Barriers in Access to Justice in Environmental Matters in the European Union

Case Study Report
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Summary

Environmental issues are a vastly growing concern and the need for their protection is an increasing global issue. Whilst there has been legislative headway, nationally, regionally and internationally, with regards to environmental protection, without the possibility for enforcement of these environmental laws, it becomes futile. The ability to ‘challenge decisions, acts and omissions’\(^1\) by ‘public and private bodies’\(^2\) is an integral part of democratic society as it provides the public with a say in the way in which their lives are governed. This is particularly true for environmental issues where the public often have a main, vested interest in protecting the environment and act as further checks and balances on the legislators and to legal persons.

The ability to effectively access justice is an issue that spans across the globe, with issues linked to the particular national economic, legal, cultural, social, and political conditions. It is intrinsically linked to the level of democracy in a nation, and the ability of the nations’ people to challenge anything that may restrict their rights or that violates legislation. Whilst most of the countries in this study are considered democratically strong, they still have varied levels of conditions that will affect the effective access to justice and it is thus important to assess these barriers to gain an understanding as to how to increase environmental justice.

This study was therefore designed with the goal of documenting and identifying the barriers to effective access to justice within the European Union. It found that whilst there is some progress in certain areas, others are becoming more restrictive, leading to stronger, rather than weaker, barriers to accessing justice. The main challenge is therefore to find ways in which the barriers can be reduced, and the environment better protected.

Chapter 1 – Introduction

Justice is a fundamental backbone of the rule of law and of a democratic society. Without the possibility of enforcing environmental legislation, law is merely a figurehead which could be overruled and the environment damaged. States and natural and legal persons often believe themselves to be above the law and push the boundaries upon which environmental law is built. They try to build their businesses and economies by circumventing legislation put in place to protect the environment. Civil society have a right to access justice under the Aarhus Convention. It provides that every person, ‘to be able to assert this right [to a healthy environment] … must… have access to justice in environmental matters...’\(^3\). They must be able to uphold these rights in the legal system and hold persons and States accountable when they do not believe environmental protection is being maintained. Furthermore, environmental law is also designed in such a way that it places environmental responsibilities on companies and States which are often breached, thus allowing for further degradation of the environment. Although access to environmental justice is a key component of the Aarhus Convention, there is little binding legislation within the EU on the access to justice.

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2 Ibid. pg. 2.
There are a few directives, such as the Environmental Liability Directive and the 2003/35/EC Directive providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EC and 96/61/EC. However these relate more to article 9.2 of the Aarhus Convention and not article 9.3.

Individuals and NGOs play a vital role in enforcing these rights and responsibilities. They are, however, often prevented from accessing justice in the first place, before they can even attempt to receive justice for the environment and their environmental rights and enforce environmental law. This systematic denial of their rights is primarily down to the legislation surrounding access to justice as it often creates a barrier through which civil society cannot access the judicial system. Numerous barriers or indicators can be identified as preventing society from accessing legal remedies, to the detriment of the environment. These barriers vary from procedural issues that block access, such as the cost of legal remedies, to the underlying system in a society, whereby ‘state bureaucracy reflects ‘sharp’ hierarchical social status’.

This study was, therefore, created to identify certain legislative and practical indicators that create a barrier to accessing justice in the European Union, the ways in which and to what extent each of these indicators in the various States creates a barrier. J&E will carry out advocacy actions to further communicate issues on the matter and try to remove or minimise the existing barriers.

**Chapter 2 – Scope and Methodology**

- **Scope of the Case Studies**

The study focussed on 5 main barriers for effectively accessing justice in environmental matters for each Justice and Environment member. Of those members, 7 practitioners delivered replies on their nation’s access to justice: Austria, Bulgaria, Croatia, Czech Republic, Estonia, Hungary and Romania. These States have varied legislative, political and judicial systems that mean they likely differ in the ways in which the indicators create barriers. This research is designed to identify and categorize the range and gravity of certain barriers of access to justice. It is also important to identify whether there are similarities between the nations and whether certain systems or characteristics create stronger or weaker barriers to effectively accessing justice.

