SEMINAR ORGANISED BY THE GREEK COUNCIL OF STATE IN COLLABORATION WITH ACA-EUROPE

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Climate change-crisis / Overtourism
Questionnaire

Introduction

In keeping with the Guiding Principle [Leitmotiv] of the Greek presidency of ACA-Europe, the first seminar, which will be held in Athens in November 2025, will focus on the role of the administrative judge when confronted with current challenges related to the climate crisis and the harmful effects of overtourism. The following questionnaire focuses on the six points outlined in the Guiding Principle. The presentation of the regulatory framework in the various countries [international law, European law and national law] and the application of this normative framework by judges in each country will enable us to address questions relating to the effectiveness and relevance of the traditional tools and methods available to judges when they are called upon to rule on disputes concerning the aforementioned challenges.

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Part A: Climate change-crisis

I. The regulatory framework

I.A. Supranational rules

I.A.1. Rules of international law

➥ What international instruments [treaties/conventions] relating to climate change are in force in your country?

Kyoto Protocol X

Paris Accords X

Aarhus Convention (procedural matters) X

Other (please specify)

➥ What is the formal validity of the aforementioned rules of international law in your country's legal system? (please describe briefly the procedure for incorporating international rules into the legal system)

All the international instruments mentioned above are incorporated into Estonian legal system as international treaties. International treaties have direct binding force. As derives from Article 123 section 2 of the Estonian

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Constitution[1], international treaties take precedence over national laws and regulations, if laws or other acts of Estonia are in conflict with international treaties ratified by the Estonian Parliament. However, it is not allowed to enter into international treaties that are in conflict with the Constitution (§ 123 section 1 of the Estonian Constitution).

The procedure itself is regulated in the Foreign Relations Act (FRA)[2] The Ministry of Foreign Affairs has the right to initiate conclusion of a treaty (§ 12 section 1 of FRA). Ministries and other governmental authorities whose area of government the treaty concerns shall be involved in the preparations of the conclusion of a treaty (§ 13 section 2 of FRA). A treaty prepared for conclusion is approved by the Government of the Republic (§ 16 of FRA). An international treaty is either concluded by signing, ratifying, approving, thereof or acceding to the treaty, or in another manner prescribed in the treaty (FRA § 19). Grounds for ratifying the international treaty by the Estonian Parliament are stipulated in § 20 of the FRA. Kyoto Protocol, Paris Accords and Aarhus Convention are all ratified by the Estonian Parliament.

I.A.2. EU rules

➥ Which are the main EU climate change rules that have been incorporated into your national legislation?

Estonia does not have a framework climate act, but the act is currently under preparation. The EU law on climate change has been incorporated into various acts and regulations. For instance, the Atmospheric Air Protection Act[3] transposes the EU emission trading system, the Building Code[4] transposes the energy efficiency requirements for buildings and the Environmental Impact Assessment and Environmental Management System Act[5] transposes the requirement to assess climate impacts of projects and plans.

➥ Has your country been the subject of proceedings for failure to fulfil its obligations under EU legislation in this area?

The commission has started proceedings against Estonia: 1) regarding the fact that Estonia has not presented its final and updated national energy- and climate programs according to regulation no 2018/1999; 2) lack of transposition of Directive (EU) 2023/959 on emission trading system.

➥ If so, please indicate what stage has been reached in the proceedings (warning letters, Commission appeals, rulings by EU courts)

Stages of the aforementioned proceedings are as follows: 1) a reasoned opinion was issued in March 2025; 2) official letter was sent on the 24th of July 2024.

I.B. Rules of national law

I.B.1.1. Does your country have any principles or provisions at constitutional level:

for the protection of the environment in general	x

[1] Available in English: https://www.riigiteataja.ee/en/eli/530122020003/consolide
[2] Available in English: https://www.riigiteataja.ee/en/eli/509012025003/consolide
[3] Available in English: https://www.riigiteataja.ee/en/eli/510062024001/consolide
[4] Available in English: https://www.riigiteataja.ee/en/eli/516122024005/consolide
[5] Available in English: https://www.riigiteataja.ee/en/eli/518102024017/consolide

for climate change

for the protection of health X

for the protection of young people or other population groups

1.B.1.2. If so, do these provisions:

Contain only substantive rules? X

Or do they also establish procedural guarantees?

Do they make explicit reference to: solidarity between generations? ☐

the rights of future generations?

vulnerable groups?

The obligation for the state to protect the environment in general stems from § 5 and § 53 of the Constitution. Paragraph 5 of the Constitution states that the natural wealth and resources of Estonia are national riches which must be used sustainably. Paragraph 53 stipulates that everyone has a duty to preserve the living and natural environment and to compensate for damage they cause to the environment. Article 28 of the Constitution states that everyone has the right to the protection of health /.../.

I.B.2. Has the national legislator adopted specific legal instruments to address climate change issues, apart from the legislation necessary to comply with secondary EU law?

yes ☐

no X

If so, please briefly mention this legislation, as well as the main content of the relevant substantive and procedural rules.

I.B.3. Does your country have a specific action plan to address climate change?

yes X

no ☐

If so:

- What is the level of planning (national, regional, etc.)?

