

## Croatia

*The purpose of this legal analysis is to discover the legal framework and practice of the respective Member State and whether the costs of bringing a case are a barrier to access to justice.*

### **I. Country information**

Currency: *Croatian kuna (HRK - hrvatska kuna)*

EUR exchange rate: *1 EUR = 7,32 HRK*

GDP per capita: *EUR 13.042 (2008) – position 51 in the list of countries*

Human Development Index: *0.862 (2008 – 45<sup>th</sup> 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)?

*Administrative fee for an appeal is EUR 6,75. In case an appeal is submitted because access to information (environmental or any other information) was ignored the appellant does not have to pay any fee.*

Who pays the procedural duty or fee for an appeal?

*Administrative fee for an appeal must be paid by the appellant.*

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

*No, appellant must pay this administrative fee or his appeal will not be accepted.*

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

*There is no possibility of the refund of this administrative fee.*

Who bears the costs of evidence in an administrative procedure?

*The appellant bears the total cost of evidence but I think this needs to be explained in more details.*

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*The basic rule is that the administrative body bears the regular costs of the procedure, except the cost of administrative fees or other costs that the party pays according to special regulations other than Law on General Administrative Procedure. However, in the procedures initiated at the request of a party or in administrative matters in which there are two parties (or more) of opposite interest, the costs of the procedure shall be covered by the party which initiated the procedure or by the party which loses the case, unless it is otherwise stipulated. This means that the party which got “negative” decision will pay all the cost.*

*Additionally, when the procedure started at the request of the party, and in which it is certain that the “investigation procedure” will cause some special expenses, it may be ordered that the party must lay, in advance, the amount of money to cover these costs. If the party does not cover that amount in a specified time, the official may waive the presentation of evidence or suspend proceedings unless the extension of the process is in a public interest.*

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

*It is very difficult to provide a concrete answer to this question because there are no costs prescribed by the law. It depends on the fact what the appellant is willing to provide as evidence to the administrative body. For example, if the appeal is against an EIA study approval and the appellant is willing to pay for a new EIA study, then the cost can be enormous, between EUR 20.000 to 500.000.*

*However, in the practice of Croatian NGOs, the administrative appeal procedures did not involve any costs for evidence, because the reason for appeal has mainly been violation of procedures or legal norms which was just described in the appeal. Additionally, when we needed some expertise, it was provided free of charge.*

## **B) Judicial procedural costs**

### **a) Administrative<sup>1</sup> judicial procedure**

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

*There is no obligation to pay any fee for the start of a procedure. The fee is paid at the end of the procedure.*

*In administrative disputes fee is paid according to the value of the dispute (and according to the Tariff determined by the Law on Judicial Fees, but never less than EUR 27) when the value is appreciable (the administrative dispute is appreciable if its*

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<sup>1</sup> 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.

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*value can be, without any doubt, identified). The Court shall decide according to its discretion right if the amount in dispute is appreciable. If the amount in dispute is invaluable, the fee is EUR 68. For the proposal for the reopening of the proceedings, the fee is always EUR 27. Also, the fee for the verdict in the proceedings in an administrative dispute depends on the value of the dispute and if the dispute is invaluable the fee is EUR 68.*

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

*In administrative disputes the fee for appeal is paid according to the value of the dispute and according to the Tariff determined by the Law on Judicial Fees. Fee for the appeal is half of the amount determined for the fee for the lawsuit.*

Who pays the aforementioned procedural duty or fee?

*Fees are paid by the plaintiff or the appellant if s/he loses and by the defendant (administrative body) if the plaintiff/appellant succeeded.*

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

*The court shall exempt from payment of court fees the party which to its general finance status cannot pay the court fee without prejudice to the necessary means of support of him/herself and his/her family. There is also a list of categories which are excluded from fee payment.*

Who bears the costs of evidence in the procedure?

*Firstly, the party which suggested some evidence bears the costs but at the end the party which loses will cover it upon the request of the opposite party.*

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

*It is very difficult to provide concrete answer to this question because there are no costs prescribed by the law. It depends on the fact what the party is willing to provide as evidence to the Administrative Court. For example, if the Court procedure was started against an EIA study approval and the plaintiff is willing to pay a new EIA study, then the cost can be enormous, between EUR 20.000 and 500.000.*

*However, in practice of the Croatian NGOs the administrative court procedures did not involve any costs for evidence, because the reason for starting a dispute have mainly been violation of procedures or legal norms which was just described in the lawsuit. Additionally, when we needed some expertise, it was provided free of charge.*

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

*I cannot give a concrete answer to this question since, for now, not one of NGO administrative disputes was finished, so we did not have to cover any costs.*

## **b) Civil<sup>2</sup> judicial procedure**

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

*In civil judicial procedure fee is paid according to the value of dispute.*

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

*For an appeal in civil judicial procedure fee is paid according to the value of dispute and according to the Tariff set in Law on Judicial Fees.*

Who pays the aforementioned procedural duty or fee?