- **Methodology**

The study was designed as a questionnaire with 5 blocks identified by the objectives of regulation, each corresponding to a particular indicator and within each section, there are 3 sub-sections: legislation, practice and scoring. The subsections on legislation and practice involved questions that required qualitative answers, whilst the scoring section involved a quantitative scoring system for how high a barrier certain indicators or issues within those indicators created. The end of each block also provided a chance to discuss significant cases for any of the preceding issues for that block.

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The Survey:

<table>
<thead>
<tr>
<th>Objective</th>
<th>Indicator (example)</th>
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</table>
| **BLOCK 1: 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?  
- what are the criteria of legal standing for eNGOs in environmental matters?  
- are there preconditions of access to justice in environmental matters (besides of course fulfilling the criteria of legal standing)?  |
| b) practice | - 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?  |
| 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  
criteria of legal standing for eNGOs in environmental matters  
preconditions of access to justice in environmental matters  |

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<tr>
<th>Objective</th>
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</table>
| **BLOCK 2: 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?  |
- is there a review of administrative omissions by the court?
- is there a review of acts of private persons by the court?
- is there a review of omissions of private persons by the court?
- what is the scope of challenges brought in a review?
- what kind of injunctive reliefs are available in environmental matters?
- what are the conditions of applying an injunctive relief by the court?

| b) practice | - what is the scope and depth of review by the courts in practice?  
|            | - what is the practice of courts in applying injunctive relief in environmental cases?  
|            | - does this mean a barrier to effective access to justice?  
|            | - are the judicial remedies effective when challenges 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  
|            | scope and depth of review by the courts  
|            | conditions of applying an injunctive relief  
|            | effectiveness of judicial remedies |

<table>
<thead>
<tr>
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</thead>
</table>
| BLOCK 3:  | deadline for submitting an administrative complaint: deadline for bringing a court action  
| Timeliness of access to justice | deadline set for administrative review  
|                                   | deadline set for judicial review:  
|                                   | deadline for requesting and granting an injunction  
|                                   | average length of procedures |

| a) legislation | - what is the deadline for submitting an administrative remedy in environmental matters?  
|                | - what is the deadline for bringing a court action in environmental matters?  
|                | - what is the deadline set for the competent authority for administrative review? |
- what is the deadline set for the court for judicial review?

b) practice
- what is the average actual duration of an administrative review process?
- what is the average actual duration of a judicial review process?
- what is the average actual duration of a judicial case against a private person?
- what is the average actual duration of granting an injunction?

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
the average actual duration of a judicial review process
the average actual duration of granting an injunction

Objective Indicator (example)

BLOCK FOUR 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) legislation
- what are the fees for administrative review in environmental matters?
- what are the fees for judicial review in environmental matters?
- what are the rules of bearing costs of procedures in environmental matters?
- are there any cost capping mechanisms, legal aid, etc.?

b) practice
- what are the average actual fees for administrative review in environmental matters?
- what are the average actual fees for judicial review in environmental matters?
- how do court apply the rules of bearing costs of procedures in environmental matters?
what are the typical costs in environmental cases?
how high are the costs of experts?
do the cost capping mechanisms, legal aid, etc. work in practice?
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
average actual fees for judicial review
bearing costs of procedures in environmental matters
typical costs in environmental cases
functioning of cost capping mechanisms, legal aid, etc.

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<tr>
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</table>
| BLOCK 5: 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

<table>
<thead>
<tr>
<th>Scoring</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1: very weak, 2: weak, 3: intermediate, 4: strong, 5: very strong</td>
<td>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:</td>
</tr>
<tr>
<td>1: very weak, 2: weak, 3: intermediate, 4: strong, 5: very strong</td>
<td>lack of guidance on access to justice in environmental matters available for the public</td>
</tr>
<tr>
<td>1: very weak, 2: weak, 3: intermediate, 4: strong, 5: very strong</td>
<td>lack of trainings for public officials and judges in access to justice</td>
</tr>
<tr>
<td>1: very weak, 2: weak, 3: intermediate, 4: strong, 5: very strong</td>
<td>no access to information regarding judgments in environmental cases</td>
</tr>
<tr>
<td>1: very weak, 2: weak, 3: intermediate, 4: strong, 5: very strong</td>
<td>no support for environmental legal advisory services and eNGOs</td>
</tr>
</tbody>
</table>
Chapter 3 – Analysis of the Main Results

The following chapter is an analysis of the main results, with each block beginning with 3 graphs analysing various points that can be determined from the ‘scores’ section of each block. The scores range from 1-5 as to how much of a barrier that particular indicator causes, with 1 being a very low barrier and thus the best score, and 5 being a very high barrier and thus the worst score. Therefore, the higher the column, the higher the barrier that indicator or block causes to accessing justice.

