

Hungary

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: *Hungarian forint (HUF – magyar forint)*

EUR exchange rate: *1 EUR = 285,2 HUF (28.05.2009)*

GDP per capita: *EUR 15.800 (2008) – 62,9% of EU average*

Human Development Index: *0.877 (2008 – 38th 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)?

There is a fundamental difference between administrative procedures in Hungary whether a duty or a fee has to be paid for initiating or using a remedy in the procedure. Duties are regulated by an Act of Parliament No. 93 of 1990 on Duties (Duties Act), as amended. This Act defines in precise details how the obligation of payment applies to different parties and case types in administrative procedures. From among the many case categories and types falling under the scope of the Act, the following have relevance in environmental protection:

- *a general administrative procedure*
 - *initiating: EUR 7,7*
 - *appeal: EUR 17,5*
- *a construction permitting procedure*
 - *initiating: EUR 70,2*
 - *appeal: EUR 105,2*
- *an environmental procedure where no fee has to be paid*
 - *initiating: EUR 17,5*
 - *appeal: EUR 35*

A totally distinct regime applies to those administrative procedures where a so-called administrative service fee has to be paid, pursuant to Art. 67 of the Duties Act. This states that certain administrative procedures may require the payment of such fees as regulated by ministerial decrees. Allowances and waivers regulated by the Duties Act apply in such procedures only if the ministerial decree explicitly regulates so. Again,

Justice & Environment Legal Analysis – 2009 Aarhus Convention “Price of Justice”

from among the many case categories and types falling under this fee payment regime, the following have relevance in environmental protection:

- *environmental administrative procedures*¹
 - *initiating: EUR 17,5 to 18.596,5 per application or unit*
 - *appeal: EUR 8,7 to 9.298,2 per application or unit*
- *EIA procedures*²
 - *initiating: EUR 2.280,7 to 8.772 per application*
 - *appeal: EUR 1.140 to 4.386 per application*
- *IPPC procedures*²
 - *initiating: EUR 1.754,4 to 5.263,1 per application*
 - *appeal: EUR 877,2 to 2.631,5 per application*
- *GMO related administrative procedures*²
 - *initiating: EUR 245,6 to 1052,6 per application or installation*
 - *appeal: EUR 122,8 to 526,3 per application or installation*
- *highway construction permitting procedures*³
 - *initiating: EUR 9.675 per the first kilometer*
 - *appeal: EUR 4.837,5 per the first kilometer*
- *mining permitting procedures*⁴
 - *initiating: EUR 456,1 per setting up a mine and EUR 280,7 per opening a mine*
 - *appeal: EUR 228 per setting up a mine and EUR 140,3 per opening a mine*
- *forestry administrative procedures*⁵
 - *initiating: EUR 14,3 per application*
 - *appeal: EUR 28,6 per application*

As can be seen from the list above, firstly the amount of fees to be paid may vary greatly among the different types of procedures, secondly even within types of procedures we may find significant variations depending on the specific matter in question, lastly the amount of fees may be extremely high in certain cases, e.g. in EIA, IPPC and highway related administrative procedures.

Who pays the procedural duty or fee for an appeal?

Both the duty and the fee for an appeal are to be paid by the appellant, be it the applicant or another party to the case.

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

¹ Decree No. 33 of 2005 of the Minister of Environment and Water Management

² Decree No. 138 of 2004 of the Minister of Agriculture and Rural Development

³ Decree No. 26 of 1997 of the Minister of Transport, Telecommunication and Water Management

⁴ Decree No. 57 of 2005 of the Minister of Economy and Transport

⁵ Decree No. 56 of 1999 of the Minister of Agriculture and Rural Development

Justice & Environment Legal Analysis – 2009 Aarhus Convention “Price of Justice”

There are allowances and waivers according to both the nature of the case and the personal characteristics of the appellant; however, they are not providing the same level of advantages in all cases and to all types of appellants. It is probably easiest to illustrate the system of such reliefs in a matrix.

