

Price of Justice

Romania

Comparative Analysis on Costs of
Administrative and Judicial Remedies

Legal Analysis

Justice and Environment 2011

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I. Country information

Currency: *Romanian leu (LEU - leu românesc)*

EUR exchange rate: *1 EUR = 4,30 LEI*

GDP per capita: *EUR 11.000 (2010) – 45% of EU average*

Human Development Index: *0.767 (2008 – 50th 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)?

For administrative procedure there is no procedural duty or fee in Romania.

Who pays the procedural duty or fee for an appeal?

See comment above.

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

See comment above.

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

If the appeal is successful and the authority is revoking the decision as illegal, (situation that I never heard of in Romania), the appellant could start a lawsuit asking for damages (expenses of the appeal including lawyer fee, evidence costs, etc., other material or moral damages) at court.

Who bears the costs of evidence in an administrative procedure?

In administrative procedures in Romania there is no possibility to manage evidence in judiciary sense. If the appellant wants to send along with the formal appeal any evidence it should do it on his own expense, with no possibility of refunding.

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

There are no costs prescribed by law. If the appellant wants to elaborate evidence, it is up to him how much money it is willing to pay.

B) Judicial procedural costs

a) Administrative¹ judicial procedure²

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

Minimum EUR 1.075. If damages are requested it could rise up to EUR 9,06. The limits are prescribed by law. The exact amount of money to be paid is established by court³. Another cost of litigation is the judicial stamp. The highest value is EUR 0,69. In administrative judicial procedures the procedural duty is EUR 1,86 EUR for the injunctive relief.

All duties must be paid at the beginning of the proceedings.

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

For appeal - half of the fee paid for the start of the procedure.

Who pays the aforementioned procedural duty or fee?

The plaintiff/appellant always is the one who's paying the procedural duty.

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

For the procedural duty the court can admit a request of a party that proves that s/he cannot afford to pay, a discount, a distribution of payment in a period of time, or postponement of payment. The court can also grant a dispensation of payment according to the financial possibilities of the party.

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.

² Law No. 554/2004 regarding the judicial administrative procedure.

³ All procedural duties are regulated by Law No. 146/1997.

For legal persons, including NGOs, the court can allow such facilities only exceptionally, in certain conditions:

- *the procedural duty is more than 10% of the medium taxable income in the last three months*
- *the juridical person is in liquidation procedure*
- *according to the amount of money to be paid, the court appreciates that the payment would affect the normal activity of the juridical person*

The access to information cases, including access to environmental information (the cases are judged by administrative courts) are free of any procedural duty or legal stamp.

Who bears the costs of evidence in the procedure?

The one that is requesting any evidence (documents, witnesses, local investigation, etc.) to be managed is the one who is paying for it. In Romania, the only evidence for which fees are needed is the expertise. That means that the party that is requesting an expertise to prove his claim, should pay for it.

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

As mentioned above, there are no limits prescribed by law for the expertise. The judge is establishing a fee at the beginning and after the expert submits the expertise, according to his specification, the judge could raise the fee or not. In my practice the fee for one expertise fluctuates between EUR 232 and 4.000. In EIA/SEA cases the fee could go even higher if more than one expertise is needed.

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

Always the party that lost should cover all expenses of the party that won, including: procedural duty, lawyer fee, evidence fee – expert/specialist fee, reimbursement of witnesses, lawyers' fees, travel costs, if travel between cities was needed for the party that won, any other costs that can be proved by the one that won the case, if they are accepted by the judge (if the expenses were exclusively caused by the trial).

The court is the one that decides if it is reasonable for the party that lost to pay to the party that won all expenses requested by the party that won the case:

- *if the claims of one party were partially admitted by the court, then the court can reduce the amount of the sue charges proportionally,*
- *if the claims were admitted entirely, the court still can reduce the cost of sue charges, if they consider that they are not reasonable.*

b) Civil⁴ judicial procedure

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

The procedural duty/fee is considerably higher than in administrative judicial procedure, according to the pecuniary value of the case. The limits are prescribed by law⁵:

- a. pecuniary value less than EUR 11.62, the procedural duty is EUR 1,39*
- b. pecuniary value between EUR 11.86 and EUR 116.27, the procedural duty is EUR 1.39 plus 10% for the amount of money higher than EUR 11.62*
- c. pecuniary value between EUR 116,5 and EUR 1162.7, the procedural duty is EUR 11.86 + 8% for the amount of money higher than EUR 116.27*
- d. pecuniary value between EUR 1163 and EUR 5813.9 the procedural duty is EUR 93.58 + 6% for the amount of money higher than EUR 1162.7*
- e. pecuniary value between EUR 5814.1 and EUR 11627.9 the procedural duty is EUR 374.6 + 4% for the amount of money higher than EUR 5813.9*
- f. pecuniary value between EUR 11628.1 and EUR 58139.5 the procedural duty is EUR 607.2 + 2% for the amount of money higher than EUR 11627.9*
- g. pecuniary value higher than EUR 58139.5 the procedural duty is EUR 1537.4 + 1% for the amount of money higher than EUR 58138.5*

The exact amount of money to be paid is established by court.

Another cost of litigation is the judicial stamp. The highest value is EUR 0.69.

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

For appeal - half of the fee paid for the start of the procedure.

