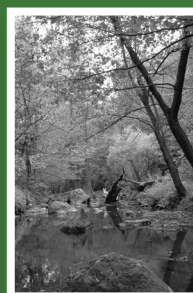
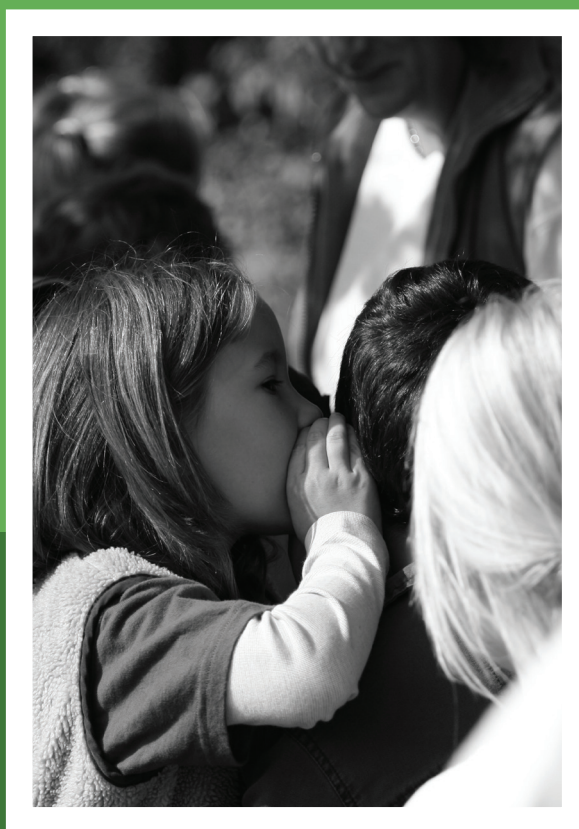


PRICE OF JUSTICE

International Comparative Analysis on Costs of Administrative and Judicial Remedies



Justice & Environment

Justice & Environment (J&E) is a European network of environmental law organisations. J&E is a non-profit association with a mission that *aims for better legislation and implementation of environmental law on the national and European Union (EU) level to protect the environment, people and nature*. J&E fulfils this mission by ensuring the enforcement of EU legislation through the use of European law and exchange of information.

J&E was created in January 2003 and founded as a non-profit association in September 2004. J&E currently comprises six full-member organisations: Environmental Law Service, Czech Republic (EPS); Estonian Environmental Law Centre, Estonia (EELC); Environmental Management and Law Association, Hungary (EMLA); ÖKOBÜRO – Coordination Office of Austrian Environmental Organisations, Austria; Legal-Informational Centre for NGOs, Slovenia (PIC); and the Centre for Public Advocacy, Slovakia (VIA IURIS). J&E also has six associate members: Environmental Justice Association, Spain (AJA); Centre for Legal Resources, Romania (CRJ); Front 21/42 Citizens' Association, Macedonia (Front 21/42); MilieuKontakt International, the Netherlands (MKI); Independent Institute of Environmental Concerns, Germany (UfU); and Green Action – Friends of the Earth Croatia, Croatia (ZA).

All J&E activities are based on the expertise, knowledge and experience of its member organisations. The members contribute their legal know-how and are instrumental in the initiation, design and implementation of the J&E work programme. The strong grassroots contacts of the members enable J&E to concentrate on Europe-wide legal issues and horizontal legislation, notably the: Aarhus Convention, environmental impact assessment, environmental liability, pollution, Natura 2000, transport and the building of legal capacity. Within these fields J&E: carries out analysis, compiles case studies and joint position papers; formulates strategic complaints, encourages discussion and legal education; and conducts outreach activities. Thus J&E provides added value from civil society to legislators and adds tangible benefits by broadening public knowledge of EU law and legislation.

To carry out its programme of work J&E relies on a number of donors and supporters. First and foremost the members themselves financially contribute to the network. However J&E has been supported by: the European Commission through the LIFE+ programme, the International Visegrad Fund (IVF), The Ministry of Housing, Spatial Planning and the Environment of The Netherlands (VROM), the Sigrid Rausing Trust and its own member organisations

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*Sumptus census ne superet*¹

1. Introduction

Fundamental rights as granted by international and regional conventions, agreements and treaties are important sources of activist law enforcement. They are inalienable attributes of every human being and are not donated by the government or any other authoritative body. In contrast, the latter are obliged to respect such rights and abstain from limiting or hindering their exercise.

