JUSTICE AND ENVIRONMENT
European Network of Environmental Law Organizations

Barriers of Access to Justice

Czechia

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	- what are the criteria of legal standing for individuals in environmental matters? In the administrative proceedings, basic rule for "standing" (right to have a position of the party), is the concept of ones "rights or duties being possibly directly affected" by the decision. This concept is generally expressed in the article 27 of the Act no. 500/2004 Coll., Administrative Code, according to which, persons "whose rights or duties can be directly affected by the administrative decision" are considered as parties to the administrative procedures (next to the persons who submitted request for a permit (applicants), persons whom the decision shall create, abolish or alter their rights and duties and persons to whom a position of party is stipulated by a special act). The Building Act includes autonomous definitions of parties of the administrative proceedings for issuing the land use and building permits. According to these definitions, only the individuals and legal entities whose property rights or another rights *in rem* can be directly affected by the permit have a status of party of the proceedings. Similar is regulation of parties of the administrative procedures according to Act no. 44/1988 Coll. Mining Act. In some other procedures, related to the environment, the applicant is the only person with the rights of party. Such situation still exists for example with regard to the "noise exceptions" – decisions which authorize an operator of a source of noise which is exceeding the maximum limits to

continue with the operations for a limited period of time (with possibility of repeated prolongation) – hopefully, this is going to be changed by the administrative courts' case law in the following years.Other examples are the permits issued according to Act no.18/1997 Coll., Nuclear Act. On the other hand, the EIA consultation procedures (which are not finished by a binding permit) and procedures of adopting land use plans are open for anyone to make comments; these are also the only procedures in which the ad hoc groups can participate.

At the level of the judicial procedures, the utterly prevailing concept for standing for all categories of subjects is the concept of impairment of right. The general standing provision for administrative judiciary (Article 65 of Act no. 150/2002 Coll., Code of the Administrative Judiciary) states that standing to sue the administrative decisions is granted to

a) persons who assert that their rights have been infringed by the decision which "creates, changes, nullifies or authoritatively determines their rights or duties" and

b) other parties to administrative proceedings for issuing the administrative decision, who assert that their rights have been infringed in these proceedings and this could cause illegality of the decision (standing to sue for the environmental organizations is derived from this provision)

On the grounds of these provisions, both individuals and eNGOs may file a lawsuit against administrative decisions.

- what are the criteria of legal standing for eNGOs in environmental matters?

Environmental organizations can get a status of the party to the environmental administrative proceedings according to a number of specific acts - Nature Protection Act, EIA Act, IPPC Act, Water Protection Act, and some others, if they meet set legislative criteria. At the same time, however, neither the environmental organizations can become parties in case the law explicitly states that the applicant is the only party to the proceedings (as for example in the proceedings carried out on the grounds of the Nuclear Act, as described above).

On the grounds of Nature Protection Act, IPPC Act and Water Protection Act, environmental NGOs may get a status of the party in the administrative proceedings started on the grounds and in line with these acts, such as issuing tree felling permit, water exploitation permit or IPPC permit. Generally speaking, the general purpose of a NGO must be the environmental protection and it must actively enter the respective proceedings within a set time period.

As to the other possible environmental interferences, the eNGOs may participate only on the grounds of the EIA act – in the process of environmental impact assessment itself and in the subsequent administrative procedures.

Lately, the comprehensive list of “subsequent procedures” (meaning administrative procedures for which EIA statements are obligatory and binding base and in which public concerned may participate on the grounds of EIA Directive provisions) was introduced into the Czech EIA Act – before, subsequent procedures were described only generally and it was left to concrete cases and procedures to interpret whether a procedure is “subsequent” or it is not. From one point of view, this can be seen as a positive step as it brings some clarification as to which procedures are “subsequent procedures” and which are not - the problem is that the list does not list all procedures and hence the scope of procedures in which the public concerned may take part has been limited, for example procedures according to the Nuclear Act were excluded. There are also formal requirements to be met by NGOs without 3 years experience legitimating their participation in subsequent procedures (e.g.petition with 200 signatures must be submitted), these requirements were tightened lately which may also affect legal standing and effective and quality public participation. Moreover, eNGOs are no more entitled to comment on EIA reviews and have no standing in subsequent proceedings led mainly on the grounds of the Building Act in case full EIA statement is not issued in the very case.

