NGO Report about the implementation of Århus Convention in Estonia for the Second Conference of the Parties (Almaty, Kazakhstan, 25-27 May 2005)

1. Introduction

According to Article 10, paragraph of the Århus Convention (hereinafter referred as the Convention) the Parties shall keep under continuous review the implementation of the Convention on the basis of regular reporting by the Parties. The decision I/8 "Reporting requirements" of the Meeting of the Parties invites international, regional and non-governmental organizations engaged in programmes or activities providing support to Parties and/or other States in the implementation of the Convention to provide the secretariat with reports on their programmes or activities and lessons learned. Encouraged by this invitation, Estonian Council of Environmental Organizations hereby provides a report on implementation of the Convention in Estonia.

Estonian Council of Environmental Organizations (*Eesti Keskkonnaühenduste Koda* – EKO) is an informal cooperation network of 10 of the biggest and more active Estonian non-governmental organizations (NGOs)[1]. The members of EKO have been actively involved in implementation of the Convention since its enforcement in October 2001 and therefore have gained valuable knowledge about the problems and successes in this field. On years 2002-2005 two members of EKO, Estonian Fund for Nature (*Eestimaa Looduse Fond* - ELF) and Estonian Green Movement-FoE (*Eesti Roheline Liikumine* – ERL) have cooperated in projects of environmental legal help and monitoring of spatial planning, analysing and consulting about hundred legal cases, concerning the subjects of the Convention. In cooperation with two abovementioned organizations, Estonian Institute for Sustainable Development (*Säästva Eesti Instituut* – SEI) has on 2003-2004 carried through the project for assessing the access to environmental information and possibilities of public to participate in environmental decision-making processes according to methodology of The Access Initiative[2] (TAI) (the project will be hereinafter referred as TAI project)[3]. In the following report, mainly the experiences and results of the abovementioned projects will be used.

We are aware that Estonian Ministry of Environment (hereinafter MoE) has presented a National Report, according to requirements of the Decision I/8 of the Meeting of Parties, in purpose to give overview about transposition and implementation of the Convention in Estonia. The Decision I/8 also requests the Parties to prepare their reports through a transparent and consultative process, involving public. We are of opinion that MoE has not fulfilled this request. MoE has prepared the National Report without involving Estonian environmental NGOs and gave the public 10-day period to comment the Report (due to protest of EKO, the period was slightly expanded and finally covered 14 days). This period was clearly insufficient and gave NGOs practically no possibilities to be involved. EKO and MoE had a meeting in this matter, in result of which MoE added some NGO comments to the National Report.

As the National Report mostly analyses the legislative issues (describing practice of the implementation mainly from point of view of MoE itself), we try to focus the attention to practical

[1] More information about EKO and it's members is available at website http://www.eko.org.ee
[2] http://www.accessinitiative.org
[3] additional information about TAI project is available at website http://www.seit.ee/?cid=99&uudis_id=55

issues. Thus, the present Report is aimed to study more thoroughly the problems and successes in practice of Estonian NGOs in implementation of the Convention.

2. General provisions (Article 3)

The legislative, regulatory and other measures, necessary to achieve compatibility between the provisions implementing the information, public participation and access to justice provision in the Convention, are well described in the National Report. Hence we do not repeat this description. The measures, required in art 3(1) of the Convention, have in major part been taken by Estonian government. More problematic issue is the enforcement of the Convention and creation of the clear, transparent and consistent framework to implement the provisions of the Convention.

The public authorities are generally aware of the requirements of the Convention, but not in details (especially on local level). In practice of members of EKO, the officials and authorities rarely assist and provide guidance to the public in seeking access to information. More common is negative attitude towards the public, seeking information, especially in local municipalities. The same is situation in public participation proceedings.

The requirement of appropriate recognition of and support to associations, organizations or groups promoting environmental protection (art 3(4)) has not been fulfilled in practice. At the moment, most environmental organizations operate without recognition and support (there are possibilities to apply for financial support on project basis from Environmental Investment Centre (*Keskkonnainvesteeringute Keskus* – KIK), but these possibilities are restricted); the activities of members of EKO have in many cases found rather negative attitude and opposition by public authorities. However, the situation seems to be improving.

