

Access to Justice: Remedies

Article 9.4 of the Aarhus Convention and the requirement for adequate and effective remedies, including injunctive relief

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Introduction

Background and Scope

The Aarhus Convention requires that its parties make available to the public procedures that “provide adequate and effective remedies, including injunctive relief as appropriate, and [are] fair, equitable, timely and not prohibitively expensive.” In order to meet this requirement, it is imperative that procedures provide a means to actually prevent environmental harm. Unfortunately, there are numerous examples of court decisions that are victories for environmental protection on paper but defeats in practice because of an inability to stop the damaging activity while the case was being considered. Once environmental damage occurs, it is often irreversible.

This study builds on preexisting studies by compiling and updating information on remedies available under Article 9(4) of the Aarhus Convention. The most extensive of these prior studies is the 2007 Milieu Report, which provided a comprehensive overview of access to justice in twenty-five countries. Another important resource is the NGO Justice and Environment’s recent Report on Access to Justice in Environmental Matters. This report takes an in-depth look at the status of and difficulties with the implementation of the third pillar of the Aarhus Convention in ten countries. The contributing authors are representatives of NGOs active in those countries. The older but still excellent book *Access to Justice in Environmental Matters in the EU*, edited by Jonas Ebbesson, provides useful background information on sixteen legal systems in English and French.

The present study focuses on the narrow topic of remedies in twenty-nine parties to the Aarhus Convention, plus Ireland. It briefly outlines the administrative and judicial procedures in each country and describes the available procedural remedies. It then offers conclusions and raises issues for further inquiry. This study does not include the EECCA countries, which are being separately studied by others, or many of the Balkan countries, about which little secondary material was available.

Definitions

The literature variously uses the terms “stays”, “stoppages”, “suspensions”, “interim relief”, “delays” and others. This study will use the term “suspensive effect” to mean that filing a procedure automatically suspends the contested decision or permitted action. It will use the term “injunction” to mean a temporary stopping of the contested decision or permitted action that is not automatic.

Article 9(4) of the Aarhus Convention states that “the procedures . . . shall provide adequate and effective remedies . . .” It is unclear whether the remedies required are procedural only, or both procedural and substantive. While this study focuses on procedural remedies, it briefly notes other types of remedies as well.

Albania

A. The Administrative and Legal System

Environmental Legislation

The Albanian Constitution guarantees a right to be informed of the status of the environment and environmental protection.² It also expresses a state policy goal of promoting a healthy and sustainable environment.³

Most areas of environmental law are governed by Law 8934, of 5 September 2002 On Environmental Protection [hereinafter Law on Environmental Protection].⁴ This law emphasizes that “anyone has the right to complain for activities that threaten, damage and pollute the environment, and to ask for a closing-down of the activity, in case of risk.”⁵ Topics covered by the Law on Environmental Protection include sustainable development, environmental remediation, as well as the establishment of the Ministry of Environment, Forests and Administration of Waters (MoE) and Regional Environmental Agencies.⁶

However, certain activities are regulated by special pieces of legislation. Environmental Impact Assessments are regulated by Article 26 of the Law on Environmental Protection and Law 8990, of 23 January 2003 On Environmental Impact Assessment.⁷ Waste is regulated by Article 20 of the Law on Environmental Protection, Law 9010, of 13 February 2003 On the Management of Solid Wastes, and Law 9537 of 18 May 2006 On the Management of Hazardous Wastes.⁸ Additionally, some environmental violations are crimes, which are regulated by the Albanian Criminal Code, Special Part, Chapter IV, articles 201-207.⁹

System for decision-making and administrative appeal

The MOE proposes and implements environmental policies, as well as coordinates the efforts of other ministries and Regional Environmental Agencies.¹⁰ Administrative appeals are principally governed by the Code of Administrative Procedures. Administrative acts and omissions can be appealed through an informal request, or a formal administrative appeal. An informal request can be made at any time. It generally

² Albanian Constitution (1998), Art. 56 (English translation of the Constitution from the Institute for Policy and Legal Studies available at <http://www.ipls.org/services/kusht/cp2.html#p2c4>).

³ Albanian Constitution, Art. 59.

⁴ 2008 National Implementation Report—Albania at 59.

⁵ *Id.*

⁶ Enkelejda Muçaj and Sajmir Dautaj, “Albania,” in *The International Comparative Legal Guide to Environment Law 2010: A Practical Cross-Boarder Insight into Environment Law* (London: Global Legal Group, 2010), 4.

⁷ *Id.* at 5.

⁸ *Id.* at 5-6.

⁹ Albanian Criminal Code available in English at <http://www.legislationline.org/documents/section/criminal-codes/country/47>.

¹⁰ See Administrator, The Mission of MOEWFA, Mar. 25, 2010, <http://www.moe.gov.al/en> (click on “The Mission”).

takes the form of a letter with basic information about the applicant, the facts surrounding the complaint, and the legal basis for the claim if possible. The administrative body must respond within one month of the filing of the request.¹¹ Formal administrative appeals must be made within one month of notification of the act or refusal to act, or publication of the act. When the claimant is not notified of the administrative body's refusal to act, appeals of omissions must be made within three months of the initial request concerning the issue of the act.¹² Appeals may be made to the administrative body that issued or refused to issue the act; or its superior body.¹³ Decisions must be made within one month.¹⁴ The rules for Environmental Impact Assessment appeals differ slightly. Appeals can be made directly to the Minister of Environment, or its supervisor if the Ministry is at fault.¹⁵ The Minister must respond within 20 days.¹⁶

An Ombudsman, also referred to as a People's Advocate, is provided for in Article 60 et seq. of the Constitution and is elected by the Assembly. The Ombudsman can make recommendations and propose measures, but does not have binding authority. The Ombudsman can respond to complaints, act of its own initiative, and act in collaboration with NGOs. The Ombudsman also has the power to initiate legal proceedings, including in the Constitutional Court.¹⁷

The role of the courts

There are no special judicial procedures for environmental cases.¹⁸ Albania has a three tiered court system consisting of courts of first instance, six regional appeals courts, and a Supreme Court, which is the highest court of appeal and is organized into civil and criminal panels.¹⁹ There are also courts of felonies, military courts, and a Constitutional Court.²⁰

Administrative acts and omissions generally must be challenged through administrative procedures before going to court.²¹ Administrative appeal decisions can

¹¹ Code of Administrative Procedures, Art. 136 (available in English at <http://www.pad.gov.al/Content/KuadriLigjor/en-law/ligji8485.htm?action=view>); *Si mund te ankohemi ndaj nje akti administrativ?*, <http://www.pad.gov.al/menu1.html>, 2008 (not available in English).

¹² Code of Administrative Procedures, Art. 140; *Si mund te ankohemi ndaj nje akti administrativ?*, supra note 11.

¹³ Code of Administrative Procedures, Art. 139; *Si mund te ankohemi ndaj nje akti administrativ?*, supra note 11.

¹⁴ Code of Administrative Procedures, Art. 141.

¹⁵ Steven Stec and Enio Haxhimihali, *Legal Recourse/Advocacy (Albania)* (training guide from the REC Master Class) at 5, available at <http://ftp.rec.org/memberftp/Jerome/Resource Materials/Albania/English> (uploaded 22 Sept. 2008).

¹⁶ *Id.*

¹⁷ <http://www.avokatipopullit.gov.al/English> (follow "About Us" and "Legal Basis") (last accessed 1 December 2010).

¹⁸ 2008 National Implementation Report—Albania at 65.

¹⁹ Mbaresa Veleshnja Gentry, *A Guide to Researching the Albanian Legal System*, <http://www.nyulawglobal.org/globalex/albania.htm>, 2005.

²⁰ *Id.*

²¹ Code of Administrative Procedures, Art. 137(3).

be appealed to the courts of first instance.²² Judicial appeals must be made within 30 days of the receipt of the administrative appeal decision.²³ Second instance appeals must be made within 15 days of the court of first instance decision.²⁴ Environmental claims may also be made in Constitutional Court when constitutional issues are involved.²⁵

B. Procedural Remedies

Suspensive Effect of Procedures

An informal administrative request does not have suspensive effect.²⁶ Formal administrative appeals generally do have suspensive effect.²⁷ There are some exceptions, including the subjective “when the immediate implementation is in the interest of the public order, public health and other public interests.”²⁸ Judicial appeals do not appear to have suspensive effect.

Requirements for an injunction

For cases before the Constitutional Court, the Court may grant an injunction at the request of a party or of its own accord if it finds that implementation of the challenged act may have consequences that negatively affect state, public or individual interests. The suspension remains effective until the final judgment of the Court, at which time the Court must state whether the suspension will become permanent.²⁹

This author has been unable to find information about the availability of injunctions in the courts of first instance.

Miscellaneous

A member of the public may make a complaint against any activity that pollutes or threatens to damage the environment and seek a permanent injunction for the cessation of the activity. Authorities must respond to the complaint within one month of receipt.³⁰

²² Steven Stec and Enio Haxhimihali, Legal Recourse/Advocacy at 4, *supra* note 15.

²³ *Id.*

²⁴ *Id.*

²⁵ A Constitutional Court claim was unsuccessfully made in the Vlora Industrial Park matter, later the subject of ACCC/C/2005/12. *See* Report of the Compliance Committee on its Sixteenth Meeting: Addendum: Findings and Recommendations with Regard to Compliance by Albania at 7 (June 2007), available at http://www.unece.org/env/documents/2007/pp/ECE_MP.PP_C_1_2007_4_Add_1.pdf.

²⁶ Code of Administrative Procedures, Art. 136(4); *Si mund te ankohemi ndaj nje akti administrativ?*, *supra* note 11.

²⁷ Code of Administrative Procedures, Art. 138; *Si mund te ankohemi ndaj nje akti administrativ?*, *supra* note 11.

²⁸ Code of Administrative Procedures, Art. 138(2)(d).

²⁹ Law 8577 of 10 February 2000 on the Organization and Operation of the Constitutional Court of the Republic of Albania, Art. 45; available in English at <http://www1.law.nyu.edu/eecr/bycountryrefs/albaniaConstCourt.html>.

³⁰ 2008 National Implementation Report—Albania at 59.

Austria

A. The Administrative and Legal System

Environmental Legislation

Austria has a complex and sophisticated system of laws for environmental protection. The Trade Code (*Gewerbeordnung*) contains environmental regulations for most industries, though railways, road infrastructure, mining, telecommunications, waste disposal plants, and most agricultural plants are governed by industry specific laws.³¹ The Act on Environmental Management (*Umweltmanagementgesetz*) sets up a system for private individuals to become environmental auditors of industrial plants.³² Other important environmental laws include the Federal Act on Environmental Impact Assessment (*Umweltverträglichkeitsprüfungsgesetz - UVP-G*), the Water Act (*Wasserrechtsgesetz*), the Waste Management Act (*Abfallwirtschaftsgesetz*), the Air Pollution Law for Boiler Facilities (*Emissionsschutzgesetz für Kesselanlagen*) and the Air Pollution Control Act (*Immissionsschutzgesetz-Luft*), the Environmental Liability Act (*Bundes-Umwelthaftungsgesetz – B-UHG und Landesgesetze*), the Environmental Information Act (*Umweltinformationsgesetz - UIG*), and Private Environmental Law (*Allgemeines Bürgerliches Gesetzbuch - ABGB*).³³ Criminal environmental law is found in Sections 180-183b of the Criminal Code (*Strafgesetzbuch*).³⁴

System for decision-making and administrative appeal

Austria has a federal system of government, and responsibility for environmental protection is divided between the federal government, the provincial (Länder) governments, and town governments. Nature protection and planning are governed at the province and town level. Most other environmental issues are governed at the federal level, but administered at the province and town level. The Minister for Agriculture, Forestry, Environment and Water Management is the main regulator at the Federal level.³⁵ Additionally, the Federal Environment Agency (*Umweltbundesamt*) does environmental monitoring, management, and analysis, and makes policy recommendations.³⁶

Most environmental administrative decisions are appealed to provincial administrative tribunals. EIA decisions, except for federal road and rail projects,³⁷ are

³¹ See Stephan Dank, "Austria," in *The International Comparative Legal Guide to: Environment Law 2010: A Practical Cross-boarder Insight into Environment Law* (London: Global Legal Group, 2010), 31.

³² *Id.* at 30.

³³ *Id.*

³⁴ *Id.* at 33.

³⁵ *Id.* at 30.

³⁶ <http://www.umweltbundesamt.at/ueberuns> (last accessed 1 December 2010).

³⁷ This exception has been declared invalid by the Administrative Court in the decision on "Angerschluhtbrücke"; VwGH 30.9.2010, 2010/03/0051, 0055.

appealed to the Environmental Senate (*Umweltsenat*),³⁸ an independent review body that hears EIA appeals, and has been found to be a court under EU law in ECJ case C-205/08. Highway and rail EIA decisions are appealed to the Minister of Transport.³⁹ Appeals regarding waste or IPPC facilities must be made within two weeks. The administrative authority must render a decision regarding these appeals within six months. EIA appeals must be made within four weeks.⁴⁰

Austria has both Environmental Ombudsmen and an Ombudsman board. The Environmental Ombudsmen are empowered to bring complaints related to compliance with environmental administrative procedures before the administrative courts.⁴¹ The Environmental Ombudsman's participation may be compulsory; the Ombudsman can be criminally liable if his lack of participation results in environmental harm.⁴² The Ombudsman Board investigates claims of severe administrative violations. The Board can exert political pressure by bringing violations to the attention of the media, but does not have any authority to participate in legal proceedings.⁴³

The role of the courts

Austria has three supreme courts: one administrative, one constitutional and one civil and criminal. Most environmental issues are dealt with in the administrative court system. Environmental administrative decisions may also be appealed to the constitutional court if it is alleged that the administrative decision violates constitutional rights, or that laws or regulations are illegal.⁴⁴

B. Procedural Remedies

Suspensive Effect of Procedures

Administrative appeals have suspensive effect.⁴⁵ After exhausting administrative remedies, a complainant can appeal to administrative or constitutional courts, but these appeals do not have suspensive effect.⁴⁶

Requirements for an injunction

Courts of first instance can grant a stay of an administrative decision (referred to as granting suspensive effect) if it is not against the public interest and if necessary to

³⁸ Justice and Environment, *Selected problems of the practical application of the Aarhus Convention – based on experience and court practice of NGOs in 7 EU countries*, 2009 at 17 [hereinafter *Selected problems of the practical application of the Aarhus Convention*].

³⁹ ACCC/C/2010/48, Austrian Response of 6 Oct. 2010 at 19.

⁴⁰ Milieu Report—Austria at 10.

⁴¹ 2010 National Implementation Report—Austria at 98(e).

⁴² ACCC/C/2010/48, Austrian Response of 6 Oct. 2010 at 8.

⁴³ 2008 National Implementation Report—Austria at 99(d).

⁴⁴ Milieu Report for Austria at 7; Otto Dietrich and Markus A. Reiterer, "Austria," in *Access to Justice in Environmental matters in the EU*, ed. Jonas Ebbesson (The Hague: Kluwer Law International, 2002), 109-110.

⁴⁵ Milieu Summary Report at 12.

⁴⁶ Milieu Report for Austria at 10; Dietrich and Reiterer, "Austria," 110.

“prevent a disproportional disadvantage to the claimant.”⁴⁷ Others have described the second prong of the injunction test as a weighing of the interests rather than a determination of disproportional disadvantage.⁴⁸

The next level of appeal is the Federal Highest Administrative Court or the Constitutional Court.⁴⁹ These courts have the power to grant injunctions, but in practice rarely do so in environmental matters.⁵⁰ Appeals at the high court level generally take between one and two years, so inability to get an injunction is quite detrimental. A recent case study demonstrates that a motorway will be completed before the Highest Administrative Court reaches a decision in an EIA permit appeal case.⁵¹

In private cases, the Civil Court can issue an injunction if the claimant shows that its claim is supported by prima facie evidence and that damage would occur without an injunction. Courts do not often grant these injunctions, however, because the potential damage is too speculative.⁵² Injunctions are not possible in private claims against plants that are operating under permits granted by competent authorities, provided that concerned parties had legal standing in the permitting procedure. The only remedy available is damages.⁵³

Miscellaneous

Mediation is available for environmental disputes. The Austrian EIA Act of 2000 allows for interruption of permit approval procedures for mediation. Mediation is voluntary, and provides a structured procedure for all affected by a potential project to participate in the process.⁵⁴

If a person's health is threatened or property invaded by harmful emissions from a neighboring property, that person can bring a civil suit against the property owner. These claims are governed by paragraphs 16 and 364 et seq. of the Austrian Civil Code. There may also be liability under specific environmental laws, such as the Austrian Water Act.⁵⁵

An NGO or citizen who learns of a violation of environmental law can report the violation to a prosecutor or administrative authority. These authorities have discretion to decide what steps, if any, to take. Corrective action ranges from fixing the violation to criminal prosecution. Recent legislation has expanded legal standing in such proceedings.

⁴⁷ Milieu Report—Austria at 10.

⁴⁸ Dietrich and Reiterer, “Austria,” 110.

⁴⁹ Appeals against first instance court decisions have suspensive effect by law (§ 64 of the General Administrative Procedure Act – AVG). Only in specific cases does suspensive effect have to be granted by a separate decision of the first instance court. For federal road and rail projects, the high courts have previously been the first instance for appeal. This has been overturned by a decision of the Administrative Court of September 2010, now appeals regarding all EIA projects have to be filed with the Environmental Senate, and have suspensive effect. See note 37.

⁵⁰ Justice and Environment, *Report on Access to Justice in Environmental Matters* 34 (2010). This is disputed by Austria in ACCC/C/2010/48, Austrian Response of 6 Oct. 2010 at 19-23.

⁵¹ *Selected problems of the Aarhus Convention application* at 17.

⁵² Dietrich and Reiterer, “Austria,” 112.

⁵³ ACCC/C/2010/48, Austrian Response of 6 Oct. 2010 at 2.

⁵⁴ 2008 National Implementation Report—Austria at 104.

⁵⁵ 2008 National Implementation Report—Austria at 99(a).

Belgium

A. The Administrative and Legal System

Environmental Legislation

Article 6 of the Special Law of 8 August 1980, as amended by the Special laws of 1988 and 1993, allocates nearly all responsibility for environmental protection and water policy to the three regions (Flemish, Brussels, and Walloon regions).⁵⁶ A few exceptions remain under federal competence: product standardization, protection against nuclear and other ionizing rays, and waste transportation.⁵⁷

System for decision-making and administrative appeal

Belgium has a federal system of government. As noted above, the three Regions have primary responsibility for environmental protection and have executive and legislative power to make laws and administrative procedure in most environmental matters.⁵⁸ The administrative decision maker in environmental matters at the federal level is the Ministry of Public Health, Food Safety Chain, and Environment.⁵⁹ In the Flemish region, several agencies split responsibility for the various areas of environmental law: The Flemish Ministry of Environment, Nature and Energy (which oversees several internal agencies), the Flemish Environmental Company (or “VMM”, overseeing air and water policy), the Flemish Public Waste Company (“OVAM”), the Flemish Land Company (“VLM”), and the Flemish Regulating Body for the Electricity and Gas Market (“VREG”).⁶⁰ In the Brussels Region, the Brussels Institute for Environmental Management (“BIM” or “IBGE”) administers environmental law.⁶¹ The responsible agencies in the Walloon Region are: The General Directorate of Natural Resources and the Environment of the Ministry of the Walloon Region, the Walloon Waste Service (“OWD”) and the Research Center for Nature, Woods and Forests.⁶²

The Regions have established some specialized administrative review bodies to decide specific environmental issues.⁶³ For example, Brussels Region established the *Milieucollege—Collège d’Environnement* to hear permit appeals.⁶⁴ This body consists of one judge and five experts.⁶⁵ Appeal board decisions can be appealed to the Regional Government.⁶⁶ Most environmental matters, however, are appealed directly to the judiciary.

⁵⁶ Pascal Mallien, “Belgium,” in *The International Comparative Legal Guide to: Environment Law 2010* (London: Global Legal Group, 2010), 39.

⁵⁷ *Id.*

⁵⁸ Milieu Report—Belgium at pg 7; Pierre Möerynch and Stéphane Nicolas, “Belgium,” in *Access to Justice in Environmental Matters in the EU* (The Hague: Kluwer Law International, 2002), 146.

⁵⁹ Mallien, “Belgium,” supra note 56 at 39.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ Milieu Report—Belgium at pg. 7-8.

⁶⁴ *Id.*

⁶⁵ Luc Lavrysen, *The Implementation of the IPPC-Directive in Belgium 2* (June 2009).

⁶⁶ *Id.*

Belgium's Federal Ombudsman is an independent institution that intervenes in individuals' and legal persons' disputes with the government at the request of the disputer, and makes an annual report to the House of Representatives.⁶⁷

The role of the courts

The federal government has jurisdiction over the judicial system.⁶⁸ There are 27 courts of first instance, five appeals courts and one Supreme Court.⁶⁹ There are also a Constitutional Court and administrative courts. The Council of State, which reviews the legality of administrative decisions made by both regional and federal authorities, is the Supreme Administrative Court.⁷⁰ The Council of State has an average backlog approaching five years, and cases often take as long as nine years from filing to be decided.⁷¹

Recently, in the Flanders region, two administrative environmental courts with limited competencies were created: the *Milieuhandhavingscollege* (Environmental Enforcement Court) that hears appeals against administrative fines imposed for violations of environmental law⁷² and the *Raad voor Vergunningsbetwistingen* (Building Permits Court) that hears appeals against building permits.⁷³

B. Procedural Remedies

Suspensive Effect of Procedures

Neither judicial nor, with few exceptions, administrative proceedings have suspensive effect.⁷⁴

Requirements for an injunction

Administrative decisions are challenged before the Council of State, whereas other types of cases are brought before the civil courts. These two systems have different requirements for an injunction. The Council of State will grant an injunction if the complainant makes a prima facie case and if serious harm that is difficult to undo would result from the absence of an injunction.⁷⁵ Requests for injunctions are supposed to be granted or denied within 45 days, and if granted a final decision on the annulment of the law is supposed to be made within six months from the date of injunction. These

⁶⁷ The Federal Ombudsman 2009 Annual Report 11, available at <http://www.federalombudsman.be/en/homepage>.

⁶⁸ Milieu Report—Belgium at pg 7; Möerynch and Nicolas, “Belgium,” 146.

⁶⁹ Milieu Report—Belgium at pg. 7.

⁷⁰ Milieu Report—Belgium at pg 7; Möerynch and Nicolas, “Belgium,” 146.

⁷¹ Luc Lavrysen, “Belgium”, in *The Role of the Judiciary in Environmental Governance: Comparative Perspectives* (Alphen aan den Rijn: Kluwer Law International, 2009), 97-9.

⁷² <http://www.mhhc.be/en>.

⁷³ <http://www.rwo.be/Default.aspx?tabid=12706>

⁷⁴ Milieu Summary Report at table 2; Möerynch and Nicolas, “Belgium,” 146.

⁷⁵ Milieu Summary Report at table 2; Möerynch and Nicolas, “Belgium,” 146.

deadlines are often not met. There is also a procedure for an emergency injunction, though it is rarely used.⁷⁶

If a complainant is seeking to prevent harm to the environment that would result from an act⁷⁷ by a public authority that is not an administrative decision, he can either bring a regular civil action or a special environmental action in the civil court of first instance. The special environmental action (*Wet betreffende een vorderingsrecht inzake de bescherming van het leefmilieu/Loi concernant un droit d'action en matière de protection de l'environnement*, Law of 12 January 1993) has looser standing requirements and is designed to allow NGO participation.⁷⁸ In order to get an injunction in the special environmental proceeding, the complainant must show that a “manifest violation” of environmental law has occurred or that there is a serious threat that such a violation will occur.⁷⁹

A claimant can seek damages or remediation if he is personally injured by a violation of environmental law.⁸⁰ All claimants seeking damages must bring an ordinary civil action. There are two requirements for an injunction in an ordinary civil action. The claimant must show first that he will be personally harmed by the environmental damage, and second that such harm is imminent.⁸¹

Miscellaneous

In the Special environmental procedure, in addition to granting injunctions, the court can order the defendant to restore the environment to its original condition. No damages can be awarded, but the court can impose a civil penalty if orders are not followed.⁸²

An individual, legal person, or NGO that suffers damage, including moral damage, caused by a violation of environmental law can initiate a criminal procedure as a civil third party.⁸³

Bosnia and Herzegovina

A. The administrative and legal system

Environmental legislation

Bosnia and Herzegovina (BiH) is divided into the entities of the Federation of Bosnia and Herzegovina (FBiH), the Republika Srpska (RS), and the Brčko District of BiH (BD). Environmental legislation is enacted at the Entity/District level. All three have

⁷⁶ Milieu Report—Belgium at pg 16.

⁷⁷ It is unsettled whether the special environmental procedure can be used to challenge omissions as well as acts. Milieu Report—Belgium at 9.

⁷⁸ ACCC/C/2005/11, Statement to the Compliance Committee of the Aarhus Convention for the Belgian State at 1.1.1b.

⁷⁹ Milieu Report—Belgium at 9.

⁸⁰ Milieu Report—Belgium at 9-10.

⁸¹ Milieu Report—Belgium at 9.

⁸² Milieu Report—Belgium at pg 16-17.

⁸³ ACCC/C/2005/11, Statement to the Compliance Committee of the Aarhus Convention for the Belgian State at 1.1.2.

framework environmental laws: Law on Protection of Environment of FBiH (Official Gazette of FBiH 33/03, 39/09), Law on Protection of Environment of RS (Official Gazette of RS 28/07, 41/08, 29/10), and Law on Protection of the Environment of BD (Official Gazette of BD 24/04, 1/05, 19/07, 9/09). Additional important environmental laws in FBiH include Law on Protection of Nature of FBiH (Official Gazette of FBiH 33/03), Law on Waters of FBiH (Official Gazette of FBiH 70/06), Law on Air Protection FBiH (Official Gazette of FBiH 33/03), and Law on Waste Management FBiH (Official Gazette FBiH 33/03, 72/09). Important environmental laws in RS include Law on Protection of Nature of RS (Official Gazette of RS 50/02, 34/08), Law on Waters of RS (Official Gazette of RS 50/06) Law on Air Protection RS (Official Gazette RS 53/02), and Law on Waste Management RS (Official Gazette RS 53/02, 65/08). Important environmental laws in BD include Law on Protection of Nature of BD (Official Gazette of BD 24/04, 1/05, 19/07, 9/09), Law on Protection of Waters of BD (Official Gazette of BD 25/04, 1/05, 19/07), Law on Air Protection BD (Official Gazette BD 25/05, 1/05, 19/07, 9/09), and Law on Waste Management BD (Official Gazette BD 25/05, 1/05, 19/07, 2/08, 2/09).⁸⁴

System for decision-making and administrative appeal

Environmental issues are regulated almost entirely at the entity level. At the State level, the Ministry of Foreign Trade and Economic Relations of BiH has responsibility for harmonizing plans and policies of the entities. In FBiH, the Ministry of Environment and Tourism of FBiH and the Ministry of Agriculture, Forestry and Water Management of FBiH are the administrative authorities with primary responsibility for environmental matters. In RS, ministries with primary responsibility are the RS Ministry of Spatial Planning, Civil Engineering and Ecology and the Ministry of Agriculture, Forestry and Water Management of RS. The Department of Spatial Planning and Property-Legal Affairs of BD has environmental competence in BD.⁸⁵

The State and each entity/district each have their own Law on Administrative Disputes.⁸⁶ Denials of access to information can be appealed to the body specified in the rejection letter, usually the head of the institution, within fifteen days.⁸⁷ Administrative procedures for other types of environmental appeal are available as provided for in law. Environmental decisions made following an administrative procedure, such as an EIA decision, are appealed directly to administrative courts.⁸⁸

Both entities and BD each have a human rights Ombudsman. The Ombudsman cannot intervene in administrative or judicial procedures, but can issue recommendations, initiate judicial procedures, or refer the case to other authorities.⁸⁹

⁸⁴ 2010 National Implementation Report—Bosnia and Herzegovina 2, 20.

