ESTONIA

1. The right to be tried within a reasonable time

1.1. In case of criminal offences relating to violation of the requirements for the protection and use of the environment and the natural resources the pre-trial proceedings are mostly conducted by the Environmental Inspectorate (Section 212(2)(7) of the Code of Criminal Procedure (CCP)[1]) According to the principle of legality, the investigative body is required to conduct criminal proceedings upon the appearance of facts referring to a criminal offence (Section 6 of the CCP). The facts referring to a criminal offence principally appear during common verification visits and monitoring and trough reports of criminal offences submitted to the Environmental Inspectorate.

1.2. As the number of environmental crime cases is rather small, the sample is insufficient to give an adequate overview of the time of proceedings. In the cases that have been heard in general criminal procedure, the time required to go from a citation to a first instance judgement averages between six months and a year. In some of the complex environmental crime cases (both evidentially and legally) the proceedings in the court of first instance have also taken 4 years. On average, the proceedings in the court of appeals require approximately 6 months.

1.3. Environmental criminal offences have proven to be time- and resource-consuming in regards to collection of evidence. Namely the main issues of concern regarding collection of evidence are tied to the amount of evidence required to prove certain facts (e.g. threat of environmental damage) and the time and financial resources required for the preparation of expert's reports. There's also a certain level of ambiguity concerning the interpretation of some elements of crime (e.g. the threat of environmental damage), which were introduced to the Penal Code on 01.01.2015 and where the case law is still evolving.

1.4. There have been no environmental crime cases where the courts would have had to rely on the right to be tried within a reasonable time.

1.5. The legal consequences of undue delay are set out in the Sections 205^2 and 274^2 of the CCP. According to the Sections 205^2 and 274^2, the criminal proceedings may be terminated, if it is established in a court hearing that the criminal matter cannot be adjudicated within a reasonable time of proceedings and violation of the right of the accused to hearing of the criminal matter within a reasonable period of time cannot be cured in any other manner, i.e. granting commutation due to exceeding of the reasonable time of proceedings (Section 306 (1)(6^1)) or compensation for damage caused by the unreasonable time of proceedings (Compensation for Damage Caused in Offence Proceedings Act Section 5 (1)(6) and (4))[2].

[1] Available online in English: https://www.riigiteataja.ee/en/eli/531052016002/consolide.
[2] Available online in English: https://www.riigiteataja.ee/en/eli/522122014001/consolide.

2. The right to a fair trial as including the right to respect of judgments/ implementation of judgments

2.1. For environmental offences it is possible to implement both punitive and remedial sanctions. As punitive sanctions, for criminal offences it is possible to impose a pecuniary punishment or imprisonment as principal punishments (Section 44 (1) of the Penal Code[3]) and for misdemeanours (minor offences) it is possible to impose a fine or detention as principal punishments (Sections 47 and 48 of the Penal Code). As a supplementary punishment, it is possible for a criminal offence relating to violation of hunting or fishing rights to deprive the offender of the hunting and fishing rights for the term of up to three years (Section 52 of the Penal Code). In addition, for commission of a prohibited act against an animal, a court may impose, as a supplementary punishment, a prohibition on the keeping of any animals or animals of certain species for up to five years in the case of a criminal offence and for up to three years in the case of a misdemeanour (Section 52^2 of the Penal Code).

Imprisonment is used as widely as the pecuniary punishment (approximately 50% of cases); though in the vast majority of cases the imprisonment is used with probation. The length of the inflicted prison sentence varies mostly from four months to a year, averaging at approximately seven months. For an environmental criminal offence, the courts impose a pecuniary punishment mostly from 100 to 300 daily rates, averaging at approximately 200 daily rates (in Euros approx. 1,000-10,000 Euros). For legal persons most of the pecuniary punishments are located in the range of 10,000 to 100,000 Euros. The fines imposed for environmental misdemeanours vary depending on the field of the offence. For example, in misdemeanours that relate to animal protection, hunting and fishing, the fines imposed on natural persons average at approximately 50 Euros; if the misdemeanour relates to waste or water protection, the fines average at approximately 150 Euros; if the misdemeanour relates to chemicals, radiation or the protection of ambient air or earth's crust, the fines average at approximately 250 Euros; if the misdemeanour relates to pollution the average imposed fine is over 550 Euros.