Who pays the aforementioned procedural duty or fee?

The plaintiff/appellant always is the one who's paying the procedural duty.

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

For the procedural duty the court can admit a request of a party that proves that s/he can't afford to pay, a discount, a distribution of payment in a period of time, or postponement of payment. The court can also grant a dispensation of payment according to the financial possibilities of the party.

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.

⁵ See infra 3.

For juridical persons, including NGOs, the court can allow such facilities only exceptionally, in certain conditions:

- *the procedural duty is more than 10% of the medium taxable income in the last three months*
- *if the juridical person is in liquidation procedure*
- *if, according to the amount of money to be paid, the court appreciates that the payment would affect the normal activity of the juridical person*

Who bears the costs of evidence in the procedure?

The one that is requesting any evidence to be managed is the one who's paying for it. In Romania, the only evidence for which fees are needed are the expertise. That means that the party that is requesting an expertise to prove his claim, should pay for it.

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

As mentioned above, only the expertise should be paid. However, for inspections of the court at a specific place, the court could also order some payment, but usually the judges are not going themselves, but appointing an expert, that would be paid according to the rules established for expertise. The rules from administrative judicial procedure are the same as in civil procedure.

In civil procedure the court could order deposits of money (bail) for specific procedures like injunctive relief, permanent or temporary. There is no limitation prescribed by law. The judge is free to establish the amount of money according to the circumstances of the case and to its own belief.

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

Always the party that lost should cover all expenses of the party that won, including: procedural duty, lawyer fee, evidence fee – expert/specialist fee, reimbursement of witnesses, lawyers' fees, travel costs, if travel between cities was needed for the party that won, any are costs that can be proved by the one that won the case, if they are accepted by the judge (if the expenses were exclusively caused by the trial).

The court is the one that decides if it is reasonable for the party that lost to pay to the party that won all expenses requested by the party that won the case:

- *if the claims of one party were partially admitted by the court, then the court can reduce the amount of the sue charges proportionally*
- *if the claims were admitted entirely, the court still can reduce the cost of sue charges, if they consider that they are not reasonable*

c) Legal aid (optional questions)⁶

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

Yes.

If your answer is yes, please detail briefly:

Who can use such legal aid?

Any individual (the legal entities are excluded) can request legal aid if they have residence or are seated in Romania or any other Member State of EU. For other persons the legal aid will be granted according to other conventions referring to this subject. If there is no conventional bound to the state of residence of the person requesting legal aid, then the legal aid will be granted according to the international courtesy, according to the reciprocity principle.

What kind of procedures is eligible for legal aid?

Legal aid is eligible in all judicial procedures, civil, criminal, commercial, administrative, etc., including administrative procedures, in all cases, including administrative procedures through assistance of a lawyer paid by the state, and extra judicial procedures.

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

Legal aid covers lawyer's fee (the lawyer can be appointed by the state or chosen by the party), the expert fee, the translator fee, the interpreter fee, officer of the court's fee (judiciary executors), dispensation, discounts, distributions of payment in a period of time, or postponements of payment for the procedural duties and legal stamps. The amount of money spent for legal aid in any of the forms mentioned, cumulated or not, for one person, cannot be higher than 12 minimum gross salaries (EUR 1.546) in 12 month.

⁶ Governmental Emergency Ordinance No. 51/2008 rearing legal aid in all civil proceedings, Law No. 51/1995 regarding the organisation and exertion of lawyers profession, Law No. 146/1997 regarding the procedural duty.

III. 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?

The most significant procedures for the protection of the environment are the administrative and the administrative judicial procedures.

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

Considering the recent regulation of legal aid, there are perspectives that Romania would meet the requirements of the Aarhus Convention in the future.

What arguments support your above position?

There still are two major obstacles from the price of justice point of view: the limit of 12 months minimum gross salaries, and the fact that the legal persons can obtain legal aid only for procedural duties and legal stamps. In environmental law the environmental NGOs have full legal standing in court, but most of them cannot afford lawyer and expert fees, even if there are chances to obtain legal aid for the judiciary costs.

There are other obstacles related to full application of the Aarhus Convention not related to price of justice, but with lack of knowledge of the involved parties in administrative and judicial procedures, like public clerks, judges, experts.

What recommendations can you formulate in this matter?

Our recommendations are:

- NGOs to be eligible for legal aid in the cases where they are defending fundamental rights and public interest in general.*
- to train involved parties in environmental law so that the access to justice would be not only affordable, but also effective*
- amendment of loser pays principle in administrative judicial procedure, so that any person suing an administrative public body should not be forced to pay to the state any expenses, because the public institutions are paying from public budgets = public money. The theory that the possibility of paying the expenses is discouraging for abusive actions is in fact an obstacle of access to justice, and application of "presumption of guilt", that is forbidden by the Constitution. If a lawsuit against the state is proved to be abusive (!) then other measures could be enforced by court, maybe even the payment of the expenses.*

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

Only Attorneys at Law or Attorney's offices can provide legal aid, but only with approval from the Bar Association. There is no possibility for NGOs to provide legal aid. NGOs can hire attorneys and negotiate smaller fees.

Is legal aid frequently used in environmental cases?

I am not aware of any environmental case where legal aid was used. Legal aid is granted only in criminal cases, for persons arrested, immigrants, etc.

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