Implementation of the art 3(8) has not been in accordance to the Convention. There have been problems in connection to financial decisions of Environmental Investment Centre about projects of some environmental NGOs that have supported the implementation of the Convention and in the process have criticized actions of public authorities. In February 2004, the MoE made request to KIK for not satisfying most grant applications of ELF and ERL, after these organizations had initiated court cases against MoE in other matters on basis of the Convention. As the chairman of the council of KIK is the Minister of Environment himself and the applications in question had got high rates from the evaluation committees of KIK, there is a clear case of discrimination in the meaning of art 3(8) of the Convention.

3. Access to environmental information (Article 4)

The National Report gives basic overview about Estonian legislation, in regard to access to environmental information. The main access channel is presenting a request for information which is quite thoroughly and sufficiently regulated. Therefore, the requirements of the Convention are fulfilled on legislative level. In practice, however, we have met several difficulties by using the rights, granted by the Convention.

The most serious problem is violation of right to get information – the request for information will not be answered by the public authorities (officials of ministry of environment, county environmental departments or local municipalities) or these authorities illegally refuse to provide requested information. In course of TAI project 10 "test" requests for information were sent to the

MoE and its departments, but only 7 of them got answers. Even worse is situation in local municipalities. Often the time limits for fulfilling the request (5 working days) have been exceeded. Not rare are the occasions when only part of the requested information is provided.

Difficulties have appeared also in getting the requested information in requested form. There have been cases where officials have interpreted access to information as right to study the requested information at its location, but have refused to issue copies of such information. Another problem is connected with cases where the person making the request for information wishes to study information at its location – in case the official, responsible for this field of work, is not present, the person making the request for information will get no information.

The Convention requests that information must be made available without an interest having to be stated. In practice there have been many cases where the public authorities have asked for interest from the persons making the request for information. During the TAI project it turned out that in informational department of MoE it was not possible to send electronic request for information on their webpage without stating the interest.

The public authorities also have difficulties by fulfilling requests for information that are capacious, involving great amount of information. It has appeared that there is no access to such information – it will not be delivered to the person making the request for information, but there is no possibility to study this information at its location (latest occasion is connected with a request for information from Environmental Investment Centre).

Sometimes the officials do not know the legal justification of restricted access to information (e.g. cases, connected to positions taken by EU member states in EU Environmental Council. In case the EU-origin documents are marked with a sign "Restricted access", NGOs do not have possibility to study them, but there is no information about the bases of which the restrictions to access are enforced.

By capacious documents there is also problem of prohibitive expenses. According to the Public Information Act, public authorities may demand fee for made copies, starting from 21st page, maximum 3 kroons per page (please note that typical market rate for copying ranges between 0,5 and 1 kroon). There is no fixed differential system for allowing safeguard access to information for insolvent or less wealthy persons. In some cases (complicated development projects) files in amount 200 or more pages is not rare occasion. Financial expenditures in such extent may present remarkable hindrance of realization of right to access to environmental information and participation in decision-making processes. Such regulation is not in accordance with the request of the Convention that the charge for information shall not exceed a reasonable amount (art 4 (8)). No schedule of charges has been made publicly available by public authorities according to art 4(8).

4. Collection and dissemination of environmental information (Article 5)

The National Report gives again thorough and sufficient overview about the legislative framework in issue of collection and dissemination of environmental information.

Concerning practice of implementation of art 5, in course of the TAI project implementation of the legislation was monitored (regarding mainly access to information in emergency cases, access to results of environmental monitoring and access to facility-level information). The project results showed as positive outcomes that there is a regular production of environmental information, that

the information, provided for public, is timely and of high quality. Negative aspects were that the requirements of the confidentiality of environmental information are not defined, the group of public, getting the information, is very small, and that the information is often not available in the Internet. It is especially hard to get access to facility-level information.

