



Barriers of Access to Justice

Romania

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>There are no special criteria for legal standing in environmental matters. According to the environmental protection emergency governmental ordinance, any individual has legal standing in court in environmental matters, regardless of the existence of a prejudice. According to the environmental protection emergency governmental ordinance any individual may pursue in court any environmental cases even if the individual did not suffer a subjective prejudice.</p> <ul style="list-style-type: none">- what are the criteria of legal standing for eNGOs in environmental matters? <p>Environmental NGOs have legal standing in courts in environmental matters according to the same environmental protection emergency ordinance.</p> <p>The NGOs must prove that their official scope according to their statute is the protection of the environment. However, unofficial groups or other NGOs have standing in the administrative courts, according to the Administrative procedural law, to defend fundamental rights based on the legitimate public interest that is</p>

	<p>defined by law as sufficient for filing a valid claim against a public body. The environment is a fundamental right according to the Romanian Constitution. All the environmental permits and regulatory acts are administrative act, subject to the administrative law.</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>There are no other preconditions except the obligation to submit first the administrative complaint to the public authority that issued the act. A condition for access to justice in any administrative court is, according the administrative procedural law, to file an administrative complaint to the public body that issued the administrative act pursued in court.</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? - do the criteria of legal standing for eNGOs in environmental matters pose a barrier to access to justice? - do the preconditions of access to justice in environmental matters (if they exist) pose a barrier to access to justice? <p>No, the criteria of legal standing and the preconditions are not a barrier to access to justice in Romania.</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.
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: 1 - criteria of legal standing for eNGOs in environmental matters: 1 - preconditions of access to justice in environmental matters: 1

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	<p>- is there a review of administrative acts by the court?</p> <p>Yes, the environmental administrative acts are subject to the administrative procedural law. The acts issued by local authorities are reviewed by the Tribunals (county courts) and the acts issued by central authorities are reviewed by the Courts of Appeal (regional courts). Against the decision of the first courts the interested party may submit an appeal, that is an extraordinary remedy that may be filed only for restrictive issued specified by the civil procedural code.</p> <p>- is there a review of administrative omissions by the court?</p> <p>Yes, the omissions can be pursued in the same conditions as the administrative acts.</p> <p>- is there a review of acts of private persons by the court?</p> <p>The acts of the private persons can be pursued in civil courts, according to the general rules provided by the civil procedural code. In environmental cases the substantive prejudice is not to be proved, however a prejudice to the environment at least, should be established. The claims against the private persons could be filed for ex if they are executing an administrative act (ex a building permit, a functioning permit of the industrial or civil facility) and they are not respecting the conditions provided by the administrative act, causing harm to the environment. The claims could be brought to court even if the plaintiff did not suffer a direct prejudice as a result of the violation of the permits conditions.</p> <p>- is there a review of omissions of private persons by the court?</p>

Yes, if the private person failed to act to prevent any harm/damage to the environment, they can be pursued in court and the court could decide that they must fulfil their obligations and the court can even establish a deadline.

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

The administrative court can cancel administrative acts, order the administrative authority to fulfil some obligation (ex to disclose information, to suspend permits, etc.) or grant rights, to issue administrative acts. The court can also grant damages or penalties. The cases can be reviewed in substance or procedural.

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

According to the administrative procedural law, the effects of the administrative acts can be suspended.

According to the civil procedural law the injunctive relief is also regulated but it could be used only against the private persons, or against the administrative authorities regarding their obligations “to do” for ex administrative operations.

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

Injunctive provided by the administrative procedural law

The requirements of the law are improper for the environmental cases. The arguments proving a “well justified case” must not be the arguments related to the illegality of the act because the court is not able to examine the arguments used for the annulment of the act in the injunctive relief case. Therefore, only formal arguments can be used, that are not always sufficient. The law also requires proving a prejudice that is imminent. In environmental case it is very difficult to prove such prejudice. The interest of injunctive relief in environmental matters is to prevent any prejudice from happening. Or, it is not possible for the prejudice to be imminent because this means the it is already too late to stop it (also considering the length of the judicial proceedings). In any other case, the prejudice seems uncertain and the court will not grant the injunctive relief. On the other hand, to prove an imminent prejudice means to provide a scientific expertise concluding that the facts consist in a serious threat for the environment. Such expertise is very expensive and most of the NGOs and individuals are not able to pay for it, even in the main annulment case (considering also the average net income of 500 -600 eur.). Experts fee can rise to 3000 to 15000 eur. Such an expertise is not an admissible evidence in an injunctive relief procedure and it was never ordered in any case, as far as I am aware of.

