



**Economic and Social
Council**

Distr.
GENERAL

ECE/MP.PP/2005/18/Add.23
17 May 2005

ORIGINAL: ENGLISH

ECONOMIC COMMISSION FOR EUROPE

Meeting of the Parties to the
Convention on Access to Information,
Public Participation in Decision-making and
Access to Justice in Environmental Matters

(Second meeting, Almaty, Kazakhstan, 25-27 May 2005)
(Item 6 (a) of the provisional agenda)

IMPLEMENTATION REPORT

Estonia^{*/}

Based on the reporting format annexed to decision I/8

1. Provide brief information on the process by which this report has been prepared, including information on which types of public authorities were consulted or contributed to its preparation, on how the public was consulted and how the outcome of the public consultation was taken into account and on the material, which was used as a basis for preparing the report.

The report was prepared by the Ministry of the Environment (MoE). The Association of Towns of Estonia and the Association of Municipalities of Estonia were involved in its preparation as the Ministry asked for their experience in the implementation of different articles of the Convention in the form of a questionnaire. The environmental departments and other institutions under the MoE also provided their opinion on implementation. The draft report was published on the website of the MoE for comments between 3 and 14 February 2005. However, as the report was also submitted to the Estonian Chamber of Environmental Associations, the deadline for comments was postponed until 18 February upon their request. Comments were received from

^{*/} This document was submitted late due to the fact that the report was received by the secretariat from the Party concerned after the deadline set out in decision I/8 and various first-time problems had to be overcome as this is the first reporting cycle under decision I/8 of the Meeting of the Parties. This was compounded by the fact that a considerable volume of other documentation being prepared for the second meeting of the Parties had to be processed during the same period.

the Estonian Nature Protection Society, the Estonian Chamber of Environmental Associations and the Information and Technology Centre of the MoE. They have been taken into account wherever and to the extent possible.

2. Report any particular circumstances that are relevant for understanding the report, e.g. whether there is a federal and/or decentralized decision-making structure, whether the provisions of the Convention have a direct effect upon its entry into force, or whether financial constraints are a significant obstacle to implementation (optional).

According to the Constitution, in case of inconsistency between national legislation and provisions of an international convention, treaty or similar act having legally binding effect, the provisions of the latter prevail. Based on this provision, the Convention is directly applied by courts, namely through the recognition of the right of access to justice of environmental non-governmental organizations (NGOs) challenging the acts of public authorities in the public interest.

ARTICLE 3

3. List legislative, regulatory and other measures that implement the general provisions in paragraphs 2, 3, 4, 7 and 8 of article 3.

(a) The general obligation of public authorities as the holders of information to assist persons making requests for information has been established in paragraph 9 of the Public Information Act. A more detailed description of the obligations is provided in paragraph 15 of the same Act, according to which the holders of information are required to clearly explain the procedure for, and the conditions and manners of, access to information to requesters; assist them in every way during the application process, and identification of the relevant information and most suitable manner of access thereto; if necessary, promptly refer requesters to the competent official or employee, or promptly forward the request in writing to the competent official or employee. If a request for information does not indicate the manner in which the requested information is to be provided, the holder of information shall promptly contact the requester in order to clarify the request.

The website of the MoE and the Environmental Departments contains information on their areas of work together with the contact details of experts. The homepage of the Ministry and the Departments (e.g. Tartu and Järva County) includes an option for submitting requests for information electronically.

On 10 December 2004, the Memorandum and Clarification Request Reply Act entered into force, according to which a public authority has the obligation to give free of charge explanations on legal acts or projects thereof developed by the public authority, legal acts forming the basis of its activities and its competence. The Act also establishes the obligation to receive persons.

The obligation of public authority bodies is also established in paragraph 36 of the Administrative Procedure Act, according to which an administrative body is obligated to explain the rights and obligations of parties to the procedure and the order of procedure;

(b) The MoE has acknowledged and prioritized the areas of public access to environmental information, and the promotion of environmental education and awareness. In 2004, the Environmental Information Centre was formed at the MoE for inquiries from the public, schools and high-schools, and an environmental education office was launched. The promotion of environmental education and awareness has not been directly established under any legal acts, but various projects have been implemented in this area.

In 2000-2004, two projects related to the implementation of the Convention were undertaken with financing from the Danish Environmental Agency: the first (2000-2002) focused on the two first pillars of the Convention and the second (2002-2004) on the third pillar. The main objective of the project was to develop a concept for the implementation of the third pillar and to familiarize environmental organizations with the principles of decision-making in environmental matters and the extent of legal control over these decisions.

