

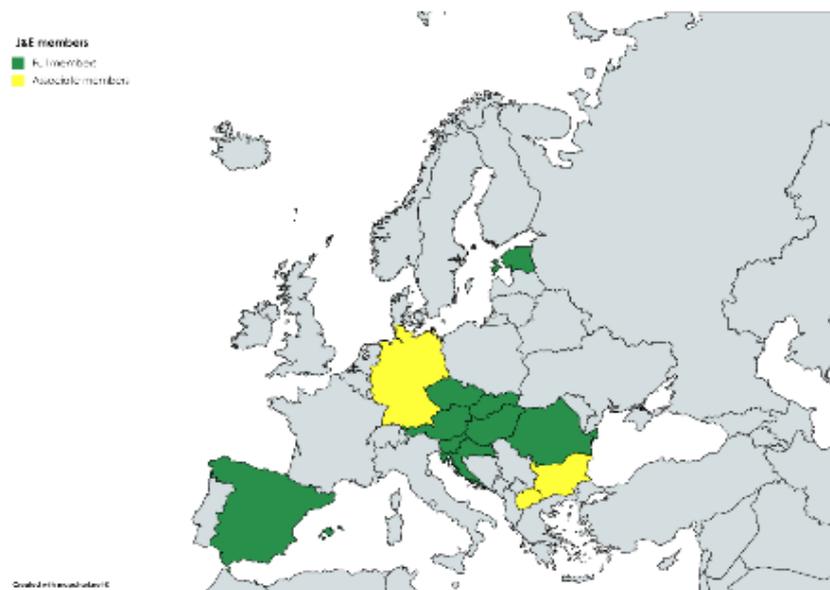


Clarification and assessment of status quo regarding barriers of access to justice in the Member States

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Justice and Environment

- Network of public interest environmental law NGOs
- Established in 2003
- Having 13 members, covering 12 countries (11 EU Member States)
- Active in access to justice in environmental matters since 2006



Research objectives

- ▶ Sufficient legal standing
- ▶ Extent and effectiveness of legal remedies
- ▶ Timeliness of A2J
- ▶ Costs
- ▶ Availability of capacity building
- ▶ 7 countries surveyed: environmental lawyers' assessment on barriers to A2J
- ▶ Austria, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Romania

Methodology

- Expert assessment based on questionnaire (national lawyers)
- Scoring: 1-5 (very weak- very strong barriers)
- Criteria under each objective

E.g. under sufficient legal standing - conditions of standing for individuals/eNGOs, preconditions of access (e.g. prior participation)

- Average scoring per category, sub-category, country and for all countries

Content of the country studies

1. Legislation

- what is the deadline for submitting an administrative remedy in environmental matters?
- what is the deadline for bringing a court action in environmental matters?

2. Practice

- what is the average actual duration of an administrative review process?

In all cases the administrative review lasts 30 days.

- what is the average actual duration of a judicial review process?

Average duration could be one year and a half. If the appeal would be heard by the High Court of Cassation and Justice, it could last more than two years.

3. Scoring (1-5)

Legal standing

	Austria	Bulgaria	Croatia	Czech R.	Estonia	Hungary	Romania	Average
criteria of legal standing for individuals in environmental matters	4	2	5	3	2	4	1	3.00
criteria of legal standing for eNGOs in environmental matters	4	3	1	3	1	3	1	2.29
preconditions of access to justice in environmental matters	3	2	3	3	1	2	1	2.14
average	3.67	2.33	3.00	3.00	1.33	3.00	1.00	2.48

Availability of legal remedies and adequacy

	Austria	Bulgaria	Croatia	Czech R.	Estonia	Hungary	Romania	Average
scope and depth of review by the courts	3	2	4	2	3	1	1	2.29
conditions of applying an injunctive relief	3	3	2	4	2	4	5	3.29
effectiveness of judicial remedies	3	4	2	1	2	3	3	2.57
average	3.00	3.00	2.67	2.33	2.33	2.67	3.00	2.71

Timeliness of access to justice

	Austria	Bulgaria	Croatia	Czech R.	Estonia	Hungary	Romania	Average
the average actual duration of an administrative review process		2	5	1	1	3	1	2.17
the average actual duration of a judicial review process	3	3	5	3	3	3	5	3.67
the average actual duration of granting an injunction		3	5	2	2	4	5	3.50
average	3.00	3.00	5.00	2.50	2.50	3.50	5.00	3.58

Costs

	Austria	Bulgaria	Croatia	Czech R.	Estonia	Hungary	Romania	Average
average actual fees for administrative review	1	1	1	1	1	2	1	1.14
average actual fees for judicial review	1	1	1	1	1	2	3	1.43
bearing costs of procedures in environmental matters	4	2	5	2	4	3	5	3.57
typical costs in environmental cases	3	2		2	4	5	5	3.50
functioning of cost capping mechanisms, legal aid, etc.	3	3	5	2	5	4	5	3.86
average	2.40	1.80	3.00	1.60	3.00	3.20	3.80	2.69