The first graph identifies the average scores each State has provided for each indicator within that particular block. For example, it identifies what score Croatia gave to each indicator of the sufficient legal standing block.

The second graph provides a total average of the State’s scores for each indicator, with, for example, the average actual fees for administrative review indicator within the ‘costs of access to justice’ block scoring an average of 1.14, meaning it creates a very low barrier to accessing justice. Within this graph, there is also a total average for the whole block, combining the average scores of each indicator. The third graph simply looks at the country averages overall for that block to be able to compare which country has the highest or lowest barrier to accessing justice due to that particular block.
SUFFICIENT LEGAL STANDING - AVERAGES FOR EACH INDICATOR

- Conditions of Standing for Individuals
- Conditions of Standing for eNGO's
- Preconditions of Access
- Average

AUSTRIA: 4, 3, 3.67
BULGARIA: 2, 3, 2.33
CROATIA: 5, 3, 3
CZECH REPUBLIC: 3, 3, 3
ESTONIA: 2, 1, 1.33
HUNGARY: 4, 3, 3
ROMANIA: 1, 1, 1

SUFFICIENT LEGAL STANDING - TOTAL AVERAGE FOR EACH INDICATOR

- Conditions of Standing for Individuals
- Conditions of Standing for eNGO's
- Preconditions of Access
- Total Average

AVERAGES:
- 3
- 2.29
- 2.14
- 2.48
For all 7 nations involved in this report, both individuals and eNGOs can have legal standing in environmental matters but the way in which this standing is provided to the various natural and legal persons and how easy it is to gain legal standing differs between the nations.

a. Legal Standing for Individuals

All individuals can have legal standing with most of the nations (6 out of 7) applying some form of the impairment of rights doctrine in their legislation. Austria applies the doctrine far more strictly than others who do not relate directly to the impairment of rights per se but more to rights being affected. Bulgaria, for example, phrases it in relation to whether the ‘public concerned’ will be affected by/likely to have an interest in the issues at stake but it can be considered that this still relates closely to the impairment of rights doctrine. As does the Czech Republic whereby legal standing for individuals relates to whether the rights are ‘affected’ for administrative proceedings, rather than ‘impaired’. Romania is the only State that has no criteria for individuals to have standing as ‘any individual may pursue in court any environmental cases even if the individual did not suffer a subjective prejudice’.

In practice, for half of the nations where the impairment of rights doctrine applies in some form, there is a barrier to accessing justice for individuals. Croatia has a prior public participation requirement for certain cases which causes a barrier to accessing the justice whilst Hungary is becoming stricter and more restrictive in the criteria for when an individual’s rights have been affected. Austria’s application of the impairment of rights doctrine is so strict that it causes a barrier in itself but it is believed that the PROTECT case⁵ should help ease this barrier. All the other States do not have a barrier for individuals to gain legal standing. It should be noted though that Estonia also applies the impairment of rights doctrine strictly whereby the right must be your own, however individuals can have legal standing.

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standing through the impairment of the ‘right to environment meeting the health and well-being of persons’ needs’. The scope of application for this right is still unclear but it provides a pathway to what could have been a potential barrier to accessing justice.