Environmental education-related activities of the environmental departments in the administrative area of the MoE have included training courses, information seminars and information days on all environmental topics for various target groups (for an average of 20 events a year) and exhibitions. Every year, environmental awareness projects of the Environmental Investments Centre are carried out (environmental page in county newspapers, training courses for various target groups, etc.) and publications issued and distributed free of charge to schools, libraries and other interested persons. In cooperation with NGOs, several joint projects have been implemented, e.g. nature nights, voluntary work parties, cleaning of protected areas, etc.;

(c) According to some environmental NGOs, article 3, para. 4, has not yet been fully implemented as there is no direct support for, or recognition of, environmental organizations by the State. They consider that there is a need to specify the term "recognition" of environmental NGOs at the State level. Environmental NGOs are eligible for applying for finances from the EU Structural Funds administered by the Environmental Investment Centre (foundation owned by the State), but in practice there have been contradictory opinions between the State and NGOs about financing. NGOs have stated that their activities are constantly opposed by some public authorities and officials and that the Republic of Estonia does not comply with that provision of the Convention, i.e. the State does not offer enough participatory opportunity nor recognition;

(e) The prohibition established in article 3, para. 8, in regards to penalizing, persecuting or harassing persons exercising their rights is first of all contained in paragraph 12 of the Constitution, according to which no one shall be discriminated against on the basis of nationality, race, colour, sex, language, origin, religion, political or other opinion, property or social status, or on other grounds. The Penal Code establishes that as fit for a State based on the rule of law, no one shall be convicted or punished for an act which was not an offence pursuant to the law applicable at the time of the commission and that a person shall be punished for an act if it comprises the necessary elements of an offence, is unlawful and the person is guilty of the commission of the offence.

- 4. Describe any obstacles encountered in the implementation of any of the paragraphs of article 3 listed above.**
- 5. Provide further information on the practical application of the general provisions of the Convention.**
- 6. Give relevant web site addresses, if available:**

ARTICLE 4

7. List legislative, regulatory and other measures that implement the provisions on access to environmental information in article 4.

The terms set out in article 2 have been partly defined in national legislation. The term “public authority” is defined in paragraph 8 (1) of the Administrative Procedure Act as “any agency, body or official, which is authorized to perform public administration duties by an Act, a regulation issued on the basis of an Act or a contract under public law”.

The term “environmental information” has not been defined, but paragraph 3 (1) of the Public Information Act defines “public information” as information which is recorded and documented in any manner and on any medium and which is obtained or created upon performance of public duties provided by law or legislation issued on the basis thereof. Thus the definition of “public information” also includes “environmental information”.

The terms the “public” and the “public concerned” have not been directly defined, but they are, however, used in various environmental legal acts as general terms.

Access to environmental information is guaranteed under paragraphs 9 and 10 of the Public Information Act which requires that holders of information grant access to information in their possession and assist the public in requesting the information. The persons making requests for information do not have to justify their interest or the request for information. The grounds for refusal are exhaustively listed, and relate to format, content, etc. of requests. Requests are refused *inter alia* if the information requested is intended for the internal use of the public authority. Such use includes information on national defence, international relations, industrial solutions, intellectual property rights, inquiries and court proceedings, and sensitive and private personal data.

A request for information shall be complied with promptly, but not later than within five working days. If the request cannot be met within this deadline, the person having made the request shall be notified. The deadline can be extended to a maximum of 15 working days.

Public institutions are obliged to register requests for information (on the basis of the Public Information Act), memoranda and requests for explanations (on the basis of the Memorandum and Clarification Request Reply Act) addressed to them. Memoranda and requests for clarification must be complied with in writing within one month. If additional research is needed, this deadline may be extended to two months.

Generally, requests for information are free of charge. However, a small charge can be levied by a public authority in case of the provision of large numbers of copies.

8. Describe any obstacles encountered in the implementation of any of the paragraphs of article 4.

9. Provide further information on the practical application of the provisions on access to information, e.g. are there any statistics available on the number of requests made, the number of refusals and their reasons?

Environmental information is held mainly by the MoE, the Ministry's environmental departments located in the counties and its Information and Technology Centre.

Generally there have been no problems with the term for complying with requests for information, except with respect to the Information and Technology Centre that has to process a large number of requests (5,690 in 2004, including 5,498 related to nature protection). For example, public notaries file approximately 45 requests per day. On the average, complying with one request for information takes 45 minutes of working time. However, an amendment to the Environmental Register Act has been passed lately, providing for a 30-day deadline for complying with requests for registry data. The creation of a system enabling digital enquiries between the Chamber of Notaries, the Land Board and the Centre has been investigated.

The deadline may be extended if requests for information are sent to e-mail addresses of experts temporarily out of office. Some requests need clarification prior to reply.

Environmental NGOs have complained that local authorities, and in some cases also the environmental services, do not always reply to requests for information or that the person responsible for the information is not present. According to the study¹ published by the Estonian Institute for Sustainable Development in January 2005 regarding access to environmental information and opportunities for participating in decision-making, three out of ten test requests for information were left unanswered. According to the study, the most problematic is obtaining information on specific enterprises. Although pollution reports of enterprises at the disposal of public authorities should be accessible to the public (upon request), there are no uniform rules for releasing such information, it can at times be treated as a commercial secret (although not according to the Convention) and only the average figures of the industry are disclosed. At the same time – although the law does not require so – several large enterprises (e.g. AS Eesti Energia) prepare environmental reports meant for the public. Indeed, one of the recommendations presented in the study is to specify more clearly the principles on dissemination and confidentiality of information on pollution held by enterprises found in legal acts.