⁸⁵ *Id.* at 5.

⁸⁶ These are: Official Gazette BiH 19/02, 19/02, 88/07, 83/08, 74/10; Official Gazette FBiH 09/05; Official Gazette RS 109/05; Official Gazette BD 4/00, 1/01.

⁸⁷ Stephen Stec and Mladen Ivanovic, Legal Recourse/Advocacy (Bosnia and Herzegovina) (training guide from the REC Master Class) at 3, available at <http://ftp.rec.org/memberftp/Jerome/Resource%20Materials/Bosnia-Herzegovina/English/Word%20Versions> (uploaded 21 Mar. 2008).

⁸⁸ *Id.* at 5.

⁸⁹ *Id.* at 3.

The role of the courts

The State and the entities/district have independent court systems. The State court system consists of the Court of Bosnia and Herzegovina and the Constitutional Court of Bosnia and Herzegovina.⁹⁰ The Court of BiH is divided into criminal, administrative, and appellate divisions.⁹¹ Courts at the Entity level are three tiered. In FBiH, the court system is made up of municipality courts, cantonal courts, a Supreme Court and a Constitutional Court.⁹² Appeals of administrative decisions are initiated in the cantonal or Supreme Court.⁹³ In RS, the court system consists of basic courts, district courts, a Supreme Court and a Constitutional Court.⁹⁴ Appeals of administrative decisions are generally initiated in the district courts.⁹⁵ The BD court system consists of a Basic Court and an Appeals Court.⁹⁶ Appeals of administrative decisions are initiated in the Basic Court. At the State level, appeals must be filed within 60 days of the contested decision, while at the entity/district level, appeals must be filed within 30 days.⁹⁷

Environmental administrative cases have largely arisen in FBiH, so this report will focus on that entity's law where possible.⁹⁸ Article 39 of the Law on Protection of Environment of FBiH states that potential remedies available through the courts include remediation, termination of environmentally damaging activities (permanent injunction) and monetary damages. The court may also require a payment to the Federal Fund for Environmental Protection.⁹⁹

B. Procedural remedies

Suspensive effect of procedures

Cases brought before the Administrative Division of the Court of BiH do not have suspensive effect.¹⁰⁰ If the Administrative Division decision is appealed to the Appellate Division, the first instance decision is suspended absent legislation or an order by the Administrative Division to the contrary. If the Administrative Division does grant an order giving immediate effect to its decision while the case is appealed, the party concerned may have to provide a bond in case the Administrative Division decision is overturned.¹⁰¹

⁹⁰ Mirela Rožajac-Zulčić, Update: a Guide to Legal Research in Bosnia and Herzegovina, GlobaLex, http://www.nyulawglobal.org/globalex/Bosnia_Herzegovina1.htm (Aug. 2008) at Sec. 4.

⁹¹ Court of BiH, Jurisdiction, Organization, and Structure of the Court of Bosnia and Herzegovina, <http://www.sudbih.gov.ba/?opcija=sadrzaj&kat=3&id=3&jezik=e> (last accessed 1 Dec. 2010).

⁹² Mirela Rožajac-Zulčić, Update: a Guide to Legal Research in Bosnia and Herzegovina.

⁹³ Stephen Stec and Mladen Ivanovic, Legal Recourse/Advocacy at 5.

⁹⁴ Mirela Rožajac-Zulčić, Update: a Guide to Legal Research in Bosnia and Herzegovina.

⁹⁵ Stephen Stec and Mladen Ivanovic, Legal Recourse/Advocacy at 5.

⁹⁶ Mirela Rožajac-Zulčić, Update: a Guide to Legal Research in Bosnia and Herzegovina.

⁹⁷ Stephen Stec and Mladen Ivanovic, Legal Recourse/Advocacy at 5.

⁹⁸ See 2010 National Implementation Report—Bosnia and Herzegovina at 24.

⁹⁹ Available at <http://www.fbihvlada.gov.ba/bosanski/zakoni/index.php>.

¹⁰⁰ Law on the Court of Bosnia and Herzegovina (Official Gazette 16/02) Art. 49, available in English at http://www.sudbih.gov.ba/files/docs/zakoni/en/Zakon_o_sudu_16_02_-_eng.pdf.

¹⁰¹ *Id.* at Art. 57(2).

The Law on Administrative Disputes FBiH states that judicial procedures do not have suspensive effect.¹⁰²

Requirements for an injunction

The Administrative Division of the Court of BiH may grant injunctions (or “order suspension”) to ensure that its judgment will be complied with.¹⁰³

In FBiH, once a lawsuit is filed, an authority responsible for implementation of a contested administrative decision must postpone the execution of that decision at the request of the claimant if there is a threat of harm to the claimant that would be difficult to repair, it is not against the public interest, and postponing execution would not cause greater damage to the opposing party. Decisions about whether to grant a postponement must be made within three days. A court can also grant an injunction using the same criteria.¹⁰⁴

Croatia

A. The administrative and legal system

Environmental Legislation

Nature protection is provided for in Article 52 of the Croatian Constitution. A human right to a healthy environment is guaranteed in Article 69.¹⁰⁵ Croatia has a number of laws that govern the various aspects of environmental law, which are supported by a variety of regulations. The National Environmental Strategy (Official Gazette No. 46/02) and the National Environmental Action Plan (Official Gazette No. 46/02), passed by Parliament in 2002, lay out Croatia’s environmental policy.¹⁰⁶ The Environmental Protection Act (Official Gazette No. 110/07) is the primary environmental law providing for access to environmental justice.¹⁰⁷ Other important environmental laws include the Law on Physical Planning and Building (Official Gazette No. 76/06, 38/09), the Regulation on Environmental Impact Assessment (Official Gazette No. 64/08), the Law on Waters (Official Gazette No. 107/95 and 150/05), the Law on Waste (Official Gazette Nos. 178/04, 153/05, 111/06, 60/08 and 87/09), and the Law on Air Protection (Official Gazette No. 178/04, 60/08).¹⁰⁸ Criminal environmental violations are contained in Chapter 19 of the Criminal Code.

¹⁰² Art. 17. Available at <http://www.fbihvlada.gov.ba/bosanski/zakoni/index.php>.

¹⁰³ Law on the Court of Bosnia and Herzegovina at Art. 49 and 57 (not available in English).

¹⁰⁴ Law on Administrative Disputes FBiH, Art. 17.

¹⁰⁵ http://www.servat.unibe.ch/icl/hr00000_.html, last updated May 2004.

¹⁰⁶ Tomislav Tus and Martina Prpic, “Croatia,” in *The International Comparative Legal Guide to: Environment Law 2010: A Practical Cross-Border Insight into Environment Law* (London: Global Legal Group, 2010), 89.

¹⁰⁷ Tus and Prpic, “Croatia,” at 89.

¹⁰⁸ *Id.*, *passim*; English language versions of environmental laws are available at <http://www.mzopu.hr/default.aspx?id=3969>. The Official Gazette is not available in English, but can be accessed at <http://narodne-novine.nn.hr/default.aspx>.

System for decision-making and administrative appeal

Environmental law and policy is enacted by the Croatian Parliament after adoption of an opinion of the Space Planning and Environmental Protection Committee.¹⁰⁹ The Ministry of Environmental Protection, Physical Planning and Construction [hereinafter MEP] has primary responsibility for the administration of national environmental policy and co-ordination of the activities of all Ministries and other central state administrative authorities of the Republic of Croatia in environmental matters, including sustainable development, pollution monitoring and prevention, waste management, air and marine protection, environmental impact assessment, and international cooperation.¹¹⁰ Various departments within the ministry have responsibility for individual areas of regulation, including environmental inspection.¹¹¹ Some areas of environmental regulation are administered by other Ministries. The Ministry of Culture has responsibility for natural resource and species protection and the Ministry of Regional Development, Forestry and Water Management has responsibility for forest and water resources.¹¹²

The Act on General Administrative Procedure governs administrative appeals.¹¹³ Permits issued by the MEP cannot be challenged through administrative procedures, but can be challenged in the Administrative Court.¹¹⁴

Croatia has a Parliamentary Ombudsman. The Ombudsman is charged with protecting the legal and constitutional rights of citizens in their disputes with government authorities. He submits an annual report to Parliament, which can then obligate institutions to report on what steps they are taking to correct violations.¹¹⁵

The role of the courts

The Republic of Croatia has both regular and specialized courts. The three instances of the regular courts include municipal courts, county courts and the Supreme Court, which is also the highest judicial authority for the specialized courts. There is also a Constitutional Court, which has the role of guaranteeing compliance with and proper application of the Constitution of the Republic of Croatia. Other regular and specialized courts may be established by law according to subject matter jurisdiction or for certain legal matters.¹¹⁶

¹⁰⁹ Tus and Prpic, "Croatia," at 89.

¹¹⁰ MEP, Scope of the Ministry, <http://www.mzopu.hr/default.aspx?id=9274> (last accessed 9 March 2011).

¹¹¹ MEP, Organisation of the Ministry, <http://www.mzopu.hr/default.aspx?id=3968> (last accessed 9 March 2011).

¹¹² 2008 National Implementation Report—Croatia at pg. 7.

¹¹³ *Report on Access to Justice in Environmental Matters* at 38.

¹¹⁴ Tus and Prpic, "Croatia," at 90.

¹¹⁵ <http://www.hr/croatia/state/ombudsman>.

¹¹⁶ Article 13 of Courts Act (Official Gazette No. 150/05) and amendments No. 16/07, 113/08 and 153/09, 116/10, 122/10 and Article 2 of the Constitutional Act on the Constitutional Court of the Republic of Croatia (Official Gazette No. 99/99), and amendments (Official Gazette no. 29/02 and 49/02, consolidated text). According to Article 13a of the Courts Act, which will enter into force on 1 January 2012 (Amendments of Courts Act no. 153/09), administrative courts, as well as the High Administrative Court of the Republic of Croatia shall fall into the specialized courts category.

Most environmental matters, such as permit and EIA appeals, are within the jurisdiction of the Administrative Court. There is currently only one administrative court in the country, so justice can be quite slow.¹¹⁷ However, the new Administrative Dispute Act (Official Gazette 20/10), which will enter into force on 1 January 2012, takes steps to address the issue by setting out rules for lower administrative courts and a High Administrative Court.

Appeals must state the nature of the violation and support the claim with evidence. After receiving an administrative decision, judicial appeals to the Administrative Court must be made within 30 days. If contesting an omission, the appeal must be made within 15 days from the deadline for performing the act or issuing the decision.¹¹⁸

Whether in Administrative Court or a court of general jurisdiction, the court may:

- Order the operator, company, polluter or the public authority to undertake all necessary measures, including the suspension of specific activities;
- Require the polluter to pay an appropriate fee to the Fund for Environmental Protection and Energy Efficiency;
- Establish necessary temporary measures and order the operator, company, polluter or the public authority to implement them; or
- Issue another adequate decision in accordance with the law.¹¹⁹

Pursuant to the Environmental Protection Act, court proceedings on all legal actions instigated in the field of environmental protection shall be deemed urgent.¹²⁰

B. Procedural remedies

Suspensive Effect of Procedures

Procedures do not have suspensive effect.¹²¹

Requirements for an injunction

The Environment Protection Act states that the competent court can order an injunction, but according to a recent NGO report, the Administrative Court currently has no power to actually grant one.¹²² In administrative cases, however, the claimant can request that the administrative body responsible for executing the contested decision wait until the final court decision is issued. The request may be granted if there would be irreparable harm to the claimant without a delay, the delay would not cause greater irreparable harm to the other party, and it is not against public interest.¹²³ If the opposing party does delay and is

¹¹⁷ *Report on Access to Justice in Environmental Matters* at 40.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ Environmental Protection Act at art. 149.

¹²¹ *Report on Access to Justice in Environmental Matters* at 40; Aarhus Toolkits, 2009 (2010) at 7.

¹²² *Report on Access to Justice in Environmental Matters* at 40. The 2010 National Implementation Report—Croatia at pg. 27 also notes NGO dissatisfaction with the lack of ability to stop environmentally harmful activities during the judicial procedure.

¹²³ *Report on Access to Justice in Environmental Matters* at 40-1.

so injured, and the claimant is found to have abused his right to request a delay, the claimant may have to pay damages to the opposing party.¹²⁴

Article 26 of the new Administrative Disputes Act, which will enter into force in 2012, will allow the administrative courts to grant injunctions if there is a danger of harm to the claimant that would be difficult to fix, and the injunction is not otherwise prohibited by law or contrary to the public interest.

Miscellaneous

Anyone can report violations to the appropriate authorities such as the State Prosecutor, Environmental Protection Inspection, Nature Protection Inspection, or Construction Inspection.¹²⁵

Property owners that are neighbors to polluters may bring an action for damages and cessation of the polluting activity under the Law on Property¹²⁶

Cyprus

A. The administrative and legal system

Environmental Legislation

The laws regulating Environmental Impact Assessments are the Environmental Impact Assessment of Certain Projects Law 2005 and the Environmental Impact Assessment of Certain Plans and Programs Law 2005.¹²⁷ Other important environmental laws include the Air Pollution Control Law 2002, the Air Quality Law 2002, the Control of Water Pollution Law 2002, the Solid Waste and Hazardous Waste Law 2002, and the Integrated Pollution and Prevention Control Laws of 2003-2008.¹²⁸ Many of these laws contain provisions for criminal penalties. For example, under the Solid Waste and Hazardous Waste Law 2002, noncompliance with a permit or other violation of the law can be punished by up to three years in prison and a fine of 34,160 Euro.¹²⁹

System for decision-making and administrative appeal

Environmental policy is created by the Council of Ministers. The Ministry of Agriculture, Natural Resources and the Environment has the main responsibility for environmental issues, but several other Ministries share competence. Environmental law and policy is made almost exclusively at the federal level, but municipalities are

¹²⁴ *Id.* at 41.

¹²⁵ *Id.*

¹²⁶ Law on Property, Official Gazette Nos. 91/96, 68/98, 137/99, 22/00, 73/00, 114/01, 79/06, 141/06, 146/08.

¹²⁷ Christina Hadjiedemetriou, "Cyprus," in *The International Comparative Legal Guide To Environment Law 2010: A Practical Cross-Boarder Insight Into Environment Law* (London: Global Legal Group, 2010), 98.

¹²⁸ *Id.* at 96-7.

¹²⁹ *Id.* at 99.

responsible for issuing construction permits, wastewater treatment, and a few other areas of environmental administration.¹³⁰

Administrative decisions can be appealed to a superior administrative body in what is called a “hierarchical appeal.” The competent authority must respond within 30 days.¹³¹

A citizen who is directly affected by an administrative decision may make a complaint to the Ombudsman within 1 year of finding out about the decision. The Ombudsman may choose to investigate, but the investigation does not suspend the administrative decision. The Ombudsman does not have the power to prosecute, though he may inform citizens of their rights to bring complaints.¹³²

The role of the courts

Cyprus has six district courts that hear civil matters, and criminal matters with penalties of up to five years.¹³³ A number of other courts hear other specific types of claims, but there is no specialized environmental court.¹³⁴ The Supreme Court is the second instance court for appeals from the district and other lower courts, but is the first instance court for administrative cases.¹³⁵ Exhaustion of administrative remedies is not required, but the claimant must allege that the administrative decision was in violation of the constitution, the law, or an abuse of power.¹³⁶ Appeals must be filed within 75 days of the publication of the disputed act, or if not published or in the case of omissions, within 75 days of the claimant’s knowledge of the disputed act or omission.¹³⁷ In the first instance, the Supreme Court consists of a single judge.¹³⁸ Appeals are made to a five judge panel.¹³⁹ The decision can be further appealed within the Supreme Court system by the losing party within 42 days. At each instance, the process takes about one year.¹⁴⁰

B. Procedural remedies

Suspensive Effect of Procedures

Neither administrative nor judicial appeals have suspensive effect.¹⁴¹

¹³⁰ Milieu Report—Cyprus at 9-10.

¹³¹ Milieu Report—Cyprus at 14; Cypriot Constitution Art. 29, available in English at <http://www.cyprus.gov.cy/portal/portal.nsf/All/C44572D7363776ACC2256EBD004F3BB3?OpenDocument>.

¹³² Milieu Report—Cyprus at 15.

¹³³ http://www.supremecourt.gov.cy/judicial/sc.nsf/DMLchart_en/DMLchart_en?OpenDocument, follow “District Courts.”

¹³⁴ http://www.supremecourt.gov.cy/judicial/sc.nsf/DMLchart_en/DMLchart_en?OpenDocument

¹³⁵ http://www.supremecourt.gov.cy/judicial/sc.nsf/DMLSCourt_en/DMLSCourt_en?OpenDocument, follow “Supreme Court.”

¹³⁶ Cypriot Constitution at Art. 146(1).

¹³⁷ Hadjiedemetriou, “Cyprus,” 97.

¹³⁸ Milieu Report—Cyprus at 20-22.

¹³⁹ *Id.* at 21.

¹⁴⁰ *Id.* at 20-22.

¹⁴¹ Milieu Summary Report at Table 2.

Requirements for an injunction

Generally, administrative acts are effective upon publication in the Official Gazette of the Republic.¹⁴² In exceptional circumstances, the Supreme Court can grant an injunction delaying the execution of the act. The Claimant must also have filed a challenge to the act in the Supreme Court, as well as the request for the injunction.¹⁴³

When filing an appeal, a claimant can seek to have the first instance decision suspended. This type of injunction is also granted only in exceptional circumstances.¹⁴⁴

Miscellaneous

The Commissioner for Environment, like the Ombudsman, can investigate alleged environmental violations and recommend changes.¹⁴⁵ Like the Ombudsman, however, this office lacks enforcement power.

According to Article 146, paragraph 6 of the Constitution, a claimant who has suffered losses because of an administrative act or omission can seek monetary damages and other remedies through the District Courts.¹⁴⁶

Czech Republic

A. The Administrative and Legal System

Environmental Legislation

The Czech Constitution guarantees a right to a favorable environment.¹⁴⁷ Other important environmental laws, all of which include their own permitting requirements, include the 183/2006 Building Act, 114/1992 Nature Protection Act, 254/2001 Water Protection Act, 86/2002 Air Protection Act, 76/2002 IPPC Act, 44/1988 Mining Act, 258/2001 Public Health Protection Act, and 18/1997 Nuclear Act.¹⁴⁸

System for decision-making and administrative appeal

The Ministry of the Environment is responsible for most aspects of environmental administration including protection of natural water accumulation, protection of water resources and the quality of groundwater and surface water; air protection; nature and landscape protection; conservation of agricultural land; operation of the National Geological Survey; protection of the rock environment, including mineral resources and groundwater; geological works and environmental supervision of mining; waste management; environmental impact assessment of activities and their consequences, including transboundary; gamekeeping, fisheries and forestry in national parks; national

¹⁴² Milieu Report—Cyprus at 16.

¹⁴³ *Id.* at 23.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 15.

¹⁴⁶ *Id.* at 22.

¹⁴⁷ Aarhus Toolkits, 2009 at 10 (2010).

¹⁴⁸ See ACCC/C/2010/50 Complaint at 3-4.

environmental policy; and co-ordination of the activities of all Ministries and other central state administrative authorities of the Czech Republic in environmental matters.¹⁴⁹ Various agencies and departments within the ministry have responsibility for individual areas of regulation.¹⁵⁰

Administrative acts must first be appealed to the body that issued the decision, then to a hierarchically superior body.¹⁵¹ Decisions must be issued without undue delay.¹⁵² If not issued immediately, the decision must be rendered within 30 days of the request, with additional time possible if needed for expert testimony, oral hearings, or a few other reasons.¹⁵³ Second instance appeals must be made within 15 days of the issue of the first instance decision, or 90 days if the party is not properly notified about appeal procedures.¹⁵⁴

Two types of extraordinary appeals from the final administrative decision are available. The first is a review procedure in which the hierarchical superior can initiate a review if it doubts the legality of an administrative decision.¹⁵⁵ A party to the administrative proceedings can also request such a review. The superior administrative authority must inform the party within 30 days whether it intends to pursue a review, and if not, why not.¹⁵⁶ The review must be initiated within two months of the superior authority learning of the potential illegality of the decision, and no later than one year after the contested decision was rendered.¹⁵⁷

The second type of extraordinary appeal is a reopening of the proceedings.¹⁵⁸ A party may be eligible to apply for a reopening of the proceedings if new evidence comes to light or if there was a change in the regulations underlying the administrative decision.¹⁵⁹ This type of appeal must be filed within three months of the party learning the information that makes the proceedings eligible for reopening, and no later than three years after the contested decision entered into force.¹⁶⁰ The reopening of proceedings may not be used when the review procedure is available.¹⁶¹

The Czech Republic has an Ombudsman who assists persons in disputes with the authorities and other administrative bodies. He can recommend remedies, but his decisions are not binding. He also cannot intervene in court proceedings.¹⁶²

¹⁴⁹ Ministry of the Environment of the Czech Republic, The Ministry, <http://www.mzp.cz/en/ministry> (2008-2010).

¹⁵⁰ Ministry of the Environment of the Czech Republic, Organisational Structure, http://www.mzp.cz/en/organisational_structure (2008-2010).

¹⁵¹ Milieu Report—Czech Republic at 10.

¹⁵² Code of Administrative Procedure [CAP], Coll. 500/2004 Sec. 71(1), available at <http://business.center.cz/business/pravo> (not available in English).

¹⁵³ *Id.* at Sec. 71(3).

¹⁵⁴ Milieu Report—Czech Republic at 9, n. 16.

¹⁵⁵ CAP, *supra* note 152 at Title IX.

¹⁵⁶ *Id.* at Sec. 94(1).

¹⁵⁷ *Id.* at Sec. 96.

¹⁵⁸ *Id.* at Title X.

¹⁵⁹ *Id.* at Sec. 100(1).

¹⁶⁰ *Id.* at Sec. 100(2).

¹⁶¹ *Id.*

¹⁶² Public Defender of Rights, Mandate of the Public Defender of Rights, <http://www.ochrance.cz/en/public-defender-of-rights/mandate-of-the-public-defender-of-rights> (last accessed 1 December 2010).

The role of the courts

Czech Republic has courts of general jurisdiction, administrative courts, and a Constitutional Court.¹⁶³ The court of general jurisdiction system consists of 86 district courts, 8 regional courts, two high courts, and a Supreme Court. Most types of cases originate in the district court and can be appealed to the regional court in the second instance and the Supreme Court in the final instance.¹⁶⁴ Certain types of cases enumerated in Art. 9 of the Code of Civil Justice originate in the regional court, and can be appealed to the high court in the second instance and the Supreme Court in the final instance.¹⁶⁵ Leave for appeal is required to bring an appeal to the Supreme Court.¹⁶⁶

The administrative courts provide judicial review of administrative acts. Exhaustion of administrative remedies is required.¹⁶⁷ The system is two tiered. Cases are heard in the first instance by special administrative chambers of the regional courts.¹⁶⁸ If improper or illegal proceedings at the regional level are alleged, a cassatory complaint may be made to the Supreme Administrative Court.¹⁶⁹ The Supreme Administrative Court may uphold the first instance decision, or vacate and refer the case back to the regional court.¹⁷⁰

B. Procedural Remedies

Suspensive effect of procedures

Administrative appeals do have suspensive effect unless otherwise specified in law.¹⁷¹ The judicial procedure does not have suspensory effect, unless otherwise specified in law, at either the first instance or cassatory complaint (Supreme Court) level.¹⁷²

Requirements for an injunction

The administrative authority can order interim measures, including an injunction, either ex officio or at the request of a party.¹⁷³ If requested by a party, a decision on the interim measure must be rendered within 10 days.¹⁷⁴

Administrative courts have the power to grant injunctions and other interim measures under Section 38 of the Code of Administrative Justice, or “award suspensory effect” under Section 73. In practice, however, injunctions/suspensions are very difficult

¹⁶³ Michal Bobek, UPDATE: An Introduction to the Czech Legal System and Legal Resources Online, http://www.nyulawglobal.org/globalex/Czech_Republic1.htm (Sep. 2009) at Para. 2.4.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*, see also Art. 9 of the Code of Civil Justice Coll. 99/1963, available in Czech at <http://business.center.cz/business/pravo/zakony/osr/cast1h2.aspx>.

¹⁶⁶ Michal Bobek, *supra* note 163.

¹⁶⁷ Milieu Report—Czech Republic at 12.

¹⁶⁸ Michal Bobek, *supra* note 163.

¹⁶⁹ Code of Administrative Justice (CAJ), Coll. 150/2002 Art. 103, available in English at <http://www.nssoud.cz/docs/caj2002.pdf>.

¹⁷⁰ CAJ Art. 110.

¹⁷¹ Milieu Report—Czech Republic at 9.

¹⁷² CAJ Art. 73, 107.

¹⁷³ CAP, *supra* note 152 at Sec. 61(1).

¹⁷⁴ *Id.* at Sec. 61(2).

to obtain. Under Section 73, the complainant must show a potential of irreparable harm to the plaintiff personally, that the rights of third parties will not be unreasonably affected, and that it is not against the public interest.¹⁷⁵ The requirement for personal harm has prevented NGOs from being eligible to seek injunctions.¹⁷⁶ The Supreme Administrative Court has noted that courts must grant injunctions in environmental cases even without proof of irretrievable personal harm in order to be in compliance with the Aarhus Convention, and administrative courts have been easing the requirements in environmental cases.¹⁷⁷ The requirements for Section 38 interim measures are somewhat less stringent, requiring only “serious” rather than “irreparable” harm, and this harm need not be personal to a party. However, Section 38 measures cannot be used when Section 73 suspension can be.¹⁷⁸ The result has been that injunctive relief has rarely been granted in administrative cases.¹⁷⁹ The difficulty in obtaining injunctive relief is a subject of the complaint in ACCC/C/2010/50, currently before the compliance committee. Because environmental proceedings can be quite lengthy, the frequent refusal of courts to grant interim measures has been problematic.

The requirements for an injunction are different in the civil courts. Here, the requirements are looser but a bond of about 1800 Euro is required. However, environmental cases are rarely brought in civil law courts.¹⁸⁰

Miscellaneous

There are no special environmental provisions for lawsuits against private persons, but private persons can be sued for damages and protection against injury using general legal principals.¹⁸¹

Denmark

A. The administrative and legal system

Environmental legislation

Important environmental legislation includes the Environmental Protections Act, the Nature Protection Act, the Planning Act, the Raw Materials Act, the Water Supply Act, the Watercourse Act, the Act on the Protection of the Marine Environment, the Act on Soil Pollution, and the Act on Environmental Liability.