Once eNGOs are parties to administrative proceedings, they may file a lawsuit against administrative decisions issued in these proceedings. On the grounds of the EIA act, eNGOs may file a lawsuit against the subsequent decision even without participation in such procedure (see below).

At the level of the judicial procedures, environmental organizations could in the past, according to the prevailing case law of the Czech courts, claim only infringement of their procedural rights in the administrative procedures, not the substantive legality of the administrative decisions as such (this was the consequence of strict application of the concept of impairment of right on their lawsuit).However, this approach of Czech Administrative courts has started to change in past few years, since the turning decision of the Constitutional Court of 30 May 2014 has been issued. Within this decision, the Constitutional Court established, at least under some conditions (impairment of rights, relation to the locality), the right of the environmental NGOs to challenge the land use plans at courts. Following this decision of the Constitutional Court, also administrative courts started slowly to rule that the eNGOs may claim also substantive legality of the administrative decisions.

- are there preconditions of access to justice in environmental matters (besides of course fulfilling the criteria of legal standing)?

In most cases, standing to sue in judicial procedure is closely related to (is following) the status of a party to the relevant administrative procedure.

	Therefore, except the few possibilities of so called “public interest lawsuits”, there is no special regulation for standing rights for a specific legal area or actors. At the same time, however, the scope of subjects with standing in the given area is strongly influenced by the scope of parties of the relevant administrative procedures. For example, as only the “neighbors” (persons whose property rights are affected) are parties to administrative procedures according to the Building Act (next to the investor, municipality and possibly eNGOs), only these persons can also have standing to sue a final decision issued according to the Building Act. In cases where the applicant is the only party to the administrative proceedings, it is also only the applicant who has standing to sue the decision at court. There are some exceptions for eNGOs on the grounds of the EIA Act. On the grounds of Article 7 para 9 of the EIA Act, the eNGOs meeting the set criteria are entitled to bring a legal action against the decision issued in the screening and scopingprocedure determining that project or change to a project shall not be assessed under the EIA Act, and may challenge the substantive and/or procedural legality of such decision. For the purposes of this procedure, the EIA Act explicitly states that the publicconcerned is presumed to have rights which may be impaired by the decision in screening and scoping proceduredetermining that the project, or change thereto, shall not be assessed under the EIA Act. On the grounds of Article 9d para 1 of the EIA Act, the eNGOs are entitled to bring an action against the decision issued in subsequent proceeding and challenge the substantial and/or procedural legality of such decision. For the purposes of this procedure, the EIA Act explicitly states that the public concerned is presumed to have rights which may be impaired by the decision issued in subsequent proceedings.
b) practice	- do the criteria of legal standing for individuals in environmental matters pose a barrier to access to justice? It is a problem in those proceedings where the legislation states that only an applicant is a party to the administrative proceeding (such as Nuclear Act, noise exceptions). Afterwards, also legal standing of other subjects, including affected individuals, before courts is questionable. There are however some examples of court decisions where courts granted the individuals standing to sue in such cases. - do the criteria of legal standing for eNGOs in environmental matters pose a barrier to access to justice? There has been an improvement in recent years relating to the courts’ approach as to what eNGOs can actually claim – whether only infringement of their procedural rights in the administrative procedures, or also the substantive legality of the administrative decisions as such.

In the past, this represented an important barrier as eNGOs could only claim infringement of their procedural rights in the administrative procedures which was clearly insufficient. The question if the courts would accept standing of NGOs to challenge decisions issued in procedures where recent legislation limited he NGOs rights to participate is still not solved (see next point).

- do the preconditions of access to justice in environmental matters (if they exist) pose a barrier to access to justice?