Practical conditions of the implementation of such rights, however, are a more complicated matter. While formal granting of rights may take the form of declarations and even abstaining from hampering them is a relatively easy task for the governments of Europe today, ensuring an enabling environment for their practice is a more demanding and cumbersome duty. As we will see below, some EU Member States and other countries could not cope with this task on an acceptable level as our research has uncovered.

One major aspect of the exercise of procedural rights is the one of costs and expenses entailed by the initiation of processes and the use of remedies therein. The importance of the question cannot be overestimated given the major role such costs play in the decision of members of the public and environmental non-governmental organizations to enter into legal proceedings. We might even risk the assumption that the major deterrent for potential applicants and plaintiffs from starting environmental proceedings in certain legal systems (dominantly the Anglo-Saxon legal regimes) is the amount of possible costs that a loser of the case might have to pay.

Obviously, such deterrent effect has multiple impacts on procedures and the development of environmental law at large. *Prima facie* it results in fewer procedures that means lesser burden for the state administration, fewer cases for the judiciary, and altogether, saving for the state budget. However, it also means fewer cases against maladministration of environmental issues by the government and against unlawful conduct by polluters. It may also convey the false message that the law as adopted in a given country is functioning properly, and the lack of cases may result in the stagnation of legal development on the long run.

As *dr. Owen McIntyre* (Faculty of Law at the University College Cork) says: “...*by setting out clearly the objectives to be achieved through the use of arrangements which allocate costs as between the parties to judicial review proceedings, it will be a great deal easier for the courts to develop a coherent body of rules and principles relating to their use and availability.*”²

It is worth taking a closer look how the Aarhus Convention deals with the aforementioned issue.

2. The legal framework

The Aarhus Convention is a major foundation of enforcing procedural rights in environmental decision-making. It both deserves the title of the most comprehensive collection of such rights in one document as well as being the international convention adopted with the most public involvement

¹ „Let not your spending exceed your income” – Latin proverb http://dictionary.babylon.com/Sumptus_census_ne_superet

² Dr. Owen McIntyre, Faculty of Law, University College Cork: *The Role of Pre-emptive / Protective Costs Orders in Environmental Judicial Review Proceedings*, page 5

to date. The area the Convention affects is a specific one because it does not *per se* define good environmental decisions. However, it defines what it requires from an environmental decision to be well made by guaranteeing public participation therein. Also it states that such good environmental decisions are necessary for enforcing the human right to environment. In this context, the Convention tries to set the boundaries and criteria of inclusive and participatory decision-making as well as the conditions for a meaningful system of remedies.

Within this framework, the Convention includes principal as well as practical provisions, i.e. those that affect a basic right and others that affect the everyday application thereof. One such issue that belongs to the latter category is the one of costs of procedures, both administrative and judicial.

The Aarhus Convention devotes relatively little attention to the question of costs, a bit contrary to the real importance of the question on the ground. The passages where reference is to be found (in relation to participation and justice) are:

Art. 3.8

*Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalized, persecuted or harassed in any way for their involvement. This provision shall not affect the powers of national courts to award **reasonable costs** in judicial proceedings.*

Art. 6.6

*Each Party shall require the competent public authorities to give the public concerned access for examination, upon request where so required under national law, **free of charge** and as soon as it becomes available, to all information relevant to the decision-making referred to in this article that is available at the time of the public participation procedure, without prejudice to the right of Parties to refuse to disclose certain information in accordance with article 4, paragraphs 3 and 4.*

Art. 9.1

[...]