¹⁷⁵ 2010 National Implementation Report—Czech Republic at pg 31.

¹⁷⁶ *Selected problems of the Aarhus Convention application* at 22.

¹⁷⁷ *Id.* at 23-24.

¹⁷⁸ CAJ, *supra* note 169 at 38(3).

¹⁷⁹ Justice and Environment, *Report on Access to Justice in Environmental Matters* 55 (2010).

¹⁸⁰ *Selected problems of the Aarhus Convention application* at 22.

¹⁸¹ *Report on Access to Justice in Environmental Matters* at 52.

System for decision-making and administrative appeal

The Danish Ministry of the Environment has primary responsibility for environmental administration. Its sub-authorities include the National Survey and Cadastre, the Nature Agency, the Environmental Protection Agency. The Nature and Environmental Board of Appeal is also affiliated with the Ministry for the Environment. The Ministry of Climate and Energy also has responsibility for some environmental matters and oversees the Energy Board of Appeal.

Environmental permits may be appealed to an administrative appeal board or to a court. The Danish constitution gives courts the authority to review all administrative acts. But in practice, nearly all environmental appeals utilize the administrative appeals board system.¹⁸² There are two main appeals boards: The Nature and Environmental Appeal Board and the Energy Appeal Board.¹⁸³ The Nature and Environmental Appeal Board deals with both highly complex matters relating to pollution from industrial activities and with less technical questions, particularly those relating to the procedural issues in the granting of development permits. The Nature and Environmental Appeal Board is the highest administrative appellate body for decisions made under the Environmental Protection Act, Act on Water Supply, Act on the Protection of the Marine Environment, Act on Environmental and Genetic Engineering, and Act on Chemical Substance and Products, Planning Act, Nature Protection Act, Raw Material Act, Forest Act, and a few others.¹⁸⁴ Each act contains procedural rules for appeal (as does the Nature and Environmental Appeal Board Act) that are used in conjunction with the more general Administrative Procedures Act (*Forvaltningsloven*).¹⁸⁵

Generally, complaints do not need to have a high degree of specificity. Appeals to the Nature and Environmental Appeal Board can in some cases be made via an online form available at its website, www.nmkn.dk.¹⁸⁶ For most appeals there is a 500 kroner fee for individuals and a 3000 kroner fee for companies, organizations and public authorities. The fee will, however, be refunded if the appeal leads to amendment, modification or repeal of the decision appealed against or if the appellant fully or partially succeeds in his claim.

Denmark has a Parliamentary Ombudsman. Anyone can make a complaint to the Ombudsman free of charge. The complainer does not have to show standing or follow any formal procedures. The Ombudsman can also decide to initiate an investigation of its own accord. The Ombudsman can merely criticize the decisions of the public administration; it has no binding authority.¹⁸⁷ The Ombudsman is rarely used in

¹⁸² Ulf Kjellerup, "Denmark," in Nicolas de Sadeleer et al., *Access to Justice in Environmental Matters and the Role of NGOs – Empirical Findings and Legal Appraisal* (Groningen/Amsterdam: Europa Law Publishing 2005), 22-3; Ellen Margrethe Basse and Helle Tegner Anker, "Denmark," in *Access to Justice in Environmental Matters in the EU*, ed. Jonas Ebbeson (The Hague: Kluwer Law International, 2002), 154.

¹⁸³ Ulf Kjellerup, "Denmark," 22-3.

¹⁸⁴ *Id.* at 24.

¹⁸⁵ *Id.* at 25-6.

¹⁸⁶ http://www.nkn.dk/Emner/Vejledninger/Til_borgere/klageformular.htm

¹⁸⁷ Basse and Anker, "Denmark," 154; Parliamentary Ombudsman, *Complaining to the Ombudsman*, http://en.ombudsmanden.dk/om_at_klage (last accessed 1 Dec. 2010).

environmental cases; it has been suggested that the reason is the effectiveness of the appeal board system.¹⁸⁸

The role of the courts

Appeals may also be made through the court system. Exhaustion of administrative remedies is not required.¹⁸⁹ The courts of general jurisdiction hear all types of cases, including administrative.¹⁹⁰ The judicial system has three tiers: courts of first instance (district courts), courts of appeal (high courts) and a supreme court.¹⁹¹ Cases against public authorities are initiated at the district court level and can be appealed to a high court (under certain conditions a case may also be referred by the district court directly to a high court.). Only in exceptional cases is there a right of appeal (third tier) to the Supreme Court.

B. Procedural remedies

Suspensive effect of procedures

In general, filing an administrative appeal may have a suspensive effect, while filing a lawsuit does not.¹⁹² Whether administrative appeals have suspensive effect varies depending upon the act appealed. For instance, under the Nature Protection Act, with few exceptions, a permittee may not commence action under a permit until after a complaints period of four weeks from the day the decision is announced.¹⁹³ Any appeals made during that period have suspensive effect.¹⁹⁴ Appeals made under the Environmental Protection Act do not have a suspensive effect, except in limited circumstances.¹⁹⁵ Other environmental acts that do not give all appeals suspensive effect are The Planning Act, The Raw Material Act, and The Act on the Protection of the Marine Environment.¹⁹⁶ In limited situations, appeals do have suspensive effect under the Act on the Use of Danish Subsoil, the Act on the Continental Shelf, and the Electricity Supply Act.¹⁹⁷

Requirements for an injunction

Injunctions can be granted at the discretion of the court or administrative appeals board.¹⁹⁸ It must weigh the public authority's interest in enforcing its decision against

¹⁸⁸ Helle Tegner Anker et al., *The Role of Courts in Environmental Law: a Nordic Comparative Study*, Nordic Environmental Law Journal 2009, pg 15.

¹⁸⁹ *Id.* at 12.

¹⁹⁰ *Id.*

¹⁹¹ Basse and Anker, "Denmark," 155.

¹⁹² Milieu Summary Report at Table 2.

¹⁹³ Nature Protection Act, Ch. 12 Sec. 87.

¹⁹⁴ *Id.*

¹⁹⁵ Milieu Report—Denmark at 16; Ulf Kjellerup, "Denmark," 40.

¹⁹⁶ Ulf Kjellerup, "Denmark," 40.

¹⁹⁷ *Id.*

¹⁹⁸ Basse and Anker, "Denmark," 159.

the appellant's interest.¹⁹⁹ Other considerations are whether a significant violation of the law is likely to occur and whether the appellant's position is likely to be significantly worsened and require physical remediation in the absence of an injunction.²⁰⁰

Estonia

A. The administrative and legal system

Environmental legislation

Legislation important to environmental regulation includes the Administrative Proceedings Act, Environmental Impact Assessment and Environmental Management System Act, Planning Act, Public Information Act, Earth's Crust Act, Water Act, Waste Act, Ambient Air Protection Act, Integrated Pollution Prevention and Control Act, Radiation Act, the Environmental Supervision Act, the Environmental Charges Act, and the Environmental Liability Act.²⁰¹ Additionally, the Penal Code contains provisions for environmental crimes.²⁰²

System for decision-making and administrative appeal

The Ministry of the Environment has primary responsibility for environmental administration.²⁰³ Within the Ministry, responsibility is divided between state commercial enterprises, state government, and federal government authorities.²⁰⁴ The most important federal authorities are the Environmental Board, which has primary responsibility for granting environmental permits, and the Environmental Inspectorate, which has primary responsibility for environmental supervision and enforcement.²⁰⁵

A claimant may challenge an administrative act through a "challenge proceeding," which is regulated under the Administrative Procedure Act.²⁰⁶ Challenges must generally be filed within 30 days. Adjudications are supposed to be made within 10 days, but the time may be extended to 30 days.²⁰⁷

Similar to an Ombudsman, anyone may make a complaint to the Chancellor of Justice free of charge, and the Chancellor may carry out an investigation. However, while

¹⁹⁹ Milieu Summary Report at Table 2.

²⁰⁰ Ulf Kjellerup, "Denmark," 40.

²⁰¹ *Selected problems of the Aarhus Convention application at 25*; 2008 National Implementation Report—Estonia at paras. 82 and 96.

²⁰² Imbi Jürgen and Piret Blankin, "Estonia," in *The International Comparative Legal Guide To Environment Law 2010: A Practical Cross-Boarder Insight Into Environment Law* (London: Global Legal Group, 2010), 137.

²⁰³ Ministry of the Environment, Jurisdictional Structure of the Ministry of the Environment, <http://www.envir.ee/58736> (2005).

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ 2010 National Implementation Report—Estonia at pg. 23.

²⁰⁷ *Id.*

this office is independent, the 2010 National Implementation Report notes that it lacks the resources to be an efficient remedy.²⁰⁸

The role of the courts

Estonia has a three-tiered court system.²⁰⁹ County courts, which are general jurisdiction courts, and administrative courts hear cases in the first instance.²¹⁰ Two circuit courts hear second instance appeals from both. One Supreme Court is the final decision maker for all types of cases. Administrative acts and omissions are subject to review.²¹¹ Exhaustion of administrative remedies is not required to bring a case to administrative court, except challenges brought under the Environmental Charges Act and the Environmental Liability Act.²¹²

Courts work relatively quickly. The court is required to decide the case within a reasonable time. Both environmental NGO and Ministry of Justice figures confirm that cases are completed within 2-3 years total in the capital city of Tallinn, and within 1-2 years when pursued elsewhere. According to 2006 Ministry of Justice Statistics, cases in the Administrative Court took an average of 207 days in Tallinn and 91 days elsewhere. Cases appealed to the circuit courts took an average of 289 days in Tallinn and 100 days in the circuit court of Tartu. No statistics on the length of Supreme Court proceedings were available.²¹³

B. Procedural remedies

Suspensive effect of procedures

Neither administrative nor judicial proceedings have suspensive effect.²¹⁴

Requirements for an injunction

Injunctions are relatively easy to obtain in Estonia. The court may grant an injunction at any stage of the proceedings either at the “reasoned request” of the claimant or of its own accord. The decision whether to grant an injunction is generally made quite quickly, even within a few days. According to Section 12 of the Administrative Court Proceedings Act, an administrative court can use an injunction to suspend the disputed administrative act, stop the issue of a disputed administrative act, mandate the issue of an administrative act, or seek other means to require an action.²¹⁵

Execution of a challenged administrative act may also be suspended during an administrative adjudication.²¹⁶

²⁰⁸ *Id.* at 26.

²⁰⁹ Ministry of Justice, Estonian Court System, <http://www.kohus.ee/6908> (Mar. 2005).

²¹⁰ Supreme Court, Estonian Court System, <http://www.nc.ee/?id=188> (last accessed 1 Dec. 2010).

²¹¹ Justice and Environment, *Report on Access to Justice in Environmental Matters* 62 (2010).

²¹² 2010 National Implementation Report—Estonia at pg. 23.

²¹³ Milieu Report—Estonia at 19.

²¹⁴ Milieu Summary Report at Table 2.

²¹⁵ *Selected problems of the Aarhus Convention application* at 28.

²¹⁶ 2010 National Implementation Report—Estonia at pg. 23.

Miscellaneous

A private individual cannot bring criminal proceedings, but can inform authorities of violations. The authorities are bound to take action if it appears from the facts that offences have occurred or are occurring. However, the authority has discretion to terminate proceedings.²¹⁷ Under the Environmental Supervision Act, para. 22, environmental supervisors can suspend an environmentally damaging activity if it is not in compliance with a permit, or is in compliance with a permit but still endangering life, health or property.²¹⁸

An owner of neighboring property may bring a claim to prevent the spread of a nuisance (gas, smoke, odor, etc) if the use of his property is significantly damaged or the nuisance violates environmental law.²¹⁹

A landowner can demand a structure not be built on a neighboring property if there is reason to presume it will cause a prohibited nuisance to the landowner's property.²²⁰

Under paragraphs 133, 1056 and 1058 of the Law of Obligations Act, damage to persons or property caused by environmentally hazardous activities must be compensated.²²¹

European Union

A. The Administrative And Legal System

Environmental Legislation

Directive 2003/4/EC on public access to environmental information and Directive 2003/35/EC on public participation guide the EU member states in implementing the Aarhus Convention. There is also a proposed directive on access to justice that has not been adopted.²²² The Aarhus Regulation, (EC) 1367/2006, applies the convention to EU institutions, bodies, offices and agencies and establishes a procedure for internal review. Commission Decision 2008/50/EC establishes additional provisions regarding the internal review procedure and Commission Decision 2008/401/EC contains provisions relating to the internal review procedure as well as other provisions implementing the Aarhus Regulation.²²³

System for decision-making and administrative appeal

The Aarhus Regulation and the above mentioned Commission Decisions lay out a system for internal review. Administrative acts or omissions of EU bodies and institutions that

²¹⁷ Milieu Report—Estonia at 7.

²¹⁸ 2010 National Implementation Report—Estonia at pg. 26.

²¹⁹ *Id.*

²²⁰ *Id.* at 26-7.

²²¹ *Id.* at 27.

²²² http://eur-lex.europa.eu/LexUriServ/site/en/com/2003/com2003_0624en01.pdf

²²³ European Commission, The Aarhus Convention, <http://ec.europa.eu/environment/aarhus/#legislation> (17 Nov. 2010).

fall within the scope of Community environmental law may be challenged using the internal review procedure.²²⁴ The request can only be made by NGOs that meet certain requirements. It should be made to the body/institution that made or should have made the contested act or omission; and must be submitted within six weeks of the time the administrative decision was adopted, notified or published, whichever is the latest, or, if an omission is being contested, within six weeks of when an administrative decision should have been adopted.²²⁵ The request should include the administrative act or omission contested, the grounds for seeking review, supporting documents and information, the name and contact information for an individual authorized to act on behalf of the NGO, and evidence that the NGO is entitled to make the request.²²⁶ The Commission must respond as soon as possible, no later than 12 weeks from the receipt of the request (or up to 18 weeks with an extension).²²⁷ If the request is rejected, the Commission must state the reasons, and notify the claimant of its right to seek further redress through the Ombudsman or the courts.²²⁸

Complaints about maladministration by EU bodies and institutions can be made to the EU Ombudsman by submitting a form available on its website. The Ombudsman can launch an investigation either at the request of the complainant or of its own accord. The Ombudsman can mediate and make recommendations, but its decisions are nonbinding. It can make a report to the European Parliament if its recommendations are not followed.²²⁹

The role of the courts

An action for annulment can be brought in EU courts under Article 263, para. 4 TFEU. However, according to a study published in 2009, standing requirements have been interpreted rather restrictively to the effect that standing is difficult to achieve in public interest environmental cases.²³⁰ Whether the EU's standing requirements are in compliance with Article 9 of the Aarhus Convention is the subject of pending case ACCC/C/2008/32.

B. Procedural Remedies

Suspensive effect of procedures

Neither the request for internal review or judicial review in the ECJ or CFI have suspensive effect.²³¹

²²⁴ Marc Pallemmaerts, *Compliance by the European Community with its Obligations on Access to Justice as a Party to the Aarhus Convention*, An IEEP Report for WWF-UK, 2009.

²²⁵ 1367/2006 at Art. 10.

²²⁶ Commission Decision 2008/50/EC at Art. 1.

²²⁷ European Commission, Aarhus Regulation Practical Guide, available at <http://ec.europa.eu/environment/aarhus/#guide>.

²²⁸ Commission Decision 2008/401/EC at Art. 6.

²²⁹ European Ombudsman, The European Ombudsman at a glance, <http://www.ombudsman.europa.eu/en/atyourservice/ataglance.faces> [last accessed 1 Dec. 2010].

²³⁰ Pallemmaerts, *supra* note 224 at 31-41.

²³¹ *Id.* at 41.

Requirements for an injunction

The Court has the power to order suspension if “circumstances so require”, or “necessary” injunctions or other interim measures. The President of the Court rules on injunctions in a summary procedure. However, suspensions and injunctions are rarely granted in environmental cases.²³²

Finland

A. The administrative and legal system

Environmental legislation

The Finnish Constitution (law 731/1999) obligates all citizens to protect biodiversity, the environment and cultural heritage. The administration is responsible for ensuring that everyone has a sound environment and the ability to influence environmental decision-making.²³³

Finnish environmental regulation is quite compartmentalized, though in recent years substantial efforts have been made to coordinate the different pieces of legislation. The Environmental Protection Act (86/2000, MSL) establishes a comprehensive permit regime for polluting industries and other operations. The legislation covers those installations regulated under the EU IPPC Directive, along with other activities. It also includes rules on liability for contaminated water and land. Other important environmental laws include the Land Use and Building Act (1321/1999, MBL), the Environmental Impact Assessment Act (468/1994, EIA), the Waste Act (1072/1993), the Water Act (264/1961), the Chemicals Act (744/1989), the Act on Public Roads (503/2005), the Forestry Act (1093/1996), the Nature Conservation Act (1096/1996, NVL), the Act on Compensation for Environmental Damage (737/1994), and the Nuclear Energy Act (779/2004).

Environmental crime is regulated by the Penal Code (39/1889). Criminal provisions can also be found in individual laws, such as the MSL.

System for decision-making and administrative appeal

Responsibility for environmental administration in Finland rests with the Ministry of the Environment. The Environmental Institute (Syke) undertakes research and coordinates environmental surveillance throughout the country.

The environmental legal system has recently undergone a major reform. All permits under the Environmental Protection Act are issued by the newly created Regional State Administrative Agencies. Other kinds of permits for major activities, such as large water projects, have been transferred to regional Centers for Economic Development, Transport and the Environment (ELY). Municipalities also have competence to grant

²³² *Id.*

²³³ Finnish Constitution (1999, amended 2007), available at <http://www.finlex.fi/en/laki/kaannokset/1999/en19990731.pdf>.

some types of permits. While there are some administrative remedies available, redress is more frequently sought through the courts.

Finland has both a Parliamentary Ombudsman and a Chancellor of Justice, which investigate complaints and have similar powers.²³⁴ Complaints to the Ombudsman must be made within five years of the matter complained of.²³⁵ These institutions are not frequently utilized in environmental matters.²³⁶

The role of the courts

Finland has courts of general jurisdiction and administrative courts. The courts of general jurisdiction have three tiers: the first tier consists of district courts (*käräjäoikeus*), the second tier consists of the courts of appeal (*hovioikeus*) and at the top is the Finnish Supreme Court (*Korkein oikeus*).

Environmental decisions are commonly appealed directly to the administrative courts. First instance decisions are made by the eight regional administrative courts. The Administrative Court of Vaasa specializes in environmental law, and has jurisdiction over appeals from decisions made under the Environmental Protection Act and the Water Act for the whole country.²³⁷ The Supreme Administrative Court (*Högsta förvaltningsdomstolen*, HFD) in Helsinki is the administrative court of last resort. In both the Administrative court in Vaasa and the Supreme Administrative Court, technicians (engineers, chemists, ecologists, etc.) sit in as judges when cases are decided. Environmental judicial procedure in Finland is relatively fast, as cases are never heard in more than two instances.

B. Procedural remedies

Suspensive effect of procedures

Under Finnish law, an administrative decision cannot be utilized until the opportunity for appeals has passed. Accordingly, an appeal has suspensive effect. Permit decisions for major operations can, however, be combined with a “go-ahead decision” enabling the applicant to start his or her undertakings. These decisions are granted quite frequently under the MBL and the Water Act. Under the MSL, a go-ahead decision can be granted if there are good reasons for such a decision and it does not render any appeal meaningless. Additionally, the applicant has to pay a bond to secure any damage to the environment.²³⁸

²³⁴ <http://www.oikeusasiamies.fi/Resource.phx/ea/english/ombudsman/chancellorofjustice.htm>.

²³⁵ <http://www.oikeusasiamies.fi/Resource.phx/ea/english/ombudsman/tasks/investigating.htm>

²³⁶ Helle Tegner Anker et al., *The Role of Courts in Environmental Law: a Nordic Comparative Study*, Nordic Environmental Law Journal 2009, pg 15.

²³⁷ *Id.* at 13.

²³⁸ MSL at Secs. 100 and 101. The MSL is available in English at <http://www.finlex.fi/en/laki/kaannokset/2000/en20000086>.

Requirements for an injunction

If a go-ahead decision has been granted, claimants can seek an injunction when they appeal the permit. The court will consider whether there are compelling reasons to grant the injunction as well as a likelihood of success on the merits.

France

A. The administrative and legal system

Environmental legislation

The Environmental Charter to the French Constitution (*Charte adossée à la Constitution*), added to the Constitution in 2005, establishes a right to public health and a balanced environment.²³⁹ The French Environmental Code regulates nearly all other aspects of environmental law, including environmental principles, public participation, permits, agencies, water, air, nature protection, national parks, access to nature, hunting, fishing, chemicals, waste, and noise.²⁴⁰ Criminal penalties are included in the Environmental Code.

System for decision-making and administrative appeal

Responsibility for environmental administration is shared between national and local authorities.²⁴¹ The Ministry of Ecology, Energy, Sustainable Development and Sea (MEEDDM), and its sub-agencies, have primary administrative responsibility at the national level.²⁴² Enforcement of laws regarding industry, air pollution, and waste is done at the Regional level.²⁴³ A *Préfet*, a representative of the State at the *département* level, is responsible for issuing environmental permits to “classified installations” (those regulated by Environmental Code Article L. 511-1 *et seq.*), as well as for issuing administrative sanctions.²⁴⁴ Municipal mayors also share in the responsibility for implementing and enforcing environmental law.²⁴⁵ For example, urban planning and land use is mostly regulated at the city level.²⁴⁶

Administrative decisions can be contested through a non-contentious appeal, which is made to the body that issued the decision, or a hierarchical appeal to the body hierarchically superior to the one that issued the decision. Decisions made in response to non-contentious appeals can be in turn appealed either through a hierarchical appeal or in

²³⁹ Vincent Brenot and Mathieu Werner, “France,” in *The International Comparative Legal Guide to: Environment Law 2010: A Practical Cross-Boarder Insight into Environment Law* 143 (London: Global Legal Group, 2010), 143.

²⁴⁰ Environmental Code available in French at <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006074220> (1 Dec. 2010).

²⁴¹ Brenot and Werner, “France,” 143; Milieu Report—France at 11-12.

²⁴² Brenot and Werner, “France,” *supra* note 239 at 143.

²⁴³ Milieu Report—France at 11-12.

²⁴⁴ Brenot and Werner, “France,” 143.

²⁴⁵ Milieu Report—France at 12.

²⁴⁶ *Id.*

administrative court. However, judicial administrative appeals must be filed within two months of the contested decision. The first administrative appeal stops the time limit from running, but the second administrative appeal does not, so potential loss of judicial remedies should be considered in decision whether to file a second administrative appeal.²⁴⁷

France has an Ombudsman, or “Mediator of the Republic”, who can recommend solutions to administrative disputes.²⁴⁸ Complaints must be made to a Member of Parliament who then refers them to the Ombudsman, rather than directly.²⁴⁹ Administrative remedies must be exhausted before seeking the Ombudsman’s aid.²⁵⁰ The primary goal of the Ombudsman is to mediate administrative disputes, but if mediation fails he may also issue (nonbinding) injunctions to administrative bodies to follow a court decision; initiate disciplinary procedures against officials if their employing agency refuses to do so, and launch investigations and request amendments to laws.²⁵¹ The Ombudsman may not intervene in court proceedings,²⁵² and its decisions are not binding.

The role of the courts

France has courts of ordinary jurisdiction that hear both civil and criminal matters, and administrative courts that hear only administrative matters.²⁵³ Each jurisdiction has three levels of adjudication.²⁵⁴ The three levels of administrative courts are the Administrative Courts, Administrative Courts of Appeal, and the Council of State (*Coueil d’Etat*).²⁵⁵ The top court of general jurisdiction is the Court of Cassation.²⁵⁶ A jurisdictional court decides in which court a matter belongs if the issue is unclear.²⁵⁷

Exhaustion of administrative remedies is generally not required to bring a case to administrative court.²⁵⁸ There are some exceptions contained in specific laws and regulations; for example complaints regarding access to information must be first appealed to the Commission for Access to Administrative Documents.²⁵⁹ Most

²⁴⁷ Milieu Report—France at 15.

²⁴⁸ Michel Prieur and Jessica Makowiak, “France,” in *Access to Justice in Environmental Matters in the EU*, ed. Jonas Ebbesson (The Hague: Kluwer Law International, 2002), 229-230.

²⁴⁹ Milieu Report—France at 16; Law no. 73-6 of 3rd January 1973 establishing a Mediator of the French Republic supplemented by law no. 76-1211 of 24th December 1976 and by law no. 89-18 of 13th January 1989 and modified by law no. 92-125 of 6th February 1992 at Sec. 6, available in English at http://www.omineurope.info/uk/gesetz_france_uk.htm.

²⁵⁰ Milieu Report—France at 16; Law no. 73-6 of 3rd January 1973 establishing a Mediator of the French Republic, supra note 249 at Sec. 7.

²⁵¹ Le Médiateur de la République, *Les moyens pour agir*, <http://www.mediateur-republique.fr> (7 Dec. 2010).

²⁵² Law no. 73-6 of 3rd January 1973 establishing a Mediator of the French Republic, supra note 249 at Sec. 11.

²⁵³ Sandrine Bélier, “France,” in Nicolas de Sadeleer et al., *Access to Justice in Environmental Matters and the Role of NGOs – Empirical Findings and Legal Appraisal* (Groningen/Amsterdam: Europa Law Publishing 2005), 47.

²⁵⁴ *Id.*

²⁵⁵ Milieu Report—France at 5.

²⁵⁶ *Id.*

²⁵⁷ Sandrine Bélier, “France,” 47.

²⁵⁸ Milieu Report—France at 13.

²⁵⁹ *Id.*

administrative judicial appeals must be brought within two months of the contested decision.²⁶⁰ There are several exceptions in environmental cases. Environmental Code L. 514-6 and L. 214-10 allows third parties with standing to appeal certain environmental permits up to four years from publication, or up to two years from the implementation of the permit, whichever is the longer.

There are four types of administrative judicial proceedings. The first is the full jurisdiction proceedings (*contentieux de pleine juridiction*), in which the court can both annul or modify administrative decisions and award damages.²⁶¹ This type of proceeding requires a plaintiff who is personally injured. Other types of proceeding include annulment proceedings (*contentieux de l'annulation*), in which a court can find an administrative decision illegal and annul it; interpretation proceedings (*contentieux de l'interprétation*), in which a court interprets administrative decisions; and repression proceedings (*contentieux de la repression*), in which a court can impose penalties for violations of environmental law.²⁶²

First instance administrative proceedings take seven months to two years, second instance proceedings take one to two and a half years, and final instance proceedings about one year.²⁶³ The average total length for a case that goes through all three instances is about four years.²⁶⁴

B. Procedural remedies

Suspensive effect of procedures

Neither administrative nor judicial procedures have suspensive effect.²⁶⁵

Requirements for an injunction

Under article L. 521-1 of the Administrative Code, an injunction will be granted if a case is urgent and there is serious doubt about the legality of the disputed administrative decision.²⁶⁶ Under articles L. 554-11 and L. 554-12 of the Code, a judge must also injunct permits granted without the proper environmental impact assessment, or planning decisions made without the required prior public inquiry.²⁶⁷

Miscellaneous

Any person who has sustained damage may initiate criminal environmental proceedings. A public prosecutor also may initiate proceedings. Available remedies are fines or imprisonment.²⁶⁸

²⁶⁰ *Id.* at 16.