  Following the change of the Czech case law relating to legal standing of NGOs and their right to claim substantive rights, improvement of former barriers may be tracked. However, big legislation change introduced in the last year meant definitely deterioration in respect of the access to justice. Before, eNGOs may have participated in all proceedings where some aspects of nature and landscape protection may have been affected, including all proceedings carried out in line with the Building Act (on the grounds of Article 70 of the Nature and Landscape Protection Act). This is not possible any more. ENGOs may only participate in the proceedings carried out in line with the Building Act if these are subsequent to the full environmental impact assessment or in the proceedings carried out directly on the grounds of Nature protection act (such as for example tree felling). They are not entitled to participate in the proceedings led on the grounds of the Building Act in case the full environmental impact assessment has not been realized. Subsequently, it is likely will not be granted legal standing before court.

- cite one or two court cases where either the criteria of standing or preconditions of access meant a barrier to access to justice, etc.

  It is difficult to find examples of the court decisions illustrating the impacts of the new legislation on standing before courts, because after being deprived of the right to participate in the decision-making procedures, the NGOs mostly refrained from attempts to challenge such decisions at courts. An example of this situation is the case of “reconstruction” of the D1 highway, where an NGO participated in the building procedures until the end of 2017 and brought a number of the permits to courts, but from 2018, it ceased doing so. In the past, the NGOs were repeatedly not granted standing to sue decisions issued according the Atomic act by courts, with argument that they are entitled to participate in other procedures where permits for nuclear facilities are issued and subsequently challenge them before courts.

c) scoring	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: 1: very weak, 2: weak, 3: intermediate, 4: strong, 5: very strong - criteria of legal standing for individuals in environmental matters: 3 - criteria of legal standing for eNGOs in environmental matters: 3 - preconditions of access to justice in environmental matters: 3

Objective	Indicator (example)
Availability of legal remedies and adequacy	review against administrative acts or omissions review against actions or omissions of private persons 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.) availability of injunctive relief effective remedies available when challenges are successful
a) legislation	- is there a review of administrative acts by the court? Yes, there is.The decisions of the administrative authorities, concerning environment, are reviewed in the first instance by the departments of the Regional courts, specialized on administrative judiciary in general. The judgments of administrative courts can be re-examined by the Supreme Administrative Court, which is a specialized judicial authority in the area of administrative judiciary. The remedy to challenge the decision of the courts of the first instance in administrative matters is filing the "cassation complaint" at the Supreme Administrative Court. The cassation complaint is considered to be an extraordinary remedy, as it does not postpone the legal force of the first instance decision. However, as for the frequency of using it and taking into account that the Supreme Administrative Court can change the contested decision, the cassation complaint has a character of an ordinary remedy. - is there a review of administrative omissions by the court? Yes, there is. A person who has exhausted the administrative measures for the protection against illegal omission (inaction) of an administrative authority, which infringes his or her rights, can ask the court to order the administrative authority "to issue a decision on the merits of the matter". There is, however, a significant "gap" in this regulation (as interpreted by the Czech administrative courts), which leads to the conclusion that it is not possible to ask court to order the authority to start the procedure itself (ex officio), when it is obliged by law to do so (for example, if there is a project built or operated without the necessary permits). The courts repeatedly refused the lawsuits of affected neighbours in such cases. There is also no regulation concerning standing of the environmental organizations to sue administrative authorities in case of illegal omissions. It could be possible to use another kind of administrative action – so called "action against other illegal interventions of the administrative authorities" – in such cases. The legislative regulation of this kind of action has changed since 2012. According to the current wording, anyone asserting that his or her rights were infringed by "illegal intervention, instruction or enforcement" by the administrative authority" can ask the court to prohibit the authority

from continuing with the intervention, to order the authority to remove the results of such intervention, or just to declare that it was illegal.

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

Claims against private individuals or legal entities can be submitted directly to the civil courts (within the scope of civil judiciary) in all matters concerning private rights and duties, including those which relate to the protection of the constitutional right for favorable environment. People can invoke this constitutional right only within the scope of the laws implementing such rights. It means that also in the claims submitted to the civil courts against private individuals or legal entities, the plaintiff has to claim and prove that a specific duty determined by law was breached by the defendant and that the rights of the plaintiff were infringed by that means.