	<i>Payment of duties</i>	<i>Payment of fees</i>
<i>Nature of the case</i>	<i>Although there are a number of procedures which are exempt from the obligation to pay duties either for their initiation or for a remedy therein, these case types are irrelevant from an environmental protection perspective.</i>	<i>There are very detailed and sophisticated tables and fee lists in all subordinate regulations which concern fees in administrative procedures, however, they do not contain waivers or allowances according to the nature of the case.</i>
<i>Characteristics of the appellant</i>	<i>All NGOs are exempt to pay duties in case they declare and prove that they had no obligation to pay company taxes based on their entrepreneurial activities in the year preceding the initiation or appeal in the administrative procedure.</i>	<i>Only the ministerial decree on environmental procedures (see footnote No. 2) contains a relief for NGOs stating that they have to pay only 1% of the ordinary fee for a remedy in case they are not the initiators of the procedure. All other laws oblige NGOs to pay the full amount of fees in the relevant procedures.</i>

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

Both in case of duties and fees, if the administrative decision was declared unlawful either by the appellate administrative body or the court, the duty or the fee has to be refunded to the party.

Who bears the costs of evidence in an administrative procedure?

All costs including the one of evidence of an administrative procedure started upon request have to be pre-paid and borne by the applicant as a general rule. In case a procedure was initiated against an unlawful action and the unlawfulness of the said action was eventually not proven, the applicant must bear the costs; whereas, if the action proved to be unlawful, the costs are to be borne by the party acting unlawfully.

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

There can be no definite answer given to this question. There are a number of factors that make it impossible. First of all, there is no such thing as a typical environmental administrative procedure. Although EIA procedures are very well documented and

Justice & Environment Legal Analysis – 2009 Aarhus Convention “Price of Justice”

high profile cases in environmental administration, they do not form the majority of cases managed by the environmental protection authorities. On the other hand, the most typical environmental procedures are those where enterprises report to competent environmental authorities about their air and water emissions and waste production. These processes, however, are the least important cases for the environmental NGOs since their real environmental impact is insignificant. Secondly, administrative authorities including the environmental administration tend to regard the procedural duties and fees paid by the applicants as a full coverage of the costs of evidence in a given procedure. While this may be true for the fees, for the duties they may be less than enough to cover the total expenses of administration in a procedure. Nevertheless administrative bodies seem to overlook this potential gap and to not bother about charging applicants with extra costs. Thirdly, this is also the consequence of the situation that costs of evidence outside the procedure, e.g. preparation of a corrected EIS or the involvement of an additional expert are borne by the applicant anyway.

B) Judicial procedural costs

a) Administrative⁶ judicial procedure

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

Unlike administrative procedures, judicial procedures fall under only one regime of procedural payments. Both the initiation of and the use of remedies in a judicial procedure require the payment of duties as regulated by the Duties Act. According to this law, the standard duty to be paid for initiating the judicial review of an administrative decision is EUR 57,9.

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

In Hungary, the judicial review of administrative decisions is a one-level process, therefore there is no possibility for an appeal, and respectively, there is no duty to be paid for such an appeal. However, there is a possibility to use an extraordinary remedy against the court judgment to the Supreme Court; the cost of such a remedy is also EUR 57,9.

Who pays the aforementioned procedural duty or fee?

Procedural duties are paid by the 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

⁶ 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.

characteristics of the appellant?

As regards the nature of the case, there is one major relief: duties in judicial review cases of administrative decisions do not have to be paid at the beginning of the procedure but they are “registered” in the file, to be paid later by the loser of the case. This means that administrative judicial proceedings can be started practically by not paying any duties in the beginning.

As for the characteristics of the applicant, the aforementioned relief regulated by the Duties Act also applies here, i.e. all NGOs are exempt to pay duties in case they declare and prove that they had no obligation to pay company taxes based on their entrepreneurial activities in the year preceding the initiation of or extraordinary remedy in the judicial procedure.

Who bears the costs of evidence in the procedure?

