JUSTICE AND ENVIRONMENT
European Network of Environmental Law Organizations

Barriers of Access to Justice

Croatia

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

Country Study

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I. INTRODUCTION

There are a number of barriers in front of effective access to justice (legislative and practical) in each Member State. The current survey is supposed to produce a clear, first-hand information from practitioners from the EU MS on the range and gravity of barriers of effective access to justice in environmental matters. For this, we are using a combination of research and polling to identify and categorize the barriers of access to justice. There will be 5 major blocks identified by the objectives of regulation and there will be 3 types of questions in each block, i.e. legislative, practical and scoring. Within each type, there may be more questions depending on the number of issues analyzed.

II. THE BARRIERS IN DETAIL

Objective	Indicator (example)
Sufficient legal standing	conditions of standing for individuals (e.g. affectedness) conditions of standing for eNGOs preconditions of access (e.g. prior participation)
a) legislation	- what are the criteria of legal standing for individuals in environmental matters? According to the Environmental Protection Act (EPA) (OG 80/13, 153/13, 78/15, 12/18) Art 167 par 1 and Art 168 par 1 Individuals have the right to file an appeal if they can prove impairment of their right due to the location and/or nature and impact of the project and if they participated in the procedure as public concerned. - what are the criteria of legal standing for eNGOs in environmental matters? According to the EPA Art 167 par 2 and Art 168 par 2 An NGO has a sufficient legal interest in the procedures regulated by the Environmental Protection Act which provide for the participation of the public concerned, if it fulfils the following requirements: 1. if it is registered in accordance with special regulations governing associations and if environmental protection, including protection of human health and protection or rational use of natural resources, is set out as a goal in its statute, 2. if it has been registered for at least two years prior to the initiation of the public authority's procedure (in relation to which it is expressing its legal interest), and if it can prove that in that period it actively

participated in activities related to environmental protection on the territory of the city or municipality where it has a registered seat in accordance with its Statute. Such NGO shall have the right to file an appeal with the Ministry or file a lawsuit before the competent court, for the purpose of challenging the procedural and/or substantive legality of decisions, actions or omissions.

- are there preconditions of access to justice in environmental matters (besides of course fulfilling the criteria of legal standing)?

1) Natural and legal persons must participate in prior public participation procedure relate to some environmental issues so that they can have legal standing. That is not the case for Environmental NGOs, which only needs to fulfil the criteria of legal standing.

2) In Criminal and Misdemeanour cases environmental NGOs needs to be victims in order to participate in the court proceedings. The members of the public, including environmental NGOs, have no possibility of access to justice in the case of misdemeanour proceedings and criminal proceedings for violation of laws relating to the environment and nature. Due to the narrow definition of the „party“ to proceedings (misdemeanour or criminal), NGOs can't participate in these proceedings in the case of violation of laws relating to the environment, because they are not covered by the term "victim" nor are considered to have a legal interest in the name of the nature, biodiversity, fauna and flora, even if the NGOs objectives are related to the environment and nature.

   However, "anybody" can submit a criminal report to Police or State Attorney Office about any criminal act, so criminal acts against environment included.

Croatian NGOs also do not have the opportunity to participate in the inspection procedures except for the right to submit an application and the right to get a respond to the application. NGOs are not considered parties in these proceedings and do not have any procedural rights to participate in these proceedings, which they should have according to Article 9, Paragraph 3 of the Aarhus Convention.

3) Some provisions of the Building Act, the Physical Planning Act, the Act on Sustainable Waste Management and the Mining Act not in accordance with the Aarhus Convention:

   - Building Act (OG 153/13,20/17) – Article 115
   - The Physical Planning Act (OG no. 153/13,65/17) – Article 141
   - The Act on Sustainable Waste Management (OG no. 94/13,73/17) – Article 95
   - The Mining Act (OG no. 56/13, 14/14, 52/18) – Article 15