Availability of capacity building

	Austria	Bulgaria	Croatia	Czech R.	Estonia	Hungary	Romania	Average
lack of guidance on access to justice in environmental matters available for the public	4		5			3		4.00
lack of trainings for public officials and judges in access to justice	5		5			3		4.33
no access to information regarding judgments in environmental cases	1		5			1		2.33
no support for environmental legal advisory services and eNGOs	3		5			5		4.33
average	3.25		5.00			3.00		3.75

Overall scores

Austria	Bulgaria	Croatia	Czech R.	Estonia	Hungary	Romania	Average
3.06	2.53	3.73	2.36	2.29	3.07	3.20	2.86

Austria



- Austria follows a strict impairment of rights doctrine
- **Since the CJEU C-644/15 “Protect” case, several administrative courts have given legal standing to eNGOs, e.g. in a nature protection case and a water case**
- preconditions of access to justice in environmental matters: in EIA cases eNGOs have to register at the ministry and prove that they fulfill certain criteria;
- 200 signatures of voters in the municipality or adjacent municipality
- Parties invited by the authorities have to participate in the administrative procedure, otherwise they will “lose” their legal standing
- **It is hard to always know that a procedure has been opened, making timely intervention in the procedure and/or timely appeals to the courts very difficult**
- administrative acts can be reviewed by the administrative courts - courts enjoy this competence, but due to the above standing restrictions many administrative acts remain unchallenged (limited availability of legal remedies)

Austria



- administrative complaint may cover substantive and/or procedural reasons. The administrative court is not bound to the facts found by the authority
- administrative procedure - suspensive effect, some environmental laws grant exceptions from this general rule, additionally the authority may deny the suspensive effect due to the overriding interest of the other party
- **appeal to the Highest Administrative Court normally has no suspensive effect**
- No administrative appeal – directly in the administrative courts
- The administrative court has to decide within six months
- 30 Euros filing fee (administrative court); 240 Euros filing fees (Highest Administrative Court, Constitutional Court)
- **Lawyer's fees and expert fees are the main issue: 4.000 Euros for the commissioning of an expertise appointed by the court**
- Judges not reached by the capacity building
- Judgements available online

Bulgaria



- The public concerned: everyone with legitimate interest and non-governmental organizations promoting environmental protection which are established in accordance with national legislation
- appealing decisions under the Energy Act access is denied
- **Controversial practice: some judges holding that only environmental NGOs registered in public interest have right of appeal in environmental cases**
- scope of review – broad are certain administrative acts which are not challengeable where access to justice is denied to members of the public, including environmental organizations with respect to General Spatial Plans and Detailed Spatial Plans (ACCC/C/2011/58 and C/2012/76)
- The appeal of the administrative act in environmental matters stays the enforcement of the act

Bulgaria



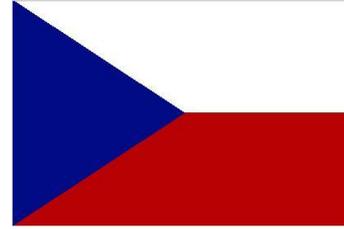
- Immediate enforcement ordered by the administration is common
- an appeal or a protest through the agency of the administrative authority whereof the act is contested, within fourteen days after communication of the act to the persons and organizations concerned
- Administrative review: two weeks after receipt of the case file, where it is a single-person authority, or within one month, where it is collective
- For court cases on appeals of EIA of investment proposals of projects of national and strategic importance the court should hear the case within 6 months
- Increased fees for court review (second instance) – up to 2250 EUR (material interest)
- Minimum fee for a lawyer in administrative cases – 250 EUR

Croatia



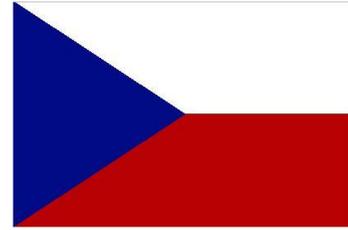
- Infringement and Preliminary Participation in the Procedure
- Civil organizations: Registered and operational for 2 years, no prior participation is required
- Mining Act: No access rights
- The action has no suspensive effect
- **Administrative Court: Rarely investigates substantive infringement, only proceedings**
- **Long Administrative Proceedings** (Brodarci Small Hydropower Plant 2 Years 3 Months)
- Default court proceedings (8 days to start)
- 90 days to bring an action if the decision was not delivered
- Environmental issues ex lege out of the question
- In some cases, administrative degrees last for years

