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**Slovenian Presidency of the Council of the European Union**

# The Heritage and Cultural Rights as a Crucial Element of Environmental Impact Assessments in Europe and Estonia

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World **Heritage** processes should promote and encourage the effective, inclusive and equitable participation of rights-holders, including Indigenous peoples and local communities, and stakeholders concerned with the property as necessary conditions to its sustainable management, protection, conservation, and presentation. All affected and interested parties in the proposed action should be identified early and consulted in order to allow their views and concerns to be meaningfully considered in the assessment. States Parties to the World Heritage Convention are encouraged to respect human-rights based approaches.

Operational Guidelines para 12, 14bis, 39, 119



# Impact assessments

The Environmental Impact Assessment (EIA)  
Directive 1985

Strategic Environmental Assessment (SEA)  
Directive 2001

The environmental impact assessment must identify, describe and assess the direct and indirect effects of a project on a number of environmental factors (population and human health, biodiversity, land, soil, water, air, climate, landscape, material assets and **cultural heritage**), as well as the interaction between these various elements.

Environmental and Social Impact  
Assessment

Heritage Impact Assessment

SOPHIA - Social Platform for Holistic  
Heritage Impact Assessment



# EIA directive:

## Article 3

*THE EIA shall identify, describe and assess in an appropriate manner, in the light of each individual case the direct and indirect effects of a project on:*

- a) Human beings, fauna and flora*
- b) soil, water, air, climate and the **landscape***
- c) material assets and the **cultural heritage***
- d) The interaction between the factors referred to in points a, b and c*

# Study among the members of ICLAFI and ICOMOS Europe Group June 2021

-Is HIA compulsory in your country for WH and national heritage? Name and type of legislative document that regulates HIA (link if possible)

-Is EIA compulsory in your country for WH and national heritage? Name and type of legislative document that regulates EIA (link if possible). What is the relation between HIA and EIA?

- Relevant comments

- 24 answers from Europe
- EIA – mandatory; national legislation
- HIA – element of EIA
- Some countries practice HIA for WH sites

# Feedback on the practice of HIA as part of EIA

Acropolis

Istanbul Canal

Vilnius Old Town

- Not professionally addressed
  - Remains very superficial
  - Missing public consultations
  - No requirements for professionalism
  - Conducted too late in the process
  - Only projects of certain size
  - Separate from other studies
  - Advisory function not taken seriously
  - EIA is mandatory and therefore supports sanctions; HIA is not...



## HIA has to be a process!

- HIA can identify areas of overlapping interests where environmental, social and economic outcomes can all be gained in an equitable manner without damage to heritage
- Provides an opportunity to establish a joint working process
- Cultural landscapes to be integrated
- Public/community involvement



# EU Faro Convention on the Value of Cultural Heritage for Society

## Article 4 – Rights and responsibilities relating to cultural heritage

The Parties recognise that:

- A everyone, alone or collectively, has the right to benefit from the cultural heritage and to contribute towards its enrichment;
- B everyone, alone or collectively, has the responsibility to respect the cultural heritage of others as much as their own heritage, and consequently the common heritage of Europe;
- C exercise of the right to cultural heritage may be subject only to those restrictions which are necessary in a democratic society for the protection of the public interest and the rights and freedoms of others.

## Article 8 – Environment, heritage and quality of life

The Parties undertake to utilise all heritage aspects of the cultural environment to:

- A enrich the processes of economic, political, social and cultural development and land-use planning, resorting to cultural heritage impact assessments and adopting mitigation strategies where necessary;
- B promote an integrated approach to policies concerning cultural, biological, geological and landscape diversity to achieve a balance between these elements;
- C reinforce social cohesion by fostering a sense of shared responsibility towards the places in which people live;
- D promote the objective of quality in contemporary additions to the environment **without endangering its cultural values.**

