



Barriers of Access to Justice

Bulgaria

Clarification and assessment of status quo regarding barriers of access to justice in the Member States

Country Study

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I. INTRODUCTION

There are a number of barriers in front of effective access to justice (legislative and practical) in each Member State. The current survey is supposed to produce a clear, first-hand information from practitioners from the EU MS on the range and gravity of barriers of effective access to justice in environmental matters. For this, we are using a combination of research and polling to identify and categorize the barriers of access to justice. There will be 5 major blocks identified by the objectives of regulation and there will be 3 types of questions in each block, i.e. legislative, practical and scoring. Within each type, there may be more questions depending on the number of issues analyzed.

II. THE BARRIERS IN DETAIL

Objective	Indicator (example)
Sufficient legal standing	conditions of standing for individuals (e.g. affectedness) conditions of standing for eNGOs preconditions of access (e.g. prior participation)
a) legislation	<ul style="list-style-type: none">- what are the criteria of legal standing for individuals in environmental matters?- <p>No barriers and criteria for individuals as of § 24 of the Supplementary Provisions of Environmental Protection Act which states that "Public" shall be one or more natural or legal persons and the associations, organizations or groups thereof, established in accordance with national legislation.</p> <p>§ 25 of EPA further states that "The public concerned" shall be the public referred to in § 24, which is affected or is likely to be affected by, or which has an interest in, the procedures for approval of plans, programmes, development proposals, and in the decision-making process on the granting or updating of permits according to the procedure established by this Act, or in the conditions set in the permits, including the non-governmental organizations promoting environmental protection which are established in accordance with national legislation.</p> <p>E.g. on decisions on SEA Art. 88 (3) of EPA states that the persons concerned may appeal against the statement (for not conducting SEA) or SEA decision according to the procedure established by the Administrative Procedure Code within fourteen days.</p>

	<p>On decisions on EIA Art. 99 (6) EPA states that the persons concerned may appeal against the EIA decision according to the procedure established by the Administrative Procedure Code within fourteen days after the announcement under Paragraph (4).</p> <ul style="list-style-type: none"> - what are the criteria of legal standing for eNGOs in environmental matters? <p>§ 24 and 25 of the Supplementary Provisions of Environmental Protection Act require as a criterion that non-governmental organizations shall promote environmental protection and are established in accordance with national legislation.</p> <ul style="list-style-type: none"> - are there preconditions of access to justice in environmental matters (besides of course fulfilling the criteria of legal standing)? <p>Not in most of the cases (e.g. SEA, EIA) but as shown below in cases with relevance to environment like appealing decisions under the Energy Act access is denied.</p>
b) practice	<ul style="list-style-type: none"> - do the criteria of legal standing for individuals in environmental matters pose a barrier to access to justice? <p>No. Individuals get easier legal standing than eNGOs.</p> <ul style="list-style-type: none"> - do the criteria of legal standing for eNGOs in environmental matters pose a barrier to access to justice? <p>The national courts interpret differently “the public concerned” pursuant Art. 2, p.5 of the Aarhus Convention, transposed by § 24 and 25 of the Supplementary Provisions of Environmental Protection Act. At the moment there is no settled case-law on the matter with some judges holding that only environmental NGOs registered in public interest have right of appeal in environmental cases. Conversely, other judges held that right of appeal have all environmental NGOs, both registered in private and public interest.</p> <ul style="list-style-type: none"> - do the preconditions of access to justice in environmental matters (if they exist) pose a barrier to access to justice? <p>No.</p> <ul style="list-style-type: none"> - cite one or two court cases where either the criteria of standing or preconditions of access meant a barrier to access to justice, etc.

	<p>In the case with the appeal of the integrated permit of a thermoelectric power plant, the first instance district court denies legal standing of eNGO registered in private interest (there is such division by registration for NGOs). Third chamber of Supreme Administrative Court repels this decision of the district court by developing argumentation that the parameters of the legal interest of appealing the administrative act are defined by the subject of the act, which is establishing obligations or affecting rights and legal interests of the appealing citizen or organization and these parameters are a condition to decide on the admissibility of the legal review for legality of the act.</p> <p>In a case with the appeal of the decision of the Energy and Water Regulatory Commission (EWRC) for extending the duration of the licence for electric power generation was sought to establish a practice of allowing environmental NGOs in litigations on Energy Act, so that they could appeal the acts of the EWRC. In the project case the court denied the right of appeal to the environmental NGOs.</p>
c) scoring	<p>On a scale of 1 to 5 please score the following in terms of how strongly they mean a barrier to access to justice in environmental matters:</p> <p>1: very weak, 2: weak, 3: intermediate, 4: strong, 5: very strong</p> <ul style="list-style-type: none"> - criteria of legal standing for individuals in environmental matters: 2 - criteria of legal standing for eNGOs in environmental matters: 3 - preconditions of access to justice in environmental matters: 2

