

Price of Justice

Slovakia

Comparative Analysis on Costs of
Administrative and Judicial Remedies

Legal Analysis

Justice and Environment 2011

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Legal Analysis

I. Country information

Currency: *Euro (EUR)*

EUR exchange rate: -

GDP per capita: EURO 16,282 (2010)

Human Development Index: 0.764 (2010 – 22nd 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. The fee for an extraordinary remedy in administrative procedures (a.k.a. “reopening the procedure”) is EUR 165,5 for a legal person (NGO) and EUR 16,50 for a natural person.

Who pays the procedural duty or fee for an appeal?

No 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?

No procedural duty or fee.

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

No procedural duty or fee.

Who bears the costs of evidence in an administrative procedure?

Normally, the administrative authority which is responsible for the decision bears costs of the evidence in administrative procedures. According to the law, a decision made by the administrative authority should be based on reliably grounded facts. Therefore, it is also its duty to ensure evidence necessary for such decision.

But, the party to the proceedings has the right to bring its own evidence (for example expert opinion, some kind of expert studies, etc.), and if it is so, then this party bears the costs of them.

In trespassing administrative procedures, the subject who is found guilty, must pay a penalty and the whole costs of the procedure, which can be considered as a kind of compensation of the costs of evidence.

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

It depends on the type of environmental administrative procedure. In many environmental administrative procedures there is no evidence, because the decision made by administrative authority is based on facts, which are at the disposal of an administrative authority. That is the reason, why there are no costs of evidence.

Of course, there are some administrative procedures, where some type of evidence is necessary for the decision, because it is defined by law and the administrative authority cannot make a decision without such evidence. Typical example is SEA/EIA procedures, where the applicant pays the costs for the documentation, and without this documentation the administrative procedure cannot be completed. The costs of the EIA/SEA documentation are various, depending on the type of activity, usually EUR 7.500 to 12.000.

It can happen sometimes that other parties of the proceedings (for example NGOs) bring their own evidence (for example some specific studies, expert opinion, etc.) when they decide that it is necessary for an objective decision. This can bring some extra costs for the parties regarding the evidence.

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)?

The amount of procedural fee to start administrative judicial procedure is EUR 66.

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

The amount of procedural fee for an appeal in administrative judicial procedure is EUR 66 (it is the same as for the start the procedure).

Who pays the aforementioned procedural duty or fee?

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.

The fees to start administrative judicial procedure and the fee for an appeal in this procedure is paid by the subject (party of the proceedings), who starts the judicial procedure or submits an appeal. But, if the applicant is successful in the case, the court could decide, that the losing administrative authority has to pay him the full amount of the procedural fee.

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 special Act on Court Fees which stipulates special conditions for exemptions from the court fees. Those conditions are based on the nature of the case (e.g. custody cases, social and health insurance cases, but also cases of inactivity of administrative authority, illegal intervention of the administrative authority, etc.) or they depend on the subject (e.g. state organizations, municipalities, prosecutor, minors, etc.). Among exempted subjects there are also charitable, humanitarian and environmental foundations and non-governmental organizations, as well as organizations protecting consumers' rights.

The court does not decide on such waiver ex officio, such subject has to apply for a waiver and provide arguments supporting his/her exemption.

Another possibility is up to the decision of the court – the applicant must ask the court for a waiver and prove that s/he does not have sufficient financial resources. It doesn't matter about the nature of the case, it is not taken into account. The law only says that the court will not award the waiver if it is absolutely clear that the lawsuit cannot be successful.

Who bears the costs of evidence in the procedure?

According to the law each party of the procedure is obliged to bring its own evidence to confirm its statements and to bear the costs for this evidence. Usually there is no special proving during the environmental judicial procedures and the case is decided on the base of evidence, which was provided during administrative procedure.

The court can execute also other evidence, without the suggestion of the parties.

Usually there are no special costs of evidence.

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

It is very similar as in administrative procedure (see above). Normally, there are no costs for evidence.

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

According to the Civil Procedure Code if a plaintiff succeeds with the case the administrative authority (the defendant) can be obliged to pay the plaintiff's expenses regarding the court proceedings. However, this principle is not applied if the plaintiff loses the case and the court upholds the administrative authority decision. In such case each party bears its own

expenses. In other words, administrative authority always bears its own costs, regardless of the outcome of the judicial proceedings.

Moreover, if the court decides the same case again only because the administrative authority did not respect its first decision, such administrative authority is obliged to cover all the plaintiff's expenses related to the judicial proceedings.

b) Civil² 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 the fee to start civil judicial procedure depends on the nature of the case.

It depends if the subject of the case is pecuniary, or not. If it is so, the fee is 6 % from the demanded sum (EUR 16,5 at least, EUR 33.193,5 at most). In other cases, the basic fee is EUR 99,5, but there are many other specific rates, and the fee depends of the type and character of the case.

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

The amount of fee to be paid for an appeal is exactly the same as for starting this case at the 1st instance court

Who pays the aforementioned procedural duty or fee?

These fees are paid by applicant, i.e. by the plaintiff or the appellant.

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

There is the same situation as within the administrative judicial procedure.