10. Give relevant web site addresses, if available:

ARTICLE 5

11. List legislative, regulatory and other measures that implement the provisions on the collection and dissemination of environmental information in article 5.

The general disclosure of information is addressed in the Public Information Act. The following information is to be published on the website of the public authority (mandatory), and, if necessary, in public broadcasting or printed press, local government institution or public library, official publication or in any other manner prescribed by legal acts:

- Information on life-threatening dangers, or risks to health and property of persons;
- Information concerning the state of the environment, environmental damage and hazardous environmental impacts;
- Other information and documents that must be disclosed under an international agreement, Act or legislation passed on the basis thereof, or which the holder of information deems necessary to disclose.

Legal acts, international agreements, reasoned rulings of the Supreme Court, announcements and other documents of the Republic of Estonia are published in accordance with the State Gazette Act in the official publication Riigi Teataja. Its paragraph 5 also establishes the term for the entry into force of acts, decisions and others that are published and need to be enforced; this term is in most cases linked to publication in the Riigi Teataja (e.g. a law enters into force on the 10th day and a regulation of the Government of the Republic or a minister enters into force on the 3rd day following publication).

The collection, processing, storing and disclosing of environmental information are addressed in practically all national environmental acts (Environmental Impact Assessment and Environmental Auditing Act, Environmental Monitoring Act, Integrated Pollution Prevention and Control Act, Planning Act, Water Act, Forest Act, Earth's Crust Act, the Release of Genetically Modified Organisms into the Environment Act, Waste Act, Chemicals Act, Radiation Act and Nature Protection Act). On the basis of these, environmental information is divided between over 40 different data compounds. In order to consolidate and interlink the information, and to facilitate public access, it was decided to establish a national environmental register. The Environmental Register Act was enforced on 1 January 2003. The Environmental Register is operated by the Information and Technology Centre of the MoE. Various databases are being connected to it on a staggered basis in accordance with the Act, and the Register shall be fully functional in 2007 and publicly accessible on the Internet (www.keskkonnainfo.ee). Requests for information from the Register are free of charge, and shall be denied only if falling in an exhaustive list of exemptions, such as dangers to public safety, the environment, protected species, intellectual property rights and confidential commercial information.

Once a year, information on the state of natural resources, significant changes in environmental conditions, activities or production accidents with a significant or transboundary environmental impact, as well as changes to the Register, are published. A consolidated report on environmental monitoring programmes is disclosed in every four years.

In 2003, Estonia, together with other countries, signed the Pollutant Release and Transfer Registers (PRTs) Protocol, which should be ratified either in 2005 or 2006.

Information concerning factors that may be hazardous to human health or the environment must be disclosed immediately. Such provisions are included in the Environmental Register Act, Environmental Impact Assessment and Environmental Auditing Act, Environmental Monitoring Act, Ambient Air Protection Act and Release of Genetically Modified Organisms into the Environment Act.

The constant monitoring of the state of the environment and sources of impact are regulated under the Environmental Monitoring Act. Environmental monitoring carried out on the basis of a State or local government monitoring programme, or to the extent determined by a natural resources exploitation or pollution permit, is published in the form of periodicals and to the extent determined by the Minister of the Environment on the website of the MoE (www.envir.ee). Exceptionally, only persons performing official functions have access to environmental monitoring data if the publication thereof may endanger human health or protected species, if the data are being processed or if the data contain or concern confidential business, industrial or intellectual property information.

Access to information regarding goods and services offered on the commodities market is regulated primarily under the Consumer Protection Act adopted in 1993 and enforced in 1994. Product safety and the related provision of information to consumers is regulated under the Product Safety Act; obtaining relevant and correct information on goods and services offered in order to make a conscious choice is one of the fundamental rights of consumers. The consumer has the right to obtain the necessary information on safety, protection of health, property and economic interests related to goods or services offered.

The Riigikogu has passed a new Environmental Impact Assessment and Environmental Management System Act, which, in accordance with Regulation (EEC) No. 761/2001 of 19 March 2001 allowing voluntary participation by organizations in a Community eco-management and audit scheme (EMAS), establishes the rights and obligations of respective institutions in Estonia. In accordance with its paragraph 50, the MoE must prepare a strategy and plan of activities for promoting environmental management and auditing systems for promoting the Community's environmental management and auditing system and for organizing the necessary information campaigns and training.

The MoE has since the end of the 1990s concluded several free-will agreements with enterprises, whose activities have a significant impact on the environment (available to the public on the website of the MoE), with them aim of mutual cooperation to improve environmental conditions. This cooperation consists on the one hand in the Ministry providing information on future changes in environment-related legal acts and involving representatives of the enterprises in the development of legal acts, and on the other the enterprises assuming additional obligations that are not directly mandatory under the applicable law but considerably improve environmental conditions, such as the implementation of ISO 1400-compliant environmental management systems, informing the public of their activities influencing the environment and carrying out additional scientific research. Such agreements have been concluded with the Federation of the Estonian Chemical Industry, AS Nordic Kunda Tsement and AS Narva Elektri jaamad.