5. Public participation in decisions on specific activities (Article 6)

The National Report analyses the implementation of Article 6 mainly by focusing on the new Environmental Impact Assessment and Environmental Management System Act (enforced on 3rd April of 2005; hereinafter referred as EIA Act). As important as EIA procedure is, it cannot be regarded as the only input of public participation in decision-making processes. The decisions in the meaning of Article 6 are usually environmental permits, building permits etc that are not made in the EIA process. On the opposite, EIA proceedings are one part of the proceedings of environmental permits. Thus, the relevant legislation to focus on in this matter, involves mainly different acts that regulate different fields of activities (Water Act, Waste Act, Ambient Air Protection Act, Earth's Crust Act, Integrated Pollution Prevention and Control Act, but also Administrative Procedure Act as general regulation for open proceedings). Therefore the present Report analyses the accordance of these legal acts to the Convention, considering EIA issues if relevant.

Concerning implementation of Article 6 of the Convention, the general legislative framework has been established in Estonia, in order to ensure proper application of the provisions of the Convention. There are, however, shortages in the legislation, causing serious problems in practice.

5.1. Informing the public in adequate, timely and effective manner (art 6 (2))

According to the results of TAI project, informing the public in decision-making processes can generally estimated as middle-range. However, it must be taken into account that only 2 cases were taken for evaluation. On basis of longer practice of ELF and ERL, the real situation can be estimated as poor.

5.1.1. The measures taken to ensure that the public concerned is informed, early in environmental decision-making procedure and in adequate, timely and effective manner, are insufficient already at legislative level. The most serious is the problem of informing the public in adequate and effective manner. The information about the environmental decision-making procedures is disclosed only electronically in the publication *Ametlikud Teadaanded*[4] (Official Notices) (except for permits for radiation activities (must be published in national newspapers as well, and integrated environmental permits that must be published in site of the planned activity) but most people are not aware of this publication and very little group of people is using it periodically (most likely only civil servants and lawyers). According to gallup of TNS Emor in April 2005, in beginning of 2005 51% of Estonian habitants of age 15-74 were using internet (the percentage has been steadily increased – on 2000 it was 28%, on 2002 32%, on 2003 45 %)[5]. This means that at the moment at least half of the population has got no opportunity to get information about environmental decision-making processes. The access to internet is still quite restricted in rural areas.

[4] http://www.ametlikudteadaanded.ee
[5] http://www.emor.ee/eng/arhiiv.html?id=1332

As the publication *Ametlikud Teadaanded* is unfamiliar even to most part of internet users, it cannot be regarded as effective manner for informing public about decision-making in environmental matters.

The new EIA Act does provide some solutions to the problem of access to information, establishing obligation to publish information about EIA proceedings in *Ametlikud Teadaanded*, but also in national or local newspaper, and additionally obligates the decision-maker to inform definite interest groups (local communities, non-governmental organizations etc) about the EIA proceedings. However, the solutions may not be adequate or sufficient for giving people information about decision-making processes. The new EIA Act provides obligation to publish information about EIA proceedings, but not about the information about the proceeding of the environmental permit in question – the latter will still be published only in *Ametlikud Teadaanded*, which is unsatisfactory for reasons, mentioned above. The two proceedings are different in Estonian legislation and EIA proceeding can only be part of the "main" proceeding – proceeding of environmental permit, the decision in meaning of art 6 of the Convention. The participation in EIA proceedings gives legal possibility to present objections or suggestions only to EIA proceedings and EIA report, but not to the final decision.

5.1.2. The other problematic issue about implementation of art 6 (2) is the insufficient contents of the information, provided by public authorities about the planned activity and decision-making procedure.

The regulation about what kind of information should be given about planned activity, is varying at different laws (Water Act, Waste Act, Ambient Air Protection Act, Earth's Crust Act, Integrated Pollution Prevention and Control Act, but also Administrative Procedure Act as general regulation for open proceedings). Most of them obligate the decision-making authority to give public short information about:

1) developer of the planned activity;
2) site of the planned activity;
3) short description of the planned activity;
4) access to the materials and application of the developer;
5) information about public hearing (if such will be held).

These acts (except Ambient Air Protection Act) do not contain obligation to give information about following issues, obligatory according to art 6 (2) of the Convention:

- the opportunities for public to participate;
- indication of the relevant public authority to which comments or questions can be submitted;
- indication of what environmental information relevant to the proposed activity is available;
- fact that the activity is subject to EIA procedure.