The Estonian Government has adopted an action plan „General Principle of Climate Policy until 2050".[6] It has national level of planning.

[6] Available in English: https://kliimaministeerium.ee/sites/default/files/documents/2021-07/Low%20Carbon%20Strategy%20until%202050.pdf

- Please specify whether this planning is limited to defining policy guidelines (for example: limits on the use of fossil fuels; favouring other forms of energy; support for 'green' investments; improvement of infrastructure, buildings and vehicles - in the public or private sectors; cost sharing for the 'green' transition; special measures for vulnerable population groups; management of climate change-related crises, etc.),
- or whether it also contains binding rules?

Action plan is limited to defying general policy guidelines. Action plan is a vision document that sets long term greenhouse gas emissions reduction target and policy guidelines for adjusting with the impact of climate change or ensuring the preparedness and resilience to react to the impact of climate change. However, the principles and guidelines in the action plan have to be taken into account when renewing and implementing the cross-sectoral and sectoral strategies and national development plans.[7] The action plan also has to be taken into consideration when exercising discretion in issuing administrative acts, such as environmental permits.

I.B.4. In your legal system [in the Constitution and/or in the laws] is there an explicit obligation for the State and/or other public-sector bodies to adopt positive measures or avoid certain actions in relation to climate change?

No.

- If so, what is the nature of these measures?

(a) preventive measures

(b) repressive measures

(c) restitution measures

- Do individuals have any rights to ensure that this obligation is met? If so, under what conditions?

- Is the legal pursuit of this right regulated?

- Do individuals have any rights to ensure that private persons comply with similar obligations?

- Are there specific regulations for the ecological damage caused by climate change?

No.

[7] Available in English: https://kliimaministeerium.ee/en/general-principles-climate-policy

I.B.5. In your country, is the allocation of public responsibilities in the field of climate change subject to regulation?

yes X
no

➥ If so, which are the authorities responsible for managing issues related to the climate crisis [protection against the effects of the crisis and/or disaster management]?

Special Ministry X
Legal entity under public law ☐
Other organisational unit ☐

In Estonia, the Ministry of Climate[8] is responsible for managing issues related to the climate change. For example, the ministry is responsible for the comprehensive implementation of green reform, climate policy planning, accelerating the development of renewable energy and coordinating the implementation of renewable energy projects.[9] However, the ministry is not solely concentrated on climate issues. Besides climate related issues, the ministry is for example also responsible for the development of the maritime sector, waste management, energy, transport and environmental protection. The ministry has a broad competence area, in order to be able to coordinate climate related issues effectively.

➥ Is there a body responsible for: the collection and processing of scientific data? yes X / no ☐

➥ conducting comparative studies and surveys? yes X / no ☐

➥ monitoring the implementation of measures and the achievement of objectives? yes X / no ☐

➥ evaluating research carried out on climate change? yes X / no ☐

The tasks listed above are performed by national public bodies. However, Estonia does not have a public body that carries out the tasks solely for the purpose of dealing with climate change issues. For instance, significant part of scientific environmental data is relevant for the issues of climate change, such as data collected for weather forecasting or monitoring the status of protected species. The environmental data is collected and processed primarily by the Estonian Environmental Agency[10].

Besides that, the Ministry of Climate has established a non-regulatory body – Climate Change Council.

➥ If so, please describe the composition and the operating rules of the competent bodies (participation of elected representatives, scientists, guarantees of independence)?

Since there is no public body that carries out the tasks solely for the purpose of dealing with climate change issues, the composition of a non-regulatory body - Climate Change Council is being introduced. The Council is composed of 17 scientists and sectoral experts who advise the Government, the Parliament, ministries and stakeholders on the preparation of the Climate Change Act (framework climate act). The Council is

[8] https://kliimaministeerium.ee/en
[9] Statute of the Ministry of Climate § 6 (available in Estonian: https://www.riigiteataja.ee/akt/129122024049).
[10] https://www.keskkonnaagentuur.ee/en

independent in its activities and in the positions it takes. The Climate Change Council will remain active after the enactment of the Climate Change Act to monitor the achievement of the objectives and to make recommendations to the government on an ongoing basis.[11]

- What is the nature of power allocated to these bodies (purely advisory power, decision-making power)?

The Climate Change Council acts as an advisory body.

- Is prior consultation with a court or other independent bodies provided for when adopting a regulation concerning climate change?

Prior consultation is required as specified in the general rules on consulting, i.e. the rules are not specific to climate change issues.

- Is there a provision for public participation in the development of climate action plans or legislation? If so, what form of participation (consultation, other)?

Public participation is not mandatory for laws and regulations, but it is a good practice to involve stakeholders, including non-governmental organisations. Public participation in drafting plans and programmes depends on the plan or programme. The procedural rules are set out in many acts, some of which explicitly require public participation. The existing action plan on climate was adopted as the decision of the Parliament. Public participation is not mandatory for adopting decisions of the Parliament. However, in practice, the draft decision was prepared by the Ministry of Environment. The drafting process involved extensive participation of stakeholders.

