Questionnaire of the 3rd Study Commission (2013)

July 04, 2013

Question 1.
Has your country special legislation for:
The violation of laws concerning environment in general? Are there special rules for criminal investigation?

The legal acts regulating the given field are:
Environmental Liability Act
Waste Act
Environmental Charges Act
Fishing Act
Hunting Act
Earth’s Crust Act
Water Act
Forest Act
Environmental Impact Assessment and Environmental Management System Act

Additionally violations are regulated by the EU regulations, which are directly applicable.

The violations provided for by the abovementioned specific Acts are punishable as misdemeanours (for example, violation of requirements concerning keeping of animals, committing a prohibited act with respect to an animal).

More serious violations are also punishable pursuant to criminal procedure (for example, cruel treatment of an animal). The liability is provided for in Chapter 20 of the Penal Code. The significant factor is damage as a consequence.

There are no specific rules in the misdemeanour or criminal procedure, and it is not known whether introduction of such rules is being discussed.

Question 2.
Do the laws which deal with environment include specific punitive measures? What are the possible sentences? Could you give an example?

For example, the possibility to impose a supplementary punishment (deprivation of the right to keep any animals) provided for in Art. 522 of the Penal Code can be called a specific rule.
Deprivation of the right to keep any animals is a relatively obvious measure if a person systematically treats his animals with negligence or commits violent acts against animals.

**Question 3.**

3.1. Is "restitution" possible.
Is it for instance possible that the sentence is suspended in that sense that the sentence will be executed only if the offender does not fulfil certain conditions; for example a condition to repair all damages and take measures to prevent new damages in the future.

There are two types of compensation for damage used in Estonia:
1) restoration or substitution of the previous situation (restoration of the salmon population that perished in the river, sanction to plant new trees in case of felling of trees). Obviously this cannot always mean work contribution of the person who caused the damage – most likely such person will have to pay to the competent institution in order to remedy the damage;

2) monetary compensation for damage to the environment (fixed specific compensation rates for different animals, etc.).

Of course, before causing damage to the environment the person causing such damage is obliged to apply preventive measures.

3.2. Is it possible in your country that the Public Prosecutor decides to impose a fine instead of taking the case to Court (out of Court settlement).

Settlements between the prosecutor and the suspect are possible in case of application of various simplified procedures. Criminal procedure can also be ended if there is no public interest in continuation of the procedure, if the person’s guilt is negligible, and if he has remedied or has commenced to remedy the damage caused by the criminal offence, and has paid the expenses relating to the criminal proceedings.

At the same time in these cases the final decision or the decision to end the procedure is also made by the court on the basis of an application submitted by the prosecutors’ office.

3.3. Is it possible for the Public Prosecutor to take coercive measures?, i.e. measures the public prosecutor may take in criminal proceedings (like temporarily closing of a factory)

This is not possible. Securing of criminal procedure is possible only on the basis of an order of a preliminary investigation judge. At the same time the Code does not contain such securing measures as closing down of a factory. The closest option would be seizure of property. In cases of urgency seizure of property is also possible without a preliminary investigation judge’s permission, however, in such case the preliminary investigation judge must be immediately notified of such seizure of
property. The judge decides on whether the seizure of property remains in force or not.

**Question 4.**
Has your country set up one or more specialised agencies to investigate and identify violation of environmental laws?

Identification and investigation of violations is performed by:
1) Veterinary and Food Board;
2) Environmental Inspectorate;
3) Police prefectures – supporting role, but they have the right and obligation to deal with cases concerning misdemeanour and criminal procedure.

**Question 5.**
5.1 Has your country signed and ratified Agreements, Treaties or other forms of international cooperation regarding protecting environment?

Conventions that Estonia has joined:
* Conventions concerning protection of seas and marine pollution (Helsinki, London, Copenhagen and Brussels)
* Conventions concerning protection of internal waters (Helsinki)
* Fishing conventions (Gdansk, Ottawa, multilateral cooperation in the Northeast Atlantic)
* Conventions concerning hazardous waste (Basel)
* Conventions concerning protection of the environment (HELCOM, IUCN, IWC, Ramsar, CITES, Bern, Bonn, Rio de Janeiro)
* Conventions concerning prevention of and avoiding atmospheric pollution (Geneva concerning transboundary air pollution, Montreal and Vienna concerning the ozone layer, and Kyoto concerning climate)
* Conventions regulating nuclear issues
* Stockholm Convention on Persistent Organic Pollutants
* Aarhus Convention
* Espoo Convention

5.2.
*Has your country ratified the Basel Convention on the Control of Transboundary Movements of Hazardous Waste and their Disposal (March 22, 1989)
Estonia is a party to this convention.

