit.

If the administrative act or refusal has not been notified to the applicant, yet the applicant has learned of the administrative act or refusal in a different manner, but has unreasonably delayed with the bringing of an annulment or mandatory action, the time-limit for bringing the action is deemed to have lapsed.

- what is the deadline set for the competent authority for administrative review?

10-30 days

- what is the deadline set for the court for judicial review?

No deadline

- what is the deadline for requesting and granting an injunction?

No deadline (asap)

b) practice

- what is the average actual duration of an administrative review process?

10-30 days

- what is the average actual duration of a judicial review process?

For administrative review – ca 1 month

Administrative courts – ca 13 months

Circuit courts – ca 8 months

The Supreme Court – ca 7 months

- what is the average actual duration of a judicial case against a private person?

We do not know (as there aren't many cases).

- what is the average actual duration of granting an injunction?

1-2 weeks

	<ul style="list-style-type: none"> - <u>cite one or two court cases for any of the preceding issues, e.g. length of procedure, time to grant and injunction, etc.</u>
c) scoring	<p>On a scale of 1 to 5 please score the following in terms of how strongly they mean a barrier to access to justice in environmental matters:</p> <p>1: very weak, 2: weak, 3: intermediate, 4: strong, 5: very strong</p> <p>the average actual duration of an administrative review process:</p> <p>the average actual duration of a judicial review process: 3</p> <p>the average actual duration of granting an injunction: 2</p>

Objective	Indicator (example)
Costs of access to justice	fees for administrative review: fees for judicial review: rules of bearing costs of procedures: costs for/necessity of expertise: cost capping mechanisms, legal aid, etc.: A
a) legislation	<ul style="list-style-type: none"> - <u>what are the fees for administrative review in environmental matters?</u> No fee. <ul style="list-style-type: none"> - <u>what are the fees for judicial review in environmental matters?</u> 15 € state tax for a proceeding. <ul style="list-style-type: none"> - <u>what are the rules of bearing costs of procedures in environmental matters?</u> Loser pays principle applied with discretion for judges to reduce the amount. <ul style="list-style-type: none"> - <u>are there any cost capping mechanisms, legal aid, etc.?</u> No (there is a legal aid regulation but it doesn't usually apply because you have to be extremely poor to get it).
b) practice	<ul style="list-style-type: none"> - <u>what are the average actual fees for administrative review in environmental matters?</u> No fee. <ul style="list-style-type: none"> - <u>what are the average actual fees for judicial review in environmental matters?</u> 15 € for a proceeding. <ul style="list-style-type: none"> - <u>how do court apply the rules of bearing costs of procedures in environmental matters?</u> Loser pays principle applies.

Long practice of the courts has also been that if the case is related to the principal activity of the administrative body, their costs for the legal proceedings will be borne by themselves.¹⁰

Regarding reduction of costs, the Supreme Court has stated that right to file a claim in environmental matters is governed by Article 9 (4) of the Aarhus Convention, where it is said that judicial proceedings cannot be prohibitively costly. An infringement of that article are also cases, where overly expensive procedural costs are imposed on the applicants. Based on that the Supreme Court decided to reduce costs imposed on the applicants from 11 880 € to 6800 € (costs to be paid out to the third party).¹¹

- what are the typical costs in environmental cases?

Legal aid fees, third party legal aid fees (if you lose), expertise (if included and needed to prove noise etc. regulations violations) and state tax.

- how high are the costs of experts?

Depends on a case, varies from 200 € – 5000 €.

- do the cost capping mechanisms, legal aid, etc. work in practice?

No.

- cite one or two court cases for any of the preceding issues, e.g. expert fees, legal aid, etc.

c) scoring

On a scale of 1 to 5 please score the following in terms of how strongly they mean a barrier to access to justice in environmental matters:

1: very weak, 2: weak, 3: intermediate, 4: strong, 5: very strong

average actual fees for administrative review: 1

average actual fees for judicial review: 1

bearing costs of procedures in environmental matters: 4

typical costs in environmental cases: 4

functioning of cost capping mechanisms, legal aid, etc.: 5

¹⁰ The Supreme Court case No 3-3-1-64-13, p 50

¹¹ The Supreme Court case No 3-3-1-67-14, pp 32.2, 39-40.1

Objective	Indicator (example)
Availability of capacity building	<p>guidance on access to justice in environmental matters available for the public</p> <p>trainings provided for public officials and judges in access to justice</p> <p>access to information regarding judgments in relevant cases</p> <p>recognition of and state financial support to environmental legal advisory services by/to eNGOs</p>
a) legislation	<ul style="list-style-type: none"> - is there an obligation by law to have guidance on access to justice in environmental matters available for the public? - are there trainings prescribed for public officials and judges in access to justice? - is access to information regarding judgments in environmental cases regulated by law? - are environmental legal advisory services and eNGOs recognized by law?
b) practice	<ul style="list-style-type: none"> - is there a guidance on access to justice in environmental matters available for the public? - are there trainings for public officials and judges in access to justice? - is access to information regarding judgments in environmental cases ensured? - are environmental legal advisory services and eNGOs supported by the state? - cite one or two court cases for any of the preceding issues, e.g. guidance to the public, eNGO support, etc.
c) scoring	<p>On a scale of 1 to 5 please score the following in terms of how strongly they mean a barrier to access to justice in environmental matters:</p> <p>1: very weak, 2: weak, 3: intermediate, 4: strong, 5: very strong</p> <p>lack of guidance on access to justice in environmental matters available for the public:</p> <p>lack of trainings for public officials and judges in access to justice:</p> <p>no access to information regarding judgments in environmental cases:</p> <p>no support for environmental legal advisory services and eNGOs:</p>

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