12. Describe any obstacles encountered in the implementation of any of the paragraphs of article 5.

13. Provide further information on the practical application of the provisions on the collection and dissemination of environmental information in article 5, e.g. are there any statistics available on the information published?

Relevant publications providing substantial and statistical information on the county are issued by some counties. Several folders have been prepared on various environmental areas. Environment-related statistical information on the environmental departments is posted and constantly updated on the homepage, and substantial information is provided on all environmental areas. All necessary permit application forms and information on application procedures have also been provided. The homepages of some environmental departments also contain environmental impact assessment (EIA) programmes and reports. Several environmental departments publish articles in county newspapers.

Information days, seminars, environmental awareness promotion campaigns and other events promoting awareness are supported and/or organized. Environmental television and radio programmes for informing citizens on environmental issues are financed from the State budget. An important information channel for informing the public is the environmental supplement or page published in every county newspaper and the events organized during the nature protection month and the forest week.

As a new form of cooperation to involve the third sector, county cooperation partners with the environmental awareness programme started in 2004. For each year, special programme objectives are agreed.

The NGOs have pointed out the following problems in the implementation of article 5 of the Convention:

- Irregular disclosure of the progress in planning and EIA procedures;
- Irregular disclosure of draft legal acts, administrative reform of areas of protection and other such environmental information;
- To date, the environmental registry does not provide for all the data that should be accessible to the public according to the law;
- There is a need for more active dissemination of information by the environmental services and local authorities.

According to the study² mentioned above³, the information forwarded to the public is timely, regular and of good quality. In terms of negative aspects, the study states that confidentiality requirements regarding disclosure of environmental information have not been clearly defined, that the circle of persons receiving information is limited and that the information searched for is often not available on the Internet. On the basis of the cases analysed, the study concludes that the coverage of emergency situations in the mass media has been good, but that the public authorities' initiatives to release information needs to be improved: although the law prescribes the obligation to prepare information during emergency situations and environmental accidents, the order and procedure of notification have not been clearly defined.

The study considers that environmental monitoring is good; air monitoring in particular is regular and thorough, and information is of good quality, timely and accessible to the public. The level of accessibility of information is, however, uneven among departments, as no uniform

procedures have been developed. The study considers the accessibility of national reports on the environment to be good, and the yearly publication *Keskkond* (Environment) issued since 1999 by the Statistical Office thorough, of quality and easily accessible on the Internet. However, according to the study, more information materials on environmental statistics should be issued for specific target groups.

14. Give relevant web site addresses, if available:

ARTICLE 6

15. List legislative, regulatory and other measures that implement the provisions on public participation in decisions on specific activities in article 6.

The specific activities provided for in article 6 of the Convention have been regulated in national legislation through the issuing of authorizations and EIAs. In the course of issuing an operating permit, an EIA is performed on the basis of the presumed environmental impact of the planned activity either as a compulsory procedure or on the basis of the relevant decision of the issuer of the authorization. The currently applicable Environmental Impact Assessment and Environmental Auditing Act was passed in 2000, but, in order to eliminate various shortcomings discovered in the act, the Riigikogu has passed a new Environmental Impact Assessment and Environmental Auditing Act that entered into force in March 2005. As the Environmental Impact Assessment and Environmental Auditing Act is repealed by the new Act, this report is based on the latter.

Authorizations upon the issuing of which environmental impacts are assessed are:

- Building permits or permits for the use of construction works (procedure based on the Building Act);
- Integrated environmental permits (on the basis of the Integrated Pollution Prevention and Control Act), permits for the special use of water (on the basis of the Water Act), ambient air pollution permits (on the basis of the Ambient Air Protection Act), waste permits and hazardous waste handling licences (on the basis of the Waste Act) and radiation practice licences (on the basis of the Radiation Act);
- Extraction permits, permits for geological research and permits for general geological research (on the basis of the Earth's Crust Act);
- Any other document permitting to carry out activities that are likely to have a significant environmental impact.

According to paragraph 3 of the Environmental Impact Assessment and Environmental Management System Act, an assessment of environmental impacts is mandatory if the activity would result in a significant environmental impact or affect the area of the Natura 2000 network. Environmental impact is significant if it may exceed the environmental capacity of a site, cause irreversible changes to the environment, or endanger cultural heritage, human health, well-being or property. The Act specifies a list of the fields of activity (projects, sites) upon which the assessment of the environmental impact is mandatory. For most fields of activity, a characteristic threshold value has been provided, upon the exceeding of which the EIA requirement is applicable.

Upon the issuing of permits, the provisions on open proceedings provided for in the Administrative Procedure Act are applied. These open proceedings mean that, as a rule, public participation in the procedures have been foreseen and are obligatory.