*The plaintiff is obligated to pay the court fee, but if s/he wins the case s/he can request it from the opposite party.*

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

*The court shall exempt from payment of court fees, the party which to its general finance status cannot pay the court fee without prejudice to the necessary means of support of him/herself and his/her family. There is also a list of categories which are excluded from fee payment.*

*According to the Law on Judicial Fees, prosecutors in a dispute about compensation for damage due to environmental pollution are exempt from payment of judicial fees.*

Who bears the costs of evidence in the procedure?

*The cost of evidence is borne by the one who suggests the evidence but at the end “the loser” pays it. Fees are usually needed for the expertise so the party that is requesting an expertise must pay for it in advance.*

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

*There is no limitation prescribed by any law, so it depends on the cost of the expertise. For example if the plaintiff needs just a regular water analysis, it costs just around*

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<sup>2</sup> 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.

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*EUR 40, but if s/he needs some special analysis of air pollution it costs around EUR 6.000. Unfortunately, I do not have any experience in environmental civil judicial procedure, so it is quite difficult to give a precise answer to this question.*

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

*The “loser pays principle” always prevails.*

## **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?

*According to the Free Legal Aid Law citizens have a right to free legal aid to resolve the existential issues in civil and administrative proceedings. „Socially vulnerable people” are eligible for the legal aid.*

What kind of procedures is eligible for legal aid?

*The exercise of legal aid under the provisions of the Law on Free Legal Aid shall be granted to all proceedings in front of courts, administrative bodies and other legal entities with public authorities if the procedure regards the existential issues of the user of the legal aid.*

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

*According to Law on Criminal Procedure and to Law on Civil Procedure, the state legal aid could be provided as legal aid in full extent (including all costs) but also as legal aid with obligation to compensate the costs later in full or partial extent. According to Law on Free Legal Aid, free legal aid covers fee for the legal representative and this fee is regulated by the same law.*

## **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 in Croatia regarding protection of the environment are the following procedures:*

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- *Procedures of issuing a location and construction permit (administrative procedure)*
- *Procedures of issuing EIA studies approval (administrative procedure)*
- *Spatial planning procedures*
- *Environmental permit procedures*
- *Administrative court reviews of location and construction permits and of EIA studies approvals*
- *“Ecological suit” – civil court procedures*
- *Claims for damages (so far not used for environmental damages)*
- *Issues of neighboring rights/protection from all sorts of emissions*

*„Ecological suit“ (determined by the Law on Obligations) ease the plaintiff in a way that anyone can sue, but the costs are enormous. The plaintiff must prove to the court that the pollution occurs for what he has to pay the expertise, and there are huge costs of expert advice that are always paid by party who proposes expertise. Citizens who suffer from pollution will have to do the following: hire an attorney and pay him an expensive fee, pay expensive court fees, and then wait for months or even years on the subpoena, meaning waiting for a trial to start, and then pay the attorney for every time coming to hearings and for writing submissions, pay normally expensive expertise and, if everything is OK at best, get a positive court decision in the first degree. Then the opposite party will file an appeal, and then the plaintiff will have to wait for years on the final court decision, with the uncertainty of what will happen at the end.*

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

*In my opinion, Croatia partly meets the requirements of the Aarhus Convention regarding expenses of seeking administrative and/or judicial remedies.*

What arguments support your above position?

*According to the Law on Judicial Fees, prosecutors in a dispute about compensation for damage from environmental pollution are exempt from payment of judicial fees. Still, the costs for legal representation and costs of expertise are a financial barrier to access to justice.*

*According to the Law on Free Legal Aid citizens have the right to free legal aid to resolve the existential issues in civil and administrative proceedings. Unfortunately, environmental issues are not specifically mentioned in this Law as „the existential issues“, which Zelena Akcija repeatedly requested.*

*There is also one important inconsistency of the Law on Environmental Protection and the Aarhus Convention regarding the concept of the “interested public”. In the Law on Environmental Protection it is not in conformity with the definition of the Convention, in a way that the Law narrowed the circle of persons who fall under that term. Specifically, the definition of the Law is missing persons who are interested in “decision-making about the environment”. A possible consequence of*

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*this could be that the right to access to justice is difficult for people who are interested in a decision-making about the environment, but do not fall under the concept of the interested public scheduled in the Law. In my opinion, this leads to enlargement of the costs.*

What recommendations can you formulate in this matter?

*Our recommendations are:*

- all court procedures for environmental cases should be under emergency legislation (which is now the case only for administrative court procedures)*
- to specify the precise deadlines for scheduling hearings and decision-making in civil court procedures (which now does not work)*
- to strictly define, in administrative court procedures, what „emergency procedure“ means – what is the final deadline for issuing a decision*
- for „ecological suits“ procedure attorneys Tariff should be the minimum*
- court fee should be only a burden of the defendant in all environmental cases*
- the costs of expertise should be minimal or paid at the end of the procedure*
- key terms should be better and more clearly defined in the Law on Environmental Protection, such as „interested public“ and „bodies of the public authorities“; and in the Law on Obligations, such as “public benefit activity” and “liability for dangerous activities” (which means the objective responsibility, without “proof of guilt”), which now depends on the judicial practice.*

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