It is unsurprising therefore that Austria, Hungary and Croatia scored the criteria of legal standing for individuals in environmental matters as causing high or very high barriers to accessing justice, due to the restrictive criteria for standing, whilst the others remained low.

b. Legal Standing for eNGOs

All eNGOs have standing in administrative courts if their rights and/or interests are impaired; these interests must relate to the protection of the environment. 4 of the States have specific criteria for eNGOs to have legal standing as it is difficult for their right to be affected/violated due to the restrictive application of impairment of rights doctrine. These criteria include having protection of the environment as their main goal or having to prove they’re active in the territory the act/decision relates to. 3 of the States have different possibilities of legal standing for various cases. For example, prior participation is required for railway construction and general house building administrative cases in Hungary. Austria also has specific criteria for EIA’s where the eNGO must be officially recognised by the environmental ministry according to a set of criteria for it to have legal standing. Nature, water and environmental cases tend to have easier standing criteria than others, such as the Building Acts which often requires prior public participation. The Czech Republic is gradually allowing eNGOs to claim not only procedural right infringements but also substantive legality of administrative decisions in judicial proceedings.

In practice, the standing criteria in Romania and Estonia do not create a barrier for eNGOs to access justice whilst 4 States see mixed results regarding standing: Hungary, Czech Republic, Croatia and Austria. Austria still has a barrier but, as is the case for standing for individuals, the PROTECT case should cause a reaction by the legislators to allow for eNGOs to have legal standing in nature protection and water cases. There will still, however, be barriers in relation to access to justice in non-EU related environmental sectors. Croatia does not see a barrier in practice when related to the administrative court procedure but there is in relation to criminal and misdemeanour and inspection procedures as the eNGOs must be considered victims to have standing in such cases. The broadening of the scope for what eNGOs can claim, to include substantive rights infringements, means that the barrier has been reduced for the Czech Republic. However, recent legislation has narrowed eNGOs rights to participate as their standing to challenge decisions issued in procedures has been limited. Hungary’s criteria does not in itself pose a barrier to accessing justice but instead the constantly changing breadth of the notion of ‘environmental administrative procedure’ means that less cases are considered ‘environmental’. This reduces the number of procedures where eNGOs can exercise legal standing; eNGOs now have explicit standing for EIA and EID (IPPC) cases. Bulgaria is the only State where the possibility for eNGOs accessing justice as the relevant ‘public concerned’ is interpreted differently by the various regional and national courts. Therefore, for the right to appeal, some judges have interpreted the ‘public concerned’ to include only eNGOs registered in the public interest; whilst others have included also private interest eNGOs.

Despite the mixed results, only Austria has a strong barrier to accessing justice but is optimistic this barrier will decrease. The other States only have an intermediate or lower barrier for eNGOs.
c. Preconditions of access to justice in environmental matters

The discussed preconditions of access to justice differ considerably between the States. Croatia and Hungary have preconditions relating to prior public participation. In Hungary, prior participation in the first instance process is required for any permitting procedures related to railway construction and general house building. The only preconditions for eNGOs in Hungary to ensure standing criteria is to submit their registration documents and their by-laws to the court. For Croatia, prior public participation in procedures is required for any procedures relating to environmental issues to have standing but this does not apply to eNGOs who only need to fulfil the certain legal standing criteria. Estonia does not have any preconditions; Romania only has the condition that persons are obliged to submit an administrative complaint to the public authority that issue the act before looking for a legal remedy; and in Bulgaria, access is denied to any appealing decisions under the Energy Act. In Austria, eNGOs must register at the Ministry first and prove they meet the relevant criteria for Environmental Impact Assessments, whilst there must be 200 signatures of individuals eligible to vote for citizen initiatives, and any invited parties must participate in proceedings or they will lose their standing. As for the Czech Republic, there is no specific regulation for standing rights for a specific sector or set of actors, but instead the scope of subjects with standing will relate to the scope of the parties in the relevant administrative procedure – such as neighbours for the administrative procedures to the Building Act. There are particular exceptions for eNGOs in EIA’s as they are presumed to have rights that may be impaired and so they can challenge the legality of a screening and scoping procedure decision (and the subsequent proceedings) that determines a project does not need to be assessed under the EIA act.

The preconditions for Romania, Estonia and Bulgaria do not pose a barrier to accessing justice, particularly as Estonia does not have any preconditions and Romania only has the condition of submitting the complaint to the public authority that issued the act before looking for a remedy. Once again, Austria sees a barrier to accessing justice, as does the Czech Republic, but only partially. A precondition for Austria is that the natural or legal person has to intervene in a timely manner but it is not clear when a legally recognizable intervention would have been possible and it is often not made clear that a procedure has been opened at all, let alone a decision made – making timely intervention/appeals very difficult. For the Czech Republic, the barrier relates specifically to proceedings carried out in line with the Building Act as eNGOs only have standing if the proceedings are subsequent to a full EIA.

