

Comments by the Ministry of the Environment of the Republic of Latvia on the Study concerning an Inventory of EU Member States' Measures on Access to Justice in Environmental Matters

Hereby the Ministry of the Environment of the Republic of Latvia (hereinafter – Ministry) submits its observations regarding the Country Report for Latvia and the Summary Report. The Ministry would like to point out and clarify several inaccuracies that have occurred in the aforementioned documents.

1. The judicial procedure in environmental matters in Latvia comprises not only the procedure before the Constitutional Court¹ but also the review procedure of administrative acts and actual actions of institutions before administrative courts². Consequently, it was not accurate to omit this fact from the relevant sections of the Country Report as it may lead to a false conclusion that the judicial procedure is very limited in its scope.

2. It is not accurate to state that the Constitutional Court procedure is the only one available for challenging acts of municipalities.³

The procedure before the Constitutional Court allows every person to submit a claim if the person considers that its fundamental rights have been infringed. This right allows a person to contest the validity of normative acts, including municipal (local government) acts. Administrative acts, including those issued by municipalities, may be appealed to a higher institution and to an administrative court.

For example, binding regulations issued by a local government on its spatial plan are regarded as normative acts and normally may be contested only before the Constitutional Court. A construction permit, on the other hand, is an administrative act which may be contested before an administrative court.

Consequently, acts issued by a municipality may be contested before a higher institution, an administrative court or the Constitutional Court depending on the nature of the relevant act.

3. It is not accurate to indicate that any decision taken by the State Environmental Service or the Environment State Bureau (hereinafter – Bureau) can be appealed to the Ministry.⁴

Firstly, according to the by-law of the State Environmental Service, acts adopted by its officials may be disputed either to the director-general of the Service or to the Environment State Bureau. Decisions of the latter institutions may be appealed to a court.

¹ Cf.: Country Report, pages 10, 17 et seq.

² See: Country Report, Section 2.1. et seq.

³ Cf.: Country Report, pages 10, 18, 21

⁴ See: Country Report, pages 9-10; the names of both the said institutions supervised by Ministry are used inaccurately in the Country Report; this comment uses the official names of the institutions

Secondly, according to the by-law of the Bureau, administrative acts or actual actions adopted by it may be disputed to the Ministry. Decision of the Ministry may be appealed to a court. Moreover, director of the Bureau may annul decisions made by the Bureau's officials.

These are standard procedural requirements which apply if not otherwise stipulated by law.

Considering the aforementioned, regulatory enactments state a different procedure for contesting decisions of the two institutions than described in the Country Report.

4. The Bureau co-ordinates and supervises environmental impact assessments in accordance with the procedures specified by the law "On Environmental Impact Assessment". However, the Bureau itself does not carry out environmental impact assessments.⁵ It mainly acts as a supervisory body the functions of which encompass, for example, provision of an opinion regarding final environmental impact statement of the proposed activity, which is prepared by the initiator of the activity.

5. Certain inaccuracies have occurred in the study regarding costs, legal representation and legal aid.

Firstly, a court or a judge, taking into account the financial situation of a natural person, may not only decrease the amount of the State fee but also exempt person from payment of the State fee.⁶

Secondly, as indicated in the Country Report, the Legal Aid Administration covers lawyer's costs.⁷ That should be indicated in the Summary Report (Table 3), too.

Thirdly, legal representation is not compulsory for administrative or judicial review proceedings.⁸ According to Section 35 of the Administrative Procedure Law, participants in administrative proceedings may participate in the proceedings with the assistance of or through their representative. The representative may be any natural or legal person with capacity to act, subject to certain restrictions set out in law. Thus participant in administrative proceedings may choose whether to participate in the process (both at administrative and judicial stages) with or without a representative.

Moreover, Section 103, paragraph 2 of the Administrative Procedure Law stipulates that „[w]ithin the course of administrative proceedings, while performing its duties, a court shall itself (*ex officio*) objectively determine the circumstances of a matter and provide a legal assessment of these, adjudicating the matter within a reasonable time". Consequently, the procedure at court is

⁵ Cf.: Country Report, page 9

⁶ Administrative Procedure Law, Section 128, paragraph 3; cf.: Country Report, page 15

⁷ Country Report, page 15

⁸ Cf.: Summary Report, Table 3, Legal representation

designed to enable a person to defend its rights without the assistance of a lawyer.

6. Due to the amendments of Administrative Procedure Law (in force since 1 December 2006), the conditions for deciding on interim adjustment (i.e., interim relief) have changed. Now the court may decide, pursuant to a reasoned request of an applicant, on interim adjustment if there is a reason to believe that operation of the contested administrative act may cause significant harm or damage, the prevention or compensation of which would be considerably cumbersome or would require incommensurate resources, and if the contested act, according to court, is *prima facie* unlawful.⁹

Furthermore, considering the amendments, pursuant to Section 197, paragraph 1 of the Administrative Procedure Law, an application for interim adjustment is adjudicated in a written procedure.

7. Latvia's administrative court system comprises a Regional Administrative Court, an Administrative District Court and the Senate (composed, *inter alia*, of the Administrative Matters Department). Other regional and district courts deal with civil and criminal matters.

Latvia has a mixed institutional model of the court system. A district (city) court is the court of first instance for civil matters, criminal matters, and administrative matters (Section 30, paragraph 1 of the law "On Judicial Power"). A regional court is the court of first instance for those civil matters and criminal matters, which are within the jurisdiction of regional courts in accordance with law (Section 36, paragraph 1 of the law "On Judicial Power").¹⁰

8. Considering the topic of the Country Report – "Measures on access to justice in environmental matters (Article 9(3))", it is not accurate to refer to Section 50, paragraph 1¹¹ of the law "On Pollution" regarding rights to appeal a decision taken by a regional environmental board. The said section is worded as follows:

"(1) An operator or natural or legal persons, also public organisations may dispute a decision taken by a regional environmental board in relation to Category A or B permits for the performance of polluting activities within a time period of one month of the day the decision comes into effect, to the Environment State Bureau."

Consequently, Section 50, paragraph 1 of the law "On Pollution" covers the domain of Article 9, paragraph 2 of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention, 1998).

⁹ Administrative Procedure Law, Section 195, paragraph 1; cf.: Country Report, page 17

¹⁰ Cf.: Country Report, pages 7-8

¹¹ Referred to as "Article 50 (1)" in the Country Report, page 10

9. Since 1 January 2008 the Law on Procedure of Consideration of Submissions, Complaints and Propositions in the State and Municipal Authorities has been replaced by the Law on Applications. Due to that fact the maximum term for giving a reply has been set to one month, if not otherwise stipulated by law.¹²

10. Finally, it is submitted that due to the inaccuracies that have occurred in the Country Report and Summary Report, the overall assessment of Latvia as presented in the comparative table on access to justice in environmental matters¹³ is not well founded. That refers, in particular, to the “costs and length (including legal aid)” section, which has been elaborated on in this comment (point 5).

¹² Cf.: Country Report, page 16

¹³ Summary Report, page 18