As there is not enough case law in environmental crime cases, there is also not enough empirical data to draw finite conclusions regarding the efficiency of the implemented punitive sanctions. In general, it seems that in smaller scale offences the fine and pecuniary punishment are rather ineffective in regards to the specific deterrence, as the convict rather often commits a similar violation. On the other hand, the imprisonment – even if used with probation – seems much more effective in terms of specific deterrence.

The implementation of remedial measures (including restorative, substitutive and compensatory measures) is supervised by the Environmental Board (Division 3 and Section 33^1 of the Environmental Liability Act[4]). The Board may, at the request of the person who caused damage, stagger the payment of costs relating to remedying environmental damage over a term of up to ten years (Section 28 of the Act), requesting security if necessary (Section 29 of the Act). The Board has established a functional procedural system for dealing with environmental damage (a process map has been approved, on the basis of which risk assessments are carried out annually). Both external experts and, where the relevant competence

[3] Available online in English: https://www.riigiteataja.ee/en/eli/521062016004/consolide. See the judgment of the Criminal Law Chamber of the Supreme Court in case no. 3-1-1-109-15, 08.12.2015.
[4] Available online in English: https://www.riigiteataja.ee/en/eli/530112015003/consolide.

exists within the Board, the Board's own experts are called on to assist in assessing and establishing the existence of damage.[5]

There have not been many environmental liability cases in Estonia – environmental damage or threat of environmental damage has been identified 9 times since the entry into force of the Environmental Liability Act, with 24 proceedings having been initiated altogether.[6] It is considered positive that while the limitation period for a misdemeanour is only 2 years, the limitation period for environmental liability is 30 years. On the other hand, the environmental liability proceedings are relatively time- and resource-consuming (mostly because of the collection of evidence) and may include long disputes. Another issue is the fact that the Environmental Liability Act (and the directive) do not concern the whole environment, but only part of it, and that the threshold for damage is quite high (for instance damage to surface water is only relevant if the status class of the water body changes). It is also questionable if, in case of large damage, the person who caused the damages actually has resources and capabilities to implement remedial measures.

2.2. The compensation of damages is not a penal measure, but a public claim, which is filed as a civil action in criminal proceedings and is solved based on the Environmental Liability Act, Nature Conservation Act[7] and the provisions on compensation for damaging the environment found in specific environmental law[8]. When the court is discussing an environmental criminal offence, the monetary compensation for the damage caused to the environment will also be an issue adjudicated by the court, but the compensation may also be adjudicated separately. In cases of misdemeanour (i.e. minor offence) proceedings, the compensation is always adjudicated in a separate procedure. Otherwise, the remedying of environmental damage is organised by the Environmental Board, using administrative measures. The claim regarding compensation for environmental damages must be filed by the Board; the criminal court cannot impose the compensation for environmental damages *ex officio*.

Other types of remedial measures cannot be implemented by a criminal court as such claims cannot be filed in criminal proceedings as civil actions. Their implementation is decided by the Board in separate administrative proceedings carried out based on the Environmental Liability Act.

2.3. The body conducting the proceedings may make a ruling on involvement of a person as a third party, if the person's rights or obligations may be adjudicated in the determination of the criminal matter or in special proceedings (see Section 401 of CCP). Third parties have the right to: 1) submit evidence; 2) submit requests and complaints; 3) examine the minutes of procedural acts and give statements on the conditions, course and results of the procedural acts, whereas such statements are recorded in the minutes; 4) examine the materials of the criminal file pursuant to the procedure provided for in Section 224 of CCP; 5) participate in the court hearing (see Section 402(1)). As it is highly questionable, whether in environmental

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[5] The Estonian report pursuant to Directive 2004/35/EU, 15 April 2013, Appendix 2. Available online: http://ec.europa.eu/environment/legal/liability/pdf/eld_ms_reports/EE.pdf.