*In the circumstances where a Party provides for such a review by a court of law, it shall ensure that such a person also has access to an expeditious procedure established by law that is **free of charge** or **inexpensive** for reconsideration by a public authority or review by an independent and impartial body other than a court of law.*

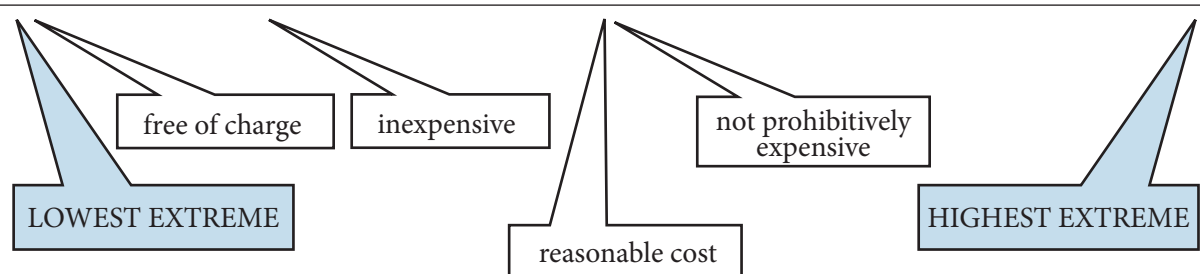
Art. 9.4

*In addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1, 2 and 3 above shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and **not prohibitively expensive**. Decisions under this article shall be given or recorded in writing. Decisions of courts, and whenever possible of other bodies, shall be publicly accessible.*

As we can see from the above citations, the Aarhus Convention operates with the following notions, although without having interpreted them among the definitions:

- reasonable costs
- free of charge
- inexpensive
- not prohibitively expensive

We could even illustrate the possible meaning of such terms on a scale as below:



We, however, must admit that such a classification of expressions relating to costs of procedures is fairly arbitrary, given that there is no authoritative and/or EU level definition of these words.

3. Research background

Justice and Environment (J&E) is an association of public interest environmental law organizations based in the EU Member States. J&E aims to use law to protect people, the environment and nature. Our primary goal is to ensure the implementation and enforcement of the EU legislation through the use of European law and exchange of information.

The Aarhus Convention has been a priority topic for J&E from its inception. This is because proper implementation of this treaty results in the proper implementation of many EU directives and possibilities for NGOs to exercise their rights under these directives.

After having discovered the discrepancies as presented above, J&E decided to prepare a comparative research on the practical implementation of the Aarhus Convention with special regard to national regimes of costs in administrative and judicial proceedings.

As usual, J&E research has been based on a unified template and national legal analyses that served as background for the present comparative analysis. For an easier overview of the national assessment results, a comparative matrix has been produced with the major findings on the national level. In the following, the research results are detailed, explained and evaluated.

4. Research template

As a starting point for the research, J&E legal experts have created a unified assessment template for examining their respective legal systems how they ensure an affordable exercise of environmental procedural rights for the members of the public and environmental non-governmental organizations. The topics to survey on the Member State/country level were the following:

I. Country information

- Currency:
- EUR exchange rate:
- GDP per capita:
- Human Development Index:

The first set of questions tried to depict an overall image of a country in question, by using information as whether the Member States belongs to the Euro zone, how high the internationally applied but much cursed GDP of the country is, and – using a *quasi* alternative indicator – where the country is located on the list of human development.

II. Administrative and judicial procedural costs

A) Administrative procedural costs

What is the amount of procedural duty or fee to be paid for an appeal (in EUR)?

Who pays the procedural duty or fee for an appeal?

Is there a waiver or an allowance, based either on the nature of the case or on personal characteristics of the appellant?

Who bears the costs if the appeal was successful (is there a refund of procedural duty or fee)?

Who bears the costs of evidence in an administrative procedure?

How much is approximately the total cost of evidence in a typical environmental administrative procedure (in EUR)?

Given that many environmental procedures are administrative ones or start as administrative procedures the first set of substantive questions focused on the costs of participation in such a process. We have supposed that members of the public and environmental non-governmental organizations do not typically initiate such procedures (i.e. do not act as applicants for permits or those that have committed unlawful acts against the protection of the environment in most of the cases). That is why the first question targeted the issue of appeal immediately. Further questions – and the subsequent ones relating to judicial procedures – follow more or less the same pattern. They ask about the amount of fee to be paid, the person obliged to pay, about the waivers and allowances, certain specific costs of evidence and about an approximate amount of such expenses.

B) Judicial procedural costs

a) Administrative³ judicial procedure

What is the amount of procedural duty or fee to be paid for the start of a procedure (in EUR)?