²⁶¹ *Id.* at 17-18.

²⁶² *Id.* at 17.

²⁶³ *Id.* at 23.

²⁶⁴ *Id.*

²⁶⁵ Sandrine Bélier, “France,” 54; Milieu Summary Report at Table 2.

²⁶⁶ 2008 National Implementation Report—France at para. 164.

²⁶⁷ *Id.* at 165; de Sadeleer et al. at 54.

²⁶⁸ Brenot and Werner, “France,” 145.

A plaintiff can seek damages from polluters through the civil courts. Under the Civil Code, polluters are liable for pollution resulting from their mistakes, including permit violations, negligence, or recklessness. Polluters may also be strictly liable for the spread of items in their possession, such as toxic chemicals.²⁶⁹ They may also be liable for nuisance.²⁷⁰ Remediation, as well as damages, is an available civil remedy.²⁷¹

Germany

A. The administrative and legal system

Environmental legislation

Article 20a of the German constitution (*Grundgesetz*) contains a general duty for the state to protect the natural bases of life on behalf of present and future generations.²⁷²

The most important pieces of federal environmental legislation are the EIA Act (*Umweltverträglichkeitsgesetz* 2001) the Federal Planning Act (*Raumordnungsgesetz* 1997), the Forestry Act (*Bundeswaldgesetz* 1975), the Nature Conservation Act (*Bundesnaturschutzgesetz* 1976), the Chemicals Act (*Chemikaliengesetz* 1980), the Act on Environmental Damages (*Umwelthaftungsgesetz* 1990), the Waste and Recycling Act (*Kreislaufwirtschafts- und Abfallgesetz* 1994) and the Act on Soil Protection (*Bodenschutzgesetz* 1998). Water activities are regulated in the Act on Water Management (*Wasserhaushaltsgesetz* 2009). Major industrial installations, landfills and other activities covered by the EU IPPC Directive are regulated in the Federal Emission Control Act (*Bundesimmissionsschutzgesetz* 2002). The Aarhus Convention and subsequent EU regulation are implemented in Germany by amendments to the Act on Environmental Information (*Umweltinformationsgesetz* 1994) and by the Act on Environmental Appeal (*Umwelt-rechtsbehelfsgesetz* 2006).

System for decision-making and administrative appeal

Germany is a federation with 16 states (*Länder*). Legislative competence is divided between the federal Government and *Länder*. The *Länder* can legislate on a topic as long as state regulation does not conflict with federal legislation.

The *Länder* have primary responsibility for the implementation and enforcement of environmental law. The administration of the *Länder* differs, but in general has three levels: state ministry, district and independent municipalities. *Länder* have their own sector-specific regulatory bodies, for example regional Environmental Protection Agencies (*Landesamt für Umweltschutz*). Federal authorities, for example the national EPA (*Umweltbundesamt*), play an inconspicuous role in the enforcement of legislation,

²⁶⁹ Sandrine Bélier, “France,” 51.

²⁷⁰ *Id.* at 51-52.

²⁷¹ *Id.* at 52.

²⁷² The official translation (<http://www.iuscomp.org/gla/statutes/GG.htm>) of Article 20a Grundgesetz reads: “Mindful also of its responsibility toward future generations, the state shall protect the natural bases of life by legislation and, in accordance with law and justice, by executive and judicial action, all within the framework of the constitutional order.”

focusing instead on advice and information, technical support and research. Most environmental administrative decisions at the local and district level are appealed to the *Länder* ministries.²⁷³

Appeals generally must be filed with the authority that issued the contested decision or the hierarchically superior authority within one month from the time the claimant knew or should have known about the decision.²⁷⁴

Germany does not have a Parliamentary Ombudsman. There is a sort of a Parliamentary complaints department.²⁷⁵

The role of the courts

Germany has courts of general jurisdiction and administrative courts, as well as special courts of labour law, finance and social security. Accordingly, there are five supreme courts in the country. However, there are no specialized environmental courts.

Among the general courts, there are two or three instances at the *Länder* level (*Amtsgerichte*, *Landgerichte* and *Oberlandsgerichte*). Judgments from the *Länder* level are appealed to the federal Supreme Court (*Bundesgerichtshof*). Environmental cases are usually brought in the administrative courts. The administrative courts have two *Länder* instances, *Verwaltungsgericht* and *Oberverwaltungsgericht*, whose decisions are appealed to the federal Supreme Administrative Court (*Bundesverwaltungsgericht*). Constitutional courts (*Verfassungsgericht*) exist at both the state and federal level. Both individuals and authorities can challenge regulations, judgments and decisions in the Constitutional Courts.

B. Procedural remedies

Suspensive effect of procedures

Both administrative and first instance judicial proceedings have suspensive effect.²⁷⁶ The issuing authority can order the immediate execution of the contested decision if the public interest or superior private interests so warrant.²⁷⁷ This happens quite frequently.²⁷⁸ There are also some specific situations in which suspensive effect does not apply, mainly large infrastructure projects such as highways, railways, and electric cables.²⁷⁹

If a claim is denied, the suspensive effect ends. If the denial is appealed, suspensive effect continues for five months. The appeals court can order that it continue after that.²⁸⁰

²⁷³ Milieu Report—Germany at 7-8.

²⁷⁴ *Id.* at 12.

²⁷⁵ See Deutscher Bundestag, Petitionsausschuss, <http://www.bundestag.de/bundestag/ausschuesse17/a02/index.jsp> (last accessed 1 Dec. 2010).

²⁷⁶ Eckard Reh binder, “Germany,” in *Access to Justice in Environmental Matters in the EU*, ed. Jonas Ebbesson (The Hague: Kluwer Law International, 2002), 245.

²⁷⁷ Reh binder, “Germany,” 245.

²⁷⁸ *Id.* at 246.

²⁷⁹ Milieu Report—Germany at 12.

²⁸⁰ Reh binder, “Germany,” 246.

Requirements for an injunction

If suspension does not apply, the claimant can seek an injunction from the administrative court.²⁸¹ The administrative court will hold a summary procedure to determine if an injunction is warranted. If the claimant makes a prima facie case that the contested decision was illegal, the injunction will be granted. If it appears the claimant's case has no merit, the injunction will be denied. Where the merits of the claimant's case are unable to be determined during the summary proceeding, the court will weigh the equities.²⁸²

Miscellaneous

One whose rights have been impaired by environmentally damaging activity can sue in the civil courts to stop or prohibit the activity, or seek monetary damages.²⁸³

Greece

A. The administrative and legal system

Environmental legislation

Article 24 of the Constitution establishes that environmental protection is the responsibility of the Greek Government.²⁸⁴ While not explicit, the highest administrative court, the Council of State (*Symvoulío tis Epikrateias*), has interpreted this Article to grant citizens a right to the environment.²⁸⁵ Greece has a framework environmental law, Law 1650/1986 on the Protection of the Environment amended by Law 3010/2002.²⁸⁶ Despite the framework legislation, Greek environmental law is quite complex.²⁸⁷ Law 1650/1986 is supplemented by numerous Presidential Decrees, ministerial decisions, and administrative acts.²⁸⁸ Additional laws govern various specific areas of environmental protection. Important laws include: Law 1327/1983 on the Management of Unforeseen Events of Environmental Pollution; Presidential Decree 1180/1981 on the Arrangement of Issues Relating to the Establishment and Functioning of Industries, Enterprises, All Kinds of Mechanical Installations and Warehouses, and the General Preservation of the Environment Thereof; Law 743/1977 for the Protection of the Sea; Law 1739/1987 on the Management of Water Resources; Law 989/1979 on the Protection of Forests and

²⁸¹ *Id.* at 245.

²⁸² *Id.*

²⁸³ 2010 National Implementation Report—Germany at para. 84.

²⁸⁴ Alkistis Christofilou and Christina Koliatsi, "Greece," in *The International Comprehensive Legal Guide to: Environment Law 2010: A Practical Cross Boarder Insight into Environment Law* (London: Global Legal Group, 2010), 163; Glykeria P. Sioutis and George Gerapetritis, "Greece," in *Access to Justice in Environmental Matters in the EU*, ed. Jonas Ebbesson (The Hague: Kluwer Law International, 2002), 261-2.

²⁸⁵ Milieu Report—Greece at 11.

²⁸⁶ 2008 National Implementation Report—Greece at para. 131.

²⁸⁷ Christofilou and Koliatsi, "Greece," at 163.

²⁸⁸ Milieu Report—Greece at 11.

Forest Expenses; and Law 2939/2001 on Packaging and Alternative Management of Packaging and Other Products.²⁸⁹ Environmental Impact Assessments are governed by Joint Ministerial Decisions 69269/1990 on EIAs and 75308/1990 on information of citizens about the content of EIAs.²⁹⁰ Greece adopted the Aarhus Convention as Law 3422/2005.²⁹¹ Criminal environmental penalties are enumerated in the framework legislation, Law 1650/1986.²⁹²

System for decision-making and administrative appeal

The Ministry of Environment, Energy and Climate Change has primary responsibility for creating, monitoring and enforcing environmental policy.²⁹³ Other ministries, such as the Ministry of Health, have some responsibility for areas of environmental protection.²⁹⁴ Regions and Prefectures also have a role in environmental protection, particularly in the area of permitting.²⁹⁵

There are no special environmental administrative procedure laws.²⁹⁶ Administrative appeals are made according to the Code of Administrative Procedure, Art 24 and 25.²⁹⁷ A claimant may file an appeal with the administrative body that issued the decision, or with the hierarchically superior body.²⁹⁸ The administrative authority must issue a decision in 30 days, unless otherwise provided by law.²⁹⁹ Only acts may be challenged through administrative procedure; omissions must be challenged through the judicial procedure.³⁰⁰

Greece has an Ombudsman, which mediates conflicts between an individual or legal entity and the public administration where the administration has refused to provide information, unreasonably delayed processing an application, infringed the law, violated a procedure, or discriminated against an individual.³⁰¹ Anyone may make a complaint to the Ombudsman, but should try to resolve matters through administrative remedies first.³⁰² The Ombudsman's main function is to mediate, investigate and report.³⁰³ It is not able to annul administrative decisions or bring sanctions, but may report criminal acts to the public prosecutor.³⁰⁴

²⁸⁹ Christofilou and Koliatsi, "Greece", 165; Milieu Report—Greece at 11.

²⁹⁰ Sioutis and Gerapetritis, "Greece", 264-265.

²⁹¹ Milieu Report—Greece at 5.

²⁹² Christofilou and Koliatsi, "Greece", 165.

²⁹³ *Id.* at 163.

²⁹⁴ Milieu Report—Greece at n.31.

²⁹⁵ *Id.* at 10.

²⁹⁶ *Id.* at 13.

²⁹⁷ Administrative Procedure Code [Greece], Law 2690/1999, 9 Mar. 1999, available in English at: <http://www.unhcr.org/refworld/docid/4c90ecf12.html>.

²⁹⁸ *Id.* at Art. 24(1).

²⁹⁹ *Id.* at Art. 24(2).

³⁰⁰ Milieu Report—Greece at 15.

³⁰¹ The Ombudsman and other provisions, Law 3094/2003, 22 Jan. 2003, available in English at http://www.synigoros.gr/en_law_in.htm#2; 2008 National Implementation Report—Greece at para. 139.

³⁰² The Greek Ombudsman, What is the Greek Ombudsman?, http://www.synigoros.gr/en_what_is.htm (2008).

³⁰³ *Id.*, see also Law 3094/2003 supra note 301.

³⁰⁴ The Greek Ombudsman, supra note 302; Law 3094/2003 supra note 301 at Art. 4(11).

The role of the courts

Greece has civil courts, criminal courts, and administrative courts.³⁰⁵ Each type of case is heard in three instances: courts of first instance, courts of appeal, and Supreme Courts.³⁰⁶ The Court of Cassation (*Areios Pagos*) is the Supreme Court for civil and criminal cases.³⁰⁷ The Council of State (*Symvoulion tis Epikrateias*), modeled after the French system, is the Supreme Court for administrative cases. It is composed of the President, ten Vice-Presidents, fifty-three councilors, fifty-six associate councilors and fifty assistant judges.³⁰⁸ The Fifth (E) chamber of the Council of State hears most environmental administrative matters.³⁰⁹

There are two other high courts. The Court of Audit (*Elegktiko Synedrio*) hears matters related to public spending, and the Special Highest Court (*Anotato Eidiko Dikastirio*) hears jurisdictional and election issues.³¹⁰

To obtain judicial review of an administrative decision, a claimant may file a written petition for annulment directly before the Council of State.³¹¹ Review in the lower administrative courts is not used in most environmental cases, and only when provided by law.³¹² Exhaustion of administrative remedies is not required, except when specified in law (generally for “quasi-judicial” administrative remedies).³¹³ Generally, claims and appeals must be filed within 60 days of the contested decision.³¹⁴

B. Procedural remedies

Suspensive effect of procedures

Administrative and many judicial proceedings have suspensive effect.³¹⁵ Applications for annulment of administrative acts before the Council of State do not have suspensive effect except where specifically provided for by law.³¹⁶

Requirements for an injunction

Injunctive relief may be available in cases before the Council of State against administrative decisions that would be irrevocable if executed. In this situation, an injunction is granted if there is probable danger or irrevocable damage, unless an injunction is against the public interest.³¹⁷ Injunctions are also available where the disputed administrative act may cause irreparable or hardly reparable personal harm to

³⁰⁵ Maria Panezi, Update: A Description of the Structure of the Hellenic Republic, the Greek Legal System, and Legal Research, <http://www.nyulawglobal.org/globalex/Greece1.htm> (Mar. 2008).

³⁰⁶ The Council of State, The Council of State, http://www.ste.gr/FL/main_en.htm [accessed 14 Dec. 2010].

³⁰⁷ *Id.*

³⁰⁸ *Id.*

³⁰⁹ Christofilou and Koliatsi, “Greece,” 163.

³¹⁰ Maria Panezi, *supra* note 305.

³¹¹ 2008 National Implementation Report—Greece at para. 136.

³¹² Sioutis and Gerapetritis, “Greece,” 263.

³¹³ Milieu Report—Greece at 15.

³¹⁴ *Id.* at 26.

³¹⁵ Milieu Summary Report at Table 2; Milieu Report—Greece at 17.

³¹⁶ Milieu Report—Greece at 27; Sioutis and Gerapetritis, “Greece,” 272.

³¹⁷ 2008 National Implementation Report—Greece at para. 137.

the claimant.³¹⁸ A three member Suspension Committee of the Council of State decides whether to grant the second type of injunctions.³¹⁹

Miscellaneous

To obtain judicial review of a claim for damages, a claimant may file a claim with the civil court.³²⁰ Under Article 914 of the Civil Code, an action in tort requires an allegation of breach of law, intention or negligence, damage and causation.³²¹ Environmental framework law 1650/1986 and consumer protection law 2251/1994 also establish that an individual or legal person responsible for environmental harm is liable for monetary damages.³²²

Hungary

A. The administrative and legal system

Environmental legislation

Article 18 of the Hungarian Constitution obligates the State to “recognize and implement everyone’s right to a healthy environment.”³²³ Act LIII of 1995 on the General Rules of Environmental Protection (Environment Act) is the main law on environmental protection. Its provisions include basic environmental principles, responsibilities of various parts of government, Environmental Impact Assessments, public participation, and liability.³²⁴ Other laws govern specific areas of environmental law, such as Act LVII of 1995 on Water Management, Act LIII of 1996 on Nature Conservation, Act LIV of 1996 on Forests and Their Protection, Act XLIII of 2000 on Waste Management, and Act XXV of 2000 on Chemical Safety. Section 280 of the Criminal code assigns criminal liability to those who cause serious environmental harm.³²⁵

System for decision-making and administrative appeal

The Ministry of Environmental Protection and Water is Hungary’s main environmental agency. It develops policies and regulations for environmental management.³²⁶ The

³¹⁸ Milieu Report—Greece at 27.

³¹⁹ Sioutis and Gerapetritis, “Greece,” 272.

³²⁰ 2008 National Implementation Report—Greece at para. 136.

³²¹ Christofilou and Koliatsi, “Greece,” 165.

³²² *Id.*

³²³ Hungary Constitution (*Act XX of 1949 as revised and restated by Act XXXI of 1989*) available in English at <http://www.mkab.hu/index.php?id=constitution> (last updated 1 Jan. 2010).

³²⁴ Act LIII of 1995 available in English at <http://web.ceu.hu/envsci/eianetwork/legislation/hungLIII.html> (last accessed 1 Dec. 2010).

³²⁵ Gábor Hugai and András Komáromi, “Hungary,” in *The International Comparative Legal Guide to: Environment Law 2010: A Practical Cross-boarder Insight into Environment La* (London: Global Legal Group, 2010), 182.

³²⁶ *Id.* at 181; see also the Ministry’s website: <http://www.kvvm.hu/index.php?lang=2>.

Ministry of Rural Development also plays a significant role in environmental management, particularly in the areas of forestry, game, and agriculture.³²⁷

Administrative appeals must be made within 15 days of communication of an administrative decision.³²⁸ There is no particular format required.³²⁹ First instance appeals are generally to the body that issued the decision.³³⁰ According to the Milieu Report, county administrative offices are generally the second instance for administrative appeals; but in most permitting cases, there are special authorities that hear second instance appeals.³³¹ According to Global Legal Group, the National Main Inspectorate of Environment and Water is generally the second instance administrative authority.³³² Administrative appeals generally take 40-50 days in the first instance and up to six months in the second instance.³³³ EIA cases may take longer.³³⁴

Hungary created an environmental ombudsman, called the Parliamentary Commissioner for Future Generations, in 2007.³³⁵ Administrative remedies must be exhausted before seeking the aid of the ombudsman, and the request must be made within one year of the final administrative decision.³³⁶ The ombudsman has broad powers to investigate complaints, and can participate in or initiate legal proceedings.³³⁷ It can also suspend the execution of administrative decisions.³³⁸

The role of the courts

Hungary has a four-tiered judicial system consisting of local courts, county courts, regional courts of appeal, and a Supreme Court.³³⁹ There is also a Constitutional Court.³⁴⁰ Most cases start in the local courts and proceed upwards, but some types of cases, enumerated in law, start in the county courts.³⁴¹ Administrative decisions can only be challenged at the county level, which has special administrative chambers.³⁴² No appeal from the administrative chamber's decision is possible.³⁴³

Exhaustion of administrative remedies is required before a claimant may seek judicial review in the administrative chambers. Review may be sought if the claimant

³²⁷ Ministry of Rural Development, The Activities of MARD, <http://www.v.m.gov.hu/main.php?folderID=1821> (20 July 2004).

³²⁸ Milieu Report—Hungary at 13.

³²⁹ *Id.* at 9.

³³⁰ *Id.* at 13.

³³¹ *Id.*

³³² Hukai and Komáromi, "Hungary," 181.

³³³ Milieu Report—Hungary at 15.

³³⁴ *Id.*

³³⁵ Solutions, An Environmental Ombudsman: Sándor Fülöp, Hungary's Parliamentary Commissioner for Future Generations, 8 Dec. 2010, <http://www.thesolutionsjournal.com/node/817>.

³³⁶ Act LIX of 1993 on the Parliamentary Commissioner at paras. 16 and 17(4), available in English at http://www.jno.hu/en/?menu=legisl_t&doc=LIX_of_1993.

³³⁷ *Id.* at 27/B.

³³⁸ *Id.* at 27/E.

³³⁹ The Supreme Court of Hungary, The Hungarian Judicial System, <http://www.lb.hu/english/index.html> (last accessed 1 Dec. 2010).

³⁴⁰ *Id.*

³⁴¹ *Id.*

³⁴² Milieu Report—Hungary at 21.

³⁴³ *Id.*

alleges that the administrative decision was illegal. The review petition must be filed within 30 days of the administrative review decision.³⁴⁴ The length of the judicial process varies greatly, but can range from one to several years.³⁴⁵

B. Procedural remedies

Suspensive effect of procedures

Administrative proceedings have suspensive effect, unless accompanied by an order of immediate execution.³⁴⁶ Judicial proceedings do not have suspensive effect.³⁴⁷

Requirements for an injunction

After an administrative appeal, the second administrative decision is enforceable as soon as it is communicated to the parties or the public. A claimant can request an injunction at any time during judicial review proceedings. The court must make a decision whether to grant the injunction within 8 days of the request. The two factors the court considers in deciding whether to grant the injunction are the irreversibility of the administrative decision, and whether the potential harm would be greater from granting or denying the injunction. The decision to grant or deny the injunction, and other interim decisions, can be appealed to the superior court.³⁴⁸

In a civil case, the court can grant an injunction if necessary to prevent damage, preserve the situation giving rise to the claims, or protect a claimant if the harm caused does not exceed the harm prevented. A bond may be required. The court must make a decision whether to grant the injunction as soon as possible after the request, and the decision can be appealed to the superior court. Injunctions are much more readily available in administrative cases than civil ones.³⁴⁹

Miscellaneous

Anyone may file an official observation or complaint about a polluting activity to a competent authority.³⁵⁰ Hungary has a system of prosecutors that look into criminal and administrative matters, regulated by Act V of 1972. Anyone can ask an administrative prosecutor to investigate an administrative issue. The prosecutor then makes an assessment of the issue. The assessment is not binding but is generally followed by the second instance authority.³⁵¹

The Environment Act establishes civil liability for polluters. Injured parties can also sue under section 100, 339 and 345 of the Civil Code or tort law.³⁵²

³⁴⁴ 2008 National Implementation Report—Hungary at para. 127.

³⁴⁵ Milieu Report—Hungary at 25.

³⁴⁶ *Id.* at 15; ACCC/C/2004/4 Response by the Government of the Republic of Hungary at 12.

³⁴⁷ 2008 National Implementation Report—Hungary at para. 127.

³⁴⁸ *Selected problems of the Aarhus Convention application* at 37.

³⁴⁹ *Id.* at 37-8.

³⁵⁰ 2008 National Implementation Report—Hungary at para. 132.

³⁵¹ Milieu Report—Hungary at 16.

³⁵² Hugai and Komáromi, “Hungary,” 184; Act IV of 1959 on the Civil Code of Hungary, available at <http://www.angelfire.com/mn2/reformclub/hunc1.html> (last accessed 1 Dec. 2010).

Ireland (Republic of)

A. The Administrative and Legal System

Environmental legislation

The most important environmental laws include the Air Pollution Act of 1987, Local Government (Water Pollution) Acts of 1977 and 1990, the Environmental Protection Agency Act of 1992, the Protection of the Environment Act of 2003, the Planning and Development Act of 2000, and the Waste Management Act of 1996.

System for decision-making and administrative appeal

The Environmental Protection Agency (EPA), along with 29 County Councils and 5 City Councils, has primary responsibility for environmental administration and enforcement. The Office of Environmental Enforcement, an office of the EPA, implements and enforces environmental laws. Other government bodies with competence relating to the environment include the Department of Communications, Energy and Natural Resources, the Department of the Environmental Heritage and Local Government, and the Radiological Protection Institute of Ireland.³⁵³

Only very limited environmental procedures are available. Local permit and licensing decisions can be appealed to the Planning Appeals Board (*An Bord Pleanála*). EPA licensing decisions can be appealed to a division of the EPA.³⁵⁴

Ireland has an Ombudsman that investigates complaints against the administration and reports on its findings. The Ombudsman makes non-binding recommendations. There is no particular format required for a complaint, but the complainant should try to resolve the issue with the body concerned before complaining to the Ombudsman.³⁵⁵

The role of the courts

The Irish court system is made up of a Circuit Court, consisting of 37 judges and one president of the court, a District Court, consisting of 63 judges and one president, a High Court of 36 judges and one president, and a Supreme Court, consisting of seven judges and one president. The Circuit and District Courts are regional courts of limited jurisdiction that can only hear cases under a certain monetary amount.³⁵⁶ Environmental statutes have provisions allowing members of the public, including NGOs, to bring

³⁵³ Finola McCarthy and Aoife Shields, "Ireland," in *The International Comparative Legal Guide to: Environment Law 2010: A Practical Cross-boarder Insight into Environment Law* (London: Global Legal Group, 2010), 198.

³⁵⁴ *Id.* at 199.

³⁵⁵ Office of the Ombudsman, Ombudsman Act 1980, <http://www.ombudsman.gov.ie/en/AboutUs/Thelegislationweoperateunder/TheOmbudsmanAct1980> (last accessed 1 Dec. 2010).

³⁵⁶ See www.courts.ie (select "The Courts") (last accessed 1 Dec. 2010).

claims. For example, the Environmental Protection Agency Act allows cases to be brought in either the Circuit Court or High Court.³⁵⁷

B. Procedural remedies

Suspensive effect of procedures

Procedures do not have suspensive effect.³⁵⁸

Requirements for an injunction

Courts will grant injunctions or other interim measures if the claimant makes a *prima facie* case and the harm from not granting the injunction would likely be greater than the harm from granting the injunction.³⁵⁹

Miscellaneous

Individuals can complain to local authorities or the Environmental Protection Agency about environmentally damaging activity. Complainers can request confidentiality, but may be asked to act as a witness. There is also a citizen enforcement procedure.³⁶⁰

Italy

A. The administrative and legal system

Environmental legislation

The Italian Constitution does not contain an explicit reference to environmental protection, but such an obligation has been read into several of its provisions, particularly Articles 32 and 9 on the right to health and protection of the landscape, respectively.³⁶¹ In 2006, Italy enacted the Code of Environmental Law, which harmonizes and codifies the previously scattered environmental laws.³⁶² There are six parts. Part I contains general provisions, Part II regulates Environmental Impact Assessments and Integrated Environmental Authorization, Part III regulates soil and water protection, Part IV

³⁵⁷ Milieu Report—Ireland at 12-13.

³⁵⁸ *Id.* at 16.

³⁵⁹ *Id.*

³⁶⁰ Irish Environmental Protection Agency, *See Something? Say Something: How to Make an Environmental Complaint* (2008), available at <http://www.epa.ie/htmldocs/seesomething/seesomethingsaysomething.htm>.

³⁶¹ Albert Zito, Marina D'Orsogna and Carolyn Frances Giordano, "Italy," in *Access to Justice in Environmental Matters in the EU*, ed. Jonas Ebbesson (The Hague: Kluwer Law International, 2002), 314-5.