- Is access to relevant information guaranteed? yes X no ☐

Access to public information is required by the general rules on access to (environmental) information, i.e. the regulation is not specific to information relevant for climate change.

II. The application of the regulatory framework by the judge

II.A. Have any disputes been brought before the courts in your country that involve, directly or indirectly (as a result of the claims, allegations and arguments of the parties to the dispute), issues related to climate change?

If so:

-Please mention the main categories of cases in which issues related to climate change arise:

(a) cases related to energy sources (conventional/renewable),

(b) cases related to the improvement of infrastructure (buildings/vehicles),

(c) cases related to environmental impact assessment during project authorisation.

- Please mention the important cases brought before the courts in your country and the judgments handed down.

[11] https://kliimanoukogu.ee/

There are very few cases in Estonia related to climate change issues.

Case no 3-20-771/113[12] is related to energy sources, namely shale oil production plant. In this case, an environmental organization contested a building permit for constructing a plant. The Administrative Law Chamber emphasized State´s obligation to limit greenhouse gas emissions in the conditions of global warming, stemming from the Constitution. Upon permitting developments of a significant climate impact, it must be observed that the planned activities were justified by an overriding interest and did not bring along a need to excessively restrict the freedoms of persons or the public interest in the future in order to curb climate changes. The more intensively and likely the planned activities aggravate the achievement of climate objectives, the more substantial the interests justifying the activities must be. The Constitution obligates the Estonian State to make a proportional contribution to the achievement of the objective of the Paris Climate Agreement. To this end, it is in turn necessary to establish, in good times, a realistic and legally binding stage- and sector-based emissions allocation plan for achieving climate neutrality. The Supreme Court did not identify any mistakes in the assessment of the climate impact of the plant, but the Court revoked the building permit due to other mistakes in the environmental impact assessment, including insufficient analysis of the vulnerability of the plant to climate change and future climate risks.

In the case no 3-20-1657/78[13] an environmental organization contested an environmental permit for peat mining. The Administrative Law Chamber again emphasized the State´s obligation to preserve the environment. Peatland areas are the most important carbon binding ecosystems on land. Dried peatlands emit significant amounts of greenhouse gases, which have a negative impact on the climate. Therefore, peat extraction causes significant environmental damage and the prevention of it must be considered to be in the interest of the State. The Court stated, that when assessing the environmental impact of a proposed activity, the administrative authority must take into account, *inter alia*, the environmental protection objectives set out in the national strategic development documents. Peat extraction does not only involve the use of peat as a natural resource but also affects the peatland ecosystem as a whole. The Court revoked the environmental permit, among others, because the administrative body should have assessed the impact of the extraction on the achievement of the aforementioned objectives in the permit procedure.

In cases no 30-20-1310/52[14], no 3-21-979/44[15] and no 3-21-1658/35[16] the Administrative Law Chamber of the Supreme Court emphasized the importance of green network. In these cases, respectively detailed spatial plan, forest notice for wood logging and spatial plan were contested. The Court stated among others that the main objectives of the conservation and planning of the green network are to protect and conserve biodiversity, mitigate and adapt to climate change and promote the green economy, including recreation. For the network to fulfil its functions, its structures need to be planned in a coherent way, i.e. with the reference areas connected by corridors into a coherent whole. In the second case the Court annulled the administrative act fully, and in other cases partially. The Court stated that the administrative authority has taken into account inappropriate considerations to justify a deterioration of the status of green network. Green network can only be adversely affected if there is an overriding interest.

II.B. Organisation of the judicial system: Does the system of dual jurisdiction (civil courts for private disputes, administrative courts for administrative disputes) apply in your country?

yes X

[12] Available in Estonian: https://rikos.rik.ee/LahendiOtsingEriVaade?asjaNr=3-20-771/103. Summary in English also available in JuriFast: https://www.aca-europe.eu/WWJURIFAST26_WEB/DOCS/BE12/BE12001563.pdf
[13] Available in Estonian: https://www.riigikohus.ee/et/lahendid/marksonastik?asjaNr=3-20-1657/78
[14] Available in Estonian: https://rikos.rik.ee/?asjaNr=3-20-1310/52
[15] Available in Estonian: https://rikos.rik.ee/?asjaNr=3-21-979/44
[16] Available in Estonian: https://rikos.rik.ee/?asjaNr=3-21-1658/35

no ☐

➥ If so, are issues related to climate change dealt with:

-mainly by the administrative courts, when they examine the legality of the actions or omissions of the State and other public entities;

-mainly by the administrative courts, when they examine compensation claims against the State and other public entities;

-mainly by the civil courts (in disputes aimed at protecting the applicant against actions by individuals)?

Issues related to climate change are dealt with mainly by the administrative courts, when they examine the legality of the actions or omissions of the State and other public entities and when they examine compensation claims against the State and other public entities.

II.B.1. In your country, does the legislation provide for a specific remedy for cases relating to the climate crisis? No. If so:

➥ Which courts have jurisdiction to hear such cases?

➥ What is the composition of these courts?

➥ What are the main features of the relevant remedies?