Public participation in decisions on the intentional release of genetically modified organisms (GMOs) into the environment is regulated by the Release of Genetically Modified Organisms into the Environment Act. GMOs may be released into the environment only with the written authorization of the Minister of the Environment. For this purpose, a relevant application is submitted to the MoE, and notifications published in the official publication *Ametlikud Teadaanded*; within seven days from the receipt of the application and the issuing of the permit, open proceedings are undertaken.

16. Describe any obstacles encountered in the implementation of any of the paragraphs of article 6.

17. Provide further information on the practical application of the provisions on public participation in decisions on specific activities in article 6, e.g. are there any statistics or other information available on public participation in decisions on specific activities or on decisions not to apply the provisions of this article to proposed activities serving national defence purposes.

Disclosure requirements required under the law are fulfilled in assessments of environmental impacts and the issuing of permits. A problem in EIA processes is how to find information on the contact details of neighbours.

Once the information is disclosed, interest in permit applications is generally not very high. However, in some cases, feedback has been very active. The permit applications and the materials for the assessment of the environmental impact are accessible at the environmental departments.

That the public's proposals and objections are often based on the emotional reaction that the activity should not be carried out in anyone's "back yard" may very well be caused by lack of knowledge. NGOs consider that the State should make efforts to educate the public concerned with regard to participation in the decision-making process. The objections and proposals prepared by NGOs are better worded and reasoned.

Upon assessing the environmental impact, the relevant parties are informed in writing, and the initiator of the environmental impact assessment informs of the initiation of the assessment, e.g. by publishing a notice in a newspaper. But as the dissemination of information is still mostly electronic, the wider public does not have sufficient information on the matter. In most cases, only the relevant parties are informed. The same problem exists with regard to environmental permits. Information is disclosed in electronic form only in the *Ametlikud Teadaanded* (Official Notice), which people do generally not read, and the wider public has very little information in this regard.

The NGOs have pointed out the following problems in the implementation of article 6 of the Convention:

- There have been cases where the public has not been involved at an early enough phase or in an effective enough manner;
- Public notifications do not always contain all the information required under the Convention;
- Information does not always reach the public because of the reasons stated in the previous paragraph;
- The two-week deadline for the public to react is not always sufficient, and in some cases the deadline is even shorter;
- There have been cases where they have received no feedback on proposals or objections submitted to the public authority;
- There have been cases where reasonings and considerations have not been disclosed, and some decisions (for example extraction permits) are not published immediately;
- Administrative proceedings in respect of GMOs do not comply with the requirements on publicity according to the Convention.

18. Give relevant web site addresses, if available:

ARTICLE 7

19. List the appropriate practical and/or other provisions made for the public to participate during the preparation of plans and programmes relating to the environment. Describe the transposition of the relevant definitions in article 2 and the non-discrimination requirement in article 3, paragraph 9.

Paragraph 31 of the new Environmental Impact Assessment and Environmental Management System Act defines a strategic planning document as a national, county, comprehensive or detailed plan, strategic development plan or other plan, programme or strategy linked to the State budget and established in a legal act of the Riigikogu, the Government of the Republic, a government institution, a county governor or a local government body. According to the law, the open procedure provisions of the Administrative Procedure Act apply to public participation in the preparation of these documents. On the basis of the applicable law, this has been done for instance in the strategic environmental impact assessment (SEA) of the “Sustainable Estonia 21” strategy, the Estonian National Development Plan and the revision of the Estonian environmental strategy. Public participation was also organized in the preparation of the Forestry Development Plan. The documents are accessible to the public for at least two weeks in the disclosure and SEA process, after which time an open meeting is organized for asking questions and expressing opinions; proposals are expected in writing. The large number of participants has sometimes been a problem, and at the same time the interests of the various interest groups are different and often contradictory, which has made taking the proposals into consideration very difficult.

The waste management plans prepared on the basis of the Waste Act are public documents, and a disclosure process must be completed upon the preparation thereof. The public is informed of the initiation and public display of both the national and county plans, as well as relevant public sessions, through notices published in the *Ametlikud Teadaanded*, on the Ministry’s homepage and, depending on the hierarchy of the waste management plan, either in a national or county newspaper. Practice has shown so far that people are very interested in this kind of disclosure process and take an active part in it. Naturally, public participation in the waste management

plan preparation process lengthens the process, and poorly considered proposals and hasty conclusions are often made. At the same time, some of the proposals are adequate.

The public is informed of the proceedings on issuing a hazardous waste handling licence in the Ametlikud Teadaanded. Public interest in this process has generally been very passive.

Public participation in the preparation of plans is regulated by the Planning Act, according to which the public is informed of the intended plans through publication of a notice either in the Riigi Teataja (State Gazette) or in newspapers. The ministry, the county governor or the local government administering the preparation of the plan provide the main characteristics and time frame of the process. The completed plans are put on public display either in the local government or county centre. Everyone has the right to present proposals and objections concerning a plan during the duration of public display. The local government or county governor administering the preparation of the plan must inform persons who have sent proposals and objections by post or electronic mail during the time the plan is on display of their opinion on such proposals and objections, and specify the time and place of the public discussion within two weeks from the end of the public display of the plan. On the basis of the outcome of the public display and discussion, the local government or county governor make the necessary amendments to the plan.