The typical claims against private individuals or legal entities, concerning environmental matters (a right for favorable environment) include

- "neighbors actions", by which the plaintiff is asking the court to order the defendant to stop annoying the neighbors "beyond proportionate degree" or "seriously threaten their rights" (e.g. by noise, emissions, etc.). The court can only order the defendant to stop the illegal activity in such cases, without further specifications how to meet this goal.

- "actions for protection of the personality and/or privacy", by which the plaintiff asks for protection against illegal interference into his or her private sphere (personality), which includes also the body, health and quality of the environment. The claim can aim for termination of the illegal interventions into the private sphere, removing of the results of such interventions, of for appropriate satisfaction

- action asking for monetary compensations for the damage of the environment, which caused also a monetary loss for the plaintiff

- "preventive action", by which the plaintiff is asking the court to order the defendant to take measures for preventing a damage on (e.g.) the natural environment.

It is generally not possible to submit claims against private individuals or legal entities directly to the administrative court. An exception is situation when an individual or legal entity acts as an administrative body. However, in the frame of the Czech legal system this is not an institute which would be actually actively used in practice (e.g. few years ago(the legislation has changed since then) authorized inspectorsissued certificates, which could substitute building permits and Constitutional Court ruled in this case that it should have been possible to file administrative law suit against it directly).

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

In respect of what was said above, in the frame of the Czech legislation system private persons regularly do not issue acts which would fully substitute administrative acts. Hence, this is not actually much relevant in practice.

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

The administrative courts have generally only a jurisdiction to cancel the administrative decisions (power of cassation). There are however exemptions from this rule. When reviewing the decisions imposing administrative penalties (fines), the courts may, next to canceling the decision, also moderate the penalty. If the court is canceling the decision on refusing the information, it can also order the administrative authority to disclose the information.

Generally, the administrative courts shall review both the substantive and procedural legality of administrative decisions subject to an administrative lawsuit. Infringement of the procedural provisions concerning the administrative procedure is a reason for canceling the contested decision, if it is likely that it could cause the substantive illegality of the decision in question. The decision of the court shall be based on the facts as they were in time when the administrative decision was issued. Normally, the courts take the materials gathered in the administrative procedure as a basis of their decisions. They are however entitled, if the parties to the court procedure suggest so, review the accuracy of such materials, repeat or amend the evidence considered in the administrative procedure. The court shall always review if the administrative authorities did not misuse exceed the scope of their discretionary powers.

The scope of the court review of the administrative decisions is in practice limited by the doctrine of infringement of rights, which forms a basis for regulation of legal standing in administrative judicial procedures and influences also which arguments of individual plaintiffs are considered as admissible. This especially concerned the lawsuits of the environmental organizations. These organizations, according to the prevailing case law of the Czech courts, could in the past claim only infringement of their procedural rights in the administrative procedures, not the substantive legality of the administrative decisions as such. As described above, this approach of Czech administrative courts has started to change in past few years, since the turning decision of the Constitutional Court of 30 May 2014 has been issued. Within this decision, the Constitutional Court established, at least under some conditions, the right of the environmental NGOs to challenge the land use plans at courts. Following this decision of the Constitutional Court, also administrative courts started slowly to rule that the eNGOs may claim also substantive legality of the administrative decisions.

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

The submission of a lawsuit against a decision of an administrative authority generally does not have a suspensive effect, it may be executed regardless the lawsuit filed against it.