# Culture and Environment in the Constitution of the Republic of Estonia (1920, 1938, 1992)

## Preambula

... which is founded on **liberty, justice and the rule of law**,

... which must guarantee the preservation of the Estonian people, the Estonian language and **the Estonian culture through the ages**,

**§ 53. Everyone has a duty to preserve the human and natural environment and to compensate for harm that he or she has caused to the environment. The procedure for compensation is provided by law.**

**The Constitution of the Republic of Estonia,** <https://www.riigiteataja.ee/en/eli/530102013003/consolide>

„However, the boundary of the concept cannot extend to the man-made environment as a whole: the living environment concerns the real environment in which people live and which they constantly use. It was also clarified in the discussions of the Constitutional Assembly that the living environment does not mean the social environment. According to the general opinion, this concept also includes nature shaped by human activities, such as city parks. In current practice, the provision has not been understood to cover the part of the living environment related to architectural and artistic values.“ 2020 Commented Edition, Oliver Kask, Martin Triipan [https://pohiseadus.ee/sisu/3524/paragrahv\\_53](https://pohiseadus.ee/sisu/3524/paragrahv_53)



# EIA Directive 2001/42/EC of the European Parliament

(b) "environmental assessment" shall mean the preparation of an environmental report, the carrying out of consultations, the taking into account of the environmental report and the results of the consultations in decision-making and the provision of information on the decision in accordance with Articles 4 to 9;

Article 3. 3. Plans and programmes referred to in paragraph 2 which determine the use of small areas at local level and minor modifications to plans and programmes referred to in paragraph 2 shall require an environmental assessment only where the Member States determine that they are likely to have significant environmental effects.

**Article 5.1. Environmental report** Where an environmental assessment is required under Article 3(1), an environmental report shall be prepared in **which the likely significant effects on the environment of implementing the plan or programme**, and reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme, are identified, described and evaluated. The information to be given for this purpose is referred to in Annex I.

ANNEX I The information to be provided under Article 5(1), subject to Article 5(2) and (3), is the following:

(f) the likely significant effects(1) on the environment, including on issues such as biodiversity, population, human health, fauna, flora, soil, water, air, climatic factors, material assets, **cultural heritage including architectural and archaeological heritage, landscape and the interrelationship between the above factors;**



# Environmental Impact Assessment and Environmental Management System Act 2005

## § 2<sup>1</sup>. Environmental impact

For the purposes of this Act, an environmental impact is a direct or indirect impact on the environment, human health and well-being, **cultural heritage or property that is expected to accompany the proposed activity** or the implementation of a strategic planning document.

## § 3. Mandatory environmental impact assessment

(1) An environmental impact is assessed if:

- 1) an activity license is applied for or amended and the proposed activity which is the reason for applying for or amending the activity license is expected to result in a significant environmental impact;
- 2) **activities are planned which, on the basis of objective information, do not exclude that they may, alone or in combination with other activities, be expected to have a significant adverse effect on the conservation objective of the Natura 2000 site** and are not directly related to or necessary for site management.



# Environmental Impact Assessment and Environmental Management System Act 2005

## § 2<sup>3</sup>. Relevant authorities

(1) Relevant agencies are agencies that are likely to be affected by the environmental impact that is expected to result from the implementation of a strategic planning document or proposed activity or that may have a legitimate interest in the expected environmental impact. **Depending on the nature of the strategic planning document** or proposed activity, the agencies mentioned in the previous sentence may include the Ministry of Defense, the Ministry of the Environment, **the Ministry of Culture**, the Ministry of Economic Affairs and Communications, the Ministry of Finance, the Ministry of the Interior, the Ministry of Social Affairs and other government agencies.