	In the Croatian legislation there are examples of limiting the term 'party' in the special, aforementioned administrative procedures. These provisions are in accordance with Article 6, Paragraph 1 of the European Convention (the right to a fair trial) and Article 14, Paragraph 2 (the equality before the law) and Article 29, Paragraph 1 of the Constitution of the Republic of Croatia (the right to an equitable procedure). Ensuring an economic procedure by having a small number of parties in the procedure is not an allowed goal which could restrict fundamental human rights. Other reasons why these provisions should be abrogated is that they are not in accordance with Article 6 of the Aarhus Convention when they lead to denying of the right to participation of the public and the public concerned in administrative procedures relating to decisions about activities that may have significant effects on the environment. In fact, in administrative procedures in which decisions about whether to allow certain activities that may have significant effects on the environment are made, public participation must be allowed during all the stages of decision-making on that activity, not only in the procedure of the environmental impact assessment . If the legislation explicitly states who may be a party in the procedure of issuing location permit, building permit, waste management permit, etc., while at the same time does not prevent public participation in such procedures when it comes to activities under Article 6 of the Aarhus Convention, such provisions of the law are not in accordance with the Aarhus Convention.
b) practice	- do the criteria of legal standing for individuals in environmental matters pose a barrier to access to justice? Yes they do. According to the Aarhus Convention the participation in the decision-making process is not a prerequisite for recognizing the right of the public concerned in participating in reviewing the decision in court. Also, Individuals are often not adequately informed, or they are not able to participate in prior public participation procedure thus losing their legal standing. The most critical elements of the implementation are the extremely weak implementation of public consultations, especially at the local level and by institutions and other legal entities with public authorities. Also, it can be hard for individuals to prove that some environmental project is producing impairment of their rights as one of the criteria for legal standing of individuals. - do the criteria of legal standing for eNGOs in environmental matters pose a barrier to access to justice? It should not produce barriers in practice in general related to Administrative court procedure. . However, there are barriers in

	criminal and misdemeanour as well as in inspection procedures as described above which pose problems for NGOs. - do the preconditions of access to justice in environmental matters (if they exist) pose a barrier to access to justice? For NGOs it should not produce a barrier. For individuals the criteria of prior participation in decision making process related to some environmental project might pose a barrier. - cite one or two court cases where either the criteria of standing or preconditions of access meant a barrier to access to justice, etc. Two verdicts (2UsI- 1472/12-59 and UsI-970/13-32), in which it has been stated that the matter of conformity of the project with spatial-planning documents is a subject matter of the administrative procedure of issuing location permits. The problem is the fact that the Physical Planning Act strictly determines the parties in the process of issuing location permits to the submitter of the request and the owners, as well as ownership holders on that particular and adjoining real estate. In other words, it means that the environmental NGOs cannot participate in the procedure of issuing location permits. Taking this into consideration, together with the inability to dispute project's conformity with spatial-planning documents in the administrative procedure of environmental impact assessment of the project, one of the vital elements of the control of negative environmental impact still remains out of reach of general public and public concerned – which is contrary to Aarhus Convention.
c) scoring	On a scale of 1 to 5 please score the following in terms of how strongly they mean a barrier to access to justice in environmental matters: 1: very weak, 2: weak, 3: intermediate, 4: strong, 5: very strong - criteria of legal standing for individuals in environmental matters: 5 - criteria of legal standing for eNGOs in environmental matters: 1 - preconditions of access to justice in environmental matters: 3

Objective	Indicator (example)
Availability of legal remedies and adequacy	review against administrative acts or omissions review against actions or omissions of private persons scope of challenges brought in a review (review of substantive issues, of formal issues, of discretionary decisions, standard of review, general court competence to hear claims, etc.) availability of injunctive relief effective remedies available when challenges are successful
a) legislation	- is there a review of administrative acts by the court? Yes, the General Administrative Procedure Act (OG 47/09) ensures that administrative acts are subject to review by the court. - is there a review of acts of private persons by the court? - is there a review of omissions of private persons by the court? - what is the scope of challenges brought in a review? Scope of administrative disputes is defined in the Administrative Disputes Act (OG 20/10, 143/12, 152/14, 94/16, 29/17) Article 3: (1) The scope of administrative dispute is the following: 1. assessment of the lawfulness of a decision by which the body of administrative law adjudicated on a right and obligation in an administrative matter (administrative act) against which it is not permissible to file a regular legal remedy and the adjudication on the rights, obligations and legal interests of the party; 2. assessment of the lawfulness of an act of the body of administrative law by which a right, obligation and legal interest of the party was breached against which it is not possible to file a regular legal remedy; 3. assessment of the lawfulness of a failure of the body of administrative law to adjudicate on a request or a regular legal remedy of the party or to act in accordance with subordinate legislation within the time limit defined by law as well as the adjudication on the rights, obligations and legal interests of the party; 4. assessment of the lawfulness of the conclusion, termination and enforcement of administrative contracts.

(2) The subject-matter of an administrative dispute is assessment of the lawfulness of a general act of the local and regional self-government, legal persons vested with public powers and legal persons performing public services (hereinafter the "general act").

- what kind of injunctive reliefs are available in environmental matters?

