Questionnaire on ESTONIAN Laws, Practices and Experiences on Enforcement

Hannes Veinla – University of Tartu

1. **Please describe generally the most import tools for the enforcement of environmental law in your country. Also describe the relative "weight" of private law, administrative law and criminal law for the enforcement.**

- The Estonian law provides for three basic types of enforcement tools: administrative, penal (criminal and quasi criminal (misdemeanours), and civil.
- The major enforcement authority in Estonia is Environmental Inspectorate. Administrative enforcement tools comprise fines, suspension of certain activities, issuance of the precepts in order to ensure the legality of certain activities, confiscation (forfeiture), restitution. These sanctions can be imposed by administrative authorities and there is as a rule no need to turn to court.
- According to art. 3 of the Penal Code an offence is a punishable act provided for in Penal Code and the principal punishment prescribed for which in the case of natural persons is a pecuniary punishment or imprisonment and in the case of legal persons, a pecuniary punishment or compulsory dissolution.The necessary element of the criminal offence is significant damage to the environment. A misdemeanour is an offence which is provided for in Penal Code or another Act and the principal punishment prescribed for which is a fine or detention. The provisions concerning criminal procedure apply to misdemeanour procedure as well, taking into account certain specifications arising from misdemeanour procedure.
- Independent from penal and administrative liability - civil liability can also be applied under Law of Obligation Act or Property Act:
- Administrative enforcement and misdemeanour procedure play major role in enforcement, criminal sanctions and civil law tools are in use very rarely.

2. **Please answer sub-questions I-IV for each situation listed as a-i below. Also indicate whether you know of national cases where these issues have been dealt with:**
   I: Which sanctions are provided under national law (criminal, administrative etc.)?
   II: Can NGOs and/or citizens challenge the enforcement – or lack of enforcement – by the competent authority, or is it within the full discretion of the competent authority to decide whether and how offences should be sanctioned? (If NGOs and citizens can challenge such decisions and omissions, including failures of a procedural character, please describe how.)
   III: In light of European Community law, including the possible direct or indirect effect of directives, does national law grant NGOs and/or affected citizens the right to take direct enforcement measures against the polluter?
   IV: Could the competent authority under national law be held liable for erroneous acts and for omissions (non-enforcement) in the cases listed below? If so, how?

   a. **When an EIA project is established without an EIA permit**.

   I: The permit for EIA project can be in principle invalidated ether by the administrative authority or by court

II: Within the discretion of the competent authority, however NGOs and citizen have extensive legal standing to challenge decisions or omissions in administrative courts

III: No

IV: State Liability Act provides the bases of and procedure for the protection and restoration of **rights violated** upon the exercise of powers of public authority and performance of other public duties and compensation for damage caused (state liability).

b. When conditions attached to the EIA decision, granting a development consent, are disregarded.

I: The permit can be in principle invalidated, in addition - fines, suspension of certain activities, issuance of the precepts in order to ensure the legality of certain activities can be in certain circumstances enforced, in case of major damage to the environment – criminal sanction is described

II: Within the discretion of the competent authority, however NGOs and citizen have extensive legal standing

III: No

IV: State liability under state liability act is possible in case of violation of person's subjective rights.

c. When an IPPC facility is established without an IPPC permit.

I: The permit can be in principle invalidated, in addition - fines, suspension of certain activities, issuance of the precepts in order to ensure the legality of certain activities can be in certain circumstances enforced, in case of major damage to the environment – criminal sanction is described

II: Within the discretion of the competent authority, however NGOs and citizen have extensive legal standing

III: No

IV: State liability under state liability act is possible in case of violation of person's subjective rights.

d. When an IPPC facility is permitted without prior assessment in accordance with article 6(3) of the Habitat Directive.

I: The permit can be invalidated.

II: Within the discretion of the competent authority, however NGOs and citizen have extensive legal standing

III: No

IV: No

e. **When an IPPC facility is operated in violation of conditions of an IPPC permit**.