Objective	Indicator (example)
Availability of legal remedies and adequacy	<p>review against administrative acts or omissions</p> <p>review against actions or omissions of private persons</p> <p>scope of challenges brought in a review (review of substantive issues, of formal issues, of discretionary decisions, standard of review, general court competence to hear claims, etc.)</p> <p>availability of injunctive relief</p> <p>effective remedies available when challenges are successful</p>
a) legislation	<ul style="list-style-type: none"> - is there a review of administrative acts by the court? <p>Yes.</p> <p>In addition, legal actions for compensation for detriment inflicted on individuals or legal persons by legally non-conforming acts, actions or omissions of administrative authorities and officials could be brought before the court.</p> <p>However, there are certain administrative acts which are not challengeable where access to justice is denied to members of the public, including environmental organizations with respect to General Spatial Plans and Detailed Spatial Plans. (See also case ACCC/C/2012/76 about injunctive relief in connection with challenges to environmental permits).</p> <ul style="list-style-type: none"> - is there a review of administrative omissions by the court? <p>Yes. Art. 257 of the Code of Administrative Procedure (APC):</p> <p>“The inaction of an administrative authority on an obligation arising directly from a statutory instrument shall be appealable indefinitely, applying, mutatis mutandis, the provisions on contestation of individual administrative acts.</p> <p>The court it may order the administrative authority to perform the action, establishing a time limit for this, or may reject the motion.”</p> <ul style="list-style-type: none"> - is there a review of acts of private persons by the court? <p>Not according to the Code of Administrative Procedure but under the Law on obligations and contracts every person must redress the damage he has guiltily caused to another person.</p> <p>In addition, the EPA contains provisions on civil liability in Article 170 of APC stating that any person, who shall culpably inflict environmental pollution or damage on another, will be obliged to indemnify the aggrieved party.</p>

In cases where assets constituting state property has been damaged, the party empowered to bring a civil liability action shall be the Minister of Environment and Water, if the detriment extends over the territory of multiple administrative regions or the competent Regional Governor, if the detriment extends over the territory of multiple municipalities.

In cases where assets constituting municipal property have been damaged, the municipality mayor is empowered to bring the action.

Art. 171 APC states that the aggrieved parties may bring action against the offender for cessation of the violation and for elimination of the consequences of pollution occurred.

- is there a review of omissions of private persons by the court?

Yes, if the damage, e.g. environmental pollution, is caused by omissions of private person the same norms on tort and the EPA provisions could apply.

- what is the scope of challenges brought in a review?

Administrative acts may be contested on the following grounds:

1. lack of competence;
2. non-compliance with the established form;
3. material breach of administrative procedure rules;
4. conflict with provisions of substantive law;
5. non-conformity with the purpose of the law.

(Art.146 APC)

- what kind of injunctive reliefs are available in environmental matters?

The appeal of the administrative act in environmental matters stays the enforcement of the act. According to Art. 90 of APC the administrative acts shall not be enforced prior to the expiry of the time limits for the appeal thereof or, where an appeal or a protest has been lodged, until resolution of the dispute by the relevant authority. This rule shall not apply where:

1. all parties concerned request in writing an anticipatory enforcement of the act;
2. an anticipatory enforcement of the act is admitted by a law or by a direction under Article 60 herein.

The superior administrative authority may stay the anticipatory enforcement, allowed by order, upon the request of the contestant if this is required by the public interest or would inflict an irreparable detriment on a person concerned.

In addition, legal actions for compensation for detriment inflicted on individuals or legal persons by legally non-conforming acts, actions or omissions of administrative authorities and officials could be brought to the court.

Also, according to Art. 250 of APC any person who has standing (e.g. environmental NGOs) may submit motion for the cessation of actions performed by an administrative authority or an official which are not warranted by an administrative act or by the law.