³⁶² Legislative Decree 3 April 2006, n. 152, amended by Legislative Decree 16 January 2008, n. 4 and by Legislative Decree 29 June 2010, n. 128; Marcello Clarich, "Italy," in *The International Comparative Legal Guide to: Environment Law 2010: A Practical Cross-boarder Insight into Environment Law* (London: Global Legal Group, 2010), 213.

regulates waste management and remediation of contaminated land, Part V regulates air pollution, and Part VI expresses the precautionary principle and establishes the system of liability.³⁶³ A number of subsequent decrees implement this framework legislation and provide more comprehensive regulation of specific areas of environmental law.³⁶⁴ Some criminal penalties are contained in specific environmental laws; the Criminal Code contains others. Criminal environmental violations are generally punishable by fines and imprisonment for six months to three years.³⁶⁵

System for decision-making and administrative appeal

Responsibility for environmental protection is divided amongst several ministries and agencies at the State and regional/local level. The Ministry of the Environment has primary responsibility at the national level,³⁶⁶ but the Ministry of Cultural Goods, the Ministry of Health and the Ministry of Public Works also share some competence in environmental matters. Regions, Provinces and Municipalities each have the power to grant some types of permits. The National Agency for Environmental Protection (*Agenzia Nazionale per la Protezione Ambientale*) and Regional Agencies for Environmental Protection (*Agenzie Regionali per la Protezione Ambientale*) monitor environmental compliance.³⁶⁷

There are several types of administrative appeals available. Most common is the typical hierarchical appeal, which is made to the administrative body hierarchically superior to the one that issued the contested act. In an atypical hierarchical appeal, the appeal is made to another body that is not hierarchically superior, such as when the contested act was issued by a body without a superior. A third type, opposition appeals, are made to the same body that issued the contested act. Situations in which the opposition appeal is required are established by law. For any of these types, the appeal decision can either be appealed by extraordinary appeal to the president of the republic or appeal to the judicial system.³⁶⁸ While the length of the appeals process varies, in a hierarchical appeal, failure to issue a decision within 90 days of the filing of an appeal constitutes rejection.³⁶⁹

There is no national Ombudsman, but many localities have them. They are regulated regionally. They can assist the public in preparation for an appeal, but cannot go to court or bring a claim themselves.³⁷⁰ Anyone can make a free written request to the Ombudsman, who can request the Public Authority review its contested act or omission. If the official does not comply, the Ombudsman can launch an internal disciplinary

³⁶³ FOALEX, Italy: Legislative Decree No. 152 approving the Code on the Environment, <http://faolex.fao.org> (select “Advanced Search”, select subject selection “All”, enter “Italy” in the Country field and “Code on the Environment” in the words from title field (using AND operator) (last accessed 1 Dec. 2010).

³⁶⁴ *See Id.*

³⁶⁵ Clarich, “Italy,” 208.

³⁶⁶ Zito, D’Orsogna and Giordano, “Italy,” 315.

³⁶⁷ Clarich, “Italy,” 205.

³⁶⁸ Milieu Report—Italy at 14-5. The three types of administrative appeals available are governed by the President of the Republic Decree n. 1199 of 24 November 1971.

³⁶⁹ Milieu Report—Italy at 17.

³⁷⁰ *Id.* at 18.

procedure concerning the officer's responsibility towards the public authority to which he or she belongs.³⁷¹

The role of the courts

Exhaustion of administrative remedies is not required to bring a case to court.³⁷² The administrative court system has undergone major changes within the last decade. Formerly, if a citizen's "subjective right" was infringed upon, the claim belonged before a civil judge. If the citizen merely had a "legitimate interest", the claim went before an administrative judge.³⁷³ Because of the difficulty establishing in which court the claim belonged, this system was overhauled and most administrative issues, including several related to environmental protection, are now properly appealed to the administrative courts.³⁷⁴ The administrative court system has two tiers (Regional Administrative Courts and Council of State), while the civil court system has three tiers, with the third being a cassatory court (Trial Court, Court of Appeal and Court of Cassation).³⁷⁵

Although the Constitution and other laws articulate a right to a reasonable trial duration, the Italian judicial process is relatively slow.³⁷⁶ The Milieu Report noted that there are some administrative judicial cases that took over a decade to be decided.³⁷⁷

B. Procedural remedies

Suspensive effect of procedures

Neither administrative nor judicial proceedings have suspensive effect.³⁷⁸

Requirements for an injunction

During the administrative procedure, the authority hearing the appeal can injunct the effect of the decision either at the request of a party or of its own accord if there are "serious reasons" to do so.³⁷⁹ During judicial review, an injunction may be granted at the request of the claimant if the claimant shows that serious and irreparable harm is likely in the absence of an injunction and puts forth a prima facie case. Other interim measures that preserve the status quo and protect assets are also available.³⁸⁰

³⁷¹ *Id.* at 18.

³⁷² *Id.* at 5.

³⁷³ Zito, D'Orsogna and Giordano, "Italy," 319.

³⁷⁴ Milieu Report—Italy at 19.

³⁷⁵ Zito, D'Orsogna and Giordano, "Italy," 319-20.

³⁷⁶ Milieu Report—Italy at 26.

³⁷⁷ *Id.*

³⁷⁸ Milieu Summary Report at Table 2.

³⁷⁹ Milieu Report—Italy at 17.

³⁸⁰ *Id.* at 27.

Miscellaneous

While a private citizen cannot bring criminal charges, he or she can report a criminal violation of environmental law to the police or other appropriate body. The authorities are required to take action if the information seems accurate.³⁸¹

Persons who are injured by violations of environmental laws or permits can bring a civil suit to stop the polluting activity, obtain monetary damages, or seek remediation. According to Article 2043 of the Civil Code, the plaintiff must prove a) the fault of the defendant, b) that he has been damaged, and c) that there is a connection between the fault and the damage. Article 2050 assigns strict liability if the damage is caused by certain hazardous activities.³⁸²

Latvia

A. The administrative and legal system

Environmental legislation

Article 115 of Latvia's constitution obligates the State to protect the people's right to a healthy environment by providing information about environmental status, and maintaining and improving the environment.³⁸³ The Law on Environmental Protection enumerates environmental principles, assigns responsibility for environmental protection, and lays out the basic system of environmental liability.³⁸⁴ Other important environmental laws are the Law on Environmental Impact Assessment, the Law on Pollution, the Law on Packaging, and the Waste Management Law.³⁸⁵

System for decision-making and administrative appeal

The Ministry of Environmental Protection and Regional Development has primary responsibility for the development and implementation of environmental policy.³⁸⁶ It also supervises the State Environment Service and the State Environment Bureau.³⁸⁷ Regional environmental boards of the State Environment Service make most permit decisions.³⁸⁸

³⁸¹ 2010 National Implementation Report—Italy at pg. 28.

³⁸² Clarich, "Italy," 208.

³⁸³ Latvian Constitution, Art. 115, available in English at <http://www.humanrights.lv/doc/latlik/satver~1.htm> (last accessed 1 Dec. 2010).

³⁸⁴ Latvian Environmental Protection Law, 21 June 2007, available in English at <http://www.vidm.gov.lv/eng/likumdosana/?doc=3300>.

³⁸⁵ Ziedonis Udris and Evita Kizlo, "Latvia," *The International Comparative Legal Guide to Environment Law 2010: A Practical Cross-Boarder Insight into Environment Law* (London: Global Legal Group, 2010), 224.

³⁸⁶ Latvian Environmental Protection Law *passim*.

³⁸⁷ Milieu Report—Latvia at 9

³⁸⁸ Ziedonis Udris and Evita Kizlo, "Latvia," 224.

Administrative appeals may be written or oral. If oral, a transcript is made by the authority and signed by the appellant.³⁸⁹ Any administrative act can be appealed.³⁹⁰ Administrative appeals must be made within one month of the act taking effect. If, however, the act does not state the deadline for bringing an appeal, the deadline is one year after the act takes effect. In the case of injured third parties not invited to participate in the administrative proceedings, the appeal must be brought within one month of when the injured party became aware of the act, at maximum within one year of the act taking effect.³⁹¹

Administrative decisions must be made within one month of the submission of the appeal, unless a shorter time period is provided by law. A claimant can request a shorter time period if the matter is urgent, and the administrative authority must respond in writing to this request “without delay.” The time period can also be extended if objectively necessary.³⁹²

Any person, group of persons, or organization is entitled both to demand that a public authority, official, or private enterprise stop acts or omissions that degrade environmental quality or are harmful to human health or life, legal interests, or property, and to provide environmental authorities with information about activities harming the environment. If the environmental authority receives a demand or information pursuant to this law, it must respond within a set time.³⁹³

The office of the Ombudsman was created in 2007. It is an independent body entitled to make investigations, consult with the public, make assessments, and recommend solutions, but does not have binding authority.³⁹⁴ Anyone can make a written complaint to the Ombudsman free of charge. The Ombudsman must notify the complainant whether it will pursue the matter within one month. Investigations are supposed to be completed within three months, but the Ombudsman can extend the deadline if it has cause. Filing a complaint does not suspend any deadlines for seeking other remedies, nor does it have suspensive effect on the complained about act, so waiting for a resolution through the Ombudsman may cause a claimant to lose the opportunity to seek other remedies.³⁹⁵

The role of the courts

Latvia has a three-tiered court system consisting of 35 district and city courts, six regional courts, and a Supreme Court.³⁹⁶ The Supreme Court consists of a Senate, a civil

³⁸⁹ 2008 National Implementation Report—Latvia at para. 191.

³⁹⁰ *Id.* at para. 205.

³⁹¹ Latvian Administrative Procedure Law of 19 Jan. 2004, Sec. 79, available in English at <http://www.constitutionnet.org/en/vl/item/administrative-procedure-law> [hereinafter Latvian Administrative Procedure Law].

³⁹² Latvian Administrative Procedure Law at Sec. 64.

³⁹³ Latvian Environmental Protection Law at Sec. 6; 2008 National Implementation Report—Latvia at paras. 200-201.

³⁹⁴ 2008 National Implementation Report—Latvia at para 202.

³⁹⁵ Submitting a Complaint to the Ombudsman, http://www.tiesibsargs.lv/eng/submit_a_complaint_to_the_ombudsman (last accessed 1 Dec. 2010).

³⁹⁶ Iona Ceica et al., Guide to Latvian Law and Legal Resources, http://www.nyulawglobal.org/globalex/Latvia.htm#_Court_System_of_Latvia (Jan. 2007).

law chamber and a criminal law chamber.³⁹⁷ The Senate is a cassatory court for cases that originate in the district/city courts.³⁹⁸ The chambers hear appeals from cases that originate in the regional courts. Since 2004, Latvia has also had a separate three-tiered administrative court system, which consists of an Administrative District court, Administrative Regional court, and the Department of Administrative Cases within the Senate of the Supreme Court.³⁹⁹ There is also a Constitutional Court.⁴⁰⁰

Administrative remedies must be exhausted before seeking judicial review.⁴⁰¹ There are no specialized environmental judges.⁴⁰² Cases take an average of 10.4 months at the Administrative Court of First Instance, another 5.8 months at the Administrative Appellate Court, and 3.4 months at the court of cassation.⁴⁰³

Persons whose constitutional rights to a healthy environment have been violated can bring a claim in the Constitutional court. Claims must be filed within 6 months of the final administrative decision becoming effective.⁴⁰⁴

B. Procedural remedies

Suspensive effect of procedures

The administrative procedure has suspensive effect.⁴⁰⁵ If an appeal is ultimately rejected and the act upheld, the act is effective from the original day that the appeals period would have ended had the act not been appealed.⁴⁰⁶ Judicial appeals, including those in administrative courts, do not have suspensive effect, except where otherwise provided by law.⁴⁰⁷

Requirements for an injunction

A court may grant an injunction of a contested administrative act or omission at the reasoned request of a party if there is reason to believe there is a threat of significant harm or damage, the prevention or compensation of which would be considerably hindered or would require incommensurate resources, and the court finds *prima facie* evidence that the contested act is illegal.⁴⁰⁸

³⁹⁷ The Supreme Court and the Latvian Court System, <http://www.at.gov.lv/en/about/operation/system> (11 Mar. 2008).

³⁹⁸ Iona Ceica et al., *supra* note 396.

³⁹⁹ 2008 National Implementation Report—Latvia at para. 199; The Supreme Court and the Latvian Court System, *supra* note 397.

⁴⁰⁰ Iona Ceica et al., *supra* note 396.

⁴⁰¹ Milieu Report—Latvia at 14.

⁴⁰² 2008 National Implementation Report—Latvia at para. 210.

⁴⁰³ Court Administration. *Statistical Analysis of the Work of the Courts in 2009*, <http://www.ta.gov.lv/index.php/lv/29/58/266/index.html> (last accessed 1 Dec. 2010) (Not available in English).

⁴⁰⁴ Milieu Report—Latvia at 19.

⁴⁰⁵ Latvian Administrative Procedure Law Sec. 80.

⁴⁰⁶ *Id.*

⁴⁰⁷ Milieu Summary Report at Table 2.

⁴⁰⁸ Latvian Administrative Procedure Law, Sec. 195, para. 1 (2008 amendment).

Miscellaneous

Monetary damages can be sought if an administrative act or activity causes a person's losses.⁴⁰⁹

Lithuania

A. The administrative and legal system

Environmental legislation

The Lithuanian Constitution obligates the state to protect the environment, and to supervise and regulate the use of natural resources.⁴¹⁰ The Environmental Protection Law of the Republic of Lithuania is a comprehensive framework law governing environmental protection.⁴¹¹ This law enumerates principles of environmental protection, assigns rights and responsibilities, set up a system of monitoring, establishes environmental liability, and contains provisions relating to environmental impact assessments, natural resources, construction, plant operation, waste, chemicals, and radioactive material. A number of sector specific laws support this framework legislation.

System for decision-making and administrative appeal

The Ministry of Environment is the authority with primary responsibility for policy relating to environmental protection, forestry, natural resources utilization, planning, construction, and housing.⁴¹² The Ministry is divided into many smaller bodies with responsibility for individual areas of environmental management. Some of these bodies include the Environmental Protection Agency, regional environmental protection departments, research centers, and inspectorates.⁴¹³

Environmental legal and administrative challenges are governed by the Law on Administrative Disputes Commissions and the Law on Administrative Proceedings of the Republic of Lithuania.⁴¹⁴ Persons who believe their rights have been violated by an administrative decision can bring an administrative appeal to the Commission for

⁴⁰⁹ 2008 National Implementation Report—Latvia at para. 206.

⁴¹⁰ Constitution of the Republic of Lithuania, adopted 25 Oct. 1992, at Arts. 53 and 54, available at http://www.lrkt.lt/Documents2_e.html.

⁴¹¹ Milieu Report—Lithuania at 10, citing Environmental Protection Law of the Republic of Lithuania (*Lietuvos Respublikos aplinkos apsaugos istatymas*), Official Gazette, 1992, No. 5-75, version last amended 28 May 2010 available in English at http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_e?p_id=377606 [hereinafter Lithuanian EPL].

⁴¹² Ministry of the Environment of the Republic of Lithuania, Mission of the Ministry, <http://www.am.lt/VI/en/VI/index.php#r/109> (30 Jan. 2002).

⁴¹³ Ministry of the Environment of the Republic of Lithuania, Addresses of Subordinate Institutions, <http://www.am.lt/VI/en/VI/index.php#r/126> (8 Jan. 2007).

⁴¹⁴ Milieu Report—Lithuania at 10; Law on Public Administration of the Republic of Lithuania available in English at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=162936&p_query=&p_tr2=; Law on Administrative Disputes Commissions available in English at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=91193&p_query=&p_tr2=.

Administrative Disputes.⁴¹⁵ Municipal and regional administrative decisions can be appealed to the Municipal Public Dispute Commissions or the Regional Administrative Dispute Commissions, respectively.⁴¹⁶ Challenges to State administrative decisions are filed with the Chief Administrative Disputes Commission.⁴¹⁷

Generally, the decision whether to use the administrative procedure or go directly to court is at the discretion of the claimant.⁴¹⁸ Claimants frequently choose to skip the administrative procedure because the results are usually appealed to the court by the losing party.⁴¹⁹

The administrative procedure is relatively fast. Complaints must be made within one month from publication (or notification to the party concerned) of the challenged decision. The Administrative Dispute Commission is required to render its decision in fourteen days of receipt of a complaint, but may extend the deadline by another fourteen days if objectively necessary.⁴²⁰

Lithuania has a Seimas (Parliamentary) Ombudsman, which can investigate complaints, make recommendations, and help individuals prepare legal challenges, but has no competence to intervene in judicial proceedings or issue binding decisions. Anyone may file a complaint in writing free of charge. If a complaint is made orally, the Ombudsman may investigate at its discretion. Complaints must be made within one year of the contested act, but the Ombudsman may investigate late complaints at its discretion.⁴²¹

The role of the courts

Lithuania has courts of general jurisdiction, administrative courts, and a Constitutional Court. The general jurisdiction court system includes 54 district courts, five regional courts, one appeals court and one Supreme Court. Some cases originate in the district courts, and others originate in the regional courts, as assigned by law. Cases that originate in the district courts can be appealed to the regional courts. Cases that originate in the regional courts can be appealed to the appeals court. The Supreme Court is a cassatory court that can review the final decisions of the lower courts of general jurisdiction.⁴²²

The administrative court system includes five regional administrative courts and one Supreme Administrative Court.⁴²³ As noted above, exhaustion of administrative remedies is not required to bring a claim to the administrative court.⁴²⁴ If an administrative appeal was made, the judicial appeal must be filed within 20 days of

⁴¹⁵ 2005 National Implementation Report—Lithuania at 28.

⁴¹⁶ Milieu Report—Lithuania at 8.

⁴¹⁷ *Id.* at 11.

⁴¹⁸ There are a few exceptions, enumerated in law, for which the appeal is required to be initiated either through the administrative or judicial procedure. Law on Public Administration of the Republic of Lithuania Arts. 18, 19 & 22.

⁴¹⁹ Milieu Report—Lithuania at 13.

⁴²⁰ Law on Public Administration of the Republic of Lithuania Arts. 30 & 31.

⁴²¹ Milieu Report—Lithuania at 5, 8; <http://www.lrski.lt/index.php?l=EN>.

⁴²² National Courts Administration, Judicial System of the Republic of Lithuania, <http://www.teismai.lt/en/courts/judicial-system> (2009).

⁴²³ Milieu Report—Lithuania at 7.

⁴²⁴ *Id.* at 5.

receipt of the administrative review decision.⁴²⁵ Otherwise, the claim must be filed within one month of the issue of the contested decision, or, if the decision demands compliance by a certain deadline, within two months of that deadline.⁴²⁶ Claims alleging violations of environmental law must be made directly to the administrative court; there are no administrative remedies available.⁴²⁷

Preparation for administrative cases must be completed within one month of the acceptance of the complaint. The case must be heard and decided at the first instance level within two months, unless a shorter time limit is required by law.⁴²⁸ The deadline may be extended up to one month in cases in which the legality of a regulatory administrative act is at issue.⁴²⁹ Cases must be completed in all instances within six months.⁴³⁰

B. Procedural remedies

Suspensive effect of procedures

Proceedings do not have suspensive effect.⁴³¹

Requirements for an injunction

There is no possibility of injunction during the administrative procedure, which takes at maximum 28 days.⁴³² During the administrative judicial procedure, a court can grant an injunction or other interim measures at the justified request of a claimant or of its own accord if it appears that failure to grant an injunction may make the enforcement of the court decision more difficult or impossible.⁴³³ The court can enjoin all or part of the disputed act.⁴³⁴

Miscellaneous

Individuals whose health, property or interests have been harmed by environmental damage can seek compensation through a civil suit.⁴³⁵

⁴²⁵ Milieu Report—Lithuania at 15; Law on Public Administration of the Republic of Lithuania Art. 32.

⁴²⁶ Milieu Report—Lithuania at 16; Law on Public Administration of the Republic of Lithuania Art. 33.

⁴²⁷ Milieu Report—Lithuania at 5.

⁴²⁸ The law says the case must be heard and decided within two months of the issuance of the order to hear the case. It is unclear whether the order to hear the case is issued at the time of acceptance of the case, after the preparation period, or sometime in between. Law on Public Administration of the Republic of Lithuania Art. 65(3).

⁴²⁹ Law on Public Administration of the Republic of Lithuania Art. 65.

⁴³⁰ Milieu Report—Lithuania at 20.

⁴³¹ *Id.* at 19.

⁴³² *Id.* at 15.

⁴³³ Law on Public Administration of the Republic of Lithuania Art. 71.

⁴³⁴ 2005 National Implementation Report—Lithuania at 28.

⁴³⁵ Lithuanian EPL Art. 33.

Malta

A. The administrative and legal system

Environmental legislation

The Maltese Constitution requires the State to safeguard the landscape.⁴³⁶ The Environment and Development Planning Act of 2010 is the primary law on environmental issues. Part II asserts that it is the duty of every person as well as the Government to protect the environment. Part III establishes administrative and regulatory bodies. Part IV regulates environment and development planning. Part V covers environmental protection and development control, including licensing. Part VII lists offenses and penalties, which include fines and imprisonment not exceeding three years.⁴³⁷ This Act is supported by several regulations.

System for decision-making and administrative appeal

The Malta Environment and Planning Authority (MEPA) has primary administrative authority in environmental matters, and is the Aarhus Convention Focal Point.⁴³⁸ The Ministry for Resources and Rural Affairs (MRRA) has competence in some areas affecting the environment, such as agriculture, waste management, and climate change.⁴³⁹ MEPA's permit and environmental protection decisions can be appealed to the Environment and Planning Review Tribunal, a quasi-judicial body. Appeals must be made within thirty days of a decision, or within fifteen days of an enforcement notice. Alternately, the appellant may file a request for reconsideration with MEPA within the same time limits, and appeal to the tribunal within thirty days from receipt of MEPA's reply. The Tribunal must hold its first hearing within three months of receipt of the appeal, or within six working days if an injunction has been granted.⁴⁴⁰

Malta's Ombudsman is an independent parliamentary officer appointed by the President of the Republic with the approval of the House of Representatives. The Ombudsman can launch an investigation upon receiving a complaint or of its own accord. Complaints must be made within six months of when the complainant became aware of the disputed matter, but the Ombudsman can make exceptions at its discretion. Complaints may be made via a letter or online complaint form. The Ombudsman can investigate and make recommendations; the recommendations are nonbinding but generally followed.⁴⁴¹

⁴³⁶ Constitution of Malta (1964), Ch. 2 Sec. 9, available at <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8566&l=1>.

⁴³⁷ Environment and Development Planning Act, ch. 504 of the Laws of Malta, Act X of 2010, available at <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11407&l=1>.

⁴³⁸ MEPA, Organisation, <http://www.mepa.org.mt/organization> (last accessed 1 March 2011).

⁴³⁹ MRRA, Organisational Chart, <http://www.mrra.gov.mt/htdocs/docs/ministrystructure.pdf> (15 November 2010).

⁴⁴⁰ Environment and Development Planning Act, art. 41; MEPA, Right of Appeal, <http://www.mepa.org.mt/permits-appeals> (last accessed 1 March 2011).

⁴⁴¹ What the Ombudsman can do for you, <http://www.ombudsman.org.mt/index.asp?pg=whatombcando> (last accessed 1 March 2011).

The role of the courts

The judicial system is divided into civil courts and criminal courts. The Constitutional Court is the final national arbiter of cases involving human rights protected both under the Constitution of Malta and the European Convention on Human Rights, the interpretation of the Constitution and the invalidity of laws. It is also the first instance decider or election issues.⁴⁴²

Environment and Planning Review Tribunal decisions can be appealed to the Court of Appeal. Appeals must be filed within twenty days of the Tribunal decision being made public.⁴⁴³

B. Procedural remedies

Suspensive effect of procedures

Neither administrative nor judicial procedures have suspensive effect.

Requirements for an injunction

Generally, injunctions are not available during appeals to the Environment and Planning Review Tribunal. In appeals from decisions related to certain types of developments, the tribunal may grant an injunction (referred to in law as a suspension) at the request of the appellant if the development is not “of strategic significance or national interest, related to any obligation ensuing from a European Union Directive, affect[ing] national security or . . . interests of other governments.” Further, the Tribunal must find that in the absence of an injunction, harm would be caused that is disproportionate to the harm caused by granting the injunction, and that the request for an injunction was not frivolous.⁴⁴⁴

Courts can also grant injunctions. To get an injunction against a private party, the claimant must show an injunction is necessary to preserve his right, and make a prima facie case that he has that right. It is more difficult to get an injunction against a government body. The government party must state in open court that it intends to do the thing that the injunction would prohibit. Then, the court must hear arguments and find that there would be disproportionate harm to the claimant in the absence of an injunction.⁴⁴⁵

⁴⁴² Judiciary of Malta, Court System of Malta, <http://www.judiciarymalta.gov.mt/file.aspx?f=508> (last accessed 1 March 1, 2011)

⁴⁴³ Environment and Development Planning Act, art. 41(6).

⁴⁴⁴ *Id.* at art. 41. This is my understanding of the injunction requirements. Here is the actual language: “. . . the Tribunal . . . shall not suspend the execution of such a permit unless it is satisfied, after hearing all the parties, that unless the execution of the permit is suspended the prejudice that would be caused would be disproportionate when compared with the actual doing of the thing so permitted or if the request is deemed as frivolous or vexatious.” Types of development against which injunctions can be requested are listed in the Seventh Schedule of the Act.

⁴⁴⁵ Code of Organization and Civil Procedure, ch. 12 of the Laws of Malta, Art. 873 (2)-(3), available at <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8577&l=1>.

The Netherlands

A. The administrative and legal system

Environmental legislation

Article 21 of the Dutch Constitution (*Grondwet*) establishes that it shall be the concern of the authorities to keep the country habitable and to protect and improve the environment.⁴⁴⁶ The Netherlands has a universally applicable Environmental Code “Wm” (*Wet milieubeheer*) that harmonizes the general rules and principles in this field, as well as regulates waste, environmental planning, environmental quality standards, fees and other economic instruments. Environmental Impact Assessments are regulated in Chapter 7 of the Wm. The Dutch Act “Wabo” (*Wet algemene bepalingen omgevingsrecht*) that lays down the rules for granting an All-in-one Permit for Physical Aspects entered into force on 1st October, 2010. The Act enables members of the public and companies to use a single transparent procedure to apply to one competent authority for permits for activities that impact the physical environment. The new Act has replaced around 25 separate permits for such matters as construction, demolition, spatial planning, listed buildings and the environment with a single permit covering all activities. Other activities with environmental impact are regulated by decrees, for example the Decree on general rules for activities (*Activiteitenbesluit*).

However, the Wm and the Wabo do not cover all areas of environmental law. Soil protection and noise are covered by sector specific laws. The Water Act creates a permit regime for discharges into water, water operations, and groundwater abstractions. Other important environmental legislation includes the Nature Conservation Act (*Natuurbeschermingswet*) and the Flora and Fauna Act (*Flora- en faunawet*).

A distinct feature of Dutch environmental regulation area is the use of agreements between different sectors of society instead of regulations. Those so-called covenants commonly are signed between national authorities and branch organizations for certain industry or other kinds of operators. Nowadays the use of covenants tends to be less in vogue.

System for decision-making and administrative appeal

The Minister of Infrastructure and the Environment (*Minister van Infrastructuur en Milieu*) (I & M) has primary responsibility for environmental administration and for issues regulated under the Water Act.

The actual implementation and enforcement of environmental regulations is managed by the provinces and the municipalities. Most permits are issued at the local level. Regional water boards or provinces are the responsible authorities under the Water Act. They are responsible for both quality and quantity of the water and issue permits. Water boards are also the owners and operators of all sewage plants in the Netherlands.