	<p>Injunctive provided by the civil procedural code</p> <p>The condition provided by the law are:</p> <ul style="list-style-type: none"> - to prove the appearance that the plaintiff has a right that is trying to protect and that is would be harmed - to prove that you have a case in court pursuing the accomplishment of that right - to ask for a temporary measure - to prove an imminent damage
<p>b) practice</p>	<ul style="list-style-type: none"> - what is the scope and depth of review by the courts in practice? <p>The scope and depth of the review is the same as described above.</p> <ul style="list-style-type: none"> - what is the practice of courts in applying injunctive relief in environmental cases? <p>The courts are not granting injunctive relief in environmental cases because it is not possible to prove an imminent prejudice. The damages to the environment caused by pollution are very hard to be proved in court before they are already happening, especially in case of diffuse pollutions like emissions, radiations, etc that requires experts that are rare, expensive.</p> <ul style="list-style-type: none"> - does this mean a barrier to effective access to justice? <p>Sometimes the ineffectiveness of the injunctive procedure is a barrier to access to justice because by the time the cases in court are being tried, the prejudice is already done. In the Defileul Jiului Gorge case, before the court cancelled the building permit, the injunctive relief was rejected, and the project was 90% already build, already disturbing seriously the habitats. Now we are not able to evaluate the environmental prejudice and no public authority is willing to evaluate and force the operator, that is a state owned company, to pay for building an illegal project and for the environmental prejudice, or to start any environmental remedial works.</p> <ul style="list-style-type: none"> - are the judicial remedies effective when challenges are successful? No, as the case described above - 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>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>

1: very weak, 2: weak, 3: intermediate, 4: strong, 5: very strong

scope and depth of review by the courts: 1

conditions of applying an injunctive relief: 5

effectiveness of judicial remedies: 3

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>The deadline is 6 months from the day that the administrative act was communicated to the public.</p> <ul style="list-style-type: none"> - what is the deadline for bringing a court action in environmental matters? <p>The deadline is 6 months since the day the answer to the administrative complaint was received or since the deadline for the public authority's answer to the administrative complaint, has expired.</p> <ul style="list-style-type: none"> - what is the deadline set for the competent authority for administrative review? <p>The competent authority must answer to the administrative complaint in 30 days.</p> <ul style="list-style-type: none"> - what is the deadline set for the court for judicial review? <p>The court has no deadline for the judicial review. At the first hearing the parties are asked how long the case should last and the courts sets period of time (month , years) until the case should be finished. However, until the first hearing is set, there is an administrative regulatory faze that is already lasting several months or years and only at the end the first hearing is set.</p> <ul style="list-style-type: none"> - what is the deadline for requesting and granting an injunction? <p>The injunction in the administrative cases has no deadline set by the law, it usually lasts several months in the first court and years until the appeal is over.</p>