II.B.2. If the answer to the previous question is no [: if your legal system does not provide for a special remedy]:

➥ Among the remedies generally provided for, which remedies deal mainly with disputes involving issues related to the climate crisis?

actions for annulment against acts or omissions of the State and other public entities	X
full jurisdiction remedies for the recognition of a right	☐
actions for damages	X
remedies for the protection of the applicant's personality	☐
procedures for requesting interim measures	X

II.B.3. If your legal system does not provide for a special remedy, are disputes relating to the climate crisis examined:

➥ by specialised divisions of the courts and/or according to a special procedure yes ☐

no X

II.B.4. According to existing practice, what is the main legal remedy for disputes relating to climate change?

An action for annulment of an administrative act is the main legal remedy used so far.

II.B.5. In your country, are there seminars or other organised training courses for judges, specifically aimed at issues related to climate change?

Training in environmental law in general is offered within the framework of judicial training program organized by the Supreme Court. In these general trainings climate change topics are also often discussed. For example, in the 2025 training program a training in environmental law takes place in Autumn. Training also includes climate related issues.

II.C. In your legal system, does the judicial review of laws and regulations:

- is exclusively an ultra vires review (review of legality)?
- or can it also be the subject of a full jurisdiction control?
- If so, under what conditions?

Judicial review of laws and regulations is subject to full jurisdiction control. Every court has the duty to check the compatibility of national laws and regulations with the Constitution and if needed initiate constitutional review proceedings. Every court also has a duty to check the compatibility of national laws and regulations with EU law. In case the national legislation contravenes EU law, and the conflict cannot be eliminated through consistent interpretation, the court must disapply the specific provision which is contrary to EU law. The Supreme Court of Estonia has in its case law dealt with the issue whether and to what extent constitutional review is possible for provisions connected with EU law[17]. To conclude, the General Assembly of the Supreme Court took the position that in most cases the court has the freedom to choose for which, whether for EU law or the Constitution, the verification of compliance will be carried out in order to resolve the case. In this regard, it is not ruled out that in resolving the case the court will disapply the Estonian provision on account of its conflict with directly applicable EU law, while simultaneously initiating constitutional review to check the constitutionality of the disapplied Estonian provision. However, when making choices the court must take into account that it may not disapply an Estonian law provision on account of its substantive unconstitutionality if the duty to establish the provision arises unavoidably from EU law. The court must also give reasoning for initiating constitutional review regarding an Estonian provision connected with EU law. The court should also consider that the constitutional review procedure should not jeopardize the primacy, unity or effectiveness of EU law.

II.D. Access to justice and admissibility of appeals:

- Does your legislation provide for specific rules of procedure for disputes relating to climate change?

yes ☐
no X

If so:

- which special rules of procedure apply?

[17] Case no 5-19-29/38 (available in English: https://www.riigikohus.ee/en/constitutional-judgment-5-19-29).

- Please indicate the reasons which, according to the legislator, justify the differentiation from the generally applicable rules of procedure.

- If the legislation does not provide for specific rules of procedure, please mention any special rules of procedure developed by case-law in your country?

There are no special rules developed in the case law.

If special rules of procedure developed by case-law exist:

- what are the conditions of admissibility according to case-law rules (legal capacity, legitimate interest in bringing an application before the court, conditions of admissibility linked to the nature of the contested acts or omissions, time limit for lodging an appeal, etc.)
- Please indicate the reasons which, according to the case-law, justify the differentiation from the generally applicable rules of procedure.

II.D.1. More specifically, with regard to legitimate interest in bringing an application before the court:

- Does your legal system recognize the actio popularis (as a constitutional principle or rule, by legislation or case-law)?

As a rule, the Estonian legal system does not acknowledge the right of recourse to the administrative court with an *actio popularis*. For the protection of another person's or public interests a person may have recourse to the court only in cases provided by law (§ 44 section 2 of the Code of Administrative Court Procedure[18] (CACP)). By way of a derogation, the possibility to file an *actio popularis* is for example provided in § 141 of the Planning Act[19] which grants every person the right to contest decision by which the detailed spatial plan was brought into effect, when it is contrary to public interest or infringes their rights or interferes with their freedoms.

How is the legitimate interest in bringing an application before the court, as a condition for the admissibility of an appeal, defined:

- in relation to certain groups or categories of the population [minors, the elderly or other vulnerable groups more exposed to the effects of climate change];
- in relation to legal persons [public law legal entities, private law entities: associations, etc]?

In climate change litigations apply the same rules as in other environmental disputes. According to the General Part of Environmental Code Act (GPECA)[20] § 30 section 1 a person whose right, including the right to the environment meeting the health and well-being needs, has been violated may file an intra-authority appeal with the administrative authority in accordance with the procedure provided for in the Administrative

[18] Available in English: https://www.riigiteataja.ee/en/eli/520032025005/consolide
[19] Available in English: https://www.riigiteataja.ee/en/eli/529122024006/consolide
[20] Available in English: https://www.riigiteataja.ee/en/eli/529122023002/consolide

Procedure Act or file a claim with the administrative court in accordance with the procedure provided for in the Code of Administrative Court Procedure.