Costs of evidence are part of the overall costs of judicial proceedings. In case the evidence involves documents, the costs of their preparation are naturally borne by that party who submits it to the court. If the evidence takes the form of hearing a witness, travel costs and related costs of the witness must be borne immediately by that party who suggested the hearing. Expert opinions as prepared by judicial experts commissioned by the court have to be paid from a deposit of the case, where the deposit must be provided by the party requiring the expert opinion. Costs of travel to a site visit are added to the costs of the process and paid at the end of the case. In these judicial proceedings, the classical “loser pays principle” prevails, with a few exemptions (see below).

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

Again, the question of calling any environmental administrative judicial procedure “typical” arises, however, in this respect it is easier to decide than at administrative procedures. Apart from the other costs of evidence that are insignificant, the costs of a judicial expert overseeing the legality and appropriateness of an EIS in a typical judicial review of an EIA permit case amounts to EUR 701,7 to 1.754,3. The costs of such an expert in a simple construction permit judicial review case is EUR 350,8 to 1.052,6.

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

As was mentioned above, in these judicial proceedings, the classical “loser pays principle” prevails, with a few exemptions. However, in case the party winning the case had also claims that were eventually not awarded, the ratio of bearing the costs shall reflect the ratio of win-and-lose. If such ratio is approximately even between the parties, the court may order that both sides bear their own costs.

b) Civil⁷ judicial procedure

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

Both the initiation of and the use of remedies in a judicial procedure require the payment of duties as regulated by the Duties Act. In order to define the amount of duties to be paid, first the “value of the proceeding’s subject” must be defined which is the monetary value of the petition or the right claimed to be awarded. The duty to be paid is respective of this and is equal to 6% of such monetary value, but minimum EUR 24,5 and maximum EUR 3.157,9.

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

The amount of duty to be paid for an appeal is exactly the same: 6% of the monetary value of the claim, but minimum EUR 24,5 and maximum EUR 3.157,9.

Who pays the aforementioned procedural duty or fee?

Procedural duties are paid by the 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?

As regards the nature of the case, there are only a few and not strictly environmental types of cases where there are reliefs: no duties have to be paid in freedom of information cases (including access to environmental information cases), and duties are to be “registered” (i.e. paid later by the loser of the case) in damages cases where the personality rights (including health and well-being) of the plaintiff are affected and where the compensation is claimed for an unlawful act of an administrative body.

As for the characteristics of the applicant, the relief regulated by the Duties Act also applies here, i.e. all NGOs are exempt to pay duties in case they declare and prove that they had no obligation to pay company taxes based on their entrepreneurial activities in the year preceding the initiation of or extraordinary remedy in the judicial procedure.

Who bears the costs of evidence in the procedure?

Just like in the administrative judicial proceedings, costs of evidence are part of the overall costs of judicial proceedings. In case the evidence involves documents, the costs of their preparation are naturally borne by that party who submits it to the court. If the evidence takes the form of hearing a witness, travel costs and related costs of the

⁷ 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.

Justice & Environment Legal Analysis – 2009 Aarhus Convention “Price of Justice”

witness must be borne immediately by that party who suggested the hearing. Expert opinions as prepared by judicial experts commissioned by the court have to be paid from a deposit of the case, where the deposit must be provided by the party requiring the expert opinion. Costs of travel to a site visit are added to the costs of the process and paid at the end of the case. In these judicial proceedings, the classical “loser pays principle” prevails, with a few exemptions (see below).

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

Both the Environmental Protection Act and the Nature Conservation Act make it possible for environmental NGOs to start lawsuits against so-called “users of the environment”. The claim against such defendants can be that they either unlawfully endanger or damage the state of environment. Such cases are decided within a normal civil judicial procedure. Apart from the other costs of evidence that are insignificant, the costs of a judicial expert visiting the site, overseeing the processes affecting the environment, preparing a report on the state of environment and formulating an opinion may vary from EUR 877 to 8.772 approximately.

