

## Slovenia

*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: *Euro (EUR)*

EUR exchange rate: -

GDP per capita: *EUR 22.500 (2008) – 89,8% of EU average*

Human Development Index: *0.923 (2008 – 26<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 14,18.*

Who pays the procedural duty or fee for an appeal?

*Person liable for the payment of procedural duty or fee is a person, who institutes an administrative procedure or on whose request the acts are performed, documents are issued that are envisaged in schedule of fees.*

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

*Waivers based on the nature of the case are set in Article 28 of the Administrative Fee Act, where it is determined, which documents and actions are exempt from fees. These are proposals, appeals, notices and other applications, submitted for ensuring public interest.*

*Waivers based on personal characteristic of the appellant are set in Article 122 of the General Administrative Procedure Act. The administrative body conducting the proceedings can exempt a party from all or part of the costs if it realizes that this person cannot pay them without detriment to maintenance of itself and its family. The administrative body conducting the proceedings can also determine payment of installments or deferment of payment of the costs, if the costs are high. The exemption from the costs is valid for the expenditures of the administrative body leading the*

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*procedure, such as official persons` travel costs, expenses incurred by witnesses, experts, interpreters, inspection, advertisement, etc. and for lodging of a security for the costs.*

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

*Every party bears the costs of the procedure before the decision of the procedural costs is issued.*

*If the procedure started ex officio and the procedure ended favorably for the party, the costs have to be paid by the administrative body, except for the personal costs of the party (costs for arrivals, loss of time, and loss of earnings).*

*Nevertheless, the General Administrative Procedure Act does not have a specific article that would determine, who pays the costs if the appeal was successful. There are only general articles about the payment of the whole procedure.*

*If a person paid a procedural fee and its appeal was successful, he is entitled to reimbursement of all or the excessively paid fee. He can get the fee back with a claim, which has to be submitted not later than 60 days from the day when its appeal was successful.*

Who bears the costs of evidence in an administrative procedure?

*There is nothing specific said about the costs of evidence in Slovenian General Administrative Procedure Act. Only Article 115 Paragraph 3 says that if the procedure starts upon a motion by the party and it can be expected that there will be special expenditures in cash (regarding evidence, inspection, etc.) the administrative body leading the procedure can determine that the party shall pay in advance the amount necessary to cover the costs which are envisaged to be incurred in the production of such evidence. If the party does not pay in advance the necessary amount within a set period, the body can drop the production of evidence or stop the procedure, except if the continuation of the procedure is in 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 an answer to this question, because there are no costs prescribed by Slovenian law. It depends on the fact what the appellant is willing to provide as evidence to the administrative body.*

## **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)?

*According to Slovenian Court Fees Act (Zakon o sodnih taksah – ZTS-1) schedule of fees – heading number 6 (6111) the amount of procedural fee for the start of a procedure is EUR 148.*

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

*According to the Slovenian Administrative Dispute Act (Zakon o upravnem sporu – ZTS-1) schedule of fees – heading number 6 (6121) the amount of procedural fee for an appeal is EUR 164.*

Who pays the aforementioned procedural duty or fee?

*Procedural fee has to be paid by the party that proposes to institute a proceeding, unless otherwise stipulated by this Act.*

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

*State and state authorities, self-governing local communities and self-governing local community bodies and some other organizations (humanitarian and invalidity organizations) are exempt from the payment of procedural fee, according to Article 10 Paragraph 1 of the Court Fees Act.*

*A party may only be exempt from payment of the court fees if otherwise the funds available for maintenance of the party and its family would be reduced to a considerable extent - Article 11 Paragraph 1 of Court Fees Act.*

*If the court adjudicates on a right, obligation or legal benefit in an administrative dispute, it shall apply the provisions of the Law on the Civil Procedure for the decision relating to the costs of the procedure. The party shall always be billed for costs incurred through his/her own fault, as well as those costs incurred by any chance occurrence affecting this party - Article 25 Paragraph 1 and 2 of the Administrative Dispute Act.*

Who bears the costs of evidence in the procedure?

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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.

*There are no special provisions regarding the costs of evidence in the procedure in Slovenian Administrative Dispute Act.*

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

*It is very difficult to provide an answer to this question, because there are no costs prescribed by Slovenian law. It depends on the fact what the appellant is willing to provide as evidence to the Administrative Court.*

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

*According to Slovenian administrative legislation, the “loser pays principle” prevails in all administrative procedures. Only general provisions set in Article 25 Paragraph 3 and 4 where it is determined that if the court grants the lawsuit and removes the contested administrative act or determines its illegality, the plaintiff is entitled to a lump sum recovery of costs. Attributed amount is paid by the defendant.*

*If the court rejects the lawsuit or the procedure is terminated, each of the parties shall be billed for their own costs related to the procedure.*

## **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)?

*According to Slovenian Court Fees Act (Zakon o sodnih taksah – ZTS-1) Article 16 to be read also in conjunction with schedule of fees – heading number 1 (1111) the amount of procedural fee to be paid for the start of a procedure depends on consideration of the value of the matter in dispute. For example if the value of the matter in dispute is up to EUR 1.500, the procedural fee is EUR 135.*

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

*The amount of procedural fee to be paid for an appeal again depends on consideration of the value of the matter in dispute. For example if the value of the matter in dispute is up to EUR 1.500, the procedural fee is the same as by the start of the procedure – EUR 135.*

Who pays the aforementioned procedural duty or fee?

