

Price of Justice

Czech Republic

Comparative Analysis on Costs of
Administrative and Judicial Remedies

Legal Analysis

Justice and Environment 2011

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I. Country information

Currency: *Czech crown (CZK – česká koruna)*

EUR exchange rate: *1 EUR = 24,3 CZK (2.9.2011)*

GDP per capita: *EUR 19.500 (2010) – 80,0 % of EU average*

Human Development Index: *0.841 (2010 – 28th position in the list of countries)*

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)?

In administrative proceedings, there is no procedural duty or fee to be paid for an appeal.

Who pays the procedural duty or fee for an appeal?

No party has to pay procedural duty or fee for an administrative appeal.

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

As follows from the above, there is no need of such measures in administrative proceedings.

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

As follows from the above, there is no need of refunding procedural duties or fees, as they are not paid for an appeal.

However, if a successful appellant was represented by an attorney, s/he can ask the administrative authority (the state) for compensation of the attorney's fee for filing the appeal. These costs paid by the appellant should be considered as "damage caused by illegal decision" (i.e. by the decision against which the appeal was filed). There is a Constitutional Court precedent confirming that. If the authority does not compensate these costs voluntarily, the appellant has to claim them by a civil lawsuit against the state.

Who bears the costs of evidence in an administrative procedure?

The basic rule is that the appropriate administrative authority is responsible for the decision to be based on reliably grounded facts. Therefore, it is also its duty to ensure evidence necessary for such decision, bears costs of them.

If the party to the proceedings decides to bring (ensure) its own evidence(s) (e.g. expert opinion), it bears the costs of them. However, if such evidence would be used by a successful appellant to support his/her appeal, it should be possible to ask the administrative authority (the state) for compensation of such costs similarly as for the attorney's fee (see the previous answer).

In administrative procedures which concern trespasses (administrative offenses), the subject who is found "guilty" must pay a lump-sum (1.000 CZK – cca 41 EUR) for the costs of the procedure (next to the penalty fine). This can be seen as a kind of compensation (also) of the costs of evidence.

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

It is hard to answer generally. In many environmental administrative procedures, the decision is based solely on facts which the administrative authority disposes with. Therefore, there are not any costs of evidence (stricto sensu).

In other kinds of proceedings, the applicant (investor) has a legal duty to present certain evidence, defined by law. Again, the costs differ significantly in such cases. For example, if a "full" EIA procedure takes place, the costs of the documentation presented by the investor usually varies between EUR 7.500-15.000.

Other parties of the proceedings (NGOs, neighbors etc.) usually do not present their own evidence, but rather ask the administrative authority to ensure it, along with its duty to base the decision on reliably grounded facts. If in some cases these parties pay for the experts' opinions, noise or pollution studies, etc., the cost can vary from EUR 100 to 4.500 (I am not aware about more expensive evidence paid by other party than applicant).

B) Judicial procedural costs

a) Administrative¹ judicial procedure

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

¹ 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.

A fee to start administrative judicial procedure is cca. EUR 125. Since 1st September 2011, a fee of cca EUR 41 has been implemented for request for injunctive relief in the administrative cases (which had been free of charge before).²

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

A fee for an appeal (“cassation complaint”) against the decision of an administrative court is cca EUR 205.

Who pays the aforementioned procedural duty or fee?

These fees are paid by any person (party) who submits the motion (i.e. administrative lawsuit and “cassation complaint”).

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

There is a possibility of a waiver of these fees. The applicant must ask the court for it and prove that s/he does not have sufficient financial resources. The nature of the case is not taken into account; the law only says that the court will not award the waiver “if the lawsuit obviously cannot be successful”.

There is a case law (in environmental cases) saying that an NGO cannot be awarded with waivers repeatedly; if the NGO wants to protect environment at courts, it must raise basic sources for that and “not to transfer them on the state”. Despite of this, in many cases the small (non-professional) NGOs were awarded waivers. The case law was recently corrected by the Supreme Administrative Court, which said that as a rule, the NGO which proves that it does not have sufficient financial resources shall be awarded with a waiver. This, however, shall not apply if “it is clear that the NGO de facto has sufficient resources, but it organizes its activities in a way that formally, it is without “ready money”. In fact, the decision indicates that “ad hoc” and small grass root NGOs shall be awarded with waivers, while the professional NGOs not.

Who bears the costs of evidence in the procedure?

The parties are obliged to prove their statements (claims) and (primarily) bear the costs of evidence they bring. However, in vast majority of cases, the case is decided merely on the base of the administrative files, eventually other official documents.