Most types of administrative decisions and omissions are challengeable through administrative procedures. However, there are exceptions to this rule. A “negative list”

⁴⁴⁶ Constitution of the Kingdom of the Netherlands 2002, available at <http://www.legislationline.org/documents/section/constitutions/country/12>.

has been introduced during the last decade, including e.g. national airports. Decisions concerning the activities on the list cannot be appealed via an administrative law procedure.⁴⁴⁷ It is still possible to challenge these decisions through civil procedures.

If an authority does not decide on a matter within certain time limits—commonly eight weeks—the claimant may seek judicial review. Exhaustion of administrative remedies is in those situations required before bringing the case to court. The uniform public preparatory procedure, paragraph 3.4 of the General Administrative Law Act (*Algemene wet bestuursrecht*) applies mostly in cases of environmental decision-making. Where a public preparatory procedure has been used—including announcement and public hearing—the decision can be brought to court directly.

The role of the courts

The courts of general jurisdiction decide on civil and criminal cases. The system has three tiers: district courts (*Rechtbank*) in the first instance, courts of appeal (*Gerechtshof*) in the second instance, and the Dutch Supreme Court (*Hoge Raad*) in the final instance. The *Hoge Raad* is a cassatory court.

Appeals of administrative decisions on the environmental area are made first to the administrative division of the *Rechtbank* and finally to a legal unit of the Council of State (*Raad van State*), *Afdeling Bestuursrechtspraak* (ABRS).⁴⁴⁸ The ABRS can try the case on the merits, but the trend is towards respecting the factual findings of the court of first instance. The effect of this attitude of the court is that appeal procedures mostly deal with formal issues.⁴⁴⁹ In some types of cases, appeal to the ABRS is the first and only instance.

As mentioned above, certain administrative decisions cannot be appealed to the administrative courts. In those cases, injured parties may bring a suit under the Civil Code (*Burgerlijk Wetboek*). A plaintiff can ask the court to permanently halt the damaging activity. NGOs have been regarded as representatives of a public interest, which is protected by the *Burgerlijk Wetboek*, and have therefore been allowed to bring actions in civil courts to stop environmentally damaging activities.⁴⁵⁰

B. Procedural remedies

Suspensive effect of procedures

Procedures do not have suspensive effect unless otherwise stated in law.⁴⁵¹ However, if a request for injunction is made within a time limit, commonly six weeks, no action can be

⁴⁴⁷ See Milieu Report—Netherlands at 8-9.

⁴⁴⁸ Before 2011, appeals went directly to ABRS.

⁴⁴⁹ Jonathan Verschuuren, “The Netherlands,” in Nicolas de Sadeleer et al., *Access to Justice in Environmental Matters and the Role of NGOs – Empirical Findings and Legal Appraisal* (Groningen/Amsterdam: Europa Law Publishing 2005), 111. According to his investigation, 70% of the NGOs successes in environmental cases concern formal issues.

⁴⁵⁰ HR 21 Mar 2003, JB 2003, 130 – Waterpact. The case is carefully described by Verschuuren in *Access to Justice in Environmental Matters and the Role of the NGOs* 2005, 112-113.

⁴⁵¹ Milieu Report—Netherlands at 16.

taken under the contested decision before a decision on whether to grant the injunction is made.

Requirements for an injunction

A single judge will rule on the injunction in a simplified procedure. Injunctions are generally only granted if the contested decision is manifestly illegal. Most appeals do not go any further if the request for injunction is denied.

Norway

A. The administrative and legal system

Environmental legislation

The Norwegian Constitution establishes a right to a healthy environment and a natural environment that is productive and diverse, and that natural resources should be managed so that future generations will have this right as well. It establishes that citizens are entitled to environmental information in order to safeguard their environmental rights.⁴⁵²

Norway has several framework environmental acts that establish environmental principals and delegate authority for further regulation and decision-making. Framework Acts include the Act of 13 March 1981 No.6 Concerning Protection Against Pollution and Concerning Waste (Pollution Control Act), the Act of 9 May 2003 No.31 Relating to the Right to Environmental Information and Public Participation in Decision-making Processes Relating to the Environment (Environmental Information Act), Act of 19 June 2009 No. 100 Relating to the Management of Biological, Geological and Landscape Diversity (Nature Diversity Act) and the Act of 14 June 1985 No. 77 the Planning and Building Act. These acts are supported by comprehensive regulations that contain specific provisions for environmental management. Important regulations include the Regulations on Environmental Impact Assessment, Pollution Regulations, Waste Regulations and Product Regulations. There are also sector specific acts that regulate particular areas, such as the Greenhouse Gas Emissions Trading Act, the Nature Diversity Act and the Product Control Act. Each law contains its own liability and criminal penalty provisions.⁴⁵³

System for decision-making and administrative appeal

The Ministry of the Environment has primary responsibility for effectuating Government environmental policies. Its five sub-agencies include the Norwegian Pollution Control

⁴⁵² The Constitution, as laid down on 17 May 1814 by the Constituent Assembly at Eidsvoll and subsequently amended, most recently 2 February 2006, available in English at <http://www.ub.uio.no/ujur/ulovdata/lov-18140517-000-eng.pdf>.

⁴⁵³ Acts and Regulations are available in English at <http://www.regjeringen.no/en/dep/md/documents-and-publications/acts-and-regulations.html?id=271041>

Authority, the Directorate for Nature Management, the Norwegian Mapping and Cadastre Authority, the Directorate for Cultural Heritage, and the Norwegian Polar Institute.⁴⁵⁴

Administrative appeals are governed by the Public Administration Act, and provisions in specific Acts. Administrative decisions may generally be appealed to the hierarchically superior body. For example, decisions under the Pollution Control Act made by the Norwegian Pollution Control Authority are appealed to the Ministry of the Environment, decisions made by county governors are appealable to the Norwegian Pollution Control Authority, and decisions made by municipalities are appealed to the municipality or city council.⁴⁵⁵ Appeals must be filed within three weeks of being notified of the decision, or, if notification is made by public announcement, within three weeks of publication. If a person is not notified of a decision and the decision is not published, the time limit for appeals runs from when the person knew or should have known about the decision, but if the decision confers a right on any person, the time limit expires three months after the decision.⁴⁵⁶

Norway has a Parliamentary (*Storting*) Ombudsman for Public Administration. It also has several specialized Ombudsmen, but none that specialize in environmental matters. Any person who thinks his or her rights have been violated by the public administration can make a complaint to the Ombudsman. The complaint must include the name of the complainant and be submitted within one year of the contested matter. The Ombudsman can initiate an investigation in response to a complaint or of its own accord. It can report on its findings and make recommendations, including recommendations of disciplinary action to prosecutors. However, the Ombudsman has no binding authority.⁴⁵⁷

The role of the courts

There are no special judicial procedures for environmental cases. Norway has a three tiered court system consisting of district courts (*tingretten*), appeals courts (*lagmannsretten*), and a Supreme Court (*Høyesterett*). There are also special tribunals that hear specific types of cases, including a Land Consolidation Court (*jordskifteretten*), which hears real estate matters.⁴⁵⁸ Judicial review of administrative decisions may be sought under the Dispute Act, which regulates civil procedure.⁴⁵⁹

B. Procedural remedies

⁴⁵⁴ Norwegian Ministry of the Environment, Cooperation for a Better Environment: A Guide to Norwegian Environmental Competence (2005), available at <http://www.regjeringen.no/en/dep/md/documents-and-publications/Handbooks-and-brochures/2005/Co-operation-for-a-better-environment-2.html?id=88174>.

⁴⁵⁵ Pollution Control Act at Sec. 85; Act of 10 February 1967 relating to procedure in cases concerning the public administration as subsequently amended, most recently by Act of 1 August 2003 No. 86 (Public Administration Act) at Sec. 28, available in English at <http://www.kredittilsynet.no/archive/Osto/01/02/Forva011.pdf>.

⁴⁵⁶ Public Administration Act at Sec. 29.

⁴⁵⁷ Act Concerning the Storting's Ombudsman for Public Administration of 22 June 1962 No. 8, last amended 16 Jan 2004 No. 3.

⁴⁵⁸ Domstol Administrasjonen, Courts of Norway, available at <http://www.domstol.no/en/The-Courts-of-Justice> (last accessed 1 Dec. 2010).

⁴⁵⁹ Act of 17 June 2005 no. 90 relating to mediation and procedure in civil disputes (The Dispute Act) at Sec. 1-5, available at <http://www.ub.uio.no/ujur/ulovdata/lov-20050617-090-eng.pdf>.

Suspensive effect of procedures

Neither administrative or judicial procedures have suspensive effect.

Requirements for an injunction

While appeals do not have suspensive effect, an agency (either the body that issued the contested decision, the appellate authority, or another superior agency) can decide not to implement an administrative decision until the time limit for appeals has expired, or an appeal has been decided. The agency can also delay implementation during a judicial appeal or while a complaint is being considered by the Ombudsman for Public Administration. If a party requests a delay, a decision must be made as soon as possible, and if refused, grounds for refusal must be given.⁴⁶⁰

Injunctions and other interim measures are available during judicial proceedings. Ordinarily, if a claimant is granted an injunction, and the claim is later determined to be invalid, the claimant is strictly liable for any damages that the other party incurred due to the injunction. In environmental cases, the party requesting the injunction is only liable for damages if he or she knew or should have known that the claim was not valid when the injunction was granted.⁴⁶¹

Poland

A. The administrative and legal system

Environmental legislation

The Polish Constitution obligates the State and citizens to protect the environment. It also says that environmental protection is a valid reason to curtail other constitutional rights, and requires public authorities to pursue environmentally sustainable policies, protect the environment, and support the activities of citizens to maintain and improve environmental quality.⁴⁶² The Act of 27th April 2001 on Environmental Protection Law is framework legislation that establishes general rules and institutions for environmental protection, as well as regulates air pollution. Sector specific rules regulate environmental impact assessments, waste management, water protection and management, natural resources protection and management, and nature and animal protection, amongst others.⁴⁶³ Criminal liability for environmental damage is established in Chapter XXII of the Polish Criminal Code and in individual statutes.⁴⁶⁴

⁴⁶⁰ Public Administration Act at Sec. 42.

⁴⁶¹ 2008 National Implementation Report—Norway at para. 111.

⁴⁶² Polish Constitution of 1997, Arts. 5, 31, 68 & 74, available at <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

⁴⁶³ Christian Schmidt, "Poland," *The International Comparative Legal Guide to Environment Law 2010: A Practical Cross-Boarder Insight into Environment Law* (London: Global Legal Group, 2010), 294.

⁴⁶⁴ Schmidt, "Poland," 297; Criminal Code of the Republic of Poland Ch. XXII of 6 June 1997, available in Polish at <http://www.legislationline.org/documents/section/criminal-codes/country/10>.

System for decision-making and administrative appeal

Numerous agencies and other bodies at the local, regional, and State level share responsibility for administering and enforcing environmental law. Some of these include the Ministry of Environmental Protection, the General Director and Regional Directors for Environmental Protection, and the Environmental Protection Inspectorate.⁴⁶⁵

Administrative appeals can be made to the hierarchically superior authority, or, when established in law, to special appeals bodies or other assigned authorities. The appeal must be made through the body that issued the contested decision. If all affected parties file an appeal, the deciding authority has the opportunity to modify its decision without passing the appeal to the next level. The administrative appeal must be made within 14 days of delivery of the first instance decision.⁴⁶⁶ Administrative proceedings should be completed within one month; the deadline may be extended to two months in difficult cases, or longer if justified. Generally, administrative decisions are rendered within the limit, and within three months at the longest.⁴⁶⁷

Poland has a Parliamentary Ombudsman known as the Human Rights Defender. There is no charge and no particular format required to bring a complaint, however the complainant should include his identity, the identity of the person whose rights are alleged to be violated, and the subject of the case. The Ombudsman cannot issue binding decisions, but can initiate legal or administrative proceedings or assist others in preparing their case. The ombudsman is not bound by time limits.⁴⁶⁸

The role of the courts

Poland has courts of ordinary jurisdiction, administrative courts, military courts, and a Constitutional Tribunal. The courts of ordinary jurisdiction are four tiered, and consist of district courts (*rejon*), provincial courts (*okręg*), courts of appeal, and a Supreme Court. The Supreme Court is divided into four chambers: civil, criminal, military, and labor, social security, and public affairs.⁴⁶⁹ The administrative court is two tiered, and consists of provincial (*voievodship*) administrative courts and a cassatory Supreme Administrative Court.⁴⁷⁰

A claimant must exhaust administrative remedies before proceeding to court.⁴⁷¹ Complaints must be filed within 30 days of notification of the second instance administrative decision.⁴⁷² Complaints must again be filed through the first instance

⁴⁶⁵ Schmidt, "Poland," 294.

⁴⁶⁶ *Selected problems of the Aarhus Convention application* at 41; Milieu Report—Poland at 12.

⁴⁶⁷ Milieu Report—Poland at 21.

⁴⁶⁸ The Ombudsman Act, Act of 15 July 1987 on the Human Rights Defender at Arts. 10, 14-16.1, available at <http://www.brpo.gov.pl/index.php?md=8537&s=3>; Milieu Report—Poland at 8.

⁴⁶⁹ Piotr Rakowski and Robert Rybicki, Update: An Overview of Public Law, http://www.nyulawglobal.org/globalex/Poland1.htm#_The_Court_system (Sep. 2010); Supreme Court of the Republic of Poland, Organization; <http://www.sn.pl/english/sadnajw/index.html> (last accessed 1 Dec. 2010).

⁴⁷⁰ *Selected problems of the Aarhus Convention application* at 41; Naczelny Sąd Administracyjny, <http://www.nsa.gov.pl/index.php?/pol> (2007) (not available in English).

⁴⁷¹ *Selected problems of the Aarhus Convention application* at 41.

⁴⁷² Milieu Report—Poland at 18; *Prawo o postępowaniu przed sądami administracyjnymi* (Act on Proceedings Before the Administrative Court), Journal of Laws of 20 September 2002 at Art. 53, available

administrative decision-maker to give it a chance to modify its decision without going to court.⁴⁷³ Cases usually take several months at the provincial administrative court and about a year at the Supreme Administrative Court.⁴⁷⁴

B. Procedural remedies

Suspensive effect of procedures

Administrative appeals have suspensive effect, although in rare circumstances an administrative authority can grant an order of immediate enforceability. Judicial appeals do not have suspensive effect.⁴⁷⁵

In a civil case, an appeal suspends the first instance court decision, but an appeal to the Supreme Court does not suspend the second instance court decision.⁴⁷⁶

Requirements for an injunction

The administrative court may grant an injunction at the motion of the claimant. The claimant must show that there is a plausible threat of serious harm or damage that would be difficult to undo if the injunction is not granted.⁴⁷⁷

In a civil procedure, the court may require interim protective measures including an injunction to prevent environmental harm.⁴⁷⁸

Portugal

A. The administrative and legal system

Environmental legislation

Articles 9 and 66 of Portugal's Constitution establish that everyone has a fundamental right to a healthy environment and a duty to defend it, and assigns the State responsibility for environmental protection.⁴⁷⁹ Portugal has a comprehensive Framework Law on the Environment that governs nearly all environmental issues.⁴⁸⁰ Public access to the courts

at http://bip.biuletyn.info.pl/php/strona.php3?bip=bip_wsawa&id_dzi=11&lad=a&id_men=47 (not available in English).

⁴⁷³ *Selected problems of the Aarhus Convention application* at 41; *Prawo o postępowaniu przed sądami administracyjnymi*, supra note 472 at Art. 54.

⁴⁷⁴ Milieu Report—Poland at 22.

⁴⁷⁵ *Selected problems of the Aarhus Convention application* at 43; Milieu Report—Poland at 22.

⁴⁷⁶ Milieu Report—Poland at 26.

⁴⁷⁷ *Id.* at 22; *Prawo o postępowaniu przed sądami administracyjnymi*, supra note 472 at Art. 61 Sec. 3.

⁴⁷⁸ *Selected problems of the Aarhus Convention application* at 45.

⁴⁷⁹ Constitution of Portugal 2005 (7th Edition), available in English at

<http://www.tribunalconstitucional.pt/tc/conteudo/files/constituicaoingles.pdf>; João Pereira Reis and Manuel de Andrade Neves, "Portugal," in *Access to Justice in Environmental Matters in the EU*, ed. Jonas Ebbesson (The Hague: Kluwer Law International, 2002), 400-1.

⁴⁸⁰ Law 11/87 of 7 April 1987, Amended by Law No. 13/2002 of 19 February, available in Portuguese at <http://www.idesporto.pt/DATA/DOCS/LEGISLACAO/doc155.pdf>; Reis and Neves, "Portugal," 399.

is governed by the Popular Action Law.⁴⁸¹ Crimes against the environment are addressed in both the Framework Law and the Penal Code.⁴⁸²

System for decision-making and administrative appeal

The Ministry for the Environment, Planning and Regional Development is the agency with principle responsibility for environmental protection.⁴⁸³ Several other State authorities with environmental competence include the Portuguese Environmental Agency, the Water Agency, the Nature Conservation and Biodiversity Agency, and the Water and Waste Regulation Agency. The State governs most aspects of environmental protection, but local administrations also play a role, particularly in the area or permitting.⁴⁸⁴

Portugal has the *actio popularis*, meaning that any citizen, qualifying association or foundation, or municipal authorities may appeal administrative decisions detrimental to the environment.⁴⁸⁵ Both acts and omissions can be challenged. Hierarchical appeals must be made within 30 days of the issue of the contested decision. A decision must be made within another 30 days, or up to 90 days when an investigation is required.⁴⁸⁶

Portugal's Ombudsman is selected by the Assembly of the Republic. It is an independent body that can launch investigations based on citizens' complaints or of its own accord. The Ombudsman has no binding authority, but makes recommendations.⁴⁸⁷

The role of the courts

Portugal has courts of general jurisdiction, administrative and tax courts, a Constitutional Court and an Audit Court. The courts of general and administrative jurisdiction are both three tiered.⁴⁸⁸

A final administrative decision is required in order to seek judicial review.⁴⁸⁹ Exhaustion of remedies is not always required, however.⁴⁹⁰ Courts can annul but not reform administrative decisions.⁴⁹¹

Judicial administrative appeals must be brought within two months of the contested administrative decision.⁴⁹² Second instance appeals must be made within thirty days from notification of the first instance decision, or fifteen days in urgent cases. In civil cases, the second instance appeal must be made within ten days from notification of

⁴⁸¹ Milieu Report—Portugal at 5.

⁴⁸² See Milieu Report—Portugal at 22; Framework Law, supra note 479 at Art. 46.

⁴⁸³ Reis and Neves, "Portugal," 400.

⁴⁸⁴ *Id.*

⁴⁸⁵ *Id.* at 404.

⁴⁸⁶ Milieu Report—Portugal at 10.

⁴⁸⁷ Statute of the Ombudsman, Law n.º 9/91, of 9 Apr., as amended by Law 30/96, of 14 Aug., and Law 52-A/2005, of 10 Oct., available in English at <http://www.provedor-jus.pt/Ingles/OmbudsmanStatute.htm>; 2005 National Implementation Report—Portugal at 28.

⁴⁸⁸ Tiago Fidalgo de Freitas, Update: Legal Research in Portugal, http://www.nyulawglobal.org/globalex/Portugal1.htm#_3._Case-law (Dec. 2009).

⁴⁸⁹ Reis and Neves, "Portugal," 404-5.

⁴⁹⁰ Milieu Report—Portugal at 13.

⁴⁹¹ Reis and Neves, "Portugal," 406.

⁴⁹² Milieu Report—Portugal at 13.

the first instance decision.⁴⁹³ The judicial administrative procedure averages more than one year, and frequently takes significantly longer.⁴⁹⁴

B. Procedural remedies

Suspensive effect of procedures

Hierarchical administrative proceedings have suspensive effect.⁴⁹⁵ Administrative court appeals suspend the first instance judicial judgment unless otherwise provided in law or the judge so rules.⁴⁹⁶ Civil appeals do not suspend the first instance judgment.⁴⁹⁷ Judicial review does not otherwise have suspensory effect.⁴⁹⁸

Requirements for an injunction

A party may request an injunction or other interim measures if needed to ensure the court's final judgment will be enforceable. The judge must decide whether to grant interim measures within 5 days. The request must be granted if there is a serious risk of damage.⁴⁹⁹

Miscellaneous

Citizens and NGOs may not bring criminal cases directly, but may provide information to or otherwise assist the public prosecutor, who may initiate a case based on the information.⁵⁰⁰

Under the Framework Law on the Environment, all citizens have the right to a pleasant and balanced environment. Those whose rights under the Framework are threatened or injured can seek damages in civil court, including moral damages. They can also seek the cessation of the damaging acts and remediation of the damage.⁵⁰¹

Romania

A. The administrative and legal system

Environmental legislation

Article 35 of Romania's Constitution states that a healthy environment is a fundamental right. It obligates the state to provide a framework for the exercise of this right, and

⁴⁹³ *Id.* at 18.

⁴⁹⁴ *Id.* at 21.

⁴⁹⁵ *Id.* at 10.

⁴⁹⁶ *Id.* at 18.

⁴⁹⁷ *Id.*

⁴⁹⁸ Milieu Summary Report at 12.

⁴⁹⁹ Milieu Report—Portugal at 22.

⁵⁰⁰ *Id.* at 22-3.

⁵⁰¹ 2005 National Implementation Report—Portugal at 28; Reis and Neves, "Portugal," 408.

obligates everyone to protect and improve the environment.⁵⁰² The primary law regulating access to environmental justice is Ordinance 195/2005 on environmental protection, which contains the principles and framework for environmental protection, including provisions on permitting and liability.⁵⁰³ Sector specific regulations are contained in secondary legislation.⁵⁰⁴ Criminal liability is provided for in the framework legislation and a supplemental ordinance on environmental liability.⁵⁰⁵

System for decision-making and administrative appeal

The Ministry of Environment is the primary administrative agency with responsibility for environmental protection. Two of its subordinate agencies are particularly important. One is the National Agency for Environmental Protection, which coordinates regional strategies for environmental protection, provides technical support, implements environmental legislation, and authorizes environmental activities.⁵⁰⁶ The other is the National Environmental Guard, which is responsible for ensuring compliance with environmental law. The Ministry of Agriculture, Forests, and Rural Development has competence in the areas of soil and forest protection.⁵⁰⁷

Administrative appeals are filed through a formal complaint to the responsible authority.⁵⁰⁸ There are specific procedures required for permit and EIA appeals.⁵⁰⁹

Romania has an Ombudsman, which it calls the People's Advocate. Any person who believes his or her rights or freedoms have been violated may file a complaint to the Ombudsman. The complaint must be in writing, signed by the complainant, and contain information regarding the injustice complained of, the public authority involved, proof that the agency has refused to deal with the complaint, whether the complaint has been addressed by the judicial system, and the names of any public authorities to whom the case has been referred previously. The complaint must be made within one year of when the complainant became aware of the violation. The Ombudsman can launch an investigation after receiving a complaint or of its own accord, and can make recommendations or refer the case to Constitutional Court.⁵¹⁰

⁵⁰² Constitution of Romania available in English at <http://www.camera-deputatilor.ro/pls/dic/site.page?id=371> (last accessed 1 Dec. 2010); *Report on Access to Justice in Environmental Matters* at 82.

⁵⁰³ Government Emergency Ordinance No. 195/2005 on environmental protection published in Official Gazette No. 1196/2005, as amended and supplemented; Global Legal Group at 303.

⁵⁰⁴ *Report on Access to Justice in Environmental Matters* at 82. A list of environmental legislation is available on the Ministry of Environment's website at <http://www.mmediu.ro/vechi/legislation.htm> (last accessed 1 Dec. 2010).

⁵⁰⁵ Ana Maria Goga and Florin Dobre, "Romania," in *The International Comparative Legal Guide to Environment Law 2010: A Practical Cross-Boarder Insight into Environment Law* (London: Global Legal Group, 2010), 305; Government Emergency Ordinance No. 68/2007 on environmental liability.

⁵⁰⁶ Goga and Dobre, "Romania," 303; see also the Ministry of Environment's website at http://www.mmediu.ro/vechi/index_en.html and the National Agency for Environmental Protection's website at <http://www.anpm.ro>.

⁵⁰⁷ Goga and Dobre, "Romania," 303.

⁵⁰⁸ *Report on Access to Justice in Environmental Matters* at 88.

⁵⁰⁹ Goga and Dobre, "Romania," 304; *Report on Access to Justice in Environmental Matters* at 84. I have been unable to find detailed information about these procedures in English.

⁵¹⁰ The People's Advocate Institution, <http://www.avp.ro/preznoue.html> (last accessed 1 Dec. 2010).

The role of the courts

The Romanian judicial system consists of first instance courts, military courts, tribunals, appeals courts, a High Court of Cassation and Justice and a Constitutional Court. Administrative claims are brought in administrative sections of the regular courts. The Tribunals, appeals courts, and High Court of Cassation and Justice all have special sections that hear administrative and fiscal claims.⁵¹¹

Exhaustion of administrative remedies is required to go to court.⁵¹² Romania recognizes an *actio popularis*.⁵¹³ Administrative claims are governed by Law no. 554/2004.⁵¹⁴ Administrative judicial decisions generally can be appealed once. An additional extraordinary appeal may be allowed if there are constitutional issues involved.⁵¹⁵

B. Procedural remedies

Suspensive effect of procedures

Neither administrative nor judicial proceedings have suspensive effect.⁵¹⁶

Requirements for an injunction

An injunction can theoretically be granted during administrative or judicial proceedings if there is *periculum in mora*. A claimant can request an injunction from a court at the beginning of the administrative appeal process, in the petition for judicial review, or at the end of the administrative procedure separately from the petition for judicial review.⁵¹⁷ However, it has been alleged in a report by NGO Justice and Environment that injunctions are often improperly denied, delayed to the point of irrelevance, or ignored even when granted.⁵¹⁸

Miscellaneous

Anyone may report an environmental crime, however the police and prosecutor have exclusive control over the investigation. Information regarding criminal proceedings is

⁵¹¹ Information available on this subject is somewhat conflicting. See Dana Neacșu and Anamaria Corbescu, Update: Doing Legal Research in Romania, Globalex, http://www.nyulawglobal.org/globalex/Romania1.htm#_1.3._The_Judicial (2009); Romania Superior Council of Magistracy, Presentation of the Romanian Judicial System, <http://www.csm-just.ro/csm/index.php?cmd=9401&lb=en> (2005); *Report on Access to Justice in Environmental Matters* at 86.

⁵¹² *Report on Access to Justice in Environmental Matters* at 84.

⁵¹³ *Id.* at 82.

⁵¹⁴ *Id.* at 85-6. I have not been able to find this law in translation.

⁵¹⁵ *Id.* at 87.

⁵¹⁶ *Id.* at 88.

⁵¹⁷ *Id.* at 88.