What is the amount of procedural duty or fee to be paid for an appeal (in EUR)?

Who pays the aforementioned procedural duty or fee?

Is there a waiver or an allowance, based either on the nature of the case or on personal characteristics of the appellant?

Who bears the costs of evidence in the procedure?

How much is approximately the total cost of evidence in a typical environmental administrative judicial procedure (in EUR)?

To what extent does the “loser pays principle” prevail in such procedures?

b) Civil⁴ judicial procedure

What is the amount of procedural duty or fee to be paid for the start of a procedure (in EUR)?

What is the amount of procedural duty or fee to be paid for an appeal (in EUR)?

Who pays the aforementioned procedural duty or fee?

Is there a waiver or an allowance, based either on the nature of the case or on personal characteristics of the appellant?

³ Administrative judicial procedures are court procedures where the procedural or substantive legality of an administrative decision is decided by a court of law, based on the motion of a plaintiff against the administrative body as a defendant.

⁴ Civil judicial procedures are court procedures where the legality of a natural or legal person's conduct is decided by a court of law, based on the motion of a plaintiff against the natural or legal person as a defendant.

Who bears the costs of evidence in the procedure?

How much is approximately the total cost of evidence in a typical environmental civil judicial procedure (in EUR)?

To what extent does the "loser pays principle" prevail in such procedures?

Questions relating to judicial proceedings first of all are divided into two major groups according to the nature of the procedure; however, within the clusters they are identical. One specific question is asked in both cases, i.e. to what extent the loser pays principle prevails, since this is one of the cornerstones of practical application of access rights in judicial proceedings.

c) Legal aid (optional questions)

Is there a state supported scheme in your country for providing legal assistance in administrative or judicial procedures?

If your answer is yes, please detail briefly:

Who can use such legal aid?

What kind of procedures is eligible for legal aid?

To what extent does legal aid cover full costs of legal assistance in the procedures?

Lastly, a few optional questions touch upon the legal aid regimes operated in the Members States/countries.

Country evaluation

Which are the most significant [a) administrative, b) administrative judicial, c) civil judicial] procedures in your country in the protection of the environment?

According to your evaluation, does your country meet the requirements of the Aarhus Convention regarding expenses of seeking administrative and/or judicial remedies?

What arguments support your above position?

What recommendations can you formulate in this matter?

As a closing set of questions, there is room for narrative evaluation after having completed the sometimes overwhelmingly numerical assessment. This is the place where researchers can evaluate the ongoing processes in their respective countries, as well as compare the current situation with the benchmark, i.e. the Aarhus Convention. Since – as was stated in the introduction – there is no overall authoritative interpretation of the notions of the Aarhus Convention, such comparison relies heavily on a) the construction of the law by the researcher and b) the experience of the assessor in the given Member State/country.

5. National findings

Finding of the research on the national level have produced quite a varying and diverse picture. There is hardly any country whose entire cost regime is identical with the other, within the countries covered by J&E.

We present the outcome of the assessment in a comparative matrix, see below.

Country	Austria	Croatia	Czech Republic	Estonia	Hungary	Romania	Slovakia	Slovenia	Spain
Question (figures are in EUR)									
GDP per capita	30 900	13 042	20 200	16 900	15 800	11 500	18 000	22 500	26 100
HDI	0.951	0.862	0.897	0.871	0.877	0.825	0.872	0.923	0.949
Rank by HDI	14	45	35	42	38	62	41	26	16
Administrative procedural costs									
Fee for an administrative appeal	13,2	6,75	no fee	no fee	"a very detailed scheme is in place for different case categories, fees may range from 35 to 9,300"	no fee	"no fee, 165,5 for an extraordinary remedy"	14,18	no fee
Person obliged to pay fee	appellant	appellant	not applicable	not applicable	appellant	not applicable	not applicable	appellant	not applicable
Waivers and allowances	no waiver	no waiver	not applicable	not applicable	NGOs either pay no fee or only 1% of the regular fee	not applicable	not applicable	"public interest sub-missions are exempt, the administrative organ can waive costs on ad hoc basis"	not applicable
Refund of fee at successful appeal	no refund	no refund	"not applicable, attorney fees can be claimed from the administrative organ"	not applicable	fee is refund	"not applicable, damages can be claimed from the administrative organ"	not applicable	fee can be claimed back within 60 days	not applicable
Bearing the costs of evidence	by the parties	"by the administrative organ or by the parties, quasi loser pays principle"	"by the administrative organ, own evidence costs can be claimed from the administrative organ at successful appeal"	by the administrative parties	"by the parties, quasi loser pays principle"	by the parties	by the administrative organ or by the parties	by the parties if the administrative organ so requires	by the parties