As result of these shortcomings of national legislation individuals often (even if they have managed to get information about the planned activity) are not aware of their possibilities to participate in the process.

5.1.3. Concerning the new EIA Act, EKO has great suspicions about the act being in accordance to art 6(2) of the Convention. According to § 11 (9) of this act, in case a decision will be made not to initiate EIA, this decision may be presented as one part of the decision about giving or not giving the permit for planned activity. Such regulation creates a very confusing situation regarding public participation as the public gets no information about whether the activity is subject to EIA procedure or not, until the permit is issued. The Convention clearly states that the public concerned shall be informed early in an environmental decision-making procedure of the fact that the activity is subject to a national or transboundary environmental impact assessment procedure. Thus, the EIA Act is in controversy with the provisions of the Convention.

5.2. Reasonable time-frames (art 6 (3))

The basic time-frame for public participation in Estonian legislation origins from Administrative Procedure Act, which states (in § 48 and 49) that period for public to present comments and suggestions to the planned decision (in environmental matters it is usually environmental permit) cannot be shorter than 2 weeks. Unfortunately, the minimum 2 weeks period has been interpreted in practice as reasonable time-frame in any decision-making process and the 2 weeks period for public participation (not as minimum, but as determined time-frame) has been transferred into environmental legislation and therefore into environmental decision-making proceedings. Hence, during the 2 weeks public has to manage to get information about the planned activity, elaborate the information, and make comments and suggestions. In case the planned activity/object is of significant impact and the information capacious and complicated, 2 weeks cannot be regarded as reasonable time-frame. EKO is at opinion that Estonian legislation does not establish reasonable time-frames for allowing sufficient time for informing the public and allowing the public to prepare and participate effectively during the environmental decision-making.

5.3. Early public participation (art 6 (4))

The provision of Convention about each Party providing for early participation, when all options are open and effective public participation can take place, has not been transferred into Estonian legislation; neither has it been properly implemented in practice. In case the planned activities have been connected to expensive and complicated objects, numerous preliminary studies have been made in practice. Such studies have not been subject of public participation, but nevertheless have significant impact to the final decision, substantially narrowing the possible alternatives – often only by economical reasoning – and often suggesting one "right" final decision.

The latest proven example of such practice is a plan of establishing a regional landfill to the South-Eastern Estonia. Several studies were made in the case, to decide about the location of the landfill, but the public had no legal means to participate in these processes. Finally, the local people disputed the detailed plan, but the local government as well as Ministry of Environment gave arguments that the selection of locations was not disputable any more in this stage of the

process. The Estonian Supreme Court satisfied the claim of local people[6] and decided that because of lack of administrative procedure for selection of location for regional landfill (but because of incorrect proceedings as well) the substantial preconditions for establishing such a landfill were not fulfilled and the selection of the location of landfill was obviously inadequate[7].

5.4. Access to information for examination (art 6 (6))

According to the Convention, each Party shall require the competent public authority to give the public concerned access for examination to all information relevant to the decision-making that is available at the time of the public participation procedure. The Administrative Procedure Act and special acts, prescribing rules for open proceedings, foresee public display as general rule. The public display is a part of the decision process where people can examine draft of the decision, project or detailed plan and present comments to it. In open proceedings the public authorities must guarantee access to all documents connected to the proceedings (provided that there are no legally justified restrictions to access to this information). Therefore, the provisions of the Convention are fulfilled on legislative level.

On level of implementation there have appeared several difficulties. Members of EKO are familiar with cases where the rules of public display are not fulfilled – the documents are not in the place of public display, there are no civil servants to provide the documents at the time and place of the public display, the documents are not displayed in one complex set and finding them demands unreasonable efforts from the member of public etc. Such humanly errors can make examination of the information quite complicated.

5.5. Significance of the outcome of the public participation (art 6 (8))

According to Administrative Procedure Act (§ 4), the public authority must exercise the right of discretion in accordance with purpose of discretion and the general principles of justice, taking into account relevant facts and considering legitimate interests. Therefore the Estonian legislation is in accordance with the Convention as it creates obligation to consider different interests, including public interest or interest of a member of public.