⁵¹⁸ *Id.* at 88-9.

not publicized.⁵¹⁹ Theoretically, a court could assess criminal penalties not only against natural persons but also against companies, however this does not appear to happen.⁵²⁰

Ordinance 195/2005 assigns civil liability for environmental damage, so a person who suffers damage could bring a private suit for damages or remediation. This type of case is apparently rare.⁵²¹

Slovak Republic

A. The administrative and legal system

Environmental legislation

Article 44 of the Slovak Constitution establishes that everyone has a right to a favorable environment, and a duty to protect and improve the environment. It also obligates the State to sustainably manage natural resources, and to protect some wild plants and animals. Article 45 guarantees access to information about the environment.⁵²² The Act on the Environment (17/1992) lays out the basic principles of Slovak environmental law. The Act on State Administration of Environmental Protection (525/2003) regulates the Ministry of Environment and other administrative bodies. Other important environmental legislation includes: the Act on Environmental Impact Assessment (24/2006), the Nature Protection Act (543/2002), the Act on Integrated Prevention and Control of Polluted Environment (245/2003) and the Slovak Construction Act (50/1976). The Criminal Code (300/2005) enumerates eight types of crimes against the environment.⁵²³

System for decision-making and administrative appeal

The administrative authorities primarily responsible for environmental matters are the Ministry of Environment, regional and district environmental offices, the Environmental Inspectorate and local inspectorates, and municipalities.⁵²⁴

Administrative procedure is governed by Act No. 71/1967 on Administrative Proceedings as well as specific procedures contained in many individual environmental laws.⁵²⁵ Generally, administrative appeals have two hierarchical tiers. In most cases, the first tier is the district environmental body and the second tier is the regional environmental body.⁵²⁶ The Administrative Proceedings Act requires appeals to be filed

⁵¹⁹ *Id.* at 85-6.

⁵²⁰ *Id.* at 87.

⁵²¹ Goga and Dobre, "Romania," 305; *see also Report on Access to Justice in Environmental Matters* at 87.

⁵²² Constitution of the Slovak Republic, available in English at

http://www.concourt.sk/info.do?id_submenu=b&urlpage=material&lang=a (2010).

⁵²³ Martin Fábry and Tomáš Rybár, "Slovakia," in *The International Comparative Legal Guide to Environment Law 2010: A Practical Cross-Boarder Insight into Environment Law* (London: Global Legal Group, 2010), 325-327.

⁵²⁴ Fábry and Rybár, "Slovakia," 325.

⁵²⁵ Milieu Report—Slovakia at 10; Act No. 71/1967 on Administrative Proceedings available in English at <http://www.indprop.gov.sk/?related-legislation> (last accessed 1 Dec. 2010).

⁵²⁶ Milieu Report—Slovakia at 12.

within 15 days of the contested decision, but some environmental laws stipulate shorter deadlines.⁵²⁷ The administrative proceedings must be started within 30 days of the complaint, but there is no deadline for completion.⁵²⁸

An Ombudsman, also referred to as the Public Defender of Rights, is regulated by the Act on Public Defender of Rights and elected by the National Council. Anyone who believes their fundamental rights or freedoms to be violated may file a complaint with the Ombudsman. The complaint may be made via a simple online form at the Ombudsman's website. The form requires the complainant to state his or her name, address, and contact information, the agency or other entity involved, and a description of the contested matter. The Ombudsman can investigate claims, assist claimants in filing administrative or judicial complaints, refer issues to a prosecutor, file motions with administrative bodies to reverse or modify administrative decisions, and make reports to the National Council or to the media. The Ombudsman does not issue binding decisions.⁵²⁹

The role of the courts

There are no special judicial procedures for environmental cases. The Slovak judicial system is three tiered, with district courts, regional courts, and a Supreme Court. There is also a Constitutional Court. The district courts are first instance courts for civil and criminal matters. The regional courts hear appeals from the district courts, but also act as courts of first instance for administrative matters. The Supreme Court hears appeals from the regional courts, but also hears appeals of administrative decisions made by State authorities.⁵³⁰

Administrative remedies must be exhausted prior to seeking judicial review.⁵³¹ Administrative judicial review is largely cassatory, with only revisions to valuations and fines allowed.⁵³² Courts are required to issue judgments without undue delay, though there are no specific deadlines. Delays can be litigated in the Constitutional Court.⁵³³

B. Procedural remedies

Suspensive effect of procedures

Administrative proceedings have suspensory effect unless otherwise provided by law. Suspensory effect may be dispensed with if it is against the urgent public interest, or may cause imminent irreversible danger or harm to another participant.⁵³⁴ Judicial proceedings do not have suspensory effect.⁵³⁵

⁵²⁷ Fábry and Rybár, "Slovakia," 326.

⁵²⁸ Milieu Report—Slovakia at 16.

⁵²⁹ The Public Defender of Rights website, <http://www.vop.gov.sk/langEnglish> (select "Legal Basis" and "Would You Like to File a Complaint?") (last accessed 1 Dec. 2010).

⁵³⁰ Milieu Report—Slovakia at 8.

⁵³¹ *Id.* at 5.

⁵³² *Report on Access to Justice in Environmental Matters* at 98.

⁵³³ Milieu Report—Slovakia at 19.

⁵³⁴ *Id.* at 12.

⁵³⁵ *Report on Access to Justice in Environmental Matters* at 98.

Requirements for an injunction

Because of the suspensive effect, standard injunctions are usually not necessary during administrative proceedings, but other interim measures are available as needed to “ensure the purpose of the proceedings is met.”⁵³⁶ In the judicial procedure, a court can order an injunction against an administrative decision if there is a threat of irreparable harm. What constitutes irreparable harm is at the discretion of the court.⁵³⁷

Miscellaneous

One can bring a civil claim for environmental damages against a natural person or legal entity, including a public authority.⁵³⁸

Slovenia

A. The administrative and legal system

Environmental legislation

Article 72 of the Slovene Constitution guarantees a right to a healthy environment and obligates the State to promote a healthy environment.⁵³⁹ The Environment Protection Act is the framework environmental legislation, and includes provisions on environmental goals, principles, emissions, waste, environmental quality standards, public participation, management, environmental impact assessments, permits, monitoring, public disclosure, budgeting, emissions trading, environmental authorities, inspections and penalties, amongst others. Other important legislation includes the Nature Conservation Act, the Water Act, the Ionizing Radiation Protection and Nuclear Safety Act, and the Construction Act.⁵⁴⁰ The Criminal Code enumerates criminal offenses against the environment.⁵⁴¹

⁵³⁶ Act No. 71/1967 on Administrative Proceedings at Art. 43; *Report on Access to Justice in Environmental Matters* at 98.

⁵³⁷ *Report on Access to Justice in Environmental Matters* at 98.

⁵³⁸ Milieu Report—Slovakia at 17.

⁵³⁹ Slovene Constitution, Official Gazette RS, Nos. 33/91-I, 42/97, 66/2000, 24/03, 69/04 and 68/06, available in English at <http://www.us-rs.si/en/about-the-court/legal-basis/constitution>.

⁵⁴⁰ Jasna Zwitter-Tehovnik and Nina Mlarkar, “Slovenia,” in *The International Comparative Legal Guide to Environment Law 2010: A Practical Cross-Boarder Insight into Environment Law* (London: Global Legal Group, 2010), 334; Ministry of the Environment and Spatial Planning, Legal Acts in Force, http://www.mop.gov.si/en/legislation/legal_acts_in_force (last accessed 1 Dec. 2010). The full citations of these laws are: Environment Protection Act (ZVO-1), Official Gazette RS, nr. 41/2004 as amended, last amendment 108/2009; Nature Conservation Act (ZON), Official Gazette RS, nr. 56/1999 (31/2000 corr.) as amended, last amendment 8/2010; Water Act, Official Gazette RS, nr. 67/02 as amended; Ionizing Radiation Protection and Nuclear Safety Act, Official Gazette RS, nr. 67/02 as amended; and the Construction Act (ZGO-1), Official Gazette RS, nr. 110/2002, 97/2003, 41/2004, 45/2004, 47/2004, 62/2004, 102/2004 (14/2005 corr.) 92/2005, 93/2005, 111/2005, 120/2006, 126/2007, 57/2009, 108/2009).

⁵⁴¹ *Report on Access to Justice in Environmental Matters* at 102.

System for decision-making and administrative appeal

Environmental matters are largely governed at the State level, although municipalities and regions do share some responsibility.⁵⁴² The National Assembly periodically adopts a national environment protection program and environmental reference points. Municipalities may adopt regionally limited environment protection programs; city communities must. The Ministry of the Environment and Spatial Planning (MoE) is the administrative authority with primary responsibility for environmental matters, along with its subordinate Environmental Agency and the independent but related Inspectorate for the Environment and Spatial Planning.⁵⁴³

First instance administrative decisions can be appealed to hierarchically superior administrative authorities. At the State level, administrative decisions are appealed to the MoE. Administrative decisions issued by the Government, MoE or municipal mayor cannot be administratively appealed, but are subject to judicial review. Administrative appeals must be made within 15 days of the contested decision.⁵⁴⁴ Administrative appeals must be decided within one or two months, depending on the procedure.⁵⁴⁵

The Human Rights Ombudsman is provided for in Art. 159 of the Slovene Constitution and is elected by Parliament. The Law on Environmental Protection explicitly states that the right to a healthy environment is a right that should be protected by the Ombudsman; anyone who believes that right has been violated can file a complaint. Complaints must be filed within one year of the contested decision. Administrative but not judicial procedures should be pursued before making a complaint. The complaint form is available on the Ombudsman's website, and requires the name, address and contact information of the complainant, the right violated, the person or body who allegedly violated the right, what action the complainant has taken previously, and the signature of the complainant. The Ombudsman can investigate complaints, and make reports and recommendations, including recommendations for disciplinary proceedings. The Ombudsman can also propose laws and amendments.⁵⁴⁶

The role of the courts

Slovenia has courts of general jurisdiction, courts of special jurisdiction and a Constitutional Court. The courts of general jurisdiction hear civil and criminal matters, and are made up of two kinds of first instance court (43 county and 11 district courts, which have competence over different types of cases) and four High Courts (appeals courts). The courts of special jurisdiction include the Labor and Social Court and the Administrative Court. The Supreme Court is primarily a cassatory court, and hears appeals from both the courts of general and special jurisdiction.⁵⁴⁷ Judicial review of an

⁵⁴² Milieu Report—Slovenia at 5.

⁵⁴³ Zwitter-Tehovnik and Mlarkar, "Slovenia," 334.

⁵⁴⁴ Milieu Report—Slovenia at 11.

⁵⁴⁵ *Id.* at 14.

⁵⁴⁶ Human Rights Ombudsman Law, available in English at <http://www.varuh-rs.si/pravni-okvir-in-pristojnosti/?L=6> (select "Human Rights Ombudsman Law") (last accessed 1 Dec. 2010).

⁵⁴⁷ Maja Čarni and Špela Košak, A Guide to the Republic of Slovenia Legal System and Legal Research, Globalex, <http://www.nyulawglobal.org/globalex/Slovenia.htm> (Sep. 2006).

administrative decision must be filed within 30 days of receipt of the decision.⁵⁴⁸ As of 2007, 58% of proceedings before the Administrative court took more than 1.5 years.⁵⁴⁹

B. Procedural remedies

Suspensive effect of procedures

Neither administrative nor judicial proceedings have suspensive effect.⁵⁵⁰

Requirements for an injunction

Under the Administrative Procedure Act Art. 221, the competent administrative body can grant an injunction if it is absolutely necessary to regulate the relationships or issues at stake. The competent body can condition the injunction on a bond against damage to the other party.⁵⁵¹

During the judicial procedure, the claimant can seek an injunction at any time before, during or after the judicial procedure to prevent imminent environmental damage. The injunction will be granted if the plaintiff shows irreparable harm will occur or the future outcome of the court case will be threatened in the absence of an injunction.⁵⁵²

Miscellaneous

Anyone may report an environmental violation to the public prosecutor or police. However, the notifier does not become a party unless he or she is also a victim.⁵⁵³

If public authorities engage in activities that directly harm the environment, a member of the public can notify the environmental inspector (or other applicable inspector), who has an obligation to prevent environmental violations.⁵⁵⁴

An individual or NGO can file a civil suit against a public authority to seek monetary damages for harm resulting from its actions, prevent the public authority from engaging in a harmful activity, or request that the public authority remove a source of danger to the environment.⁵⁵⁵

Spain

A. The administrative and legal system

⁵⁴⁸ Milieu Report—Slovenia at 14.

⁵⁴⁹ *Id.* at 15.

⁵⁵⁰ *Selected problems of the Aarhus Convention application* at 51-2 (injunctions are possible in both types of proceeding and would be unnecessary if the proceedings had suspensive effect).

⁵⁵¹ *Id.*

⁵⁵² *Id.* at 52; Milieu Report—Slovenia at 18.

⁵⁵³ Milieu Report—Slovenia at 5.

⁵⁵⁴ *Id.* at 10.

⁵⁵⁵ *Id.* at 15.

Environmental legislation

Article 45 of Spain's Constitution says that everyone has a right to a suitable environment and an obligation to protect it, and directs the public authorities to protect and improve environmental quality.⁵⁵⁶ However, this has been interpreted as a policy goal rather than a fundamental right that would allow claims to go to the Constitutional Court.⁵⁵⁷

Important environmental laws include Law 16/2002 of 1 July on IPPC permits, Legislative Royal Decree 1/2008 of 11 January on environmental impact assessments, Law 26/2007 of 23 October on Environmental Liability, Law 10/1998 of 21 April on Waste, and Legislative Royal Decree 1/2001 of 20 July approving the Law on Waters.

System for decision-making and administrative appeal

The Ministry of Environment and Rural and Marine Affairs, along with the Ministry of Industry, Tourism and Trade and the Ministry of Health and Consumer Affairs have responsibility for administering environmental policy at the State level. Autonomous Regions and municipalities also have responsibilities in some environmental matters, particularly permitting.⁵⁵⁸

Administrative appeals are made to the hierarchical superior of the authority that issued the contested decision.⁵⁵⁹ The appeal is filed with the issuing authority, which is responsible for referring the appeal to its superior.⁵⁶⁰ Spain has an *actio popularis*, and both acts and omissions can be challenged.⁵⁶¹ Appeals must be filed within one month of the publication or notification date of an act, or in cases where the administration acts through silence, within three months of the date when the silence produces effects.⁵⁶² Administrative appeal decisions must be handed down within the time specified in the relevant act, generally within six months. If an act does not include a time limit, the default is three months.⁵⁶³

Anyone may make a complaint to the Ombudsman free of charge. There is a State Ombudsman, as well as Community and local Ombudsmen. The Ombudsmen can investigate and issue recommendations, but the recommendations are not binding. They can also initiate proceedings in the Constitutional Court to have laws declared unconstitutional and protect fundamental rights.⁵⁶⁴

⁵⁵⁶ Spain's Constitution is available in English at http://www.senado.es/constitu_i/index.html (last accessed 1 Dec. 2010).

⁵⁵⁷ Alberto A. Herrero de la Fuente, "Spain," in *Access to Justice in Environmental Matters in the EU*, ed. Jonas Ebbesson (The Hague: Kluwer Law International, 2002), 442.

⁵⁵⁸ Vicente Sierra and Christian Castellá, "Spain," *The International Comparative Legal Guide to Environment Law 2010: A Practical Cross-Boarder Insight into Environment Law* (London: Global Legal Group, 2010), 347.

⁵⁵⁹ Milieu Report—Spain at 10. The information in this paragraph may be outdated. Recent legislation has simplified administrative procedure and tightened timeframes but does not appear to be available in English. The new administrative procedures are contained in Law 25/2009 of 22 December and Law 6/2010; Sierra and Castellá, Spain," 353.

⁵⁶⁰ Milieu Report—Spain at 11.

⁵⁶¹ *Id.* at 11, 13.

⁵⁶² *Id.* at 17.

⁵⁶³ *Id.* at 17.

⁵⁶⁴ *Id.* at 10, 34.

The role of the courts

Exhaustion of administrative remedies is not required to go to court.⁵⁶⁵ Administrative courts are the courts of first instance for challenges to most municipal administrative acts.⁵⁶⁶ Appeals from administrative court decisions are made to the Autonomous Community's Superior Court of Justice, which also hears appeals of land-use planning decisions and some of the federal administration's decisions in the first instance. Contested decisions made by the federal administration or other bodies with jurisdiction over the whole country are appealed to the Central Administrative Court in the first instance and the National Audience in the second instance. The National Audience is the first instance court for appeals of decisions made by a Minister or State Secretary. The Supreme Court is the court of final instance in nearly all cases. It is the court of first instance for claims against acts and general provisions enacted by the Council of Ministers.⁵⁶⁷

B. Procedural remedies

Suspensive effect of procedures

Neither administrative nor judicial proceedings have suspensive effect.⁵⁶⁸

Requirements for an injunction

In an administrative proceeding, the competent authority can issue an injunction at the request of the claimant or of its own accord. An injunction can only be granted if the execution of the contested act would cause irreparable damage or damage that is difficult to repair, and the appeal seeks to nullify the act. If an injunction may harm another party, a bond sufficient to compensate for harm to the other party is required.⁵⁶⁹

During judicial proceedings, injunctions and other interim measures are also available. A hearing on interim measures must be held with both parties present, except in the case of emergency. In deciding whether to grant an injunction, the court considers whether there would be irreparable or difficult to repair damage without an injunction, whether the claimant has made a prima facie case, whether the court proceedings would be rendered irrelevant without an injunction, and the public interest. The claimant must also provide a bond sufficient to compensate for harm to the other party.⁵⁷⁰

While injunctions, referred to as "precautionary measures" in Spanish law, are theoretically available during both the administrative and judicial process, they are often not granted in practice. In ACCC/C/2008/24, the Aarhus Convention Compliance Committee found that Spain was not in compliance with Article 9(4) because of the difficulty in getting an injunction—the complainant had first been told it was too early, and then too late to request an injunction, which left no time at which it could have

⁵⁶⁵ *Id.* at 10.

⁵⁶⁶ *Id.* at 18.

⁵⁶⁷ *Id.* at 19.

⁵⁶⁸ *Id.* 18, 32.

⁵⁶⁹ *Id.* at 18.

⁵⁷⁰ *Id.* at 32.

successfully done so. A report by NGO Justice and Environment states that injunctions are rarely granted in environmental cases, either during administrative or judicial procedures. On the other hand, the report also notes that there have been recent instances in which injunctions have been successfully obtained, and some cases in which the bond was reduced or not required in environmental cases to comply with the requirements of the Aarhus convention and Spanish law.⁵⁷¹

Miscellaneous

Spain's *actio popularis* extends to certain environmental criminal matters. An official may be criminally liable if he or she grants a manifestly illegal permit, or allows some other illegal environmentally harmful activity.⁵⁷² NGOs or members of the public can bring criminal proceedings.⁵⁷³

An injured party may file a civil suit for monetary damages, whether or not the polluter is in compliance with its permit.⁵⁷⁴

Sweden⁵⁷⁵

A. The administrative and legal system

Environmental legislation

Since 1999, Sweden has had a “universally” applicable Environmental Code (EC), which harmonized the general rules and principles in this field. The Code applies to all human activities that might harm the environment. It is, in principle, immaterial whether commercial or private operations or measures are involved. The Code contains the environmental principles and provisions providing for environmental quality norms as well as environmental impact assessments. Certain listed water operations, industrial undertakings, quarries and other environmentally hazardous activities are subjected to permit or notification requirements. The Code also contains provisions for the protection of nature, flora and fauna, genetically modified organisms, chemicals and waste.

However, certain activities are also regulated in special pieces of legislation. Planning and building issues are regulated in the 1987 Planning and Building Act (PBA). Infrastructure installations, such as railroads and highways, have regulations of their own, as do mining and forestry. Fauna is protected, in part, through hunting law.

⁵⁷¹ *Report on Access to Justice in Environmental Matters* at 110, 114; ACCC/C/2008/24 Findings and Recommendations at Para. 104, 30 Sep. 2010.

⁵⁷² Milieu Report—Spain at 22.

⁵⁷³ *Id.* at 27.

⁵⁷⁴ Sierra and Castellá, “Spain,” 349.

⁵⁷⁵ This section is adapted from Jan Darpo, “Environmental Justice through Environmental Courts? Lessons Learned from the Swedish Experience,” in *Environmental Law and Justice in Context*, ed. Jonas Ebbesson and Phoebe Okowa (Cambridge: Cambridge University Press, 2009), 176, used with author’s permission; additional notes from author Jan Darpo.

System for decision-making and administrative appeal

In addition to administrative authorities with special responsibility for the environment, the municipalities act as supervisors under the Environmental Code. Plans and permits issued under PBA are also decided by the municipalities. Decisions from the local level are appealed to the regional County Administrative Board (CAB). The CAB is also responsible for “green” issues and supervision concerning water-related activities and larger industrial activities. Additionally, the CABs issue permits for environmentally hazardous activities, landfills, waste transportation and disposal, and chemical activities, amongst others. Installations and activities involving a substantial environmental impact must obtain a permit from the Environmental Court,⁵⁷⁶ as do all kinds of water operations.

Decisions according to the specific legislation on mining and infrastructural projects are made by national authorities and their regional branches, such as the National Transport Administration and Geological Survey of Sweden. Those decisions can be appealed to the Government. Decisions regarding hunting are made by the County Boards or the Environmental Protection Agency. The Swedish Forest Agency and its regional branches make decisions regarding forestry.

The Parliamentary Ombudsmen are elected to ensure that public authorities and their staff comply with the laws and other statutes. They have a disciplinary function and act through opinions and—rarely—prosecution for misconduct. However, the Ombudsmen cannot intervene in an individual case.

The role of the courts

Sweden has administrative courts for the appeal of administrative decisions and ordinary courts for civil and criminal cases. The administrative courts decide cases on the merits in a reformatory procedure, meaning that they replace the appealed decision with a new one. The Environmental Code established a system of five Environmental Courts and one Environmental Court of Appeal. They are all divisions within the ordinary courts, but essentially act as administrative courts for environmental cases. The Environmental Courts also have jurisdiction in cases concerning damages and private actions against hazardous activities.

The route for appeals in cases concerning the environment is (almost) always the same and quite simple: Local Environmental Board → County Administrative Board → Environmental Court → Environmental Court of Appeal. Cases starting in the Environmental Court can ultimately be brought to the Supreme Court. Cases starting in an authority cannot be appealed beyond the Environmental Court of Appeal. Thus, if appealed, all environmental decisions follow this route, although the starting-point and terminus differ. Leave for appeal is required to bring an appeal to the Environmental Court of Appeal or the Supreme Court.

The Environmental Court consists of one professional judge, one environmental technician and two expert members. Industry and central public authorities nominate the last two. The underlying philosophy is that experts will contribute their experience of municipal or industrial operations or public environment supervision. The

⁵⁷⁶ As described in the ECJ ruling in the DLV case, the court in this situation is “exercising administrative powers” (C-263/08 para 37).

Environmental Court of Appeal is comprised of three professional judges and one technician. All members of the courts have an equal vote.

Some cases are dealt with in a different manner. Decisions on hunting and forestry are appealed to the administrative courts. The legality of Governmental decisions can be challenged by seeking judicial review in the Supreme Administrative Court (SAC). There is no Constitutional Court in Sweden.

As environmental appeals in Sweden are reformatory and a case may be retried in three or even four instances, the procedure is quite time consuming. Each instance generally takes at least one year.

B. Procedural remedies

Suspensive Effect of Procedures

Theoretically, a permit cannot be utilized until the possibility of appeal has passed. Accordingly, an appeal has suspensive effect on a permit decision. Permit decisions are, however, often combined with a “go-ahead decision” enabling the applicant to start his or her permitted activity.

As with permits, orders from a supervisory authority do not take legal effect until they are finally decided on appeal. If there is an urgent need, the authority can decide that the order shall take effect even if it is appealed. This happens quite rarely.

Requirements for an Injunction

If a go-ahead decision has been granted, a claimant ask the court for an injunction of that decision. According to the case law of the Environmental Court of Appeal, such “inhibition” is granted when the prospects for success of the appeal are good. An inhibition may also be granted if the appellant has a legitimate interest in having the decision scrutinized by the court or there are vital interests at stake.

Miscellaneous

If someone from the public concerned notifies a supervisory authority of a violation and asks it to order an operator to comply with the law, the authority must rule on the case and communicate its decision to the notifier. The decision is—irrespective of its content—appealable to next level (and so on). As the procedure is reformatory, the appeal body (County Board and the environmental courts) looks into all facts of the case and decides anew. In this way, the public concerned can bring a case all the way to the Environmental Court of Appeal to get an opinion on the need for an order in the individual case. However, this does not apply to activities that operate with a permit issued under the Environmental Code. The ability to challenge such activities or to apply for a revision of the permit is the prerogative of the environmental authorities. The public concerned cannot bring criminal actions for infringements of environmental law. The power to prosecute belongs to the Attorney General.

The Environmental Code also governs actions for monetary damages and other private claims. Persons who have suffered bodily injury, material damage or pecuniary loss can bring a suit in the Environmental Court. They can also ask the court to order the

operator of an activity to undertake precautionary measures or to stop the activity. In this situation, the plaintiff also can ask for an injunction in accordance with the Code on Judicial Procedure. The court may only grant such an injunction if cross-undertakings in damages (bonds) are provided by the plaintiff.

However, the ability to challenge an illegal activity by direct action in court does not apply to operations with a permit according to the EC. On the whole, private actions according to the EC for anything but damages are quite rare. Security measures according to the Code on Judicial Procedure have never been granted in an environmental case.

United Kingdom

A. The administrative and legal system

Environmental legislation

The United Kingdom does not have a formal written constitution. The UK consists of four countries: England, Wales, Scotland and Northern Ireland. Environmental law is fairly fragmented. The Environment Act 1995 (c. 25) applies in England, Wales, and Scotland. This act establishes the Environment Agency (EA) in England and Wales, and the Scottish Environment Protection Agency (SEPA) in Scotland. It also contains provisions on water, contaminated land, national parks, air quality and waste.⁵⁷⁷ Numerous other laws govern specific sectors throughout the UK.⁵⁷⁸

System for decision-making and administrative appeal

The Department for Environment, Food and Rural Affairs (Defra) is one of the primary government bodies for creating environmental policy and legislation in the UK. It is part of the English government, but also works with authorities in the other UK countries. The relatively new Department of Energy and Climate Change is another important body. The aforementioned EA and SEPA also have policy and decision-making responsibilities in the areas of environmental protection.⁵⁷⁹ Additionally, local authorities have responsibilities in a number of areas such as local air pollution control, contaminated land, and land use planning.⁵⁸⁰

Many environmental laws contain their own administrative appeal rules; there is no generic appeals process. The administrative appeals process is available only to those directly affected by an administrative decision, for example, a person denied a permit. Public interest cases must be brought directly to the judicial system.⁵⁸¹

⁵⁷⁷ Environment Act 1995 (c. 25) available at <http://www.legislation.gov.uk/ukpga/1995/25/contents>.

⁵⁷⁸ A good list of the many environmental laws is available on the website NetRegs at <http://www.netregs.gov.uk/netregs/legislation/current/default.aspx>.

⁵⁷⁹ Department of Environment, Food, and Rural Affairs, About Defra, <http://ww2.defra.gov.uk/corporate> (8 Nov. 2010); Department of Energy and Climate Change, <http://www.decc.gov.uk>; <http://www.environment-agency.gov.uk/default.aspx>; http://www.sepa.org.uk/about_us.aspx.

⁵⁸⁰ Tim Jewell and Ben Pontin, "United Kingdom," in *Access to Justice in Environmental Matters in the EU*, ed. Jonas Ebbesson (The Hague: Kluwer Law International 2002), 472.