According to the General Administrative Act Art 140 it is possible to have the Deferment of enforcement of the administrative decision:

“(1) Upon a motion by a party and in order to avoid damage that would be difficult to remedy, the public law authority that rendered the decision may defer the enforcement and, when necessary, extend the deferral of the decision’s enforcement until a legally effective decision is rendered on the administrative matter, save as otherwise provided by law and when this is not contrary to the public interest.

(2) The enforcement shall be deferred when a grace period is allowed for enforcement or when in place of the enforceable interim decision a new decision on the merits is adopted which is different than the interim decision.

(3) A decision shall be reached on the deferral.”

Also by the Administrative Disputes Act Art 26 it is possible to have Injunction reliefs in case of Administrative dispute in front of the Administrative Court:

“Delayful effect of the lawsuit

(1) The lawsuit has no delaying effect unless it is prescribed by the law.

(2) The court may decide that the lawsuit has a delaying effect if, by the execution of an individual decision or an administrative contract, the claimant shall suffer damage that could be difficult to repair if the law does not prescribe that the appeal does not postpone the execution of the individual decision and the delay is not against the public interest.”

- what are the conditions of applying an injunctive relief by the court?

It is prescribed by the Art 26 of the Administrative Disputes Act:

“The court may decide that the lawsuit has a delaying effect if, by the execution of an individual decision or an administrative contract, the claimant shall suffer damage that could be difficult to repair if the law does not prescribe that the appeal does not postpone the

	execution of the individual decision and the delay is not against the public interest.”
b) practice	- what is the scope and depth of review by the courts in practice? Most Administrative courts (there are 4 in Croatia) does not go in depth in review procedure. In most cases with which we are familiar, there stick to the procedural matters and do not go much into material matters of the case. For example, this is a big issues with court review of EIA decisions. - what is the practice of courts in applying injunctive relief in environmental cases? Contrary to an appeal, a lawsuit does not postpone the enforcement of a decision. In case when there is a concern that enforcement of a decision could result in irreparable damage (sometimes the effective outcome of the litigation can depend entirely on whether an injunction is granted) or could complicate implementation of the final verdict, one of the aspects of (un)efficiency of courts is a measure known as the injunctive relief. This measure is rarely used in Croatia. As we have pointed out in the previous chapter, court procedures last very long, the lawsuits filed in reference to illegal decisions do not postpone the enforcement of the decisions and this enables the developers to act upon a decision, in spite of the possibility for the decision to be annulled at court, or that the court could find the decision illegal. Long court procedures in combination with reluctancy to grant injunctive relief can result in “academic winnings” – annulment of permits for developments already made. - does this mean a barrier to effective access to justice? Yes - are the judicial remedies effective when challenges are successful? The judicial remedies are not effective. - cite one or two court cases for any of the preceding issues, e.g. scope and depth of review, injunctive relief, effectiveness of judicial remedies, etc. Usl-144/14-10 –the lawsuit of Pan, environmental and nature protecting organization, against Ministry of Environmental Protection and Nature in the case of Decision on Environmental Acceptability of the project “Small Hydroelectric Power Plant Brodarci”; the lawsuit was filed on December 31, 2013 at the Administrative Court in Rijeka and the verdict rejecting the lawsuit made by Pan was given on March 21, 2016 – the proceedings lasted 2 years and 3 months. On April 4, 2016 Pan appealed the verdict at the High Administrative Court in Zagreb and on July 6, 2016 it gave a verdict that the Decision of the

	Ministry would be annulled in favor of the plaintiff – the proceedings lasted 3 months. We would like to point out the last example from High Administrative Court, which completed the case in 3 months, as an example of good practice.
c) scoring	On a scale of 1 to 5 please score the following in terms of how strongly they mean a barrier to access to justice in environmental matters: 1: very weak, 2: weak, 3: intermediate, 4: strong, 5: very strong scope and depth of review by the courts: 4 conditions of applying an injunctive relief: 2 effectiveness of judicial remedies: 2