The law on one hand makes it possible for the court to execute also other evidence, even such that would not be suggested by any of the parties. On the other hand, the law says that the court shall decide the case on the basis of “factual and legal situation, as it was when the administrative decision was issued”. It is therefore rare that new piece of evidence would appear before the administrative court. Consequently, there are usually no special costs of evidence.

² An act on the court fees has been modified since 1st September 2011, increasing the fees approximately of 50%.

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

As follows from the previous answer, the most typical situation in such cases is, that the costs of evidence is zero.

If in some rare cases the parties (plaintiffs) pay for the experts' opinions, noise or pollution studies, etc., the cost can be from EUR 100 to 4.500 (similarly as in the administrative proceedings).

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

Formally this principle applies to the full extent. In fact, however, it applies only in cases when the administrative authority, which is always one party of the case, loses it, and (in most cases) only with regard to the attorney's fees.

As for the costs of evidence, there are rarely any (see above) and I have never heard about a case in which an administrative authority would pay for some.

Concerning attorney's fees, there is a fixed case law of administrative courts, according to which these are not eligible costs for the administrative authority, as they have enough employees – lawyers, who can represent them at the dispute. This shall be considered as a common part of their work (e.g. no extra costs for the authority).

b) Civil³ judicial procedure

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

An amount of fee to start civil judicial procedure depends on the nature of the case.

If the subject of the case is pecuniary, the fee is 5% from the contested sum (EUR 41 at least, EUR 168.724 at most).

In other than “pecuniary” cases, the basic fee is cca EUR 82,3. There are many other special rates. The basic one is, however, applicable in some of the most typical kinds of cases related for the environment – e.g. when the plaintiff asks the court to stop some activity (using e.g. the “nuisance lawsuit”, “protection of personality lawsuit”, etc.).

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

³ 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.

For an appeal in civil cases, the same rules apply as for starting the procedure (see previous answer). Generally, a party must pay the same fee for an appeal in a specific case, as for starting this case at the 1st stage court.

Who pays the aforementioned procedural duty or fee?

These fees are paid by any person (party) who submits the motion (i.e. lawsuit and appeal).

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

There is a possibility of a waiver of these fees. The applicant must ask the court for it and prove that s/he does not have sufficient financial resources. The nature of the case is not taken into account; the law only says that the court will not award the waiver "if the lawsuit obviously cannot be successful".

Who bears the costs of evidence in the procedure?

The parties are obliged to prove their statements (claims) and (primarily) bear the costs of evidence they bring. If the party proposes the evidence to be carried out, the court can ask this party to pay a deposit for this. Otherwise the costs of evidence ordered by court are paid by the state.

After the end of the case, the "loser pays principle" usually applies for such costs (see below). The losing party is also normally obliged to pay the costs of evidence paid by the state. This duty can be waived under the same conditions as the court fees.

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

It is hard to answer generally (and it is also not completely clear which civil court cases shall be considered as "environmental"). But for example, in "noise cases", in which the plaintiffs ask courts to order the owners of the roads to take measures to reduce the noise caused by the traffic and exceeding the noise limits, the costs of the expertise (assessment) vary between EUR 1.900 and 4.200.

This kind of cases can be considered as rather expensive (compared to other environmental problems, which are subject to civil court disputes). However, theoretically, in some cases the costs for the expertise could be much higher (e.g. cases dealing with chemical pollution of the land) – which may be the main reason why such cases have not been brought to courts so far.

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

This principle applies to the full extent as a general principle. It applies also on the costs (mostly of evidence) paid primarily by the state (see above).

It is up to the courts to modify this principle in individual cases:

- a) according to the result of the case (taking into account if the party has won the case in full, or only partially) and/or*
- b) based on the personal characteristics of the appellant, namely his/her financial situation*

The case law concerning attorney's fees in cases when the state (a government authority) is a party is not so fixed as in the administrative judiciary. Despite, there are also individual civil courts judgments in which the state as a winning party was not awarded a compensation of these costs, with similar argumentation as in administrative judiciary.

There are also some judgments in which the losing party was not ordered to pay the costs due to the fact that it tried to promote public interests – consumer's rights specifically. They are not based on special legal regulation, only on general provision of the civil procedural code, saying that the court can decide not to award compensation of costs to "the winner" in "cases of special respect". We are not aware of any "environmental" civil court decision of that kind.

c) Legal aid (optional questions)

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

There is a kind of such scheme, but it is not very systematic (it is fragmented, concerning individual fields of law) and cannot be deemed sufficient.

If your answer is yes, please detail briefly:

Basically, in the judicial procedures, the court can decide (on request of the party) to appoint him/her a legal representative and at the same time to liberate this part from the duty to pay for the legal assistance (fully or partially). The conditions are same as for waiver of the court fees, i.e. the financial situation of the applicant (see above).