[6] See for the list of cases (in Estonian): http://www.keskkonnaamet.ee/teenused/keskkonnakorraldus-2/keskkonnavastutus-2/keskkonnakahju-ja-kahju-ohuga-seonduv-teave/.

[7] Available online in English: https://www.riigiteataja.ee/en/eli/505042016001/consolide.

[8] See the judgment of the Criminal Law Chamber of the Supreme Court in case no. 3-1-1-35-08, 3.10.2008, and the judgment of the Criminal Law Chamber of the Supreme Court in case no. 3-1-1-67-14, 13.11.2014.

crime cases the NGOs' rights and obligations are adjudicated, it is rather probable, that NGOs may not be involved in criminal proceedings. The NGOs may turn to the Environmental Board and request taking preventive and remedial measures or to oblige the person who caused the damage to take preventive and remedial measures.

The compensation for damage can only be claimed by the state and it shall be transferred to the state budget.

3. The right to be presumed innocent

3.1. The basic principles of evidence are set out in Chapter 3 Division 1 of the CCP. According to Section 63(1) evidence means the statements of a suspect, accused, victim, the testimony of a witness, an expert's report, the statements given by an expert upon provision of explanations concerning the expert's report, physical evidence, reports on investigative activities, minutes of court sessions and reports or video recordings on surveillance activities, and other documents, photographs, films or other data recordings. According to Section 63(2) evidence not previously listed may also be used in order to prove the facts relating to a criminal proceeding, except in the case the evidence has been obtained by a criminal offence or violation of a fundamental right.

No evidence has predetermined weight – the court shall evaluate all evidence in the aggregate according to the conscience of the judges (Section 61 of the CCP). Evidence shall be taken in a manner which is not prejudicial to the honour and dignity of the persons participating in the taking of the evidence, does not endanger their life or health or cause unjustified proprietary damage. Evidence shall not be taken by torturing a person or using violence against him or her in any other manner or by means affecting a person's memory capacity or degrading his or her human dignity (Section 64(1) of the CCP).

In environmental criminal cases the most often used evidence are the inspection reports of the scene of events. Depending on the type of the case, expert's reports and statements given by an expert upon provision of explanations concerning the expert's report are also often relied on.

3.2. The right to be presumed innocent and the principle of *in dubio pro reo* have set out, that also in environmental crime cases all circumstances must be proved beyond a reasonable doubt. There have not yet been any criminal cases, where a lower standard of proof has been accepted. In investigative practice it has proven to be a difficult task to ascertain and to prove the significant or major extent of the environmental damage and – especially – whether the act has caused a danger to human life or health or a risk of significant damage to the environment. Since the revision of the Penal Code, that entered into force on 01.01.2015, these two elements (significant or major damage to the specific element of environment or the risk of such damage occurring) are necessary elements of most of the environmental criminal offences set out in the Penal Code.

The problems regarding the extent of the environmental damage are linked to problems regarding the methodology of damage calculations (or in some cases lack thereof), and the cost of the preparation of expert's report. Environmental criminal cases regarding the causing of danger to human life or health or a risk of significant damage to the environment have yet

to reach courts. There have been a few smaller scale cases, where the existence of threat has been established, but these criminal proceedings have been terminated due to lack of public interest in proceedings and negligible guilt (see Section 202 of CCP)[9]. The Inspectorate struggles to collect exhaustive evidence in cases, where the danger to health or environment is not imminent and the possible damage may occur during a longer period of time, i.e. pollution of ambient air (exceeding the limit values). Such criminal cases are often terminated due to the lack of grounds for criminal proceedings, i.e. failure to ascertain all of the elements of crime.

The aforementioned problems are not as much the result of the right to be presumed innocent and the principle of *in dubio pro reo*, but rather the lack of case law regarding the elements of crime introduced in the 01.01.2015 revision of the Penal Code and their standard of proof.

3.3. The impact of the right to be presumed innocent and the principle *in dubio pro reo* have no noteworthy exceptions regarding their impact on conviction decisions in the environmental crime cases.