*The Hong Kong International Convention for the safe and environmentally sound recycling of ships 2009;
Estonia is not a party to this convention.

* The UN Treaty on the Law of the Sea; (Montego Bay, November 16/1994) See f.i. articles 207 etc on the pollution of the marine World;
Estonia is not a party to this convention. With regard to marine pollution we are a party to the London Convention and with regard specifically to oil pollution from ships we are a party to the Brussels Convention.
* The international Convention for the prevention of Pollution from ships 1973 (Marpol and its annexes);
Not a party to this convention, although prevention and avoiding is exactly the main goal in the environmental sector, or at least is should be.

5.3. The European Union (EU) has set up a system for the supervision and control of shipments of waste within its borders and with the countries of the European Free Trade Organisation (EFTA), the organisation for Economic Cooperation and Development (OESO) and third countries which are party to the Basel Convention (Act 7.15.2006; amending acts 6.25.2009, 4.20.2009 and 1.1.2010); Have you had any experience with this system?

Estonia has indeed adopted the amendment to the Basel Convention that concerns transport and control of hazardous waste. Entered into force in 2001.

**Question 6.**
6.1. Could your country be more active in the field?
6.2. Is there pressure from companies or governmental organisations to be more lenient when environment is concerned based on economical reasons (or f.i. employment)?

Activity in the field of environmental protection is growing, and apparently this is the case in all European countries. I believe that environmental policy is not lenient, and all cases are dealt with on a case-by-case basis and on the basis of proportionality. Building of a factory in a nature conservation environment could indeed reduce unemployment in the given region and foster economic development in general, however one should always take into account the fact that the damage caused to the environment may be irreparable. It will be necessary to consider whether the factory can be built at another location or with capacity that is more environmentally friendly. It will be necessary to perform environmental impact assessment and collect sufficient information (a good example with this respect could be the case concerning building of the Central Hospital of Prisons in the Jämejala Park. Decision of the Supreme Court no. 3-3-1-54-03).

In case of issues concerning the environment it is becoming more common to think that it might be better to move towards voluntary measures, i.e. let’s praise and recognise those who do things the right way and better than it is required by the law. With respect to such companies the state should consider, for example, reduction of charges, monitoring or reporting. It is better to encourage companies to be willing to do more within the field of environment.

**Question 7.**
Could you as Judge be more active in the field? Are you as an individual active in the protection of the environment (f.i. by being member of a society which has a goal to protect the environment?) Does that raise questions in the Court were you are working?

This could be a matter of discussion, if the judge was, for example, a member of the Estonian Society for the Protection of Animals. Would this ensure his impartiality in
court cases where the issue is torture of an animal? Could the fact that he belongs to a respective society lead to certain complications during deliberations in court?

In the given case the judge would definitely have better knowledge concerning cases and practice related to the respective field.

7.3. Do you think that you have enough instruments and qualifications to handle these type of violations in Court?

Essentially the amount of the instruments is the same as in case of other types of offences.

7.4. Is it considered to be a specialisation to handle these cases in Court?

There have been no discussions on specialisation concerning resolution of cases of the respective field in court. Since most of Estonian courts are small, we don’t use specialisation according to types of cases (except for the Harju County Court).

**Question 8.**
Do you think there should rules to govern the situation in which a pollution is discovered long after the company involved has disappeared or changed ownership?

That’s a difficult case. While the new owner is neither responsible for nor caused the pollution, if there is pollution left it should still be removed. In such case couldn’t the punishment be retroactively applied to the previous owner? In case it is no longer possible to establish the person who caused pollution (dissolved, bankrupt), the damage must be liquidated by the state.

**Question 9.**
Is there any other comment on the subject that you would like to make?

Sincerely

Meelis Eerik
President of the Estonian Association of Judges