Objective	Indicator (example)
Timeliness of access to justice	deadline for submitting an administrative complaint: deadline for bringing a court action deadline set for administrative review deadline set for judicial review: deadline for requesting and granting an injunction average length of procedures: no general data available; for EIA procedures 18,4 months (median in 2016); 7 months from the time the authority has all necessary documents;
a) legislation	- what is the deadline for submitting an administrative remedy in environmental matters? In the General Administrative Act Art 109 it is prescribed that an appeal shall be filed within 15 days of the date of delivery of the decision, unless a longer period is prescribed. The same is in in the Environmental Protection Act. - what is the deadline for bringing a court action in environmental matters? It is stipulated in the Administrative Disputes Act Art 24: (1) A law suit shall be filed within 30 days from the day of service of the administrative act on the party filing the law suit. (2) When filing a dispute as a result of a failure to make an individual decision or omission in a prescribed period, the claim shall be submitted to the court no later than eight days after the expiration of the prescribed period. (3) The deadline in paragraph 1 of this Article also applies to the body authorized to file a law suit if the administrative act is served to it. If the act is not served to it, it may file a law suit within 90 days of the day of service of the administrative act to the party to whose benefit the act was passed. (4) If an individual decision contains legal remedy that prescribes longer time-limit for initiating a dispute than the time-limit prescribed by law, the claim may be filed within the time limit specified in the legal remarks. (5) If an individual decision contains a legal remedy indicating that the claim is not allowed, the claim may be filed within 90 days of the day the party has learned or can find out the possibility of filing the lawsuit.

	The same is in the Environmental Protection Act. - what is the deadline set for the competent authority for administrative review? Article 121 General Administrative Act sets time limits for adopting second instance decisions "A body of second instance shall reach a decision on the appeal and deliver it to party by way of the first instance body as soon as possible and **no later than 60 days** following the delivery of an orderly appeal, save when a shorter time limit has been prescribed by law." - what is the deadline set for the court for judicial review? Article 172 of Environmental Protection Act stipulates that the court procedures on each suit regarding environment protection should be urgent. In practice, the proceedings at Administrative Courts in Croatia last too long and the motions for injunctive relief are rarely accepted. - what is the deadline for requesting and granting an injunction? The same as above, it is not explained what "urgent" means.
b) practice	- what is the average actual duration of an administrative review process? The shortest duration of administrative review process is about 1 year, but in many cases it is much longer, 3-4 years in most cases. - what is the average actual duration of a judicial review process? Article 172 of Environmental Protection Act stipulates that the court procedures on each suit regarding environment protection should be urgent. In practice, the proceedings at Administrative Courts in Croatia last too long and the motions for injunctive relief are rarely accepted. - what is the average actual duration of a judicial case against a private person? - what is the average actual duration of granting an injunction? - cite one or two court cases for any of the preceding issues, e.g. length of procedure, time to grant and injunction, etc.

	1) 1 Usl-159/13-24 – lawsuit of Zelena Istra and six private plaintiffs against Ministry of Environmental Protection and Nature in the case of Decision on Environmental Acceptability of exploitation of architectural-building stone at the exploitation field “Marčana” in Marčana Municipality; the lawsuit was filed at the Administrative Court in Rijeka on January 18, 2013 and the verdict in favor of the plaintiff was given on September 7, 2016 – the proceedings lasted 3 year and 8 months. 2) In the case of a lawsuit made by Zelena akcija, Zelena Istra and several private plaintiffs against the ecological permit which Ministry of Environmental Protection and Nature issued for thermal power plant Plomin C, an injunctive relief was claimed. The court denied the injunctive relief since the decision on environmental acceptability does not present direct executive act for the realisation of the project. However, the decision does make the necessary condition to obtain such a direct executive act in further steps of the project. Public and public concerned does not have the right to participate in these proceedings and therefore they cannot claim suspension of the enforcement of the environmental acceptability decision before the case is closed in court.
c) scoring	On a scale of 1 to 5 please score the following in terms of how strongly they mean a barrier to access to justice in environmental matters: 1: very weak, 2: weak, 3: intermediate, 4: strong, 5: very strong the average actual duration of an administrative review process: 5 the average actual duration of a judicial review process: 5 the average actual duration of granting an injunction: 5

Objective	Indicator (example)
Costs of access to justice	fees for administrative review: fees for judicial review: rules of bearing costs of procedures: costs for/necessity of expertise: cost capping mechanisms, legal aid, etc.: A
a) legislation	- what are the fees for administrative review in environmental matters? There are no fees for administrative review in environmental matters. - what are the fees for judicial review in environmental matters? There are no fees for judicial review in environmental matters. - what are the rules of bearing costs of procedures in environmental matters? 1) In Art 79 of the Administrative Disputes Law it is prescribed that the party losing the dispute fully bears all costs of the dispute, unless otherwise prescribed by law. If the party partially succeeds in the dispute, the court may, with respect to the success achieved, determine that each party has its own costs or that the costs are allocated in proportion to the success of the dispute. A party who withdrew a claim, appeal or other proposal that has caused the costs to the other parties shall bear the costs and those parties 2) Barrier in Access to justice is contained in Art 171 of the Environmental Protection Act. Article 171 of the Environmental Protection Act prescribes as follows: „If a particular act by a public authority body is not valid due to the request submitted in accordance with Article 169 of this Act, and for that reason the developer, operator or another legal or natural person to which that act refers to, decides to wait until the legal validity of the act, in case it is established that the applicant has abused his right under the provisions of this Act, then the developer, operator or another legal or natural person has the right to demand compensation for damages and a loss of profit from the person who has submitted the request.“ The quoted article is contrary to Article 3, Paragraph 8 of the Aarhus Convention and Article 9, Paragraph 4 of the Aarhus Convention. A