⁵⁸¹ Milieu Report—United Kingdom at 10.

The UK has a Parliamentary and Health Services Ombudsman that investigates complaints against public authorities, including the National Health Service (NHS). Complainants should try to resolve issues with the agency in question prior to complaining to the Ombudsman. Complaints must be made through a Member of Parliament (except for complaints about the NHS, which are made to the technically separate Health Services Ombudsman through a separate procedure). The main role of the Ombudsman is to act as a complaints department and call the attention of Parliament to injustices that cannot be otherwise remedied.⁵⁸² There are several other Ombudsmen for specific matters, but none specializing in the environment. A list can be found at the website of the British and Irish Ombudsmen Association.⁵⁸³

The role of the courts

England and Wales (E&W) have a combined judicial system; Scotland and Northern Ireland each have separate judicial systems.⁵⁸⁴ E&W has a single integrated court system for all types of cases, but divisions within that system decide particular types of cases. There are lower courts, a High Court, a Court of Appeal and a Supreme Court. An Administrative Court hears administrative matters. Appeals from this court are made to the Appeals Court Civil Division. The system is complicated, but a good visual representation is available on the court website.⁵⁸⁵ Additionally, there is a system of tribunals within the Ministry of Justice that hear specialized matters. Both judges and lay people with subject matter expertise sit on the tribunals. The tribunal system is two tiered, and first tier tribunal decisions may be appealed to an upper tribunal. Upper tribunal decisions can be appealed to the Court of Appeal. Two tribunals with relevance to environmental matters are the First Tier Tribunal (Information Rights), which can hear appeals from notices of the Information Commissioner under the Environmental Information Regulations of 2004, and the First Tier Tribunal (Environment), which hears appeals against civil sanctions imposed by regulators.⁵⁸⁶

The Scottish court system consists of Justice of the Peace Courts, Sheriff Courts, and two supreme courts, the High Court of Justiciary for criminal matters and the Court of Sessions for civil matters.⁵⁸⁷ Northern Ireland's judiciary is modeled after E&W's, and includes first instance courts, a High Court, and a Court of Appeal. The UK Supreme Court is the final instance for Northern Ireland as well as E&W.⁵⁸⁸

B. Procedural remedies

⁵⁸² See <http://www.ombudsman.org.uk/about-us> (last accessed 1 Dec. 2010).

⁵⁸³ <http://www.bioa.org.uk/index.php>.

⁵⁸⁴ Sarah Carter and Hester Swift, Update: A Guide to the UK Legal System, Globalex, http://www.nyulawglobal.org/globalex/United_Kingdom1.htm (May 2009).

⁵⁸⁵ <http://www.hmcourts-service.gov.uk/aboutus/structure/index.htm> (19 Nov. 2007).

⁵⁸⁶ <http://www.informationtribunal.gov.uk> (last accessed 1 Dec. 2010);

<http://www.tribunals.gov.uk/Environment> (last accessed 1 Dec. 2010).

⁵⁸⁷ <http://www.scotcourts.gov.uk/introduction.asp>

⁵⁸⁸ Northern Ireland Courts and Tribunals Service, The Courts and Tribunals Service Structure in Northern Ireland, available at <http://www.courtsni.gov.uk/en-GB/AboutUs/OrganisationalStructure> (last accessed 1 Dec. 2010).

Suspensive effect of procedures

Neither administrative nor judicial proceedings have suspensive effect.⁵⁸⁹

Requirements for an injunction

The court weighs the harms to both sides when considering whether to grant an injunction, taking into account a number of factors including the public interest.⁵⁹⁰ An injunction can be granted conditionally or unconditionally, but is usually conditioned on a payment of cross-undertakings.⁵⁹¹ If the claimant ultimately loses, he must compensate the other party for any losses incurred while the injunction is in place.⁵⁹² Such cross-undertakings are usually too expensive for public interest litigants opposing large development projects to contemplate.

The bond requirement has come under criticism both within the UK and from the Compliance Committee. The UK's Working Group on Access to Environmental Justice noted in its 2008 "Sullivan Report" that the cost of a bond could run into the hundreds of thousands of pounds with the result that injunctions are rarely sought in environmental cases. The report recommends that bonds not be required in cases that fall under the purview of the Aarhus Convention.⁵⁹³ The Aarhus Convention Compliance Committee has found England and Wales not to be in compliance with Article 9(4) of the Aarhus Convention because the risks of high costs discourage the use of injunctions. The European Commission has also warned the UK that it is not in compliance due to the high cost of injunctions.⁵⁹⁴ The Government has taken some steps to review the issue, for example the Ministry of Justice recently solicited consultation from the public on revising the requirement for cross-undertakings.⁵⁹⁵

Miscellaneous

Private citizens may initiate criminal prosecutions and apply to have the prosecution taken over by the Crown Prosecution Service.⁵⁹⁶ Private environmental remedies are also available under the tort law of nuisance.⁵⁹⁷

⁵⁸⁹ Milieu Summary Report at Table 2.

⁵⁹⁰ Jewell and Pontin, "United Kingdom," 482.

⁵⁹¹ Milieu Report—UK at 18.

⁵⁹² *Id.*; Jewell and Pontin, "United Kingdom," 482-3.

⁵⁹³ Working Group on Access to Environmental Justice, *Ensuring Access to Environmental Justice in England and Wales*, 2008 at 26, 36 ("Sullivan Report"). A 2010 update to this report notes that the situation is unchanged. Working Group on Access to Environmental Justice, *Ensuring Access to Environmental Justice in England and Wales: Update Report*, 2010 at 14.

⁵⁹⁴ Findings and Recommendations of the Aarhus Convention Compliance Committee with Regard to Communication ACCC/C/2008/33 Concerning Compliance by the United Kingdom at para. 133; European Commission, Environment: Commission warns UK about unfair cost of challenging decisions, <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/312&format=HTML&aged=0&language=EN&guiLanguage=en> (18 Mar. 2010).

⁵⁹⁵ Ministry of Justice, Consultation Paper: Cross-undertakings in damages in environmental judicial review claims, <http://www.justice.gov.uk/consultations/cross-undertaking-cp241110.htm> (comment period closed 24 February, 2011).

⁵⁹⁶ The Crown Prosecution Service, Private Prosecutions, http://www.cps.gov.uk/legal/p_to_r/private_prosecutions/index.html (23 Jun. 2009).

⁵⁹⁷ Jewell and Pontin, "United Kingdom," 472.

Conclusions

Administrative and judicial remedies

General

In most States, administrative decisions can be contested both through administrative procedures and through the courts. Administrative procedures are very limited or unavailable in Ireland, Croatia, Finland, Sweden, and the UK. In other States, claimants are required to exhaust administrative remedies before utilizing judicial procedures. This is so in Austria, Belgium, the Czech Republic, Germany, Hungary, Latvia, Poland, Romania, and Slovakia. Some States, such as Greece, do not generally require exhaustion, but do require it for appeals from particular Acts.

Administrative and quasi-judicial remedies

Administrative remedies usually consist of appeals to the authority that issued the contested decision, or to the body that is hierarchically superior. Some countries also offer quasi-judicial procedures or tribunals that combine aspects of administrative and judicial remedies. These institutions include the *Umweltsenat* of Austria, which hears appeals of EIA decisions; Denmark's Environmental, Nature, and Energy Appeals Boards; and Lithuania's Disputes Commissions; and tribunals in Malta, Norway and the UK. Poland also has special appeals bodies for a particular type of administrative appeal. The *Umweltsenat* has been found to be the equivalent of a court by the European Court of Justice (ECJ).

Judicial Remedies

Judicial remedies are available in all States. Most States have either specialized administrative courts or an administrative court division of the general jurisdiction court system. Only Sweden and Finland have specialized environmental courts. In a few States, such as Norway, administrative cases are heard in the regular courts of general jurisdiction.

This report focuses on the judicial review of administrative decisions, but judicial remedies are available in other contexts. Civil remedies are almost always available to owners of neighboring lands that suffer injury to their property or persons due to harmful emissions. In Spain and UK (and rarely, Belgium), a private party can initiate a criminal case in the criminal court. In France, a private party can do so only if the party has sustained damage. In most States, a private party cannot bring a criminal claim, but can report criminal violations to the public prosecutor. Constitutional courts may provide another means of redress for environmental wrongs in many states, including Albania, Austria, Belgium, Croatia, the Czech Republic, Greece, Hungary, Lithuania, Malta, Portugal, Romania, Slovak Republic and Slovenia. However, access to this remedy and the ability to have a case heard is limited in a number of ways across States.

Administrative remedies are generally much faster than judicial remedies. Deadlines for completing administrative procedures are usually laid out in law, while the

length of the judicial procedure is usually open ended. The most common amount of time allowed for administrative procedures is one month. Often, the deadline can be extended for cause, such as to allow time for expert testimony. The States with the shortest deadlines for completion of administrative procedures are Estonia, at 10 days, and Lithuania, at 14 days. Both deadlines are extendable to about one month for cause. At the longer end, in Hungary first instance administrative procedures take an average of 40-50 days, and second instance administrative procedures can take up to six months.

Judicial procedures, as noted, usually take much longer. Generally, there are no deadlines for decision-making, but court procedure statutes often say judgments must be issued “without undue delay” (Slovak Republic) or “within a reasonable time” (Italy). An exception is Lithuania, which requires cases to be decided in the first instance within two months, and to be completed in all instances within six months. Elsewhere, a little over a year per instance seems to be average. There are other examples, in Italy for instance, in which there are some cases that took over a decade to be decided.

Ombudsman

General

Nearly every State in this study has an Ombudsman, with the exception of Italy, which has regional Ombudsmen only, and Germany. Ombudsmen are almost always selected by the legislative bodies of their State. The Ombudsman is generally an independent internal review institution that aids individuals and entities in disputes with administrative bodies. At minimum, an Ombudsman can investigate complaints and report on its findings. The institution tends to be quite flexible, inexpensive, and simple to access.

Most States have a single office of the Ombudsman that can receive complaints regarding multiple areas of law, whereas others have several or many offices that each receives complaints on specific topics. Some States have an Ombudsman specifically for the environment. For example, Austria has a general Ombudsman Board as well as an Environmental Ombudsman. Austria’s Environmental Ombudsman can bring complaints before Austria’s Supreme Courts, whereas the Ombudsman Board does not have the authority to participate in legal proceedings. Hungary also has had an Environmental Ombudsman (called the Parliamentary Commissioner for Future Generations) since 2007. It has the power to participate in or initiate legal proceedings, as well as suspend the execution of administrative decisions.

In several other States, the Ombudsman has the authority to participate in or initiate legal proceedings. This is so in Albania, Poland, Romania, and Spain. In France and Sweden, the Ombudsman can initiate disciplinary proceedings; in Greece, the Slovak Republic and Slovenia, the Ombudsman can recommend disciplinary action. In the Slovak Republic, Slovenia and Sweden, the Ombudsman can propose amendments or laws.

More commonly, the Ombudsman’s powers are limited to non-legally binding activities such as investigating, reporting, mediating and recommending. While the lack of legal power may disqualify them from being considered to fulfill the requirements of the Aarhus Convention, in practice they are often nevertheless very useful. Many States

report that the political pressure to follow the recommendations of the Ombudsman generally leads to compliance.

While the Ombudsman is generally an excellent tool for effectuating the goals of the Aarhus Convention, there are some aspects that may be problematic in some States. These will be discussed below.

Discretion to launch investigations

Ombudsmen generally have a great deal of discretion in choosing which complaints to investigate. Discretion in itself is not necessarily negative because it allows resources to be concentrated on the most important cases. Often, some response is required; for example, in Latvia, the Ombudsman must inform the complainant whether it will launch an investigation within one month of receipt of the complaint. An exception to discretionary participation is Austria, where the Environmental Ombudsman may be required to take action and can be found criminally liable if his inaction leads to environmental damage.

Lack of resources

Underfunding is, obviously, detrimental to the effectiveness of an Ombudsman. For example, Estonia's 2010 implementation report notes that while its Chancellor of Justice, a similar institution to the Ombudsman, carries out independent investigations, it lacks the resources to be an efficient remedy.

Lack of suspension of administrative decision or judicial complaint period

Generally, complaint to the Ombudsman is a remedy intended to be pursued after administrative remedies and before judicial remedies. However, waiting for an investigation to be completed before applying for judicial review may cause a claimant to lose the opportunity to pursue other remedies.

Lack of independence

Generally, Ombudsmen are independent although they report to a legislative body. Exceptions include France and the UK, where the Ombudsman can only consider complaints that are referred by a Member of Parliament. In practice Parliamentary members do not filter complaints. Lack of formal independence, however, may result in the Ombudsman institution not technically fulfilling that element of an Aarhus Convention remedy where required.

Lack of environmental knowledge

Parliamentary Ombudsmen are experts on administrative issues, but usually not experts on environmental matters. It has been mentioned in some States that a lack of environmental experts in the Ombudsman's office can lead to superficial investigations overly focused on formal aspects of the case.

Suspensive Effect

If initiating an administrative or judicial procedure causes the implementation of an administrative decision to be stopped until the resolution of that procedure, the procedure is said to have suspensive (or suspensory) effect. By maintaining the status quo until after procedures are complete, the suspensive effect can be very useful in preventing premature and illegal damage to the environment, ensuring the enforceability of decisions, and preventing economic waste. In some Member States, both administrative and judicial procedures have suspensive effect, in some the administrative procedure has suspensive effect but the judicial procedure does not, and in some neither procedure has suspensive effect.

Both the administrative and judicial procedures have suspensive effect in Finland, Germany, Greece, and Sweden.

The administrative procedure has suspensive effect in many States. Besides the States listed above that give suspensive effect to both administrative and judicial procedures, States that give suspensive effect to just the administrative procedure include Albania, Austria, Czech Republic, Denmark, Hungary, Latvia, Poland, Portugal and Slovakia.

A roughly equal number of States in this study do not generally give suspensive effect to either the administrative or judicial procedure, and include Belgium, Croatia, Cyprus, Estonia, France, Italy, Lithuania, Malta, Netherlands, Romania, Slovenia, Spain and the UK. Cases before the European Union's ECJ or CFI also do not have suspensive effect. Usually, States that forgo suspensive effect do not require exhaustion of administrative remedies, but in those that do, the exhaustion requirement may pose a particular difficulty.

Even when a State's procedure generally has suspensive effect, there are often exceptions. For example, several States that have suspensive effect for administrative appeals allow administrative authorities to issue orders that give immediate effect to their decisions. In Germany and Sweden, these orders of immediate execution are granted quite frequently. Also, suspensive effect does not apply to appeals related to many types of infrastructure project in Germany. In Finland, immediate execution orders are allowed for permits issued under certain acts. In Poland, immediate execution orders are available but rare. Hungary also allows these orders.

In some States, suspensive effect may be dispensed with if immediate implementation is found to be in the public interest. This is so in Albania and Slovakia.

In other States, whether or not an administrative procedure has suspensive effect depends on the type of administrative decision being contested or appeal being brought. In Denmark, administrative appeals of decisions made pursuant to the Nature Protection Act have suspensive effect, while appeals made pursuant to the Environmental Protection Act do not. In Greece, many judicial proceedings have suspensive effect, but applications for annulment of administrative acts before the Council of State do not.

Injunctions

General

If procedures do not have suspensive effect, a claimant may apply for an injunction to pause an environmentally damaging decision or activity while other remedies are pursued. Injunctions offer a middle ground between suspensions, which automatically pause activity when an administrative or judicial procedure is filed, and systems in which there is no way to pause potentially damaging activity until a final decision is reached. Generally, injunctive procedures allow the courts flexibility to weigh the potential harm from pausing or not pausing the decision or activity, and decide whether or not to grant the injunction accordingly.

The availability of the injunction is extremely important in environmental matters, and is expressly required by Article 9(4). Injunctions, along with suspension, prevent situations in which a claimant legally wins a case but still loses because the environmental damage he sought to prevent has already occurred. The risk is particularly dire in environmental cases because legal procedures can take many years, and once environmental damage has occurred, it may be impossible to repair. The criteria for obtaining an injunction vary by State. While every State in this study offers some type of injunctive procedure, there are many barriers to effective injunctive procedures.

The criteria for obtaining an injunction are described in different ways, but they fall into a few basic categories: *periculum in mora*, *prima facie* case, personal harm and weighing of interests. *Periculum in mora* means “danger in delay” and is a criterion for an injunction in nearly every State in this study. This criterion can be subdivided into two related types of “danger”: the danger of damage to the environment, and the danger to the enforceability of the proceedings. If a *prima facie* case is required, the claimant must show his claims have a likelihood of success on the merits. This criterion is sometimes also referred to as *fumis boni iuris*, or simply something along the lines of likelihood of success.

The pitfalls to effective injunctive relief fall into the following categories: criteria are too restrictive, criteria are interpreted too restrictively by courts, criteria are too vague, costs are too high because a bond is required, costs are too uncertain because of the possibility of a lawsuit, and enforcement problems. These hurdles will be discussed below.

Criteria are too restrictive

In some States, the requirements for an injunction are simply too restrictive for injunctions to be considered an effective remedy in environmental cases. For example, the criterion of danger in delay is ubiquitous, but leads to varying levels of availability of injunctive relief. This criterion may be described in law as a requirement of irreparable harm, or, less harshly, hardly repairable harm, or harm that would be difficult to repair.

Often, the requirements for an injunction are the same in environmental cases as in other types of cases. While a high bar may be appropriate in some types of cases, it may be unreasonable in cases that fall under the purview of the Aarhus Convention. Even where requirements for injunctions sound very restrictive, courts may be able to provide an effective remedy by using their discretion to interpret requirements more liberally in environmental cases.

For example, in the Czech Republic, a claimant seeking an injunction (or a type of injunction referred to as a suspension in Czech law) must show irreparable harm to the claimant personally, that the rights of third parties will not be unreasonably restricted, and that the injunction is not against the public interest. According to NGO Justice and Environment, some of these requirements have been interpreted quite strictly. The damage had to be extremely serious and directly personal, which meant that NGOs could not obtain an injunction. Further, the courts would tend to find that since a public authority made the contested decision, the decision had to be in the public interest, and thus issuing an injunction was against the public interest. However, the Supreme Administrative Court has issued an opinion that courts should be more lenient in granting injunctions, despite the language of the law, to comply with the Aarhus Convention. This more lenient standard for Aarhus cases has been followed sometimes but not others.

There are other types of restrictive provisions that make injunctions difficult to obtain. In Cyprus, injunctions are only granted in exceptional circumstances. Under EU law, the ECJ or CFI has the ability to grant an injunction, but will do so only in rare cases where “circumstances so require.”

Interpretation of requirements

Sometimes the language of the law seems to allow the granting of injunctions in a broad set of circumstances, but the court either does not interpret the law to do so, or simply does not commonly grant injunctions. For example, in Austria, the High Court may grant injunctions if there is no coercive public interest to the contrary and the claimant would suffer disproportional harm in the absence of an injunction. In practice, the High Court has granted injunctions very rarely in environmental cases. The situation is similar in Spain, where the injunction law requires only that the contested act cause irreparable damage or damage that would be difficult to repair, but requests for injunctions that would seem to meet the requirement are often denied.

Vagueness

While the basic criteria for an injunction is spelled out in law, it can be hard to predict how the court will interpret them. For example, in the Slovak Republic, an injunction can be granted if there is a threat of irreparable harm. However, what constitutes irreparable harm is completely at the discretion of the court, and cannot be appealed. In England and Wales, courts consider a number of factors in deciding whether to grant an injunction, but there is no standardized test that would allow parties to predict whether an injunction will be granted.

Bond

In some States, the party who requests an injunction must pay a bond into court. If the requesting party ultimately loses the case, the bond is used to pay any damages to the other party that were incurred as a result of the injunction. If the requesting party wins, the bond is refunded. Bonds may be too expensive for a non-profit plaintiff to contemplate. The Aarhus Convention Handbook suggests that if bonds are required, they should be of a set amount that is significant but not prohibitively expensive. In the UK, a

bond is usually required. In Spain, a bond is often required, but the court has discretion to waive or reduce it in order to comply with the Aarhus Convention requirement for affordable remedies. In Hungary, a bond may be required in civil cases, but not administrative cases.

Possibility of lawsuit

In some States, a bond is not required, but a claimant can nevertheless be held liable for damages caused by an injunction if the claimant eventually loses his case. In Norway, if a claimant is granted an injunction, but later loses the case, it may be liable for damages to the opposing party if it knew or should have known that its request for an injunction was invalid. As long as these suits are only allowed to proceed if there is wrongdoing by the claimant, they do not represent a threat to the effectiveness of injunctive remedies. The threat of a lawsuit may have a chilling effect on injunction seeking, however.

Lack of independent injunctive procedure

In Croatia, the Administrative Court is not competent to grant injunctions. The only possibility for pausing an administrative decision is to request a stay from the administrative body that issued the decision. The lack of independent oversight of the injunction procedure calls into question the availability of injunctions as an effective remedy.

In Lithuania, there is no opportunity for an injunction during the administrative procedure. The administrative procedure is generally completed within two weeks, however, so the lack of availability of injunctions does not present the danger that it might in longer proceedings.

Enforcement problems

A report by NGO Justice and Environment indicates that while Romania's law on injunctions looks reasonable, injunctions are often improperly denied or ignored when granted. The 2008 implementation report for Albania cautions that the judiciary is often insufficiently versed in environmental law. For injunctions to be an effective remedy, parties must be aware of them, courts must grant them appropriately, and they must be enforced.

Issues for further consideration and recommendations

Develop criteria for injunctions

Article 9(4) requires that adequate and effective remedies, including injunctive relief, be available. To fulfill this requirement, States must provide a means to stop an environmentally harmful activity before legal proceedings become moot. Giving suspensive effect to procedures is one way to allow a claimant to halt damaging activities while pursuing other Aarhus remedies. However, while this may be appealing from an environmental standpoint and ensure that claimants have a real chance to obtain the benefits of a favorable legal outcome, suspensive effect may cause unfair economic harm or delay socially important projects.

Injunctions are a more flexible instrument. Developing detailed criteria for when injunctions should be granted to comply with the Aarhus Convention may help States find an appropriate balance that protects the environment without unnecessarily impacting economic and other social interests.

Develop best practices for administrative procedures

Contrasting the fast administrative procedures with the often slow judicial procedures makes it tempting to search for ways to facilitate the effective use of administrative procedures. It would be interesting to explore whether a requirement to exhaust administrative remedies, for example, aids or hinders efficiency. On the one hand, parties are forced to use fast, less costly procedures, but if administrative procedures are frequently appealed, do they just add another step to an already long process? Should the role of the court be limited to a cassatory function to force the use of administrative remedies, or should courts have broad jurisdiction to rehear cases to provide a greater level of access to justice? Can short deadlines for administrative procedures lead to lack of appropriate development of complex cases/lack of needed scientific inquiry?

Study the development of quasi-judicial procedures and tribunals

Another area for further study might be whether administrative or quasi-judicial procedures alone can fulfill the requirements for access to justice under the Aarhus Convention. ECJ case C-205/08 found Austria's *Umweltsenat* to be the equivalent of a court. Tribunals and quasi-judicial administrative bodies may be able to provide the independent review of a judicial procedure combined with the less expensive, faster, and more specialized procedures of administrative remedies. There may be negative aspects to specialized environmental procedures that should also be considered, however, for example, the possibility that if a single tribunal decides a particular type of case, it might become more backlogged and slow down the review process more than if decision-making was less centralized.

Bibliography

Main Sources

Ebbesson, Jonas. 2002. *Access to justice in environmental matters in the EU = Accès à la justice en matière d'environnement dans l'UE*. Comparative environmental law & policy series, v. 3. The Hague: Kluwer Law International.

GlobalLex, NYU School of Law, <http://www.nyulawglobal.org/globalex/index.html#> (last updated 17 Jan 2011).

Global Legal Group. 2010. *The International Comparative Legal Guide to Environment Law 2010: A Practical Cross-Boarder Insight into Environment Law*. London: Global Legal Group.

Justice and Environment, *Report on Access to Justice in Environmental Matters*, 2010.

Justice and Environment, *Selected problems of the practical application of the Aarhus Convention – based on experience and court practice of NGOs in 7 EU countries*, 2009.

Milieu Ltd., *Summary report on the inventory of EU Member States' measures on access to justice in environmental matters*, 2007 and individual country reports.

National Implementation Reports

Sadeleer, Nicolas de, Gerhard Roller, Miriam Dross, and Sandrine Bélier. 2005. *Access to justice in environmental matters and the role of NGOs: empirical findings and legal appraisal*. The Avosetta series, 6. Groningen: Europa Law Publishing.

Additional Sources

Anker, Helle Tegner et al., *The Role of Courts in Environmental Law: a Nordic Comparative Study*, Nordic Environmental Law Journal 2009.

Case Law of the Aarhus Convention Compliance Committee 2004-2008 (A. Andruskevich et al., eds.) 2008.

Darpo, Jan, *Environmental Justice through Environmental Courts? Lessons Learned from the Swedish Experience*, in Ebbesson, Jonas, and Phoebe N. Okowa. 2009. *Environmental law and justice in context*. Cambridge, UK: Cambridge University Press..

Sadeleer, Nicolas de, Gerhard Roller, Miriam Dross, and Sandrine Bélier, *Access to Justice in Environmental Matters - Final Report*, ENV.A.3/ETU/2002/0030, 2002.

Hallo, Ralph, *How far has the EU applied the Aarhus Convention?*, European Environmental Bureau (EEB), 2007.

Justice and Environment, *Access to Justice in Environmental Matters Under the Aarhus Convention: Position Paper*, May 2010.

Justice and Environment, *Aarhus Toolkit: Access to Justice in Environmental Matters*, 2009.

Kotzé, Louis J., and Alexander R. Paterson. 2009. *The role of the judiciary in environmental governance: comparative perspectives*. Alphen aan den Rijn, The Netherlands: Kluwer Law International.

Pallemaerts, Marc, *Compliance by the European Community with its obligations on Access to Justice as a Party to the Aarhus Convention*, An IEEP Report for WWF-UK, 2009.

REC, various Master Class materials, available at <http://ftp.rec.org/memberftp/Jerome/Resource%20Materials>.

Stec, Stephen (ed), *Handbook on Access to Justice under the Aarhus Convention*, the Regional Environmental Center for Central and Eastern Europe, Szentendre, 2000.

Stec, Stephen and Susan Casey-Lefkowitz (in collaboration with Jerzy Jendroska, for the Regional Environmental Centre for Central and Eastern Europe), *The Aarhus Convention: An Implementation Guide*, United Nations Publication, New York and Geneva, 2000.

Working Group on Access to Environmental Justice, *Ensuring Access to Environmental Justice in England and Wales: Update Report*, 2010

Working Group on Access to Justice to Environmental Justice, *Ensuring access to environmental justice in England and Wales*, 2008 (“Sullivan Report”).

Cases

ECJ case C-205/08 (Austria)
ACCC/C/2004/4 (Hungary)
ACCC/C/2005/11 (Belgium)
ACCC/C/2005/12 (Albania)
ACCC/C/2008/33 (UK)
ACCC/C/2008/24 (Spain)
ACCC/C/2010/48 (Austria)
ACCC/C/2010/50 (Czech Republic)