- what are the conditions of applying an injunctive relief by the court?

The appeal stays the enforcement of the administrative act. During any stage of the proceeding until the entry into effect of the judgment, acting on a motion by the contestant, the court may stay the anticipatory enforcement admitted by an effective direction of the authority which has issued the contested act if the said enforcement could inflict a significant or irreparable detriment on the contestant. The enforcement may be stayed solely on the basis of new circumstances.

The administrative act shall include a direction on the anticipatory enforcement thereof, where this is required in order to ensure the life or health of individuals, to protect particularly important state or public interests, to prevent a risk of the frustration or material impediment of the enforcement of the act, or where delay in enforcement may lead to a significant or irreparable detriment, or at the request of some of the parties in protection of a particularly important interest thereof.

When no explicit prohibition of judicial review is stipulated, any anticipatory enforcement which has been allowed in respect of an administrative act on the grounds of a given law may be stayed by the court under the conditions above (inflict a significant or irreparable detriment on the contestant), upon the request of the contestant.

In case of motion against unwarranted actions of administrative authorities the case shall be examined by the court who shall obligate the administrative authority or the official who performs the unwarranted actions, to provide immediately data on the grounds of the actions performed.

	<p>In case of legal action for compensation it may be brought after the revocation of the administrative act according to the relevant procedure. The legal action may alternatively be brought together with contestation of the administrative act prior to the close of the first hearing of the case. Where detriment is caused by a null or withdrawn administrative act, the legal non-conformity of the act shall be established by the court before which the legal action for compensation has been brought. The legal non-conformity of an action or omission shall be established by the court before which the action for compensation has been brought.</p>
<p>b) practice</p>	<ul style="list-style-type: none"> - what is the scope and depth of review by the courts in practice? <p>As mentioned above the scope of review is lack of competence; non-compliance with the established form; material breach of administrative procedure rules; conflict with provisions of substantive law; non-conformity with the purpose of the law. In our estimate most often the scope is about material breach of administrative procedure rules and of the provisions of substantive law.</p> <ul style="list-style-type: none"> - what is the practice of courts in applying injunctive relief in environmental cases? - <p>As mentioned above, the appeal of the administrative act in environmental matters stays the enforcement of the act. In many cases the administrative authority has ordered anticipatory enforcement and the claimant shall ask the court to stay the anticipatory enforcement. In a case before the Supreme Administrative Court WWF Bulgaria asked the court to stay the act for anticipatory enforcement of an EIA decision of the Minister of Environment and Waters. With the EIA decision the minister approved the implementation of an investment proposal of a bypass road around the city of Gabrovo and a tunnel which is a project of national interest and allowed anticipatory enforcement claiming that it is for protection of important state and societal interests. The court dismissed the action to stay the enforcement on the grounds that the investment proposal is at the stage of designing and by the time the actual construction starts the court decision of the legality of the EIA decision will be issued.</p> <p>And we have certain administrative acts which are not challengable where access to justice and thus injunctive relief is denied to members of the public, including environmental organizations with respect to General Spatial Plans and Detailed Spatial Plans. (See also case ACCC/C/2012/76 about injunctive relief in connection with challenges to environmental permits).</p>

	<ul style="list-style-type: none"> - does this mean a barrier to effective access to justice? <p>Yes, in many cases when the anticipatory enforcement is ordered by the administrative authority and the court does not repeal it.</p> <ul style="list-style-type: none"> - are the judicial remedies effective when challenges are successful? <p>Yes, they are effective unless the anticipatory enforcement was ordered and the project is implemented.</p> <ul style="list-style-type: none"> - cite one or two court cases for any of the preceding issues, e.g. scope and depth of review, injunctive relief, effectiveness of judicial remedies, etc. <p>See above the case about the bypass road and a tunnel.</p>
c) scoring	<p>On a scale of 1 to 5 please score the following in terms of how strongly they mean a barrier to access to justice in environmental matters:</p> <p>1: very weak, 2: weak, 3: intermediate, 4: strong, 5: very strong</p> <p>scope and depth of review by the courts: 2</p> <p>conditions of applying an injunctive relief: 3</p> <p>effectiveness of judicial remedies: 4</p>