Country	Austria	Croatia	Czech Republic	Estonia	Hungary	Romania	Slovakia	Slovenia	Spain
Judicial procedural costs									
Administrative judicial procedure									
Fee for a judicial review	220	27 to 68	75	"16 +13 for requesting an injunction"	57,9	0,95 to 9,3	66	148	120 to 210
Fee for a judicial appeal	220	13,5 to 34	112,5	"16 25 for remedy at Supreme Court"	"no appeal, 57,9 for an extraordinary remedy"	0,48 to 4,65	66	164	300 to 600
Person obliged to pay fee	initiating party	initiating party	initiating party	initiating party	initiating party	initiating party	initiating party	initiating party	initiating party
Waivers and allowances	not relevant	"waiver for low income, no fee in certain case types"	"waiver for low income, case law restricting this right for NGOs"	"waiver for specific personal conditions, waiver for insolvent persons or organizations"	"waiver for low income, no fee for NGOs, no fee in certain case types"	"waiver for low income, exceptional waiver for NGOs, no fee in A2I cases"	"waiver for low income, no fee for NGOs, no fee in certain case types"	"waiver for low income, no fee for public bodies"	"no fee for non-profit entities, no fee for organizations below annual income of 8 million, no fee in human rights cases"
Bearing the costs of evidence	by the initiating party	by the initiating party	"by the initiating party, seldom used in administrative judicial cases"	"by the initiating party, seldom used in environmental judicial cases"	by the initiating party	by the initiating party	by the initiating party	no special provisions	by the initiating party
Approximate total cost of evidence	no data	no practice	"usually 0, seldom 100 to 3.500"	no practice	350 to 1.750	240 to 4.000	usually 0	varying	3.000 to 30.000
Loser pays principle	prevails only at the highest administrative court	no data	"prevails, applied almost only against administrative organs regarding attorney fees"	"prevails with limitations, court discretion may overwrite principle"	prevails	prevails	"prevails, winning administrative organ costs are not awarded"	"prevails, winning administrative organ costs are not awarded"	prevails with limitations

Country	Austria	Croatia	Czech Republic	Estonia	Hungary	Romania	Slovakia	Slovenia	Spain
Civil judicial procedure									
Fee for starting a lawsuit	may vary between 19 (claim worth less than 150) and 1.661 + 1,2% of the value (claim worth more than 363.360)	proportionate to the value of the claim	"4% of the pecuniary claim (min. 22,5, max. 374.532), 37,5 for non-pecuniary claims"	"proportionate to the value of the claim, 64 under 320 value of claim, may vary between 12 and 320"	"6% of the pecuniary claim (min. 24,5, max. 3.157,9), 52,6 for non-pecuniary claims"	proportionate to the value of the claim according to a sophisticated calculation scheme	"6% of the pecuniary claim (min. 16,5, max. 33.193,5), 99,5 for non-pecuniary claims"	proportionate to the value of the claim according to a sophisticated calculation scheme	ranging from 90 to 150
Fee for an appeal	may vary between 15 (claim worth less than 150) and 2.443 + 1,8% of the value (claim worth more than 363.360)	same as above	same as above	"same as above, to the Supreme Court 1% of the pecuniary claim (min. 25, max. 2.550)"	same as above	half of the fee to be paid for starting a lawsuit	same as above	same as above	ranging from 300 to 600
Person obliged to pay fee	plaintiff and appellant	plaintiff and appellant	plaintiff and appellant	plaintiff and appellant	plaintiff and appellant	plaintiff and appellant	plaintiff and appellant	plaintiff and appellant	plaintiff and appellant
Waivers and allowances	not relevant	"waiver for low income, no fees for prosecutors suing for environmental damage"	"waiver for specific personal conditions, no fees for public bodies"	"waiver for specific personal conditions, waiver for insolvent persons or organizations"	"waiver for low income, no fee for NGOs, no fee in certain case types e.g. A21"	"waiver for low income, exceptional waiver for NGOs"	"waiver for low income, no fee for NGOs, no fee in certain case types"	"waiver for low income, no fee for public bodies"	"no fee for non-profit entities, no fee for organizations below annual income of 8 million, no fee in certain case types"
Bearing the costs of evidence	by the initiating party	by the initiating party	by the initiating party	by the initiating party	by the initiating party	by the initiating party	by the initiating party	by the initiating party	by the initiating party
Approximate total cost of evidence	no data	approximately ranging between 40 and 6.000	"varying, may amount to 4.000"	no data	ranging between 877 and 8.772	no data	no data	"varying, may amount to 20.000"	ranging between 3.000 and 30.000
Loser pays principle	prevails	prevails	"prevails with limitations, court discretion may overwrite principle"	"prevails with limitations, cap on attorney fees"	"prevails, court discretion may alter implementation"	"prevails, court discretion may alter implementation"	"prevails, court discretion may alter implementation"	prevails	prevails