Implementation of the principles of exercising right of discretion is, however, a problematic issue. As the Convention obligates the Parties to ensure that in the decision due account is taken of the outcome of the public participation, the public authorities often claim that they have taken the outcome due account, but there were other overriding interests, causing the decision to be opposite to the outcome of public participation. Hence, there is a problem of formal participation (in some cases we have called it Aarhus bluff). This opinion is supported by results of the TAI project that conclude that the general public participation needs improvement, including the parts of asking opinion of public and giving feedback to the comments and objections of the public.

5.6. Information about decision and considerations of the public authority (art 6 (9))

[6] The decision of Estonian Supreme Court from 9th March 2005 in case No 3-3-1-88-04 (G. Veidenbaum, M. Tigane, M. Kaarna, J. Jäär, A. Poolakese *versus* Nõo vallavolikogu)

[7] The decision has been indicated and quoted in Estonian National Report as well, but from other point of perspective.

According to Estonian relevant legislation (Water Act, Waste Act, Ambient Air Protection Act, Earth's Crust Act, Integrated Pollution Prevention and Control Act, but also Administrative Procedure Act) the decisions, made as a result of open proceedings, must be publicly announced. As the public announcements about final decisions, concerning planned activity (environmental permits), are only published electronically in *Ametlikud Teadaanded*, there is again problem with access to this channel of information (the problem has been described in p 5.1.1 of present report).

Theoretically the provisions of the Convention are fulfilled. According to Administrative Procedure Act (§ 56), a written reasoning shall be provided for the issue of a written administrative act. The reasoning for the issue of an administrative act shall be included in the administrative act or in a document accessible by participants in proceedings and the administrative act shall contain a reference to the document. According to the Environmental Register Act, the environmental permits shall be made electronically available in the environmental register (as the Environmental Register Act has not been fully implemented yet, the environmental permits are actually available electronically in Information System of Environmental Permits[8]). The decisions about issuing permits are not published, but are available for the public according to regulations of Public Information Act.

In practice the provisions of Convention are hardly followed. Beside the problems with restricted accessibility to and lack of awareness about *Ametlikud Teadaanded*, the decisions of public authorities often do not contain information about reasons and considerations on which the decision is based. Unfortunately there have been no court rulings in cases of environmental permits, insufficient in that regard, but Estonian Supreme Court has more than once expressed it's firm position about complete lack of considerations in an administrative act being possible reason for annulling the administrative act. Moreover, such rulings have been made in several cases about environmental matters, where the detailed plans were disputed by local people and annulled by courts for not containing sufficient or any reasonings. Thus, the court practice is encouraging in regard of sound implementation of national legislation and the Convention in this matter.

6. Public participation concerning plans, programmes and policies relating to the environment (Article 7)

6.1. Spatial planning

The National Report gives long and thorough overview about legislation, concerning proceedings of spatial planning. In general, the regulation is satisfying. There are, however, again problems with implementing the regulation, especially as this matter is more closely connected to local municipalities where the awareness about principles of the Convention is much lower than by authorities on national level.

The three main problems by spatial planning proceedings are violation of the rules of proceedings concerning the public display, formal public participation and lack of reasonings in the final decisions. The problems are very similar to the problems of implementation of Article 6

[8] http://klis.envir.ee/klis/per/

as the detailed plan proceedings resemble more decision-making processes than shaping of plans and programmes.

6.2. Programmes and policies

Concerning participation in preparation of policies and programmes, there is no legal regulation, guaranteeing public the right to be involved in the process. The tool of strategic environmental impact assessment in the new EIA Act shall create some possibilities, but only concerning the assessment of the impact of the program or policy, not the actual preparation process itself.

TAI project has analysed the possibilities to participate on national level decision-making processes. According to the results, the informing about the intention of preparing a plan is middle-range; providing the draft version of plan to public was estimated as very good, availability of the final document and the contribution of public in the final document was estimated as middle-range and the involvement of public into implementation of the final plan was estimated as poor. The results show that in Estonia, public participation is considered to consist in providing the draft version to public and public hearings, but in most cases the contribution from public is not trackable in the final documents. One problematic issue is participation at possibly early stage which is not guaranteed and substantially restrains the possibilities of public to change the decisions.