20. Explain what opportunities there are for public participation in the preparation of policies relating to the environment.

21. Describe any obstacles encountered in the implementation of article 7.

The NGOs have pointed out that the deadline of two weeks (and which is often even shorter) for the public to react to plans is too short. They refer to their experience that in most cases they do not receive any feedback on proposals and objections submitted by them in respect of national strategies and action plans.

22. Provide further information on the practical application of the provisions on public participation in decisions on specific activities in article 7.

23. Give relevant web site addresses, if available:

ARTICLE 8

24. Describe what efforts are made to promote effective public participation during the preparation by public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment. To the extent appropriate, describe the transposition of the relevant definitions in article 2 and the non-discrimination requirement in article 3, paragraph 9.

In accordance with article 28, paras. (1)-(17), of the Public Information Act, the following documents must be disclosed:

- Draft Acts prepared by ministries and draft Government of the Republic regulations, together with explanatory memoranda, when such drafts are sent for approval or presentation to the Government of the Republic;
- Draft regulations of ministers and local governments together with explanatory memoranda before such drafts are presented for adoption;
- Draft concepts, development plans, programmes and other projects of general importance before such drafts are presented to the competent bodies for approval, and the corresponding approved or adopted documents.

The disclosure of legal acts is regulated in the draft legislative act approval information system. For approval, draft decisions of the Riigikogu, draft regulations of the Government of the Republic and draft regulations of ministers together with all annexes are made available in the draft legislative act approval information system managed by the Ministry of Justice. The ministries and the State Chancellery will post a link to the Internet location of the draft legislative act approval information system on their website. The documents entered into the draft processing information system are public. The public has the possibility to submit proposals in regards to draft legal acts during the duration of the display.

In accordance with the rules and regulations of the Government of the Republic, drafts or other documents, except for draft acts, draft decisions of the Riigikogu and draft regulations forwarded to the Government of the Republic by a ministry or the State Chancellery, can be classified as information intended for internal use either by the minister or the State Chancellor, respectively, on the grounds and in the order established in the Public Information Act, until the adoption of a decision by the Government of the Republic or for another term prescribed by law. The Ministry and State Chancellor must not release or publish the drafts and documents annexed thereto submitted to the Government of the Republic and classified as information intended for internal use until the adoption of a decision by the Government of the Republic or until the end of another term of restriction on access.

During the preparation of draft legal acts for the MoE, drafts are also sent to relevant NGOs and professional unions and other interested persons. The public participation rules at the MoE are being brought into conformity with the Ministry's internal procedure for preparing legal acts. Proposals submitted in regard to legal acts are taken into account to the extent possible.

25. Describe any obstacles encountered in the implementation of article 8.

The NGOs have pointed out the following problems in respect of the implementation of article 8:

- They are not involved enough in the early phases of drafting of legislation;
- The practice of involving the NGOs is not systematic;
- Access to information could be better.

26. Provide further information on the practical application of the provisions on public participation in the field covered by article 8.

27. Give relevant web site addresses, if available:

ARTICLE 9⁴

28. List legislative, regulatory and other measures that implement the provisions on access to justice in article 9.

The following proceedings are available in respect of a public authority:

Challenge proceedings

Challenge proceedings are regulated under the Administrative Procedure Act. Their aim is on the one hand to allow for inexpensive and prompt review of decisions, and on the other to give the administrative system a chance to correct its mistakes. Challenge proceedings are free of charge for persons. Currently they are not mandatory and the relevant person may turn directly to court. A challenge may be filed by a person who finds that his or her rights have been violated or freedoms restricted by an administrative act or in the course of administrative proceedings (para. 71). However, a challenge cannot be filed against an act or measure of an administrative authority over which the Government of the Republic exercises supervisory control.

A challenge concerning an administrative act or measure shall generally be filed within 30 days. Execution of the administrative act may be suspended for the duration of adjudication. A challenge is generally adjudicated within ten days, but the term of review may be extended for additional investigation by up to 30 days.

A decision on a challenge must be in writing and, upon dismissal of a challenge, must be reasoned and contain an explanation concerning the filing of an action before an administrative court. A person whose challenge is dismissed or whose rights are violated in challenge proceedings has the right to file an action before an administrative court.

Supervisory control proceedings

Supervisory control consists in the internal control of administrative activities and aims to ensure the legality and purposefulness of administrative activities. A person cannot demand that supervisory control be exercised, but he or she can draw the attention of the administrative body exercising supervisory control to circumstances that demand its exercise. Supervisory control is

not exercised in matters related to (State) supervision measures and acts, e.g. it is not exercised over the precepts of the Minister of the Environment.

A person exercising supervisory control has the right to:

- Issue an order for the elimination of the deficiencies in a legal instrument or act;
- Suspend the performance of an act or validity of a legal instrument;
- Invalidate a legal instrument.