Country	Austria	Croatia	Czech Republic	Estonia	Hungary	Romania	Slovakia	Slovenia	Spain
Legal aid									
Does it exist?	yes	yes	"yes but fragmented, a parallel system is in place operated by the Czech Bar Association"	yes	yes	yes	yes	yes	yes
Who can benefit?	if cost would endanger necessary subsistence	socially vulnerable natural persons	natural or legal persons in need	"natural persons in need, insolvent NGOs in environmental cases"	natural persons in need	natural persons in need	natural persons in need	natural or legal persons	natural or legal persons in need
Where can it be applied?	numerous administrative and judicial (incl. extra-judicial) proceedings	administrative and judicial proceedings affecting the existence of the person	any judicial procedure	numerous administrative and judicial (incl. extra-judicial) proceedings	numerous administrative and judicial (incl. extra-judicial) proceedings	numerous administrative and judicial (incl. extra-judicial) proceedings	civil, family, labor and asylum cases in judicial procedures	judicial and extra-judicial procedures	judicial procedures
Extent of cost coverage	can be full	can be full	can be full	can be full	"full at the court, limited outside the court"	maximum 1,546 in 12 months	can be full	can be full	can be full
Evaluation									
Compliance with the Aarhus Convention	no	partly	partly	partly	partly	partly	partly	yes	no

It is clearly worth analyzing the outcomes in more detail, especially because it seems that the combination of small shortcomings amount to an overall impression in the researchers that finally culminates in an evaluation not entirely favorable for the respective Member State/country.

Country information

We have evaluated the performance of 9 countries, including 2 EU-15 Member States (Austria/1995 and Spain/1986), 5 EU-10 countries (Estonia, Czech Republic, Hungary, Slovakia, Slovenia – all 2004), one EU-2 country (Romania/2007) and 1 candidate country (Croatia).

The highest GDP per capita is produced in Austria (EUR 30.900) while the lowest is done by Romania (EUR 11.500). One specific feature is that the EU-2 Romania has a lower GDP than the candidate country Croatia (EUR 13.042). The average of the examined countries is EUR 19.438 thus the Czech Republic and Slovakia seem to be the most average countries in this group according to this indicator.

The HDI varies between the again-highest Austria (0.951) and the again-lowest Romania (0.825). The peculiar feature of Croatia appears here again (0.862). The average value is 0.892, which means that only the Czech Republic scores average and all the other EU-10 countries are below this level.

The rank on the HDI list strongly correlates with the HDI value. The distance between the weakest EU-15 and the strongest EU-10 country is 10 places, while the again-best performing Austria (14) is 48 places further away from the again-worst performing Romania (62).

All these data show that the statistical sample of the countries was large and diverse enough to draw verifiable conclusions from the assessment.

Administrative procedural costs

Administrative procedures and especially an appeal therein seem to be a very inexpensive action in almost all of the examined countries. There are 5 countries where there is no fee whatsoever (CZ, EE, RO and ES, and in SK it is basically free) while in 3 countries the fee is minimal (AT, HR and SI), i.e. average less than EUR 12. It is only HU where a very complicated scheme exists and poses obligations to appellants to pay fees that may even amount to more than EUR 9.000.