The question of intent arises in most of the environmental criminal cases (especially in cases where the accused has violated the requirements set forth in the environmental permit, e.g. extraction of mineral resources on a larger scale than permitted) but taking the existing case law into consideration these questions usually do not pose a problem. The intent of the accused is established based on the facts of the case; the question, whether or not the accused knew that the act was prohibited, is solved under the regulation of error as to unlawfulness of act (Section 39 of the Penal Code), which sets out, that a person is deemed to have acted without guilt if he or she is incapable of understanding the unlawfulness of his or her act and cannot avoid the error.

3.4. There are no examples of an impact of the right to be presumed innocent to the sanctioning decision: the punishment imposed relies on facts which the court has declared to be proved. As the right to be presumed innocent and the *in dubio pro reo* principle set out high requisites regarding the standard of proof, then an indirect effect may be upheld.

4. The privilege against self-incrimination

4.1. Section 20 of the General Part of the Environmental Code Act sets out a general notification obligation – the operator must immediately inform the Environmental Inspectorate or, in certain events provided by law, another authority about a significant environmental nuisance arising from the installation. The violation of the aforementioned obligation is not an offence, but various environmental laws set out specific notification obligations, violation of which is usually a minor offence (misdemeanour). For example, the Section 9 of the Environmental Liability Act sets out, that if environmental damage or a threat of damage emerges, the Environmental Board or the Environmental Inspectorate must

[9] For example: A person in a natatorium accidentally mixed two chemicals, creating a poisonous gas, with possible negative effects as acute poisoning, irritation, burns etc. The Inspectorate started criminal proceedings based on the grounds of criminal offence under Section 368 of the Penal Code (violation of requirements for chemicals and waste management through negligence). As no one suffered damage to health, the criminal proceedings were terminated due to lack of public interest in proceedings and negligible guilt.

immediately be notified; Section 37 sets out a penalty for failure to notify. In case environmental damage has emerged, the Board also has the right to demand relevant information; the refusal to submit required information is sanctioned (see Environmental Liability Act Sections 9(3) and 37).

If the obligation to report arises from an offence committed by the person himself, the person cannot be sanctioned for the failure to notify the Board or the Inspectorate due to the privilege against self-incrimination.

4.2. No difficulties caused by the privilege against self-incrimination have arisen in environmental crime cases. Practical problems may arise regarding a question specific to environmental matters, as the scope of the general principle of the privilege against self-incrimination has already been quite well covered in case law.

5. The protection against double jeopardy

5.1. The general questions arising from the *ne bis in idem*-principle are so far solved based on the case law of the ECHR and Supreme Court. The criminal courts have not yet been confronted with questions regarding double jeopardy inherent to only environmental offences.

5.2. There has been some case law of the Administrative Law Chamber of the Supreme Court of Estonia on the topic of withholding investment grants from persons who have been punished for environmental misdemeanours. The Chamber found in two recent cases[10] that the Agricultural Registers and Information Board (the authority responsible for the management of grants in the agricultural sector) may not withhold the investment grants in question from these persons automatically, but must also consider the principle of proportionality and the objectives of the grant in question. The Board must take into account the gravity and recurrence of the misdemeanour, whether the violation has ended by the time of applying for the grant, and the connection between the violation and the purpose of the grant. Violations unconnected to the supported activity may only be taken into account if they cast doubt on the person's general law-abidingness and their following of the environmental rules in the future.

6. The right to proportional penalties

6.1. The inflicted penalties generally correspond to the general principles of criminal law and the penal practice – the environmental offences cannot be seen as exceptions in the sense of material penal law.

6.2. As the answer to the question 6.1. is in the negative, question 6.2. will be left unanswered.

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[10] Judgment of the Administrative Law Chamber of the Supreme Court in case no. 3-3-1-85-14, 11.03.2015; judgment of the Administrative Law Chamber of the Supreme Court in case no. 3-3-1-16-15, 27.04.2015.