Where an environmental organization contests an administrative decision or a taken administrative step in accordance with the procedure provided for in the Code of Administrative Court Procedure or in the Administrative Procedure Act, it is presumed that its interest is reasoned or that its rights have been violated where the contested administrative decision or step is related to the environmental protection goals or the current environmental protection activities of the organization (GPECA § 30 section 2).

- Concerning the allegations made by the parties to substantiate their interest in bringing proceedings in the disputes in question, what degree of specification is required?

The national conception of subjective right is understood in the light of the protective norm theory. According to the theory, a violation of a public law provision results in a violation of a person's subjective right only when the violated provision protects the person's interest. In deciding whether a person has a subjective right, both the aim of the violated norm and the weight of the person's interest must be considered[21]. The same approach applies in environmental law cases. Therefore, in order to determine the existence of a person's right to file a complaint, the protectable subjective right, including the subjective right to an environment which meets the needs of health and well-being, must be determined.[22] This approach tends to limit standing in environmental matters. CPECA § 23, which stipulates the right to an environment, has not been subject to court practice in relation to climate change issues.

Technically environmental non-governmental organisations also have standing only for the protection of their subjective rights, but in practice the complaint is filed as *actio popularis*. Therefore, in practice the organisations have broad standing as the violation of such rights is presumed in case the organisation meets the national definition of "environmental organisation" and the challenged decision is related to the field of activity or environmental goal of the organisation (CPECA § 30). In court practice, this relation does not have to be specified to a high degree, i.e. the standing criterion is not applied strictly. However, it has been established that the grounds for complaint also must be related to these goals or activities of the organisations.

- What standards of proof are required for the allegations made?

A party to the proceedings must explain their interest to the Court such that the Court finds the assertion credible. To substantiate an assertion, a party may use evidence as well or other information.

II.D.2. Nature of the contested acts or omissions:

- What are the categories of cases brought before the courts in disputes concerning climate change?

Main cases are described in the answer to question II.A. These cases relate to issuing building permit for production plant, also issuing environmental permit, spatial plans and forest notice for wood logging.

- What are the admissibility requirements for taking legal action against omissions in disputes concerning climate change?

In climate change cases and regarding omissions apply the same admissibility requirements as described in answers to question II.D.1.

[21] Case no 3-3-1-15-01 (Available in Estonian: https://www.riigikohus.ee/et/lahendid?asjaNr=3-3-1-15-01)
[22] Case no 3-3-1-8-15 (Available in Estonian: https://www.riigikohus.ee/et/lahendid?asjaNr=3-3-1-8-15)

- Have the courts in your country been asked to examine questions of cross-border interest [parties to the dispute resident or headquartered in another country, acts or omissions with environmental impacts in another country]? Yes.
- If so, how were these disputes handled [limitation of liability only for actions or omissions within the borders of the State or recognition of liability also for actions outside the borders]?

In the case no 3-16-1472/92[23] the Court analyzed the environmental impact assessment of the planning and construction of wind farms. The Court reprimanded the administrative body for not assessing the cross-border impact of the planned action. The Administrative Law Chamber stated that a cross-border procedure should have been initiated, and proper formal notification sent to neighboring countries (to Finland and Sweden). Since wind farms and the technical installations serving them may have a significant impact on the environment of neighboring countries, the State was under an obligation to initiate a cross-border procedure, irrespective of the fact that the activities affecting the environment could not have yet been started directly on the basis of the regional plan at issue and that further authorization procedures are necessary. However, the question of liability did not rise in the case, since the substantive cross-border impact assessment was not carried out.

II.E. Nature, extent and intensity of judicial review:

- In matters of climate change, how does the judge consider the delimitation of jurisdictional control in relation to:

  -the political choices made by the legislator or the administration?

  -the balancing of contradictory interests?

  -assessments of an essentially technical nature?

There are no special rules for climate change cases compared to other administrative law cases. Same procedural tools are applied. The Court does not intervene into political choices made by the legislator and in these cases the Court is rather reserved in its assessments. When the assessment concerns also political question, the Court usually refers that a concrete question should be decided by the legislator. For example, in the case no 3-20-771/103 the Court stated that according to § 3 section 1 of the Constitution, the legislator must decide on the essential questions of the obligation to limit greenhouse gas emissions under § 5 and § 53 of the Constitution on the basis of the best available scientific information and Estonia's international obligations. In the light of the Paris Agreement and the scientific knowledge on which it is based, the increase in the global average temperature must be kept well below 2°C, if possible, within 1.5°C of pre-industrial levels. The Constitution obliges the Estonian state to make a proportionate contribution to achieving this objective. The balancing of contradictory interests is a matter for the judge to assess according to their conscience. According to § 61 section 1 of the CACP the court follows the law comprehensively, fully and objectively assessing the items of evidence, and decides, according to its inner conviction, whether an assertion made by a party has been proved. The Court must reason in the judgment its conclusion made based on the facts proven. However, although not developed in the environmental disputes, according to case law of the Administrative Law Chamber, in the case of discretionary administrative decisions (including assessment of contradictory interests), the court is prohibited from making a discretionary decision on behalf of an administrative body (§ 158 section 3 third sentence of CACP). Discretionary decisions are generally subject