The person obliged to pay is the appellant with no exception, obviously where such a burden exists at all. In countries where the fee is minimal, there are no waivers except in SI, however, the cumbersome HU system is combined with an allowance system quite favorable for NGOs in almost all cases.

The refund system follows the same pattern: in case there is a minimal fee, there is no refund of the appeal fee, except in SI again. In HU the fee for a successful appeal is refund by law.

In AT, ES and RO the costs of evidence are borne by the parties, whereas in the rest of the countries it is mostly the duty of the administrative organs or mixed with the obligation of parties.

It seems that administrative procedural costs do not pose a serious hindrance to potential appellants, except in extreme situations. However, evidence cost may mean an obstacle to successful conduct in such processes.

Judicial procedural costs

The importance of judicial procedural costs are fundamentally different from those of the administrative proceedings, because while applicants in administrative processes are typically the (future) polluters, the judicial proceedings are mostly initiated by the members of the public and environmental non-governmental organizations.

Administrative judicial proceedings

In such proceedings, typically the lawfulness of administrative decisions is contested by the plaintiffs, in some countries regarding their procedural but in others also regarding their substantive legality.

The fee for a judicial review stays below EUR 150 in almost all countries except the EU-15 Member States (AT and ES). The EU-10 countries apply fees lower than EUR 100 except in SI, and in RO the fee may be as low as EUR 0,95.

The situation is the same with judicial appeals against first instance court judgments, except of course in HU where there is no such legal instrument. The highest fee is to be paid in ES (EUR 600) while the lowest may be paid in RO again (EUR 0,48). The rest of the countries impose fees in the appeal procedures only slightly lower or higher than in the first instance procedures.

In all cases the party initiating the case or the appeal shall bear the costs thereof.

Besides AT where the question is not relevant, and ES where there is a favorable system for NGOs, the rest of the countries apply wavier conditions that mostly take into account the personal situation of the applicant (most prominently, the income) and extensively apply to NGOs, however, parallel to this a system of objective waivers also exist, i.e. in certain cases there is no fee to be paid.

The costs of evidence are borne by the initiating party with almost no exception, the amount of which may even rise as high as thousands of Euros in some countries, such as CZ, RO and most strikingly ES.

The loser pays principle so common in civil judicial procedures does prevail as a basic rule, however, many exceptions break through its rigid walls, such as its one-way application in CZ or the judicial discretion under which it is subordinated.

As can be seen from the above comparison, administrative judicial procedures are again not typically very expensive procedures if they do not involve extensive evidence taking and expert opinions. However, in case a significant issue must be proven by technical expertise, costs may rise so high as to be unbearable for members of the public and environmental non-governmental organizations.

Civil judicial proceedings

In these cases the applicant stands against a polluter as respondent and the case is adjudicated within the framework of a general civil lawsuit or a specialized environmental lawsuit, however, the legality of a person's conduct is at the stake.

While in some countries the court fee for these kind of cases may be set between two amounts (such as in ES), the most commonly applied method is to make it proportionate to the pecuniary value of the claim. This is very difficult to define in environmental cases, but also it may lead to unaffordable

amounts in cases where the claim affects large-scale infrastructures or production and processing facilities.

For appeals, the same method is applied as above in most of the countries, with some good examples like RO where the appeal cost is half of the cost of starting a lawsuit.

The person obliged to pay such fees is either the plaintiff or the appellant in all countries assessed.

Again besides AT where the question is not relevant, and ES where there is a favorable system for NGOs, the rest of the countries apply wavier conditions that mostly take into account the personal situation of the applicant (most prominently, the income) and extensively apply to NGOs, however, parallel to this a system of objective waivers also exist, i.e. in certain cases there is no fee to be paid.

The costs of evidence are borne by the initiating party with no exception, the amount of which may rise even higher than in case of administrative judicial procedures. They may be as high as tens of thousands of Euros among which the previously outstanding ES is not so strikingly high any more.

The loser pays principle prevails in all countries, in some under the control of judicial discretion, and in EE with a positive feature of cap on attorney fees.

