COUNTRY STUDIES CONCERNING STATE AID - ESTONIA

Country Study

Justice and Environment 2023

CONTENTS

Background

In March 2021, the Aarhus Convention Compliance Committee (ACCC) found in favor of J&E member organization ÖKOBÜRO and its member, GLOBAL 2000, in the communication they had brought, namely ACCC/C/2015/128 (EU). Specifically, the Committee found that:

(a) By failing to provide access to administrative or judicial procedures for members of the public to challenge decisions on State aid measures taken by the European Commission under article 108 (2) TFEU that contravene European Union law relating to the environment, the Party concerned fails to comply with article 9 (3) of the Convention;

(b) *By failing to provide any procedure under article 9 (3) of the Convention through which members of the public are able to challenge decisions on State aid measures taken by the European Commission under article 108 (2) TFEU that contravene European Union law relating to the environment, the Party concerned also fails to provide an adequate and effective remedy regarding such decisions as required by article 9 (4) of the Convention.*

Accordingly, the Committee made the following recommendation:

> *The Committee, pursuant to paragraph 35 of the annex to decision I/7, recommends that the Meeting of the Parties, pursuant to paragraph 37 (b) of that annex, recommends that the Party concerned take the necessary legislative, regulatory and other measures to ensure that the Aarhus Regulation is amended, or new European Union legislation is adopted, to clearly provide members of the public with access to administrative or judicial procedures to challenge decisions on State aid measures taken by the European Commission under article 108 (2) TFEU that contravene European Union law relating to the environment, in accordance with article 9 (3) and (4) of the Convention.*

Questions

What courts have competence to make a judgment when allegedly unlawful state aid government measures are challenged in court? Administrative? Civil? Constitutional?

State aid is most likely granted with decisions that are considered to be administrative acts. In Estonia, administrative courts have jurisdiction when an administrative act is challenged. Therefore, allegedly unlawful state aid decisions are adjudicated before administrative courts. Competitors also bring challenges against unlawful state aid decisions before administrative courts.

The Constitutional Review Chamber of the Supreme Court of Estonia has jurisdiction over challenges brought against legislative acts. These challenges can be brought by the President of Estonia, the Chancellor of Justice, Riigikogu (the Parliament of Estonia) and by a municipal council. Although the Supreme Court of Estonia has once recognized the right of individuals to bring a challenge against a legislative act, it is nearly impossible to demonstrate standing in such cases and no other individuals have done it successfully. When adjudicating cases, courts of lower instances can set aside norms that they consider to be in conflict with the constitution, which triggers constitutional review in the Supreme Court. Therefore, indirectly individuals can challenge allegedly unconstitutional legal acts, but in practice this is very limited in use.

As to each of the courts identified in reply to answer 1, what requirements must be met in order to show standing? Specifically, could an NGO meet these requirements and initiate/file a case challenging potentially illegal state aid? Could other members of the public meet these requirements (presuming they are neither aid beneficiaries nor (potential) competitors Could

this NGO join an ongoing case on any side of the legal dispute as an amicus curiae?

There are no specific requirements for challenging administrative acts that are used to grant state aid in court. Generally, the plaintiff has to demonstrate impairment of their subjective rights. NGOs would most likely be unable to prove this.

Environmental NGOs are granted standing in a wide range of environmental cases provided that they satisfy certain criteria set out in § 30 and § 31 the General Part of the Environmental Code Act. The NGO must be a not-for-profit organization or a foundation which lists environmental protection as one of its aims in its articles of association and pursues that aim with its activities. Environmental protection in this sense also includes protection of the environment to ensure people's health and wellbeing as well as studying and promoting nature and natural heritage. However, to show standing, the NGO must demonstrate that the act is relevant to these environmental protection aims that they pursue according to their articles of association. Depending on the wording of the NGOs articles of association, this might be a problem. It will likely be difficult to convince the court that the decision to grant state aid hinders the NGO from attaining its environmental aims, rather than a decision to grant a construction permit, integrated environmental permit or another permit that allows causing environmental harm. However, if the NGO can successfully prove that the decision to grant state aid harms their pursuit of environmental protection, then the court should grant them standing.

When assessing the promotion of environmental protection, the NGO's ability to attain its goals of environmental protection must be considered, taking into account its activities to date. If the NGO has no previous activities, it can still be granted standing based on its organizational structure, number of members and requirements of becoming a member as laid out in its articles of association.

A non-formal association of at least two people can also be considered an environmental NGO, if they have founded the association with a written contract in which they specify environmental protection as one of their aims. If the association has no previous activities, it must show that it represents the interests of a significant proportion of local people affected by the act (which does not have to be the majority of the locals, provided that there is no evidence of the majority's differing from that of the significant minority). The standard to demonstrate that the disputed act hinders them from attaining their aims of environmental protection must still be met.

An environmental NGO does not need to demonstrate infringement of its subjective rights, because in environmental cases it is presumed that the interests of environmental NGOs are

reasoned if the act is related to the environmental goals or previous areas of activity of the NGO.

I could not find any cases of an environmental NGO bringing a case against a state aid decision, hence I could not confirm that this assessment is quite true.

The position of an *amicus curiae* does not exist in Estonian law, so an eNGO can't become an *amicus curiae* on either side of the dispute. Anyone can informally send information to the court that they deem useful in a given case; however, nobody can oblige the court to consider this information.

In short, an eNGO could probably challenge a state aid decision before an administrative court if the decision is an administrative act, the eNGO is an environmental organisation in the sense of the General Part of the Environmental Code Act and the decision to grant state aid hinders the eNGO from reaching its goals of environmental protection.