	The court may, however, grant it in accordance with Art 73 par. 2 of the Code of Administrative Judiciary at the request of the claimant, but only under conditions, that are – according to the prevailing case law – hard to meet (see below). Apart from granting a suspensive effect to the lawsuit, the administrative courts may further issue a preliminary injunction on the grounds of Art. 38 of the Code of Administrative Judiciary in case there is a need of an interim arrangement of the relation between the parties. The court may issue a preliminary injunction only in those cases where the same effect may not be achieved by granting a suspensive effect to the lawsuit. The court may order to the parties of the dispute, or even to third person, to make something, abstain from something or endure something. Nevertheless, it is very rare for administrative courts to issue preliminary injunctions and the vast majority of environmental disputes take place – in line with the Czech legal system – before the administrative courts. - what are the conditions of applying an injunctive relief by the court? Followingconditions apply for injunctive relief (granting suspensive effect to a lawsuit, Art 73 par. 2 of the Code of Administrative Judiciary), i. e. the plaintiff asking for it must prove that - executing the decision would cause him/her a harm “incomparably more serious” that which could be caused to other persons by granting the injunctive relief (till the end of 2011, there was a condition of “irreparable harm”) and - issuing injunctive relief would not be contrary to and important public interest. As far as the preliminary injunction is concerned (Art. 38 of the Code of Administrative Judiciary), there must be a threat of a “serious” harm, and it is not necessary that it is the claimant personally who is under this threat. Simultaneously, the court may issue a preliminary injunction only in those cases where the same effect may not be achieved by granting a suspensive effect to the lawsuit (as described above).
b) practice	- what is the scope and depth of review by the courts in practice? As described above. - what is the practice of courts in applying injunctive relief in environmental cases? The courts tend not to issue injunctive reliefs in environmental cases, it is generally very hard to meet the conditions stated by the Code of Administrative Judiciary so that the injunctive relief may be issued.

	- does this mean a barrier to effective access to justice? This really means a barrier to effective access to justice. In case a lawsuit is filed (for example against a land use permit approving some building or factory with negative environmental impact), the proceedings before court may take up to several years and the project of the investor is often already fully realised at the time the final administrative court ruling is issued. Afterwards, it is generally "retrospectively" approved by administrative bodies. - are the judicial remedies effective when challenges are successful? In case a court issues some injunctive relief, this is generally respected in practice, hence they are effective. It is also possible to execute them. If injunctive reliefs are not issued, the court decision is often issued only after the investment is already realized and the environment infringed. This situation is even worsened by the fragmented character of the environmental decision making procedures in the Czech Republic (see the example below). - 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. In the case of the D8 highway, the NGOs successfully claimed that the EIA procedure was illegal and the courts therefore cancelled the zoning (land use) permit for the highway. However, they did not grant injunctive relief and the procedure lasted for more than 5 years. Because of that, the building permits for most parts of the highway were issued before the zoning (land use) permit was abolished. At the same time, the courts declared that the deficits of EIA are not sufficient reason for revoking the building permits, because "this is a question the courts can deal with when reviewing the zoning but not building permits. The highway was therefore built despite the courts declared it has no valid EIA.
c) scoring	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: 1: very weak, 2: weak, 3: intermediate, 4: strong, 5: very strong scope and depth of review by the courts: 2 conditions of applying an injunctive relief: 4 effectiveness of judicial remedies: 1 (when issued)

Objective	Indicator (example)
Timeliness of access to justice	deadline for submitting an administrative complaint: deadline for bringing a court action deadline set for administrative review deadline set for judicial review: deadline for requesting and granting an injunction 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;
a) legislation	- what is the deadline for submitting an administrative remedy in environmental matters? Generally, administrative decisions shall be issued within 30 days from the time the application is submitted, this deadline can be extended, for serious reasons, on 60 days as maximum. The basic timeframe may be also extended e.g. in case there is a public hearing in EIA subsequent land use proceedings. The appeal against the first instance decision must be submitted in writing and within 15 days from receipt of the decision. In case the decision is being delivered to eNGOs via official notice-board (such as in EIA subsequent land use proceedings), this 15-days period starts to run only on the 15th day after the decision was publicised on the notice-board. The appeal to a superior administrative body must be exhausted before the administrative decision can be reviewed by the court, what means that the first instance administrative decisions cannot be taken to court directly. - what is the deadline for bringing a court action in environmental matters? The time limits in which different types of lawsuits may be challenged before courts may vary from case to case. The parties to the administrative procedure must challenge the decisionbefore courts within 2 months from the time they were delivered the final administrative decision (which is the decision of the superior body on the appeal against the 'first-instance decision'). The lawsuit against "measures of a general nature" such as the land use plans must be filed within 1 year from the time they became effective.The lawsuit in cases of unlawful inaction of administrative authorities must be filed within the period of 1 year. In civil environmental matters (such as the case of a noise claim, prevention claim etc.), there are generally no deadlines stipulated except for the damage claim which must be filed within 3 years from the time the damage was causes

and, at the same time, 2 years from the time the claimant found out about the damage and the person responsible.