There is a special Act on Court Fees which stipulates special conditions for exemption from the court fees. Those conditions are based on the nature of the case (e.g. custody cases, social and health insurance cases, but also cases of inactivity of administrative authority, illegal intervention of the administrative authority, etc.) or they depend on the subject (e.g. state organizations, municipalities, prosecutor, minors, etc.). Among exempted subjects there are also charitable, humanitarian and environmental foundations and non-governmental organizations, as well as organizations protecting consumers' rights.

The court does not decide on such waiver ex officio, such subject has to apply for a waiver and provide arguments supporting his/her exemption.

² 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?

Every party of the procedure is, according to the law, obliged to bring their own evidence to corroborate their statements and bear the costs for this evidence. There is a possibility for the court to execute also other evidence, even such that would not be suggested by any of the parties. The law says that the court shall decide the case on the base of "factual and legal situation, as it was when the administrative decision was issued", but if it is necessary for the decision, the court could bring new evidence.

After the final decision, the "loser pays principle" usually applies for costs like this.

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

It is impossible to answer this question generally, it depends on the type of case, and on the type of evidence which is necessary to prove the statement of the party.

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

The "loser pays" principle usually prevails. However, the court can decide that the expenses are proportionately divided between the parties depending on their success rate. However, there are certain cases when this principle is not used and each party bears its own expenses or the expenses are paid by successful party.

c) Legal aid (optional questions)

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?

Besides some provisions within the Civil Procedure Code and Criminal Procedure Code there is also a special Act on Providing Legal Aid to Persons in Material Deficiency. According to the law:

- *state provides an attorney ex officio in criminal procedures in cases where it is a obligation to have an attorney; if some people don't have an attorney in such cases, the state is obliged to provide attorney ex officio for those people;*
- *according to the Act on Providing Legal Aid to Persons in Material Deficiency under the condition of the Act - any natural person, if he does not have sufficient financial resources, if the lawsuit obviously cannot be successful and the monetary value of the claim is more than the approved minimum wage in Slovakia, can ask for that kind of legal aid.*

What kind of procedures is eligible for legal aid?

According to the Act on Providing Legal Aid to Persons in Material Deficiency, any natural person who does not have sufficient financial sources can apply for free legal aid. Such case must fulfill certain conditions:

- *the case may not be obviously unsuccessful,*
- *the value of the claim must be more than the approved minimum wage in Slovakia,*
- *the case must be civil case, regular commercial case, family case, labor case, administrative judicial case, asylum case, trans-border family case, trans-border civil case, trans-border labor case, trans-border commercial case. It could be also a case before Constitutional Court, if it's not a criminal case.*

The Act does not refer to any criminal cases.

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

Legal aid can be granted for:

- *legal advice, which exceeds the first legal advice;*
- *legal advice and representation in the procedure at the court hearing on the first and second instance;*
- *legal advice and representation in connection with extraordinary judicial remedies;*
- *legal advice and representation in connection with constitutional petition;*
- *legal advice and representation at the hearing of international courts;*
- *legal counseling.*

If the conditions of the Act on Providing Legal Aid to Persons in Material Deficiency are met, legal aid shall cover full costs or only part of legal assistance in the procedures.

NEW

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

According the Act on Providing Legal Aid to Persons in Material Deficiency legal aid could provide Center for Legal Aid, or an Attorney, which is destined for legal aid in the administrative procedure according this Act.

Is legal aid frequently used in environmental cases?

Until September 2011, there was no possibility to provide Legal Aid in administrative judicial cases (environmental cases are mostly administrative cases) before the court. An amendment of Act on Providing Legal Aid to Persons in Material Deficiency, which is valid from October 2011 bring a change in this. From this time there is a possibility to provide legal aid also in administrative cases. But, because this report was made in September 2011, we have no experiences, how frequently (if ever) will be legal aid used in environmental cases.

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?

- I. *siting and construction permits, IPPC permits, exceptions to the conditions of Nature Conservation Act and administrative permission procedures following EIA procedures;*
- II. *judicial review of the above mentioned permits (siting and construction permitting, IPPC permits, exceptions to the conditions of Nature Conservation Act);*
- III. *damage compensation and “neighborhood” claims against activities in neighborhood of the applicant, which are endangering or damaging his/her environment.*

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

In our opinion the requirements of the Aarhus Convention regarding expenses of seeking administrative and judicial remedies are more or less met.

What arguments support your above position?

Administrative and administrative judicial procedures can be deemed as not prohibitively expensive. The direct costs (fees) of the procedures can be considered as relatively low for most of the public concerned. Also in the civil judicial procedures the fees are mostly not a big problem. Environmental non-governmental organizations can be exempted from the obligation to pay court fee, however, if the applicant is a natural person (in the same cases), such a person is not exempted from such obligation, even though it is not only “his/her” case, but rather a public interest law case.

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).

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 – specifically considering the public interest character of the dispute. The state should bear the costs of evidence in such cases.

The system of state supported free legal aid should be developed so that qualified legal aid would be accessible also to some special legal persons. For example, the NGOs, which are active in public interest cases, but they are insolvent to pay for a professional and qualify legal aid, should have a right for a legal aid in this type of cases.

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