As a positive tendency connected to implementation of the Convention, a new inclusion plan of MoE sould be mentioned, defining exact internal rules of public participation and the role of MoE in decision-making processes. By preparing this plan, MoE has consulted with EKO and Estonian Society for Nature Conservation and encouraged NGOs to comment the plan.

7. Public participation during preparation of legislation (Article 8)

Public participation during the preparation of executive regulations and/or generally applicable legally binding normative instruments has not been regulated by Estonian legislation. Certain practice has been developed during processes of creating new legislation, but the qualities of such practice have not been identical or persistent. There have been cases where NGO's have not been informed about drafts of legal acts at all (and therefore have not been able to participate), but there have also been cases where NGO's have participated already in working groups, preparing the drafts.

The main framework, used by public authorities for involving public to the processes, has been taken over from rules of administrative proceedings, but it is not quite appropriate for legislative proceedings.

7.1. Appropriate stage for public participation

According to the Convention, the public must be involved in appropriate stage, while options are still open. In practice, the public authorities often invite public to comment the drafts in stage when drafts have already been fully worked out and harmonized within authorities, leaving very little room for changes. Public participation would be much more effective during the composition period when all the interest groups could be involved in the process of creating the draft of relevant legal act. The problem has found mentioning also in results of the TAI project,

where it is concluded that involving public in stage where a draft has already been prepared, the public has little opportunities to influence the contents of the draft.

7.2. Sufficient time-frames (art 8 (a))

The Convention foresees sufficient time-frames for public participation. In practice there have been positive cases where the time-frames have been sufficient and adequate, but also cases where the NGOs have only had couple of days to comment the drafts. However, in average case 2 weeks is given to the public for studying the materials and commenting the draft, which is clearly insufficient in many cases. At the same time, one or several months have been given to the different ministries for inner harmonization of the draft, putting the public (including NGOs) into unequal situation.

7.3. Public availability of drafts (art 8 (b))

The National Report contains overview about the electronic system of publishing the drafts of legal acts. This system is creditable, but it is rather addressed to smooth cooperation between public authorities than to active involvement of public as it demands persistent monitoring. In case the public authorities do not inform interest groups (e.g. environmental NGOs) about drafts being on public display, the information does not reach these interest groups and there will be no public participation on part of these groups.

There have been cases of active involvement of NGOs on behalf of MoE, when drafts of legal acts have been sent directly to the interest groups, but also cases where no information is provided by MoE and NGOs have lost the possibility to participate in the processes.

According to Public Information Act the drafts of legal acts have to be published on websites of governmental and local authorities. In reality the webpages of local authorities are not updated or do not exist at all (by some local municipalities), so there are cases where people are not able to get information about drafts of legal acts.

7.4. Opportunities to comment (art 8 (c))

The public always has opportunity to comment whatever necessary documents, but the importance lies in question, how these comments are going to be taken into account. In may cases there has been problem in practice that the public has been informed about possibilities to comment drafts of legal acts and NGOs have compiled and presented their comments, but have got no answer or any kind of feedback about the results. The results of TAI project confirm the existence of the problem, concluding that the practical (not formal) involvement of public – encouragement to present comments, giving feedback etc - needs improvement and that there is a need for regulation, concerning answering to comments from public (time-frames and reasonings for not taking the comments into account).

8. Access to justice (Article 9)

The National Report has been especially thorough and well elaborated in parts, concerning the implementation of Article 9 of the Convention. However, some comments on behalf of NGOs may be necessary for understanding how the implementation appears to be from the side of actual users of the means of Article 9.

8.1. Access to a review procedure before an independent and impartial body (art 9 (1))

The main nonjudicial proceedings, used in practice of NGOs, have been challenge proceedings and proceedings of Data Protection Inspectorate. Neither of these proceedings can be regarded as efficient or adequate for the protection of the rights, rising from other pillars of the Convention.