Czech Republic



- for the standing in administrative proceedings - the ones “rights or duties being possibly directly affected”
- The Building Act: the individuals and legal entities whose property rights or another rights in rem; Mining Act
- **eNGO authorized by certain laws- Nature Protection Act, EIA Act, IPPC Act, Water Protection Act and excluded by others (Nuclear Act)**
- In the judicial proceedings: the concept of impairment of rights or citizens and eNGOs assert that their rights have been infringed in these proceedings and this could cause illegality of the decision
- eNGOs are no more entitled to comment on EIA reviews and have no standing in subsequent proceedings (mostly of Building Act) in case full EIA statement is not issued
- Decision of Constitutional Court (2014) administrative courts started slowly to rule that the eNGOs may claim also substantive legality of the administrative decisions

Czech Republic



- **standing in judicial procedure is closely related to the status of a party to the relevant administrative procedure**
- eNGOs are entitled to bring an action against the decision issued in subsequent proceeding and challenge the substantial and/or procedural legality of such decision
- eNGOs may have participated in all proceedings where some aspects of nature and landscape protection, now ENGOS may only participate in the proceedings carried out in line with the Building Act if these are subsequent to the full EIA
- Cassation powers with a few exceptions
- The appeal no suspensive effect only under limited conditions, the administrative courts may further issue a preliminary injunction
- In the case of the D8 highway, the NGOs successfully claimed that the EIA procedure was illegal , no injunctive relief and the procedure lasted for more than 5 years. The building permits for most parts of the highway were issued before the zoning (land use) permit was abolished. The courts declared that the deficits of EIA are not sufficient reason for revoking the building permits. The highway was therefore built despite the courts declared it has no valid EIA.

Estonia



- Rights-based approach applies
- **ENGOs also have access to justice: interest is reasoned or that their rights have been violated if the contested administrative decision is related to the environmental protection goals or the current environmental protection activities of the organization**
- A claim in court procedure if there has been an infringement of procedural rights or a misapplication of the substantive law
- Injunctive relief when otherwise the protection of the applicant's rights by the judgment may be rendered significantly more difficult or impossible
- An annulment action - 30 days after the date on which the administrative act was notified to the applicant

Estonia



- For administrative review – ca. 1 month, Administrative courts – ca. 13 months, Circuit courts – ca. 8 months, The Supreme Court – ca. 7 months
- 15 € state tax for a proceeding
- Regarding reduction of costs, the Supreme Court has stated that right to file a claim in environmental matters is governed by Article 9 (4) of the Aarhus Convention that judicial proceedings cannot be prohibitively costly - reduced costs imposed on the applicants from 11 880 € to 6800 €
- **Experts costs vary from 200 € – 5000 €**

Hungary



- individual legal standing is based on the direct affectedness of rights or legitimate interests of natural persons. Any preferential standing must be defined by an Act of Parliament or a Government Decree
- Environmental Protection Act - ex lege conditions of legal standing in environmental administrative procedures for NGOs:
 - created for the protection of environmental interests
 - not political parties or trade unions
 - active on the impact area of an activity in question
- **Prior participation requirement in some administrative cases (railway construction and general house building). This requirement is not applicable in environmental, nature conservation or water management cases.**
- A technical type of precondition exists in EIA procedures where NGOs willing to exercise their legal standing must submit their court registration documents and their by-laws in order to prove the fulfilment of the respective standing criteria

Hungary



- In administrative lawsuits - proportionality and the public interest as well as the interests of all parties to the case whether the lack of granting the immediate protection would cause a more serious harm than the harm caused by the ordering of the immediate protection
- Review scope: in administrative lawsuits all aspects of the act under review, i.e. the procedure how the act was made, its content and also the scientific correctness of the underlying expert documents
- 15 calendar days counted from the delivery of the first instance administrative decision to file an appeal
- 30 calendar days from the delivery of the administrative decision to file a lawsuit
- no absolute deadline set for the judicial review, new Administrative Judicial Procedure - the first hearing within 60 days from the arrival of the action at the court or from the time when the action is appropriate for adjudication
- Judicial review: 100-200 EUR

Hungary



- Expert fees are really high in environmental cases and can be extremely, or even prohibitively high. The average expert fees in environmental matters, using a few examples are
- **EUR 5,000 for a complex analysis in an environmental liability case**
- **EUR 1,500 for a 24-hour noise measuring**
- **EUR 1,500 for the review of an Environmental Impact Statement**
- EUR 500 for the evaluation of one single real estate's prima facie economic value (in environmental tort cases)

Romania



- criteria of legal standing and the preconditions are not a barrier to access to justice in Romania
- The NGOs must prove that their official scope according to their statute is the protection of the environment
- **The courts are not granting injunctive relief in environmental cases because it is not possible to prove an imminent damage.** The damages to the environment caused by pollution are very hard to be proved in court before they are already happening, especially in case of diffuse pollutions like emissions, radiations, etc that requires experts that are rare, expensive
- Average duration of the judicial review could be one year and a half. The appeal to the High Court of Cassation and Justice could last more than two years.
- **The experts fee has increased severally and in some cases could be even 15.000 eur (70.000 lei) (ex. the case of an illegally built wind park that was destroying a special habitat).**

Thank you for your attention!

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