*According to Slovenian Civil Procedure Act the fee has to be paid by the party submitting the appeal.*

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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.

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

*Civil Procedure Act determines in Article 168 that in civil procedure provisions from Court Fees Acts shall be used. This means that the state and state authorities, self-governing local communities and self-governing local community bodies and some other organizations (humanitarian and invalidity organizations) are exempt from the payment of procedural fee, according to Article 10, Paragraph 1 of Court Fees Act.*

*Furthermore if the party, which was exempt from the payment of procedural fee succeeded in the procedure, procedural fee has to be paid by the opponent.*

Who bears the costs of evidence in the procedure?

*According to the Civil Procedure Act, Article 153 the party moving for the production of a piece of evidence shall pay in advance, upon a court order, the amount necessary to cover the costs which are envisaged to be incurred in the production of such evidence.*

*If both parties suggest the production of a piece of evidence, the court decides that both parties shall pay in advance the costs in equal amounts.*

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

*Very hard to estimate, may be up to EUR 20.000.*

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

*Also in civil judicial procedure “loser pays principle” prevails, because Article 154 of the Civil Procedure Act states that the party losing the litigation shall refund the costs incurred by the winning party and their intervener.*

### **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:

*There is Free Legal Aid Act (ZBPP-NPB2), according to which judicial protection is possible in front of every court of general jurisdiction and in front of specialized courts in Slovenia, in front of Constitutional Court and all organs, institutions and*

*persons in Slovenia that are competent for settling disputes out-of-court.*

Who can use such legal aid?

- *citizens of Slovenia;*
- *foreigners with residence authorization or provisional residence permit in Slovenia;*
- *other foreigners under conditions of reciprocity;*
- *non-governmental organizations and associations, who are non-profit and work in public interest;*
- *other people, for which the law or an international treaty, binding for Slovenia, says that they are entitled to free legal aid.*

What kind of procedures is eligible for legal aid?

*Legal aid can be approved for legal advice, legal representation and other legal services set by the law, for all forms of judicial protection in front of all courts of general jurisdiction and specialized courts in Slovenia, in front of the Constitutional Court and in front of all organs, institutions or persons in Slovenia, who are competent for settling disputes out-of-court.*

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

*Legal aid can be granted in the case for:*

- *legal advice, which exceeds first legal advice;*
- *legal advice and representation to conclude a court settlement;*
- *legal advice and representation in the procedure in front of the courts on first and second instance;*
- *legal advice and representation in connection with extraordinary judicial review;*
- *legal advice and representation in connection with constitutional appeal;*
- *legal advice and representation in front of international courts;*
- *legal advice and representation by lodging request for constitutional review;*
- *as exemption from payment of the costs of court proceedings;*

*Also other exemptions from costs are possible (for interpreters, experts, costs for authentic instruments and certificates needed in the court procedures).*

### **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?

*For Slovenia the administrative procedures, since we have very little administrative judicial procedures. However quite a lot of suits are filed in front of civil courts, but mainly for the compensations and not really for the protection of the environment.*

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

*In general, Slovenia meets these requirements. Under Slovenian legislation all public benefit NGOs have access to free legal aid, also administrative and court fees are not so high. But nevertheless, NGOs have problems with getting qualitative lawyers and covering the costs of expert opinions.*

What arguments support your above position?

*Under the Free Legal Aid Act NGOs have access to free lawyers, but they are appointed from the list of Ministry of Justice. Since Slovenia lacks environmental lawyers, they usually get lawyers specialized for administrative law, who are not very acquainted with environmental law, especially the Aarhus rights. Thus, their legal aid is not as thorough or qualitative as it should be.*

*Under Slovenian procedural law the client who proposes evidence has to pre-pay its expenses. Expert analyses are very often needed in environmental cases and NGOs cannot afford them or they don't even have knowledge, what kind of expertise or studies to use.*

What recommendations can you formulate in this matter?

*NGOs with public benefit status should be exempt from the pre-payment provisions. If the evidence would be declared as needed by the responsible person/judge in the procedure, the cost of the evidence should be paid from the organ's budget. Legal NGOs should have a possibility to represent other NGOs and get payment for their work (not just for the first legal advice, but for all their work). Our system is set in a way that only lawyers can get payment for their work, but the NGOs only get reimbursement of the costs in the procedure.*

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