[23] Available in English: https://rikos.rik.ee/?asjaNr=3-16-1472/92

to a moderately intensive test of rationality. This consists primarily of a review of compliance with the rules of discretion and, in the case of a restriction of rights, of a three-step proportionality test (appropriateness, necessity, moderation; § 158 section 3 first sentence of CACP). In the case of an exceptionally wide discretion and low-intensity litigation, the substantive review of a discretionary decision may be limited to the test of manifest error.[24]

When assessing technical issues, an expert opinion or opinion of a specialist is often used. Pursuant to § 56 section 2 of the CACP and § 293 section 1 of the Code of Civil Procedure (CCP)[25], one possible piece of evidence in administrative court proceedings (including in environmental matters) is an expert opinion. Expert assessment shall be carried out by a forensic expert or other qualified person employed by a state forensic institution, an officially certified expert or another person with specific expertise appointed by the court. The court may appoint a person as an expert if the person has the knowledge and experience necessary to provide an opinion. An expert shall submit an expert's opinion to the court in writing unless the court orders oral provision of opinion or with the expert's consent, in another form. An expert's opinion shall contain a detailed description of examinations, conclusions reached as a result of examinations and reasoned answers to the questions of the court. A participant in a proceeding has the right to submit questions to an expert through the court. It is possible to use the opinion of a person with specific expertise (specialist) which, for the purposes of the Codes of Court Procedure, are deemed documentary evidence (§ 272 section 2 of CCP). A specialist may be heard also in a court session where their status will be similar to that of a witness (§ 293 section 2 of CCP). In the Estonian legal order experts or experts with special knowledge do not take part in adjudication of a court case (they do not perform a jurisdictional function). The court may also request professional assistance from a relevant administrative authority in order to obtain information (§ 57 of CACP) and demand information from persons or authorities not participating in the proceedings (§ 58 of CACP).

II.E.1. On the balancing of conflicting interests, please give examples from the case-law in your country when the conflict concerns:

-environmental protection, and in particular protection against the effects of climate change, on the one hand;

-the protection of private assets and interests, on the other hand.

For example, in the case no 3-21-1658/35 the Administrative Law Chamber analyzed the impact of regulation of regeneration cutting in comprehensive spatial plans on the forest property. The Court stated that it cannot be considered as *de facto* expropriation of the property. Firstly, the regulation does not necessarily consist of outright prohibitions, e.g. instead of excluding clear-cutting, the planning may provide for its timing, limitation of its extent or the imposition of other additional conditions. Secondly, although in the case of a forest property the possibility of cutting and the use of timber is the most important economic use of real estate, the use of such real estate does not consist solely in logging, much less only in reforestation. The assessment of the potential uses of a property cannot be based solely on the business plan of the owner. In order to determine whether there is a *de facto* expropriation, it must be ascertained whether it is in principle possible to use the property for private purposes.

- Can the judge limit the temporal effects of an annulment decision [example: limitation of the retroactive effects of an annulment decision] based on the balancing of conflicting interests?
- If so, under what conditions?

One way to limit the temporal effect of an annulment decision is to set conditions for execution of the judgment. According to § 168 section 1 of CACP when granting the complaint, the court may, in the operative part of the judgment, fix a time limit for, or any other material conditions relating to execution of the

[24] Available in Estonian: https://www.riigikohus.ee/et/lahendid?asjaNr=3-20-1198/58
[25] Available in English: https://www.riigiteataja.ee/en/eli/510042025001/consolide

judgment, making sure that parties are able to state their views on the matter. The court may also order execution of the judgment to be ensured by measures of interim protection, or order interim protection to apply until a new administrative decision is issued to replace the decision set aside by the judgment.

There are no other particular conditions for applying the aforementioned paragraph. The Court decides it on its own motion. Necessity to ensure interest of an applicant could be one argument to consider.

Another possibility could be to annul an administrative act partially, i.e only this part of an administrative act, that is unlawful and has retroactive effect. In this way, the retroactive effect of an administrative act is limited by the annulment decision.

II.E.2. Technical and scientific judgments:

- Please give examples from case-law concerning the criteria and methods used by judges to rule on disputes involving technical and scientific judgments.

The Supreme Court itself is not allowed to assess evidence or determine facts, therefore the Supreme Court relies on the facts of the case, determined by lower instance courts. In general, the methods used by lower instance court judges in technical and scientific matters include general procedural tools explained in answer to question II.E.

- Does the judge have the specific tools required to exercise the above mentioned control effectively and efficiently [assistance from specialised scientists, appointment of experts, amicus curiae]?

See answer to question II.E.

II.E.3. In the judicial review, how is the diversity and complexity of the factors contributing to the phenomenon of climate change evaluated?

See also answer to question II.E. As explained before, the court follows the law comprehensively, fully and objectively assessing the items of evidence, and decides, according to its inner conviction, whether an assertion made by a party has been proved. Use of experts or specialist opinions is common. The Court must reason in the judgment its conclusion made based on the facts proven.