Administrative court proceedings

Only a person whose rights have been violated or freedoms restricted by an administrative act or measure has the right to file an action with an administrative court. An action for the establishment of the existence or absence of a public law relationship, or the unlawfulness of an administrative act or measure, may be filed by a person who has a legitimate interest in the matter.

Three conditions are applicable in determining the existence of a right to file an action:

- The relevant environmental legal standard has to give rise to a legal public right;
- This right must be held by the person filing an action, i.e. there must be a personal connection;
- A causal connection must exist between the administrative activities and the violation of the rights.

In case of legitimate interest, there are two main conditions applicable to the right to file an action:

- The person filing an action must have a certain personal connection to the case;
- The person filing an action must demonstrate the need to determine the unlawfulness.

An administrative court has the right:

- To annul an unlawful administrative act in its entirety or partially;
- To issue an order for the execution of an unlawfully suspended administrative act, the issuing of an administrative act that has not been issued or the adoption of a measure that has not been adopted;
- To declare an administrative act or measure unlawful. An administrative court shall verify both the procedural and the substantive lawfulness of administrative activities.

The administrative court proceedings are based on the “violation of rights” rather than on the objective control of administrative activities. The courts’ rather limiting interpretation of the standards for the right to file an action so far may pose a significant impediment to the implementation of the Convention. There are no special conditions for the right of NGOs to file an action. In practice, the courts, including the Supreme Court, have applied the Convention directly and on several occasions have recognized the right of NGOs to file an action. At the same time, there is no common court practice in respect of the recognition of the right to initiate

proceedings (in some cases the courts have not recognized the right when in fact they should have), and therefore the inclusion of such provisions in a law is required. The development of criteria applicable to the right to initiate proceedings is underway in cooperation with the MoE, Ministry of Justice and NGOs.

Supervisory proceedings carried out by the Data Protection Inspectorate

The Public Information Act is the main national legal act implementing the requirements of article 4 of the Convention (access to environmental information). According to its paragraph 46, a challenge may be filed with the Data Protection Inspectorate in case of a violation of the Public Information Act. The Data Protection Inspectorate (hereinafter the Inspectorate) is a government institution whose main function is State supervision over the processing of personal data, maintaining of databases and access to public information. The proceedings conducted by the Inspectorate are challenge proceedings of a certain specific nature. The Inspectorate has the right to issue orders upon the holders of information to comply with the law and take the necessary measures within five working days. In case the holder of information neglects to fulfil the order issued by the Inspectorate, and does not challenge it in the administrative court, the Inspectorate will initiate misdemeanour proceedings or turn to the superior institution or body of the holder of information in order to perform supervisory control. However, problems might arise in ensuring the implementation of the orders issued by the Inspectorate.

Supervisory proceedings carrier out by the Chancellor of Justice

The main duties of the Chancellor of Justice include reviewing the legislation of general application of the legislative and executive powers and of local governments for conformity with the Constitution and legal acts of the Republic of Estonia. In addition, paragraph 19 of the Chancellor of Justice Act establishes that everyone has the right of recourse to the Chancellor of Justice in order to control the activities of governmental authorities, including the guarantee of constitutional rights and freedoms. As the independence of the Chancellor of Justice is stressed in Chapter XII of the Constitution, the Chancellor can doubtlessly be considered an independent body in the meaning of article 9, para. 1, of the Convention. The proceedings carried out by the Chancellor are free of charge for the person who made the recourse. The Chancellor does not have sufficient means to ensure the efficient execution of his or her functions, and neither have definite proceeding deadlines been established. Therefore, the review and supervision carried out by the Chancellor of Justice is not appropriate for implementing the requirements of the Convention, but the proceedings may have a supportive role.

The following are relevant in respect of private persons:

Environmental supervision

In accordance with paragraph 22 of the Environmental Supervision Act, an activity damaging to the environment may be suspended if:

- It is not in compliance with an environmental standard or with the standards determined in the environmental permit;
- It is performed on the basis of an environmental permit but endangers the life, health or property of persons and such danger cannot be immediately eliminated;

- It is permitted only on the basis of an environmental permit which does not exist, has not been submitted, has been issued by a person who has no authority to do so or has been issued without considering the environmental protection requirements established in the law;
- It is permitted only during a certain period of time or under certain conditions and does not comply with the time or conditions permitted for such activity.

An environmental supervision authority may also take other measures in order to bring an activity damaging to the environment into conformity with the requirements.

Criminal proceedings

Paragraph 6 of the Code of Criminal Procedure establishes that investigative bodies and Prosecutors' Offices are required to conduct criminal proceedings upon the appearance of facts referring to a criminal offence unless there exist circumstances which preclude criminal procedure or the grounds to terminate criminal proceedings for reasons of expediency.

Neighbourhood rights

According to paragraphs 143 and 144 of the Law of Property Act, the owner of an unmovable property does not have the right to prohibit the spread of gas, smoke, steam, odour, soot, heat, noise, vibrations and other such nuisances emanating from another unmovable property unless this significantly damages the use of the owner's property or is contrary to environmental protection requirements. The intentional direction of nuisances to a neighbouring unmovable property is prohibited.