- what is the deadline set for the competent authority for administrative review?

Generally, the deadlines set for the second-instance authority are the same as those set for the first-instance authority. Hence administrative review decisions shall be alsoissued within 30 days (since the second-instance authority gets the files), this deadline can be extended, for serious reasons, on 60 days as maximum.

- what is the deadline set for the court for judicial review?

Generally, there are no specific deadlines for the court decisions. Proceedings in the civil and administrative judiciary (in one degree) may last from a few months to several years. In many cases the European Court of Human Rights has already ruled on the Czech Republic's obligation to pay participants compensation for infringing their rights to a fair trial as a result of the length of the court proceedings.In combination with the difficulty, or in many cases impossibility of obtaining the injunctive relief or suspensive effect of a lawsuit, this fact leads to the conclusion that the protection cannot be considered as "timely" and "effective".

Specific deadline to deliver the final court decision is set forth in cases of the so-called "measures of a general nature" such as the land use plansor special acts on some aspects of development of the traffic infrastructure projects where the Code of Administrative Judiciary prescribes a deadlineof 90 days. In cases of local referendum (a tool also used by eNGOs in environmental matters), a deadline of 30 days is prescribed.

There are no sanctions set out for the courts which deliver the decision in delay. As a remedy, it is possible to submit a complaint concerning the delay to the chairman of the court in question, or submit a request to the superior court (or other senate of the supreme courts) to set a deadline in which some action should be taken by the responsible judge. Even if no deadlines are generally set forth by the legislation, it is the duty of the court to deliver the decision in an adequate deadline.

- what is the deadline for requesting and granting an injunction?

In administrative cases, there is no time-limit in which the request for a suspensive effect or preliminary injunction has to be filed once the deadline for filing the lawsuit is respected. In civil cases, it is possible to ask for the preliminary injunction first and file the lawsuit in some period afterwards.

	Interim decisions on a suspensive effect of the lawsuit or injunctive relief must be delivered within the period of 30 days in administrative cases and 7 days in civil cases (however, this deadline is frequently over-stepped).
b) practice	- what is the average actual duration of an administrative review process? As described above, administrative review process shall take 30 days from the time the application is submitted, this deadline can be extended, for serious reasons, on 60 days as maximum. However, in practice, the duration varies very much – it can be short and it can take several months. We would say 4 months on average. - what is the average actual duration of a judicial review process? As mentioned above, there are generally no specific deadlines for the court procedures. On average, the administrative court ruling (which is most appropriate in environmental matters) would be issued within 2 years. However, this duration varies in practice, it can be 3 to 4 years and it can be shorter on the other hand. The exception are law suits against the so-called “measures of a general nature” such as the land use plansor special acts on some aspects of development of the traffic infrastructure projects where the Code of Administrative Judiciary prescribes a deadlineof 90 days. This deadline is more or less respected by courts. Similarly, in cases of local referendum a prescribed deadline of 30 days is being respected. - what is the average actual duration of a judicial case against a private person? Typical claims against private individuals or legal entities, concerning environmental matters (a right for favorable environment) such as “neighbors actions” are dealt by civil courts. These procedures may take 2-4 years on average. In an exceptional situation when an individual or legal entity would act as an administrative body (e.g. few years authorized), then there would be no difference in comparison with administrative decision review. - what is the average actual duration of granting an injunction? Interim decisions on a suspensive effect of the lawsuit or injunctive relief must be delivered within the period of 30 days in administrative cases and 7 days in civil cases. While in civil cases this deadline is generally respected, in administrative cases it is frequently over-stepped. We would say 1 to 2 months on average. - cite one or two court cases for any of the preceding issues, e.g. length of procedure, time to grant and injunction, etc.