The practice of challenge proceeding is quite new as the Administrative Proceeding Act has been in force only since 1st January of 2002. It has proven to be of no effect as the authority, solving the challenge, will in always the same authority who has issued the challenged administrative act (except in case of the challenge is connected to violation of right for access to information – in this case it is possible to turn to Data Protection Inspectorate). Whereas by regional departments of Ministry of Environment the public authority at least have reasoned their decisions to leave the challenge unsatisfied, the local governments usually even do not trouble to find reasoning to their negative decisions regarding challenges. We are not aware of any case where a challenge has been satisfied.

8.2. Access to justice of members of public (art 9 (2))

Although the provisions of Article 9 have not been transposed into Estonian legislation (the Code of Administrative Court Procedure does not give right to file an action in public interest for NGOs), the implementation of these provisions has been satisfactory. Paragraph 2 of Article 9 of the Convention has been the most successfully used provision of the Convention for Estonian NGOs. In most of the NGO-initiated court cases (except for only 1 case) the courts have confirmed that NGOs have legal standing in environmental matters. Moreover, Estonian courts have acknowledged the widest possible legal standing of NGOs, granting the legal standing even in case the NGO was an informal group of local people (so-called fellowship or partnership – *seltsing*).

There are some questions about transposition of the provisions of Convention into national law, but these questions have been already analysed in the National Report. There is, however, a permanent threat for NGOs of possible limitation of their legal standing as the Estonian government is willing to establish criteria for NGOs to be regarded as "the public concerned" in the meaning of Article 2 (5) of the Convention. The NGOs acknowledge the necessity of elimination of the controversy between provisions of Convention and the Code of Administrative Court Procedure, but have clearly expressed their opposition to any attempt to restrict the presently wide legal standing.

8.3. Equitable, timely and not prohibitively expensive procedures (art 9 (4))

The effectiveness of court proceedings in Estonia is constrained by two main reasons: length and costs of the proceedings.

The length of proceedings depends on location of the proceedings. In practice of environmental NGOs, the proceedings have lasted 2-3 years when they are held in Tallinn and 1-2 years when held elsewhere.

The costs of proceedings can theoretically be a serious obstacle in protecting the environmental rights as the losing party must pay the costs of the winner (including costs for attorney). In practice the costs of the proceedings depend mainly on who are the parties of the dispute. In case the action has been presented by individuals against public authority, courts use their right to reduce the costs and do not claim any costs from the individuals. In case the action has been presented by NGO against public authority, the costs have been reduced by courts, but still remained substantial. However, as the law allows to oblige the losing party to pay all the (reasonable) costs of the winner, there is always theoretical possibility of costs being prohibitively expensive.

Concerning the injunctive relief the regulation in Code of Administrative Court Procedure is sufficient and has proven to be effective in many cases. In practice of environmental NGOs, Estonian courts have implemented injunctive relief in all cases (although sometimes the dispute about necessity of the injunctive relief has even reached Supreme Court).

8.4. Assistance mechanisms to remove of reduce financial and other barriers to access to justice (art 9 (5))

Although an attempt has been made by Estonian government to provide free legal aid in State Legal Aid Act (also described in the National Report), this act only concerns insolvent natural persons and can therefore be not regarded as removing financial barriers to access to justice in the meaning of art 9 (5) of the Convention. In course of the project of MoE, related to the implementation of the III pillar of the Convention (reference to that project contains also in National Report in chapter I) necessity for free environmental legal help was clearly acknowledged. Unfortunately, no actions have followed on behalf of MoE to establish a proper mechanism for this purpose.

9. Conclusions

In general, the Estonian legislative framework is in accordance with the principles of the Convention. In period of last 4 years many new acts have been enforced, in order to improve the implementation of the Convention (among other purposes). The regulation of EIA considers public participation as important part of the decision-making processes in environmental matters.

At the same time it must be noted that there are number of problems in practice of implementation of the Convention. In many cases, public gets no information about the planned activities as the system used for providing information is complicated and only available in the internet. The public authorities fulfil formal requirements, but the contribution from public in the final decisions cannot be defined. Although there is a sound court practice concerning implementation of III pillar, the implementation of the Convention would be more effective in case the principles of two other pillars were more valued.