Objective	Indicator (example)
Timeliness of access to justice	<p>deadline for submitting an administrative complaint: deadline for bringing a court action</p> <p>deadline set for administrative review</p> <p>deadline set for judicial review:</p> <p>deadline for requesting and granting an injunction</p> <p>average length of procedures: no general data available; for EIA procedures 18,4 months (median in 2016); 7 months from the time the authority has all necessary documents;</p>
a) legislation	<ul style="list-style-type: none"> - what is the deadline for submitting an administrative remedy in environmental matters? <p>Art. 84 of the APC stipulates that an appeal or a protest shall be lodged in writing through the agency of the administrative authority whereof the act is contested, within fourteen days after communication of the act to the persons and organizations concerned. A tacit refusal or a tacit consent may be contested within one month after the expiry of the time limit where within the administrative authority was obligated to pronounce.</p> <ul style="list-style-type: none"> - what is the deadline for bringing a court action in environmental matters? <p>Administrative acts could be contested within fourteen days after the communication thereof. A tacit refusal or a tacit consent shall be contestable within one month after the expiry of the time limit where within the administrative authority was obligated to pronounce. Where the act, the tacit refusal or the tacit consent have been contested according to an administrative procedure, respectively 14 days or one month, shall begin to run as from the communication that the superior administrative authority has rendered a decision and, if the said authority has not pronounced, as from the latest date on which the said authority should have pronounced. (Art. 149 APC)</p> <p>The persons concerned may appeal against administrative (SEA/EIA) decision according to the procedure by the Administrative Procedure Code within fourteen days after the notification.</p> <ul style="list-style-type: none"> - what is the deadline set for the competent authority for administrative review?

	<p>The competent authority shall review the case within two weeks after receipt of the case file, where it is a single-person authority, or within one month, where collective, and issue a reasoned decision, whereby the authority could pronounce the contested act void, revoke the act in whole or in part as legally non-conforming or inexpedient, or shall reject the appeal or protest. The deadline could be extended if the appeal or the protest does not conform to the formal requirements and the persons are given seven days after receipt of the communication to rectify the deficiencies.</p> <ul style="list-style-type: none"> - what is the deadline set for the court for judicial review? <p>No set deadline in the law but the court shall render judgment within one month after the hearing where the examination of the case was completed. For court cases on appeals of EIA of investment proposals of projects of national and strategic importance the court should hear the case within 6 months and pronounce the decision with one month after the case was completed.</p> <ul style="list-style-type: none"> - what is the deadline for requesting and granting an injunction? <p>Same as above. In case of a legal action for compensation may be brought after the revocation of the administrative act according to the relevant procedure. Such a legal action may alternatively be brought together with a contestation of the administrative act prior to the close of the first hearing of the case.</p>
<p>b) practice</p>	<ul style="list-style-type: none"> - what is the average actual duration of an administrative review process? <p>Art. 84 of the APC stipulates that an appeal or a protest shall be lodged within fourteen days after communication of the act to the persons and organizations concerned. A tacit refusal or a tacit consent may be contested within one month after the expiry of the time limit where within the administrative authority was obligated to pronounce.</p> <ul style="list-style-type: none"> - what is the average actual duration of a judicial review process? <p>Up to one, one and half years per court instance depending on the complexity of the case.</p> <ul style="list-style-type: none"> - what is the average actual duration of a judicial case against a private person? <p>Depends on the complexity of the case.</p>

	<ul style="list-style-type: none"> - what is the average actual duration of granting an injunction? <p>The same as above.</p> <ul style="list-style-type: none"> - cite one or two court cases for any of the preceding issues, e.g. length of procedure, time to grant and injunction, etc.
c) scoring	<p>On a scale of 1 to 5 please score the following in terms of how strongly they mean a barrier to access to justice in environmental matters:</p> <p>1: very weak, 2: weak, 3: intermediate, 4: strong, 5: very strong</p> <p>the average actual duration of an administrative review process: 2</p> <p>the average actual duration of a judicial review process: 3</p> <p>the average actual duration of granting an injunction: 3</p>