	At the Municipal Court of Prague, which is the most overburdened court in the country, even the procedures concerning access to information can last more than 3 years, which makes them totally useless for practical reasons. On the other hand, most of the lawsuits against land use plans are decided by the courts within the 90 days deadline, which makes this kind of lawsuit probably the most effective one.
c) scoring	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: 1: very weak, 2: weak, 3: intermediate, 4: strong, 5: very strong the average actual duration of an administrative review process 1 (as there is a suspensive effect of an appeal) the average actual duration of a judicial review process 3 to 4 the average actual duration of granting an injunction 2 (much bigger barrier is that they are not granted, generally)

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	- what are the fees for administrative review in environmental matters? Generally, no costs are connected with the participation in administrative procedures in environmental matters; only the judicial stage is charged. Hence no fees for administrative review in environmental matters are applicable. - what are the fees for judicial reviewin environmental matters? There are costs connected directly with the applicant's actions towards the courts: there is especially a ▪ fee to start judicial procedure, whether it is administrative or civil, ▪ fee connected with an appeal or cassation complaint, ▪ fee connected with a request for a suspensive effect or injunction relief. All of these fees must be paid by the applicant/appellant. Further, there are costs of persons different from the court such as experts (cost of expert opinions), interpreters, witnesses etc. and the cost of parties to the procedure themselves. The court fees for individual kinds of administrative lawsuits are based on a flat rate regardless of the value of the case. A fee for a lawsuit to review an administrative decision is 3000 CZK (around 115 EUR), the same fee applies for a cassation complaint. Fee for a lawsuit against a land use plan is 5000 CZK (around 225 EUR). If a remedy is requested in the civil court action (such as claims for damages connected to environmental pollution or devastation), the system of calculating the fees is generally based on value of the case. This principle applies when the claim is pecuniary; there are specific rules for calculating fees in disputes involving non-pecuniary claims. Costs of expert opinions (noise or pollution studies, etc.) may vary; the cost can be from EUR 100 to 4.500. The parties are obliged to prove their statements (claims) and (primarily) bear the costs of evidence they bring. However, in vast majority of cases, the administrative case is decided merely on the base of the administrative files, eventually other official documents.

On the other hand, in the civil cases it is necessary to bring enough evidence to support the lawsuit, hence, the expert opinions are often necessary. In “noise cases”, for example, i.e. cases in which the plaintiffs ask courts to order the owners of the roads to take measures to reduce the noise caused by the traffic and exceeding the noise limits, the costs of the expertise (assessment) may vary between EUR 1.900 and 4.200. Theoretically, in some other cases such as cases dealing with chemical pollution of the land, the costs for the expertise may be much higher. The fees of attorneys may also vary distinctively. Typically, there is the hourly fee which is agreed with the client and may range from EUR 20 to 200; however, there are also other possibilities of determining fee such as fee for the complete representation or fee calculated on the grounds of the tariff of attorneys (legally binding by-law).

Since 1st September 2011, a fee of 1000 CZK (around 40 EUR) has been implemented for a request for injunctive relief in the administrative cases (which had been free of charge before); however, no deposit to cover any compensation is required and no compensation for damage can be generally claimed. On the other hand, in the civil matters anyone requesting a court to impose an injunctive reliefis obliged to pay a deposit of 10 000 CZK (approx. 360 Euro) to cover any compensation for damage or other loss which could be caused by the injunctive relief; a fee of 1000 CZK (around 40 EUR) is obligatory as well. However, a compensation for the damage may be claimed in much higher amount, according to the real damage proved afterwards.

- what are the rules of bearing costs of procedures in environmental matters?

The loser pays principal applies as a general rule: losing party is obliged to pay for the cost of the successful party as well as the cost of expert opinions and testimonies. The latter is, however, rare in the administrative judiciary, as the courts mostly base their decisions on the administrative files and evidence gathered thereto.

- are there any cost capping mechanisms, legal aid, etc.?