II.F. Civil liability of the State

- With regard to compensation claims, has your country's case-law considered disputes involving the civil liability of the State for damage attributed by applicants to climate change?

yes ☐
no X

- If so: to address the relevant issues, does the judge simply apply the standard provisions and methods, for example with regard to proof of damage, causal links or methods of compensation for damage,
- or does he apply specific rules?

- What is the content of the specific rules and their legal basis?

- With regard to ecological damage, how are questions of causality dealt with?

➥ Is monetary compensation recognised regarding compensation for non-material damage caused by ecological damage? yes ☐ no ☐

➥ Does the 'polluter pays' principle apply to disputes concerning climate change?

II.G. Provisional judicial protection [interim measures]

➥ How are requests for provisional judicial protection in climate change cases handled? What parameters are taken into account by the courts?

In climate change cases apply the same rules for interim measures as in other administrative law cases. According to § 249 section 1 of CACP when applying interim measures, the court should first determine the need for interim measures. Furthermore, the court is obliged to assess the prospect of the complaint, weigh public and private interests and assess the foreseeable consequences of the order (§ 249 section 3 of CACP). Interim measures may be applied at the reasoned request of the person who filed the action or on the court's own initiative (§ 249 section 1 of CACP). This may be done in every stage of administrative court proceedings and when challenging an administrative act by the administrative authority (§ 249 section 1 and 2 of CACP).

➥ Please mention the measures that the judge may order.

According to § 251 of the CACP the court can order as interim measure: 1) suspend the validity or enforcement of the administrative decision contested; 2) prohibit the issuing of the contested administrative decision or the carrying out of the contested administrative operation; 3) require the administrative authority to issue the administrative decision – or carry out the administrative operation – that was applied for, or to discontinue an operation that is in progress; 4) attach an item of property, including entering a note restraining dispositions of the property in the register, or creating a judicial mortgage provided for by the Code of Civil Procedure, or enter a note in the register about the dispute pending before the court; 5) prohibit the addressee of the administrative decision from engaging in the actions regulated in the decision or require the addressee to perform the actions, as well as set conditions for such actions, including requiring a security to be given in favor of the complainant.

➥ How does the judge consider the ecological damage alleged by the parties?

See answer to question II.E paragraphs 3 and 4.

II.H. Regarding the enforcement of a court decision:

➥ Is there a procedure for checking whether the legislator and/or the administration have adopted the necessary measures to comply with a court decision?

No, there is no special procedure for that.

- In case-law, what are the most striking examples of the methods used to monitor the enforcement of judgments in disputes relating to acts or omissions linked to climate change?

There is no case law regarding that issue. However, in cases of climate change the court can apply the same measures as in other administrative law cases. Therefore, since there is no special system for monitoring the enforcement of judgments, if failure to execute a court decision or a compromise approved by the court is brought to the court's attention, the court can impose a fine of up to 32,000 euros on the participant in proceedings whose fault this is (§ 248 section 1 of CACP). In imposing the fine, the court takes into consideration the time that has elapsed since the judgment became final, as well as any other circumstances, which possess significance in relation to the imposition of the fine and the setting of the amount of the fine. If a period of time reasonable for execution of the court decision has elapsed since the imposition of the previous fine, yet the decision has still not been executed, the court may impose the fine again (§ 248 section 2 of CACP). The imposition of the fine does not relieve the participant who failed to execute the orders contained in the judgment from the obligation to execute the order.

III.A. In your country:

- Are there any court decisions that have explicitly recognised the obligation of the State [and/or other public entities] to take positive measures to address climate change?

In the case no 3-20-771/113 the Administrative Law Chamber stated that the obligation to preserve the environment and natural resources as provided in the Constitution serves as the basis for the obligation of the State to limit greenhouse gas emissions in the conditions of global warming. The Supreme Court also emphasized that essential issues of the obligation to limit greenhouse gas emission must be decided based on the best available scientific information and international obligations of Estonia by the legislator. The Constitution obligates the Estonian State to make a proportional contribution to the achievement of the objective of the Paris Climate Agreement. To this end, it is in turn necessary to establish, in good times, a realistic and legally binding stage- and sector-based emissions allocation plan for achieving climate neutrality.

- Are there any court decisions recognising a right to ensure compliance with this obligation?

See the previous answer.

- If a relevant case-law rule has been formulated, on what legal basis?

The obligation for the state to react on climate change and among others reduce greenhouse gas emissions stems from § 5 and § 53 of the Constitution and from obligations stemming from international treaties, such as Paris Climate Agreement.

III.B. If the courts in your country have already considered issues relating to climate change:

- Do the relevant decisions refer to existing practice in another legal system, for example to the case-law of national judges in other countries or to the case-law of judges in supranational bodies:

  -dialogue between the national courts of different countries

  -dialogue between the courts of your country and the European Union judge

  -dialogue between the courts in your country and the ECtHR

  -dialogue between the courts in your country and the bodies of other international organisations [for example the UN]?

No.

III.C. In your country's case-law, is the obligation to act against climate change considered mainly:

- as an obligation based on national law
- or as an obligation under international law?