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

As was mentioned above, in these judicial proceedings, the classical “loser pays principle” prevails, with a few exemptions. However, in case the party winning the case had also claims that were eventually not awarded, the ratio of bearing the costs shall reflect the ratio of win and lose. If such ratio is approximately even between the parties, the court may order that both sides bear their own costs.

c) Legal aid (optional questions)

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

Yes, the Legal Aid Act No. 80 of 2003 and its implementing Decree No. 56 of 2007 of the Minister of Justice and Policing regulate the question.

If your answer is yes, please detail briefly:

Who can use such legal aid?

Only natural persons can use legal aid in case their net monthly income does not exceed the amount of the so-called minimum old-age pension and has no assets.

What kind of procedures are eligible for legal aid?

Civil and criminal procedures as well as extra-judicial legal advice and assistance in preparation of documents are all eligible for legal aid, except legal assistance to the

founding of an NGO.

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

Legal aid primarily covers the costs of a legal aid attorney in a case or the costs of a legal advisor if legal assistance is needed but no judicial proceeding is underway. However, while the legal representation in a court case is covered fully by the legal aid, in case of legal advice outside a court case the number of working hours of a legal expert to be spent on the matter is limited by the decision of the competent legal aid authority.

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?

If we associate significance of a procedure with its environmental impact, the most important one are the following:

- a) general construction permitting, road construction permitting and EIA permitting procedures;*
- b) judicial review of general construction permits and of EIA permits;*
- c) claims against endangering or damaging of the environment and nature.*

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 regulation as well as practice of Hungary regarding costs of access to administrative and/or judicial remedies is only partly in line with the requirements of the Aarhus Convention, however, this part forms the majority of the cases in number. To this majority of cases belong most of the administrative procedures and the administrative judicial procedures, while some administrative procedures and the civil judicial procedures do not meet the criteria of the Aarhus Convention to provide a legal remedy being “not prohibitively expensive”, pursuant to Art. 9.3 and 9.4.

What arguments support your above position?

All those administrative procedures where the Duties Act prevails (no duties to be paid by NGOs) and all those environmental administrative procedures where the preferential fee payment regime for NGOs apply (1% of the regular fee to be paid by NGOs) qualify as compliant with the Aarhus Convention.

On the other hand, almost all those other, environmentally relevant administrative procedures where a system of fees with no reliefs for NGOs apply, are clearly in contradiction with the expectations of the “not prohibitively expensive” rule of the Aarhus Convention. This was also echoed by the Hungarian NGO shadow

Justice & Environment Legal Analysis – 2009 Aarhus Convention “Price of Justice”

implementation reports for two successive Meetings of the Parties of the Aarhus Convention in Almaty in 2005 and in Riga in 2008.

Also administrative judicial procedures with their duty waivers for NGOs comply with the Aarhus Convention. Within this category, only the collateral costs of evidence amount to large sums, which, however, has a very strong deterrent effect for the willingness of NGOs and the public to sue.

Lastly, civil judicial procedures in the protection of the environment have the duty waiver rule for NGOs in place as well, but both the loser pays principle and the aforementioned collateral costs of evidence make this legal instrument a very rarely applied one, clearly for its financial implications.

What recommendations can you formulate in this matter?

It is somewhat obvious what kind of legislative actions could mitigate the situation, such as:

- *make all administrative procedures compliant with the Duties Act, either by extending its waiver provisions to fees or by amending the respective ministerial decrees and introducing respective waiver provisions into all of them;*
- *introduce a system of bearing the costs of public interest litigation that would free the NGOs from the loser pays principle and would provide state funding for covering the necessary expert costs in both reviewing administrative decisions and litigating against activities endangering or damaging the environment;*
- *extend the existing legal aid regime to additional areas, such as legal assistance to NGOs, legal aid in establishing an NGO and priority legal aid provided in public interest environmental litigation matters.*

These legislative changes together could provide an atmosphere of civil society law enforcement that would certainly align with the expectations of the Aarhus Convention.

IV. Contact information:

name: *dr. Csaba Kiss*
organization: *Environmental Management and Law Association*
address: *1076 Budapest, Garay u. 29-31., Hungary*
tel/fax: *36-1-3228462/36-1-4130300*
e-mail: drkiss@emla.hu
URL: www.emla.hu