The courts in both civil and administrative judiciary branch can mitigate the costs in the proceedings by granting the waiver of the court fees when the applicant proves the need for waiver. This possibility is applicable at all instances of the proceedings, including the appeals. The administrative courts shall grant a partial waiver of the fees if the applicant proves he/she does not have the funds to pay the fee in full; the full waiver of the fee can be granted only under special circumstances. Case law in environmental cases further specified this rule in a way that an NGO cannot be awarded with waivers repeatedly; if the NGO wants to protect environment at courts, it must raise basic sources for that and “not transfer them on the state”.

	The civil judges can grant full or partial waiver of the court fees if the applicant proves the lack of funds and the action itself is not arbitrary or the action is nearly certainly without a chance of being successful. Also, under special circumstances (it depends on the consideration of the court) the court may decide that each party has to bear its own costs Further, there is a fixed case law of administrative courts relating to the representation costs in administrative court proceedings. In case the state (or its respective administrative bodies) hires attorneys to represent it before court, it must bear the costs of such representation even in case the state is successful. The courts have repeatedly ruled that the state should be fully competent to represent itself professionally and attorney's representation costs as optional extras cannot be beard by NGOs or individuals having dispute with state. As to the civil cases, the Constitutional Court adjudicated that expenses of the authorities on the attorney`s fees must be restricted as much as possible. Concerning other possibilities of financial assistance, it is possible for a party to judicial dispute to ask the court to appoint him/her a legal representative and at the same time to liberate this part from the duty to pay for the legal assistance (fully or partially). The conditions are same as for waiver of the court fees, i.e. the financial situation of the applicant. Further, it is also possible to ask the Czech Bar Association for appointment of an attorney to provide a free legal aid (normally only for one act or few acts, not for complete representation). The condition is, apart from the financial situation, that for some reasons the above mentioned possibilities of appointment of the representative by court cannot be used. This system of the Czech Bar Association's attorney appointment may theoretically be used already at the stage of administrative procedures. It follows that it is not possible for a party to choose his/her own attorney and then ask the court for waiver of the costs of legal representation. Officially, waiver of these costs is always related to appointment of the representative by the court (or by the Bar Association).
b) practice	- what are the average actual fees for administrative review in environmental matters? No fees are applicable. - what are the average actual fees for judicial review in environmental matters? A fee for a lawsuit to review an administrative decision is 3000 CZK (around 115 EUR), the same fee applies for a cassation complaint. A fee for a request for injunctive relief in the administrative cases is 1000 CZK (around 40 EUR). These are typical costs eNGOs would bear when asking for judicial review of administrative decisions.

	- how do court apply the rules of bearing costs of procedures in environmental matters? Correctly, as described above. - what are the typical costs in environmental cases? Typically, no costs other then fees described above are applicable as the vast majority of environmental cases is dealt before administrative courts and usually the administrative cases are decided merely on the base of the administrative files, eventually other official documents. - how high are the costs of experts? Costs of expert opinions (noise or pollution studies, etc.) may vary; the cost can be from EUR 100 to 4.500. Theoretically, in some other cases such as cases dealing with chemical pollution of the land, the costs for the expertise may be much higher. - do the cost capping mechanisms, legal aid, etc. work in practice? We suppose they do work in practice. - as already expressed above, there is a fixed case law of administrative courts according to which the administrative bodies must bear the costs of such legal representation if they even if they are successful
c) scoring	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: 1: very weak, 2: weak, 3: intermediate, 4: strong, 5: very strong average actual fees for administrative review: 1 average actual fees for judicial review: 1 bearing costs of procedures in environmental matters: 2 typical costs in environmental cases: 2 functioning of cost capping mechanisms, legal aid, etc.: 2

Objective	Indicator (example)
Availability of capacity building	guidance on access to justice in environmental matters available for the public trainings provided for public officials and judges in access to justice access to information regarding judgments in relevant cases recognition of and state financial support to environmental legal advisory services by/to eNGOs
a) legislation	- 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	- 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	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: 1: very weak, 2: weak, 3: intermediate, 4: strong, 5: very strong lack of guidance on access to justice in environmental matters available for the public: lack of trainings for public officials and judges in access to justice: no access to information regarding judgments in environmental cases: no support for environmental legal advisory services and eNGOs:

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