Has any national court granted legal standing in practice to a party whose competitive position was not affected by a state aid? If yes, how would you categorize this party? An NGO? Another type of member of the public (individuals, citizens initiatives, and other non-incorporated groups)? In what position was this party accepted by the court: plaintiff or amicus curiae (on either side)?

We did not find any cases from Estonia.

One case that is on the border of relevant for the scope of this study is an almost two decades old case in which Estonian Fund for Nature (an environmental NGO) challenged the decision by Environmental Investment Centre (a state-owned foundation) to grant 2 million kroons to Luua Forestry School to train harvester and forwarder operators.[1] The Fund alleged that the

[1] 3-3-1-54-05 (in Estonian).

decision was in conflict with the goals of the Centre stated in its articles of association. Estonian Fund for Nature claimed standing based on Art 7 of the Aarhus convention, which had not yet been implemented in Estonian law. However, the Supreme Court of Estonia denied the Fund standing, because the decision was an internal administrative act and therefore not challengeable under Estonian law. The decision has lost some of its relevance, because today the General Part of the Environmental Code Act sets out criteria based on the Art 7 of the Aarhus convention that are more specific than the convention itself.

Presuming a national court would grant standing to an NGO to challenge a state aid decision, what criteria would this NGO need to meet in order to be recognized? Are there different criteria for becoming a party vs. an amicus curiae?

See above the answer to question no. 2. The position of an *amicus curiae* does not exist in Estonian law.

Has an eNGO ever filed a lawsuit against a state aid measure in your Member State? Has an eNGO ever been admitted into a case as amicus curiae? If yes, what was the outcome of the case? What was the contribution of the eNGO to the outcome of the case? Please address both admissibility (standing/scope) and merits.

We could not find any such cases in Estonia. The two cases of the ECJ have not been mentioned by the Supreme Court of Estonia and the Commission's notice 2021/C 305/01 has only been mentioned once, although not related to the standing of an eNGO but to one competitor filing a claim against unlawful state aid being granted to another company. Estonian

law does not include the position of an *amicus curiae* in a court proceeding, therefore no eNGOs have never had the opportunity to even file an *amicus curiae* brief.

The Commission's Notice mentioned above has only been mentioned once by the Supreme Court and that was unrelated to the standing of an NGO in a state aid lawsuit.

Can an applicant claim a state aid measure or scheme violated EU or national law relating to the environment? If yes, please provide details, specific examples where this was done, etc. You can quote here cases that were not initiated by eNGOs or members of the public, too.

I have not found any such cases in Estonia. I am rather doubtful whether this would work under Estonian law. The court could say that the decision to grant state aid does not allow to cause any significant environmental nuisance, as this is regulated by environmental permits and one should contest the relevant permit to protect the environment. If no necessary permit is granted for this project, the state aid itself does not harm the environment because the environmentally harmful activity is not allowed to be carried out. However, if the necessary environmental permits are granted, then the environmental harm caused is not unacceptable and therefore the state aid is lawful. But, again, since I could not find any case law about this, the above discussion is merely theoretical.

What sort of remedies is available in a judicial procedure started against a state aid measure?

There are no remedies available specific to state aid measures. As provided in subsection 1 of § 5 of the Code of Administrative Court Procedure, the court may, as in any administrative challenge before an administrative court, decide to:

1) annul the administrative act in part or in full;
2) order that an administrative act be made or an administrative measure be taken;
3) prohibit the making of an administrative act or the taking of an administrative measure;

4) award compensation for harm caused in a public law relationship;
5) issue an enforcement order requiring elimination of the consequences of the administrative act or administrative measure;
6) ascertain that the administrative act is null and void, that the administrative act or measure is unlawful, or ascertain a fact that is of material importance in the public law relationship.

If the act is annulled, which is the most common request by claimants, then the consequences of the act must be reversed.

Assuming eNGOs and other members of the public have standing to challenge state aid measures, what potential costs would they face? Would these costs be different if these eNGOs and members of the public are only acting as amicus curiae?

In administrative proceedings, the court fees are low. The state fee for submitting an application to the first two instances of court is 20 euros and it is 50 euros when submitting an appeal in cassation. Most costs are associated with hiring lawyers and, if need be, experts. The losing party must normally bear the costs of the other party in full, although there are some exceptions. Courts can reduce the amount to be paid by the losing party if paying the full cost would be manifestly unjust for them. Also, in higher instances the courts usually do not accept costs that exceed the costs associated with the proceedings in the first instance. Normally, the costs of state parties are not eligible, because the state is presumed to be capable of representing itself in cases related to its normal area of activity.

Since the position of *amicus curiae* does not exist in Estonian law, no costs can be related to it.

How can eNGOs and other members of the public have access to information about any possible planned state

aid or an actually granted state aid? Specifically, are there national registers? Please answer not only as to general information “out there”, but specifically indicate whether, in your view, this register is fit for the purposes of mounting a timely legal challenge of any such aid.

There is a national register of state aid and de minimis aid that is operated by the Ministry of Finance. In the register, it is possible to search by the name and the number of the entity that was granted aid. It is also possible to search the balance of de minimis aid granted to an entity. There is also the opportunity to search by the aid measure. However, it appears to be impossible to search by the date of granting aid, which is likely to be a major obstacle in the way of mounting a timely legal challenge of any such aid. The hint of aid being granted must still arrive from outside the register (e.g., from the media) and the register would only be useful to find out the details about the aid. There is also no obvious way to order automatic updates via email about specific aid measures or entities. Therefore, using the register to find out about specific aid seems to be tedious manual labour.

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