Objective	Indicator (example)
Costs of access to justice	fees for administrative review: fees for judicial review: rules of bearing costs of procedures: costs for/necessity of expertise: cost capping mechanisms, legal aid, etc.: A
a) legislation	<ul style="list-style-type: none"> - what are the fees for administrative review in environmental matters? No fees for the administrative review under the APC. - what are the fees for judicial review in environmental matters? The state fees are 10 BGN (5 EUR) for natural persons and for NGOs and 50 BGN (25 EUR) for other legal persons than NGOs and natural persons-sole proprietors for the first instance and half of these amounts for second instance. In addition, there are fees e.g. for court experts, and fees for the lawyers. - what are the rules of bearing costs of procedures in environmental matters? The party which loses the case bear the costs of the other party. This is the general principle applied also in environmental matters. According to Art. 143 when the court revokes the appealed administrative act or refusal to issue an administrative act, the stamp duties, the court costs and the fee for one lawyer, if the appellant had retained a lawyer, shall be reimbursed from the budget of the authority which issued the revoked act or refusal. If the court dismisses the appeal contestation or the appellant withdraws the appeal, the appellant shall pay all costs incurred in litigation, including the minimum fee for one lawyer fixed according to the ordinance to the Attorney Act, if the other party has retained a lawyer. The minimum fee for administrative court cases without material interest is 500 BGN (250 EUR). - are there any cost capping mechanisms, legal aid, etc.? Yes, a minimum fee for a lawyer in administrative court cases. According to the Attorney Act a Bulgarian lawyer or lawyer from the EU registered in the National register for legal aid is giving the legal aid pursuant to the Legal Aid Act. Attorneys or European Union lawyers may provide legal assistance and cooperation to persons, entitled to alimony;

	<p>persons in financial difficulty; relatives, friends or other lawyers.</p>
<p>b) practice</p>	<ul style="list-style-type: none"> - what are the average actual fees for administrative review in environmental matters? <p style="margin-left: 20px;">No fees.</p> - what are the average actual fees for judicial review in environmental matters? <p style="margin-left: 20px;">The state fees, fees for court expert and lawyers</p> - how do court apply the rules of bearing costs of procedures in environmental matters? <p style="margin-left: 20px;">According to the general principle that the party who loses the case bears the costs.</p> - what are the typical costs in environmental cases? <p style="margin-left: 20px;">Not different the standard cases.</p> - how high are the costs of experts? <p style="margin-left: 20px;">Depends on the complexity of the expertise needed – from 100 BGN (50 EUR)</p> - do the cost capping mechanisms, legal aid, etc. work in practice? <p style="margin-left: 20px;">Yes, the costs for lawyers’ fees are required by the law.</p> - cite one or two court cases for any of the preceding issues, e.g. expert fees, legal aid, etc.
<p>c) scoring</p>	<p>On a scale of 1 to 5 please score the following in terms of how strongly they mean a barrier to access to justice in environmental matters:</p> <p>1: very weak, 2: weak, 3: intermediate, 4: strong, 5: very strong</p> <p>average actual fees for administrative review: 1</p> <p>average actual fees for judicial review: 1</p> <p>bearing costs of procedures in environmental matters: 2</p> <p>typical costs in environmental cases: 2</p> <p>functioning of cost capping mechanisms, legal aid, etc.: 3</p>

Objective	Indicator (example)
Availability of capacity building	<p>guidance on access to justice in environmental matters available for the public</p> <p>trainings provided for public officials and judges in access to justice</p> <p>access to information regarding judgments in relevant cases</p> <p>recognition of and state financial support to environmental legal advisory services by/to eNGOs</p>
a) legislation	<ul style="list-style-type: none"> - is there an obligation by law to have guidance on access to justice in environmental matters available for the public? - are there trainings prescribed for public officials and judges in access to justice? - is access to information regarding judgments in environmental cases regulated by law? - are environmental legal advisory services and eNGOs recognized by law?
b) practice	<ul style="list-style-type: none"> - is there a guidance on access to justice in environmental matters available for the public? - are there trainings for public officials and judges in access to justice? - is access to information regarding judgments in environmental cases ensured? - are environmental legal advisory services and eNGOs supported by the state? - cite one or two court cases for any of the preceding issues, e.g. guidance to the public, eNGO support, etc.
c) scoring	<p>On a scale of 1 to 5 please score the following in terms of how strongly they mean a barrier to access to justice in environmental matters:</p> <p>1: very weak, 2: weak, 3: intermediate, 4: strong, 5: very strong</p> <p>lack of guidance on access to justice in environmental matters available for the public</p> <p>lack of trainings for public officials and judges in access to justice</p> <p>no access to information regarding judgments in environmental cases</p> <p>no support for environmental legal advisory services and eNGOs</p>

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