I: The permit can be in principle invalidated, in addition - fines, suspension of certain activities, issuance of the precepts in order to ensure the legality of certain activities can be in certain circumstances enforced, in case of major damage to the environment – criminal sanction is described

II: Within the discretion of the competent authority, however NGOs and citizen have extensive legal standing

III: No

IV: State liability under state liability act is possible in case of violation of person's subjective rights.

f. When an IPPC facility releases greenhouse gases beyond what is provided for by allowances under the ET Directive.

I: The permit can be invalidated, in addition - fines, suspension of certain activities, issuance of the precepts in order to ensure the legality of certain activities can be enforced.

II: Within the discretion of the competent authority, however NGOs and citizen have extensive legal standing

III: No

IV: No

g. When an IPPC facility has negative impact on Natura 2000 sites beyond the threshold in article 6(2) of the Habitat Directive.

I: The permit can be invalidated.

II: Within the discretion of the competent authority, however NGOs and citizen have extensive legal standing

III: No

IV: No

h. When water plans adopted under the Water Framework Directive – or for the moment existing water quality standards laid down in the "old" water directives – are not complied with.

I: The permit can be in certain circumstances invalidated

II: Within the discretion of the competent authority, however NGOs and citizen have extensive legal standing

III: No

IV: State liability under state liability act is possible in case of violation of person's subjective rights.

i. **When air plans under the Air Framework Directive are not complied with**.

In Estonia these plans are of very general character and are addressed to administrative authorities and do not create direct obligations to private entities.

3. How is article 9(3) of the Aarhus Convention, regarding access to administrative or judicial procedures for members of the public to challenge violations of environmental law, complied with? In which situations is it NOT complied with?

In Estonian law there is no special regulation for the implementation of Article 9 (3). Despite Estonian court practice has considerably broadened access to justice (see answer under question 8) the main grounds for the legal standing in Estonian

administrative procedure is the violation of subjective public rights. Civil law remedies are available only on the basis of violation of subjective rights.

4. **Please identify possible factors, such as costs, length of procedures or other practical matters, that may prevent effective access to justice for members of the public.**

   The administrative courts should review cases within two months. However, in practice the courts are overloaded and certain cases have been scrutinised in courts for years. The court fees are low, but the major obstacle is the cost of legal aid (and the 'loser pays' principle).

5. **Do NGOs and/or citizens have access to injunctive relief and interim legal remedies? Do you know any national cases which have dealt with this?**
   According to Administrative Court Procedure Act, the court may apply injunctive relief at any stage of the court proceedings at the reasoned request of the person filing the action or on its own initiative, if otherwise execution of a court judgment is impracticable or impossible. By a ruling on injunctive relief, an administrative court may - suspend the validity or execution of a contested administrative act. There is no deposit obligation. The measure is rather efficient in Estonia, as the court practice, has been relatively supportive to rule on injunctive relief in environmental matters.

6. **Are there any examples where a final administrative decision has been reopened because of a complaint based on later case law from the ECJ?**

   I am not aware of such cases

7. **Has there been any national case in which the State or the local authority have been held liable for not remedying environmental damage or other damage in violation of EC environmental law?**

   I am not aware of such cases

8. **Do you now of any significant developments, good practices or failures (e.g. cases, new laws, new institutional arrangements, or new policies) with regard to the enforcement of EC environmental law, not covered by the previous questions, that you would like to highlight**

   The most surprising development in Estonian law concerning enforcement of Environmental law is really "revolutionary" broadening of access to justice – which can affect better enforcement of environmental law of EC origin as well. The Estonian Supreme Court has ruled that in matters pertaining to decisions on environmental issues, the legal standing cannot be given meaning identically to in ordinary administrative cases through the violation of a subjective public right. Violation of a subjective right may or may not appear in environmental matters. Therefore, the basis for the right to address the court in respect of matters of environmental protection can be not only the violation of rights but also the contiguity of the complainant by the challengeable administrative act or measure. The complainant must show that the challengeable act concerns his interests. Contiguity does not merely mean the possibility that the activity or planned activity affects the person; such effect should be significant and real. Accordingly the Supreme Court has abandoned the criterion of the violation of a subjective right in relation to environmental cases.