[ [RT I, 04.07.2017, 1](#) - entry into force. 01.01.2018]

(2) The Ministry of the Environment belongs to the relevant agencies **if it is a transboundary environmental impact assessment or a strategic assessment of a transboundary environmental impact or if the Riigikogu, the Government of the Republic or a ministry establishes a strategic planning document or issues an activity license.** In other cases, the relevant authorities include the Environmental Board



## § 3<sup>1</sup>. Purpose of the environmental impact assessment

(1) The purpose of an environmental impact assessment is to provide the licensor with information on the significant environmental impact of the proposed activity and its real alternatives and on the selection of the

most appropriate solution for the proposed activity to prevent or reduce adverse effects on the environment and promote sustainable development.

(2) An environmental impact assessment shall identify the direct and indirect significant environmental effects of proposed activities on environmental elements such as land, soil, water, ambient air, climate, landscape and natural diversity, population, human health, well-being and property, **cultural heritage** and protected natural objects **and their interrelationships**. the significant environmental effects of a possible major accident or disaster, and shall be described and assessed.

The case concerned the power plant and watermill on the Hellenurme dam on the Elva River, where the museum currently operates. **The dam and the dam lake were built already in the 19th century and together with the manor ensemble are under heritage protection.** The power plant's turbine dates back to the 1950s and was put back into operation in 2005.

By a decree of the Minister of the Environment in 2004, the Elva River was added to the list of spawning and habitats for salmon, sea trout and grayling. The river is also part of the European Natura 2000 network, which aims to protect the habitats of the common breath and the thick-shelled mussel. However, the condition of the river has been assessed as poor, as the dams hinder the migration of fish



**OÜ Hellenurme and Heritage Board of Estonia versus Environmental Board of Estonia**

<https://www.riigikohus.ee/et/lahendid/?asjaNr=3-17-1739/80>

„The purpose of the Habitats Directive is not only to maintain the status quo of Natura sites, but also to improve them, but it does not apply retroactively. Therefore, the Estonian state does not have to fully restore the situation that prevailed at the location of the Hellenurme dam before its construction more than a hundred years ago. The Directive does not give the State a basis to impose such an obligation on the developer either.“

ÕÜ Hellenurme and Heritage Board of Estonia versus Environmental Board of Estonia

<https://www.riigikohus.ee/et/lahendid/?asjaNr=3-17-1739/80>



„The Supreme Court emphasizes that upon joining the European Union, Estonia could only assume proportionate and legally clear obligations to improve the condition of Natura sites. The environmental objectives set by the state for the improvement of the status of Natura sites and water **bodies must also be proportionate if they lead to the restriction of fundamental rights.**“



Ü Hellenurme and Heritage Board of Estonia versus Environmental Board of Estonia

<https://www.riigikohus.ee/et/laheid/?asjaNr=3-17-1739/80>

The National Heritage Board has ruled out the establishment of a fish access because it would change the appearance of the area. At the same time, the Heritage Protection Act does not prohibit all changes, but only inappropriate ones. **As a competent authority, the Environmental Board must find a balance between nature and heritage protection, because cultural heritage is also part of the environment.** Agencies and the developer must work together to find the most suitable solution.



OÜ Hellenurme and Heritage Board of Estonia versus Environmental Board of Estonia

<https://www.riigikohus.ee/et/lahendid/?asjaNr=3-17-1739/80>

34. The Supreme Court agrees with the respondent that at this stage of the proceedings it would be premature to exclude fishing access as a mitigation measure. The explanation of the applicant and the National Heritage Board that no fishing access is suitable for the disputed location cannot be considered sufficient, as any access would change the appearance of the area. The Heritage Protection Act does not prohibit any changes, but only inappropriate changes (§ 3 (3) of the MuKS). Cultural heritage is also part of the environment (§ 21 of the KeHJS).

**Heritage protection interests can be taken into account to the extent permitted by EU environmental law, including the opt-out clause of the Habitats Directive (Article 6 (4)).**



**OÜ Hellenurme and Heritage Board of Estonia versus Environmental Board of Estonia**

<https://www.riigikohus.ee/et/lahendid/?asjaNr=3-17-1739/80>





# Thank You!