6.3. The core of the punishment is based on the guilt of the person (Section 56(1) of the Penal Code). In imposition of a punishment, measures of general and specific deterrence must also be taken into consideration. In order to achieve the objectives of the measures of special deterrence – to influence the offender not to commit offences in the future –, inter alia the financial situation (i.e. income or turnover) of the accused must be taken into account. Consequently, the sanction inflicted on two persons that committed the same offence can differ. In case law the financial situation, i.e. the yearly income or the turnover of the accused is rather rarely stated in the judgment as a part of a formula showing calculations that the final fine or pecuniary punishment is based on, rather it is taken into consideration as a general matter that influences the imposition of a punishment.

7. The right to respect for private and family life

7.1. The right to respect for private and family life is not often referred to (at least not explicitly) in Estonian environmental adjudication. The fundamental rights most often referred to in environmental cases are the right to property and the right to the protection of health. The right to privacy has mostly been relied on in cases concerning permits for new buildings next to an individual's home,[11] but also in cases concerning the establishing of shops[12] or cafés[13] near a home (including noise complaints because of these establishments). There are also a couple of judgments where the right to respect for private and family life has been mentioned together with property and protection of health as important rights defended by the individuals in environmental cases as the basis for the distribution of costs of the proceedings – in a mining case[14] and a windfarm case[15].

7.2. The use of this right in support of environmental adjudication cannot be excluded. Mostly it could be helpful in cases where no influence on an individual's health can be shown, but the activity in question still has an impact on their everyday life.

8. The right to life

8.1. There have been no environmental cases in Estonian courts where the right to life would have been relied on.

8.2. The right to life could only be of importance in few environmental cases – those where individuals' lives are actually being endangered. Most of the time, it is sufficient to rely on the right to the protection of health.

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[11] See, for example, judgments of the Administrative Law Chamber of the Supreme Court in case no. 3-3-1-4-12, 28.03.2012, and case no. 3-3-1-29-10, 24.10.2010; and judgment of the Tallinn Circuit Court in case no. 3-13-2101, 11.06.2015.
[12] Judgment of the Administrative Law Chamber of the Supreme Court in case no. 3-3-1-62-03, 10.10.2003.
[13] Judgment of the Tallinn Administrative Court in case no. 3-15-1317, 18.05.2016.
[14] Judgment of the Administrative Law Chamber of the Supreme Court in case no. 3-3-1-67-14, 15.12.2014.
[15] Ruling of the Tallinn Administrative Court in case no. 3-13-148, 19.05.2015.

9. The right to environmental protection

The Supreme Court of Estonia has taken the position that there is no right derived from Article 37 of the Charter. Although the article is part of the Charter, the Supreme Court found that its wording indicates setting a purpose, rather than creating a subjective right.[16] That said, Article 37 of the Charter expresses important principles of environmental law – a high level of environmental protection, the integration principle and sustainable development – and these principles have been relied on in Estonian environmental adjudication (although usually not with a reference to the Charter, since they are also included in national legislation[17]).

For example in case no. 3-3-1-54-03, the Supreme Court, while never explicitly mentioning the principle of sustainable development, referred to Section 53 of the Constitution, explained the obligation of municipal governments to preserve the human and natural environment and emphasised the need to thoroughly examine all positive and negative impacts, environmental as well as social and economic, of a decision to build a hospital while partially destroying a species-rich park.[18] Relying on the principle of high level of environmental protection can be seen in the recent case no. 3-3-1-88-15, where the Supreme Court explained the importance of assessing the environmental impact of a windfarm on a Natura 2000 habitat in the light of the best scientific knowledge in the field.[19]

[16] Ruling of the Administrative Law Chamber of the Supreme Court in case no. 3-3-1-101-09, 18.06.2010.
[17] Sections 8, 9 and 13 of the General Part of the Environmental Code Act, available online in English: https://www.riigiteataja.ee/en/eli/517062015001/consolide. In addition, Section 53 of the Constitution of the Republic of Estonia provides: "Everyone has a duty to preserve the human and natural environment and to compensate for harm that he or she has caused to the environment."
[18] Judgment of the Administrative Law Chamber of the Supreme Court in case no. 3-3-1-54-03, 14.10.2003.
[19] Judgment of the Administrative Law Chamber of the Supreme Court in case no. 3-3-1-88-15, 8.08.2016.