	provision like this one does not exist in any other law within the Croatian legal system and it is absurd that it exists in the act which proscribes the principle of access to justice as one of the fundamental principles. The formulation "in case it is established that the applicant has abused his right under the provisions of this Act" can easily become the basis for arbitrary proceedings. The provision is vague and does not provide any guidelines to what it means to abuse the right to submit a complaint in the administrative procedure. In situation like this, individuals who exercise right to judicial review of acts of public authority bodies are placed in an uncertain position of a possibility of bearing enormous costs of damage compensation, because there are no clear criteria to determine whether they abused their right to complaint defined by law. - are there any cost capping mechanisms, legal aid, etc.? In Croatia, only natural persons may get a free legal aid. Access to legal aid is denied to NGOs, which is not in accordance with the Aarhus Convention (Article 9, Paragraph 4 and Article 9, Paragraph 5, requiring fair and equitable legal remedies and the duty to examine the possibility of establishing appropriate assistance mechanisms to remove or reduce financial barriers to access to justice). According to the Croatian Free Legal Aid Act, legal persons cannot be beneficiaries of free legal aid. Environmental NGOs should be able to participate equally in judicial and other proceedings. The legislator would have to establish fair criteria according to which the legal persons, especially non-profit organizations, could become beneficiaries of free legal aid.
b) practice	- what are the average actual fees for administrative review in environmental matters? No fees - what are the average actual fees for judicial review in environmental matters? No fees - how do court apply the rules of bearing costs of procedures in environmental matters? The same as in previous part. - what are the typical costs in environmental cases? - how high are the costs of experts? - do the cost capping mechanisms, legal aid, etc. work in practice? - cite one or two court cases for any of the preceding issues, e.g. expert fees, legal aid, etc.

c) scoring	On a scale of 1 to 5 please score the following in terms of how strongly they mean a barrier to access to justice in environmental matters: 1: very weak, 2: weak, 3: intermediate, 4: strong, 5: very strong average actual fees for administrative review: 1 average actual fees for judicial review: 1 bearing costs of procedures in environmental matters: 5 typical costs in environmental cases: at least 1000 Eur when third party (investor) higher a lawyer which is in 99 % of cases functioning of cost capping mechanisms, legal aid, etc.: 5

Objective	Indicator (example)
Availability of capacity building	guidance on access to justice in environmental matters available for the public trainings provided for public officials and judges in access to justice access to information regarding judgments in relevant cases recognition of and state financial support to environmental legal advisory services by/to eNGOs
a) legislation	- is there an obligation by law to have guidance on access to justice in environmental matters available for the public? - are there trainings prescribed for public officials and judges in access to justice? Trainings for judges are being performed by the Judicial Academy. In 2018 there is an educational program for the field of Administrative Law: "Aarhus Convention - Administrative or Civil law aspect - Environmental Protection and Practice of the EU Court". State and local officials are being educated through the State School for Public Administration. - is access to information regarding judgments in environmental cases regulated by law? - are environmental legal advisory services and eNGOs recognized by law?
b) practice	- is there a guidance on access to justice in environmental matters available for the public? There are some publication with guidance on access to justice in environmental matters which are available for the public which were prepared by Croatian NGOs (Legal toolkits). There is no guidance on this topic prepared by Judicial academy or the Ministry. - are there trainings for public officials and judges in access to justice? There are some trainings provided by Government Office for cooperation with NGOs about access to information but not about access to justice. - is access to information regarding judgments in environmental cases ensured? No, this poses a big problem.

	- are environmental legal advisory services and eNGOs supported by the state? No, there is Act on free legal aid, but there is not specific fund provided for free legal aid in environmental cases. - cite one or two court cases for any of the preceding issues, e.g. guidance to the public, eNGO support, etc.
c) scoring	On a scale of 1 to 5 please score the following in terms of how strongly they mean a barrier to access to justice in environmental matters: 1: very weak, 2: weak, 3: intermediate, 4: strong, 5: very strong lack of guidance on access to justice in environmental matters available for the public: 5 lack of trainings for public officials and judges in access to justice: 5 no access to information regarding judgments in environmental cases: 5 no support for environmental legal advisory services and eNGOs: 5

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