	<p>The injunctive in civil procedural code - the review is urgent, and the decision should be given in 24 hours and submitted in writing in 48 hours since the last hearing. In practice an injunctive could last also from two weeks to several month.</p> <p>In the administrative cases the injunctive can be filed immediately after the administrative complaint is submitted but also in the same time with the annulment case.</p> <p>In the civil procedure, the injunctive relief can only be submitted the court after the main case was submitted.</p>
<p>b) practice</p>	<ul style="list-style-type: none"> - what is the average actual duration of an administrative review process? <p>In all cases the administrative review lasts 30 days.</p> <ul style="list-style-type: none"> - what is the average actual duration of a judicial review process? <p>Average duration could be one year and a half. However, if the appeal would be heard by the High Court of Cassation and Justice, only the appeal could last more than two years.</p> <ul style="list-style-type: none"> - what is the average actual duration of a judicial case against a private person? <p>Average duration in civil cases depend on the overload of each court, but at least one year and a half.</p> <ul style="list-style-type: none"> - what is the average actual duration of granting an injunction? <p>In some cases, injunction proceedings take longer than the annulment case. In Defileul Jiului Gorje, the decision to reject the injunctive relief of the first court was communicated to the parties 5 month after the administrative acts were cancelled by the appeal court. The appeal can be filed only after the written decision is communicated to the parties. There is not a big difference between the duration of injunctive proceedings and the duration of the main case.</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.
<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>

1: very weak, 2: weak, 3: intermediate, 4: strong, 5: very strong
the average actual duration of an administrative review process: 1
the average actual duration of a judicial review process: 5
the average actual duration of granting an injunction: 5

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? <p>The administrative review is free of charge.</p> <ul style="list-style-type: none"> - what are the fees for judicial review in environmental matters? <p>In administrative courts the fees are very low, as much as 4.5 eur (20 lei) for an injunctive, 9.5 eur for annulment (50 lei), in the first court. Depending to the appeal arguments, the court fee could be higher, even 45 (200 lei) eur.</p> <p>The experts fee has increased severally and in some cases could be even 15.000 eur (70.000 lei) (ex the case of an illegally build wind mills park that was destroying a special habitat).</p> <p>In the civil cases the fees are depending on the object of the case. In pecuniary cases the fees are a percentage of the value of the case. The civil injunctive follows the same rules. The non-pecuniary cases have fixed amounts depending on the object of a case.</p> <ul style="list-style-type: none"> - what are the rules of bearing costs of procedures in environmental matters? <p>The loser pays principle applies. The court could however limit the lawyer fee up to a reasonable amount. The expert fees and other expenses however could not be diminished by the court.</p> <p>are there any cost capping mechanisms, legal aid, etc.?</p> <p>The legislation provides a mechanism for the legal entities as NGOs to obtain a reduction of the court fees, but they do not apply to the experts' fees.</p>
b) practice	<ul style="list-style-type: none"> - what are the average actual fees for administrative review in environmental matters? <p>The administrative review procedures are free of charge.</p>

- **what are the average actual fees for judicial review in environmental matters?**

The same as above, plus the lawyer's fee that could be also expensive. Minimum recommended fee by the Union's Bar is 500 eur for an annulment case depending on the complexity of the case. In some cases the NGOs were facing huge amounts to pay for the lawyer's fee when they lost environmental cases, like 35000 eur, 25000 eur, that could endanger the existence of the organization.

- **how do court apply the rules of bearing costs of procedures in environmental matters?**

The court will grant to the winner all the expenses with the case trial. The loser will pay all the expenses of the other party: lawyer's fee that can be diminished, the court fees, expert fees, even witness's fees, copies, transportation, etc.

- **what are the typical costs in environmental cases?**

The costs in environmental cases are the same as described above.

- **how high are the costs of experts?**

The expert fees could be from 500 (2400 lei) eur si 15.000 eur (70.000 lei) in complicated cases where more than one expert is needed.

- **do the cost capping mechanisms, legal aid, etc. work in practice?**

In practice it is very difficult for the NGOs to obtain the reduction of the court fees. However, in the administrative courts were 99% of the environmental litigation is going on, the courts fees are not prohibitive. There is no legal or practical possibility to be grated any legal aid for the experts' fees. Such legal possibility is only available for the individuals, but only if their income is less than 70 eur per month. Of course, it is not likely that any individual with such an income, if any, would litigate in environmental issues.

- cite one or two court cases for any of the preceding issues, e.g. expert fees, legal aid, 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

average actual fees for administrative review: 1

average actual fees for judicial review: 3

bearing costs of procedures in environmental matters: 5

typical costs in environmental cases: 5

functioning of cost capping mechanisms, legal aid, etc.: 5

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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