As illustrated by this overview, the burden of applicants can be high and even grades higher than in administrative judicial procedures, and in some cases all such costs (especially those of the evidence) may reach a level of prohibitively expensive expenses.

Legal aid

In such circumstances, the importance of legal aid (free legal advice and representation financed from state budget) cannot be overestimated.

Free legal aid regimes exist in all countries assessed, with a supplementary system managed by the Bar Association in CZ.

Those who can apply for such aid are natural persons in need, whose subsistence would be endangered by bearing the costs of a procedure. Other countries also allow legal persons to benefit from the legal aid, such as CZ, SI and ES. EE is a mixed example, where insolvent NGOs in environmental cases may ask for such assistance – the chance to get legal aid is a positive phenomenon, but the conditions needed to qualify (i.e. insolvency) are very restrictive.

The group of cases where such help is available is limited to those that affect the existence of persons in HR, and to judicial proceedings in CZ, SK, SI and ES. The rest of the countries allow the use of such aid also in administrative procedures.

While in almost all countries the coverage of expenses by the legal aid can be full, it is limited in extra-judicial procedures in HU, and it is limited in an absolute figure in RO within a time span of 12 months.

The limited use of legal aid in environmental cases is a general phenomenon reported by researchers of J&E, however, this may be reasoned not necessarily by its characteristics. A more decisive factor in the hesitation of clients to use legal aid in the protection of environment is rather the special legal expertise needed in such cases, whereas legal aid lawyers are not typically those who are highly sophisticated in this area.

6. Conclusions

There can be four major types of conclusions drawn as the outcome of this research, namely

- a. detailed country specific conclusions – these are probably the easiest, and were done by the country researchers of the J&E member organizations, see in the national studies;
- b. overall country evaluations – these are done also by the country researchers and are indicated at the bottom of the comparative matrix; according to this, only SI is in full compliance with the Aarhus Convention and only AT and ES are in non-compliance, whereas the rest of the countries (HR, CZ, EE, HU, RO and SK) and partly compliant with the expectations of the Convention;
- c. detailed comparative conclusions – these could be done by using the comparative matrix but would be of little use, since given the very specific circumstances of each and every Member State and the candidate country, no real implications would be formulated on that basis;
- d. overall regional (EU + HR) conclusions – using a bird's eye view on the assessed countries, the situation does not allow full satisfaction, since an overwhelming majority of the countries is ranked below full compliance.

What deserves special attention is the method of evaluation. J&E researchers have used legal texts as well as dominant case law and personal practitioner experience to formulate their summary evaluations, however, it is alarming to see that the performance of countries in meeting Aarhus Convention requirements does not correlate with their general level of development. While one could expect a more generous attitude from those countries where GDP and HDI are equally high, on the contrary, we find the worst evaluation in that very case. This again undoubtedly reaffirms our research and policy hypothesis that the level of public participation guaranteed by law and practiced by the members of the public and environmental non-governmental organizations in no way correlates with the level of development of a given country. Consequently, if public participation is made possible not only by legal but practical means, e.g. a favorable cost regime in environmental cases, that move will have absolutely no repercussions on the economic or financial situation of a country. Thus, making public participation an inexpensive instrument is nothing to fear of.

7. Recommendations

Recommendations are again to be formulated on two levels:

- a. on country level – this was done by the country researchers, see the national studies;
- b. on a general, systemic level – this is done by using the aggregate data of the research, such as
 - i. **administrative and judicial proceedings in the protection of environmental shall be made free of charge or significantly inexpensive**
 - ii. **such inexpensive nature of the proceedings should also cover the costs of evidence that is frequently the highest component in a process**
 - iii. **a system of waivers and allowances for court fees has to be applied in order not to discourage members of the public and NGOs to sue in the public interest**
 - iv. **the loser pays principle has to be applied with strong restrictions in such cases, e.g. using a cap on certain costs or excluding certain parties from those who are eligible for cost recovery (e.g. government bodies)**
 - v. **legal aid shall be available for NGOs and in environmental cases as well, covering the full amount of costs that incur in public interest litigation**

After having completed these recommendations, certainly the country evaluations will show a general image of compliance with the expectations of the Aarhus Convention.