Both. In the case no 3-20-771/113 the Administrative Law Chamber stated that the obligation to preserve the environment and natural resources as provided in the Constitution serves as the basis for the obligation of the State to limit greenhouse gas emissions in the conditions of global warming. The Supreme Court also emphasized that essential issues of the obligation to limit greenhouse gas emission must be decided based on the best available scientific information and international obligations of Estonia by the legislator. After that, the Court referred to the Paris Agreement and its goals regarding average global temperature and concluded, that the Constitution obligates the Estonian State to make a proportional contribution to the achievement of the objective of the Paris Climate Agreement.

- Within the case-law, can we find decisions aimed at harmonising the rules of international law, European law and national law?

No.

- In your country, have any court decisions considered the Paris Agreement to be a legally binding instrument?

Not explicitly but see answer to the first question in section III.C.

III.D. Does the approach of the courts in your country align with the approach of the ECtHR in *Verein Klimaseniorinnen Schweiz v. Switzerland*? [please mention any differences]

There is no national case law regarding the approach mentioned.

III.E. Have the courts in your country referred questions to the CJEU or the ECtHR for a preliminary ruling on matters directly or indirectly related to climate change?

No.

Part II: Overtourism

I. The regulatory framework [the rules of law]

I.A. Have the negative effects of the excessive development of tourist activity been adressed by the legislator and the courts of your country, following concerns discussed in the public debate?

yes ☐
no X

- If so, what are the problems envisaged in the legislation and case-law on this subject?

saturation capacity of urban and non-urban space ☐

deterioration of living conditions in urban areas (increase in housing prices, lack of properties to rent especially for younger generations and/or families with low and medium incomes - particularly in city centres, on islands and in other tourist ☐

destinations, deterioration of traffic conditions, insufficient infrastructure, increase in energy consumption, etc.)

overexploitation of natural resources (increased density due to the construction of hotels and other buildings for tourism in extra-urban areas, intensification of land use - particularly in coastal areas and the islands, insufficient infrastructure in small villages, effects on protected landscapes and/or on historical sites and/or archaeological sites and monuments) ☐

other problems ☐

I.B. Has your country taken an initiative/participated in a collective initiative for the establishment, within the EU, of a regulatory framework to address the adverse effects of 'hypertourism'? No.

If so, what is the content of the proposed measures?

I.C. Are there any relevant principles and guidelines at international level? No.

➥ If so, have they been recorded:

-in binding texts?

-in non-binding texts?

➥ Could non-binding texts serve as a basis for regulations [please give examples]?

I.D. In your country, are there any constitutional principles or provisions that can serve as a basis for dealing with issues related to overtourism?

There is no case law regarding that matter. However, as pointed out before, paragraph 5 of the Constitution states that the natural wealth and resources of Estonia are national riches which must be used sustainably. Paragraph 53 of the Constitution stipulates that everyone has a duty to preserve the living and natural environment and to compensate for damage he or she causes to the environment. The procedure for compensation shall be provided by law. These general obligations should be borne in mind when dealing with issues related to overtourism as well.

I.E.1. Has the national legislator established a regulatory framework specifically designed to address the problems resulting from excessive tourist activity?

yes ☐

no X

➥ If so, please summarise the legislation adopted and the main content of the relevant regulations (for example preventive and/or repressive measures, other provisions)

I.E.2. Does your country have a special action plan to address the problems resulting from excessive tourist activity? yes ☐ no X

➥ If so, does this plan establish guidelines for the policies to be followed or does it also contain binding rules?

➥ What is the level of planning [national, regional, etc.] ?

I.E.3. In your country, are there any regulations concerning:

-the allocation of responsibilities for the management of 'hypertourism'? ☐

-other provisions concerning the organisation of the competent authorities? ☐

No.

➥ What are the responsibilities assigned to the various bodies (advisory, decision-making)?

➥ Are there any provisions for public participation in the adoption of action plans or laws? yes ☐ no X

II. The application of the regulatory framework by the judge

II.A. Have issues related to 'hypertourism' been the subject of litigation in your country? yes ☐ no X

➥ If so, what points were raised in the arguments of the parties to the dispute? yes ☐ no ☐

➥ Please summarise the landmark cases heard by the courts in your country and the decisions handed down.

II.B. According to legal practice, what is currently the main channel through which the relevant disputes are brought before the courts?

-litigations concerning control of the legality of administrative acts or omissions? ☐

-litigations concerning compensation for damage caused by acts or omissions of the administration? ☐

-other categories of litigations? ☐

II.C. Please cite any court decisions:

-that have expressly recognised the obligation of the State and/or other public entities to take positive measures in order to address the phenomenon of 'hypertourism'? ☐

-that have recognised a right of individuals to ensure compliance with this obligation? ☐

➥ Have case-law rules been formulated in this regard? If so, on what legal basis?

II.D. Do issues linked to overtourism:

-mainly concern the administrative courts, when they monitor the actions of the State and public entities,

or do they mainly concern the civil courts called upon to judge appeals against the actions of individuals?

administrative courts ☐

civil courts ☐

both ☐

II.E. Can examples be found in your country's legislation and case-law that highlight the relationship between climate change and overtourism?

yes ☐

no ☐

➥ If so, please present the main content of the relevant legislation or court decisions.