In such cases, the costs of legal assistance shall be paid by state primarily. If the opposite party loses the case, it shall compensate these costs to the state.

This system, however, does not work very well namely due to different legal framework for individual branches of judiciary and heterogeneous attitude of the courts. The lawyers (attorneys) are also not very keen on taking this kind of cases due to relatively low compensation sums.

Next to that, it is also possible to ask the Czech Bar Association for appointment of an attorney to provide a free legal aid (normally only one or a few act, not for complete representation). The conditions are financial situation again, and next to that, the fact that for some reasons, the above mentioned possibilities of appointment of the representative by court cannot be used. This system is, at the same time, the only one which theoretically can be used at the stage of administrative procedures.

It follows from the above (e.g.), that it is not possible for a party to choose his/her own attorney and then ask the court for waiver of the costs of legal representation. Officially, waiver of these costs is always related to appointment of the representative by the court (or by the Bar Association).

There was a campaign of an NGO “Public Interest Law Association” (now “Pro bono alliance”) for better system of free legal aid. Basic information in English is at <http://www.probonoalliance.cz/en/access-to-legal-help/law-on-legal-aid-scheme> The Ministry of Justice has recently prepared a concept of new law on free legal aid, which is to some extent reflecting the requests of the campaign. One of the new institutes the law could bring is the possibility that the NGOs could provide a free legal aid, financially supported by the government, on in the branch(es) of law they specialize. It is however not sure if and when the law will be adopted, as there is a strong opposition against it, namely from the Bar Association.

Who can use such legal aid?

Any person (including legal persons), if s/he does not have sufficient financial resources can ask for that kind of legal aid.

What kind of procedures is eligible for legal aid?

All kind of judicial procedures are eligible within the system based on the court decisions (but under different conditions). Theoretically also administrative procedures are eligible within the system run by the Czech Bar Association.

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

It can either cover full costs of legal assistance or only part of them. It depends on the decision of the court or the Bar Association.

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Who can provide legal aid (e.g. can NGOs be legal aid providers)?

As a rule, only attorneys can provide legal aid as a paid service, and also only an attorney can be appointed as a representative to a party who is asking for free legal aid (see above).

On the other hand, it is possible that a party is represented before court or administrative organ by other person than an attorney (in the disputes concerning asylum rights, the law explicitly presumes that the parties can be represented by the specialized NGOs). In practice, the NGOs often provide basic free legal aid (as counseling centers) in the fields of their specialization, and sometimes also represent parties at courts. These activities are usually paid by project money.

Is legal aid frequently used in environmental cases?

Legal aid is used relatively frequently in environmental cases and the frequency seems to grow constantly. The environmental and grass root NGOs often use free legal aid provided by the specialized legal NGOs (or NGOs with legal programs). For example, ELS counseling center answers more than 1.000 requests for basic legal aid per year. Also the number of subjects asking for paid legal aid in cases related to environmental issues seems to grow in recent years.

III. Country evaluation

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

It meets the requirements of the Aarhus Convention partially. The civil judicial procedures are often rather expensive, what can be considered as not fully in compliance with the Convention requirements. Also the costs (court fees) of the administrative judicial procedures grew since 1st September 2011 (see above) and can be now prohibitive for some parties, despite they are still lower than in "western" (EU15) countries.

What arguments support your above position?

Administrative and to some extent also administrative judicial procedures can be deemed as not prohibitively expensive. Also in the civil judicial procedures the fees are mostly not the biggest problem.

The costs of evidence are high in some cases, but in most of the administrative and administrative judicial procedures the "public concerned parties" can participate relatively efficiently without paying these costs. These costs often represent a significant burden of access to justice in the civil judicial procedures.

The "loser pays principle" is mostly not a problem in administrative and administrative judicial procedures, namely because the state (administrative authorities) are not used to be awarded compensations of the costs. This principle often represents a significant burden of access to justice in the civil judicial procedures. It is further deepened by the costs (obligatory deposit) for preliminary measures (injunction).

The insufficient system of state supported free legal aid can also represent a burden of access to justice for a number of persons. In environmental cases, this is partially compensated by activities of specialized NGOs (either "law specialized or experienced" in environmental litigation).

What recommendations can you formulate in this matter?

The law should declare more precisely, especially in civil judicial procedures, that the courts shall consider not to apply the "loser pays principle" with regard to the nature of the case – concretely considering the public interest character of the dispute. The state should bear the costs of evidence in such cases.

The waivers can be applied more extensively in the court procedures, as the court fees grew considerably since 2011 and this can be prohibitive for some parties, including environmental NGOs.

The system of state supported free legal aid should be developed so that qualified legal aid would be accessible to as many persons in need of it as possible.

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