The owner of an unmovable property has the right to demand that a construction or installation be not erected or preserved on a neighbouring property if there is reason to presume that it will cause or causes a prohibited nuisance to the owner's property.

Compensation for unlawfully caused damages

The relevant applicable provisions are paragraphs 133, 1056 and 1058 of the Law of Obligations Act. If damage is caused by environmentally hazardous activities, damage related to deterioration of the environment shall also be compensated for in addition to the damage caused to persons or the property thereof. Expenses relating to the prevention of an increase in the damage, reasonable measures for mitigating the consequences of the damage and the damage arising from the application of such measures shall also be compensated for.

The principles of fairness and equity (including non-discrimination and proportionality), as well as the independence and integrity of the courts and Chancellor of Justice, are set forth in the Constitution.

Administrative courts should generally discuss cases within two months from receiving an action. However, in reality, administrative courts are often overburdened (particularly the Tallinn Administrative Court) and the overall term for review is therefore exceeded in many cases.

Out-of-court proceedings are in principle free of charge, and charges in administrative court proceedings are low except in cases related to compensation for damages in which the fee consists in three per cent of the claim for damages. At the same time, procedural expenses are not limited only to fees charged by the reviewing body, but include also other charges such as legal aid and expert expenses, as well as compensation of the defendant for expenses upon losing the case. Expenses are obviously highest in court cases. The court can reduce the legal aid expenses the defendant has to be compensated for, and in certain cases decide not to charge these altogether. It may also decide that the legal aid expenses of an insolvent natural person will be covered by the State. An attempt to provide a more comprehensive solution to providing free legal aid to insolvent natural persons as well as to environmental NGOs acting in the public interest has been made in the State Legal Aid Act. The Memorandum and Clarification Request Reply Act obliges administrative bodies to provide free legal aid to a limited extent.

The written form of decisions is a requirement clearly established in basic proceedings and can be presumed in other proceedings such as the review proceedings carried out by the Chancellor of Justice. The public accessibility of decisions is a more sensitive question. All court rulings are in principle accessible on the Internet since October 2001. Decisions taken in other proceedings are also in principle accessible to the public. Administrative bodies are obligated to maintain a register which is in principle publicly available and often accessible on the Internet. In some cases, such as the supervision proceedings carried out by the Data Protection Inspectorate, the administrative bodies must disclose the results of proceedings on their website.

Everyone's right of recourse to court is established in the Constitution. However, the public is obviously not equally well informed of exactly how to go to court and of the alternatives to court proceedings. The website of the Ministry of Justice contains a separate section on "assistance to persons going to court", which unfortunately only addresses recourse to civil court and not to administrative court. The website of the MoE introduces the principles of the Convention and contains relevant materials that can be helpful to the public in learning of possibilities of access.

29. Describe any obstacles encountered in the implementation of any of the paragraphs of article 9.

The NGOs have pointed out the following problems in the implementation of article 9:

- Internal challenging proceedings are ineffective, as in most cases the authority will not amend its earlier decision;
- A possible ruling of the court regarding payment of the winner's court costs may prove to be an obstacle to filing the claim;

However, NGOs also mentioned some positive aspects:

- The National Court has not ruled for the compensation of court costs regarding natural persons in administrative cases;
- The provision of the Planning Act allowing for *actio popularis* is adequate, necessary and does not conflict with the Administrative Court Proceeding Act.

In addition, some general problems have been identified by NGOs in respect of the Convention's implementation

- There is no reference to the right to a clean environment at the constitutional level;
- The Estonian translation of the Convention is deficient and not in full compliance with the English version.

30. Provide further information on the practical application of the provisions on access to justice pursuant to article 9, e.g. are there any statistics available on environmental justice and are there any assistance mechanisms to remove or reduce financial and other barriers to access to justice?

31. Give relevant web site addresses, if available:

32. If appropriate, indicate how the implementation of the Convention contributes to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being.

Notes

¹ Helen Poltimäe (Estonian Institute for Sustainable Development), Piret Kuldna (Estonian Institute for Sustainable Development), Maret Merisaar (Estonian Green Movement-FoE) and Tim Kolk (Estonian Fund for Nature), "On the Accessibility of Environmental Information and the Possibilities for Participation in Decision-making in Estonia", EISD publication No. 6, Estonian Institute for Sustainable Development, Tallinn, 2004. The study is based on the international methodology developed by The Access Initiative, a global coalition of public interest groups collaborating to promote national-level implementation of commitments to access to information, participation, and justice in environmental decision-making. See <http://www.accessinitiative.org>.

² Id.

³ Id.

⁴ The analysis on the implementation of article 9 of the Convention is based on the materials prepared in the framework of the Danish-Estonian cooperation project on access to justice in environmental matters conducted by Hannes Veinla and Kaarel Relve. The materials are available on the website of the MoE.