There are no strong barriers to accessing justice born out of the preconditions for legal standing but Austria, Czech Republic and Croatia all believe their preconditions are intermediate barriers at the very least. The prior public participation requirement for all individuals to have legal standing in any environmental cases in Croatia means it has the strongest barrier to accessing justice in relation to preconditions for standing.

d. Conclusions

Romania, Bulgaria and Estonia do not have strong barriers to legal standing. Austria, Croatia, the Czech Republic and Hungary do have particularly strong barriers to legal standing, particularly for individuals. Individual legal standing causes the strongest barrier to accessing justice amongst the indicators in Austria, Croatia and Hungary; in Croatia, standing for eNGOs only causes a very weak barrier and the preconditions cause an intermediate barrier.
Austria struggles the most with sufficient legal standing compared to the other States as their barrier has an average score of 3.67 for legal standing but Croatia’s standing for individuals specifically has a very high barrier against accessing justice.

None of the States’ preconditions of access pose high or very high barriers to accessing justice in environmental matters and thus do not have to be considered a major issue. The biggest issues for sufficient legal standing are standing for building and land use permits and individual standing. Building and land use permits often have extra conditions, such as prior participation requirements which is contrary to the Aarhus Convention\(^6\) in general. These procedures are often not considered environmental to the same extent and so it is more difficult for persons to gain legal standing. Standing for individuals also causes a higher barrier to accessing justice (an average score of 3) than standing for eNGOs does (an average score of 2.29) with only Bulgaria having a worse barrier for eNGOs. 3 out of the remaining 6 States have equally strong barriers for accessing justice between standing for individuals and for eNGOs and the other 3 have worse barriers for individual standing. This provides a particular issue for individuals as they are far less likely to have legal standing and are thus unable to protect their environmental rights and the environment itself.

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<table>
<thead>
<tr>
<th>Country</th>
<th>Scope and Depth of Review by the Courts</th>
<th>Conditions of Applying an Injunctive Relief</th>
<th>Effectiveness of Judicial Remedies</th>
<th>Total Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>2</td>
<td>3</td>
<td>2</td>
<td>2.67</td>
</tr>
<tr>
<td>Croatia</td>
<td>4</td>
<td>4</td>
<td>2</td>
<td>3.29</td>
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<tr>
<td>Czech Republic</td>
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</tr>
<tr>
<td>Estonia</td>
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</tr>
<tr>
<td>Hungary</td>
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</tr>
<tr>
<td>Romania</td>
<td>1</td>
<td>1</td>
<td>3</td>
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</tr>
</tbody>
</table>

**Availability of Legal Remedies and Adequacy - Averages for Each Indicator**

**Availability of Legal Remedies and Adequacy - Total Average for Each Indicator**

Scope and Depth of Review by the Courts, Conditions of Applying an Injunctive Relief, Effectiveness of Judicial Remedies, Total Average

Averages: 2.29, 3.29, 2.57, 2.71
a. Review of Administrative Acts by the Court

All States in the report have a procedure in place for Courts to review administrative acts. Certain acts, however, are not challengeable in some States, such as the General or Detailed Spatial Plans in Bulgaria. The authorities invested with reviewing powers are often local administrative courts if the act was issued by a local authority or regional administrative courts if the act is issued by central authorities, and often the Supreme Administrative Court will be the authority with cassation powers. Hungary has ‘supplementary administrative acts’ that are subject to a court review but fall under a simplified review regime where there is no trial during adjudication.

b. Review of Administrative Omissions by the Court

Croatia did not answer this section. All of the remaining six States do have a review procedure in place for administrative omissions by the Court with Romania and Estonia having the same procedure as for review of administrative acts. Bulgaria provides for the appeal of inaction of an administrative authority with an obligation whereby the Court may order the authority to perform or reject the action. Hungary has a specific judicial review procedure for omissions known as Omission Adjudication. There are then two other States: Austria and the Czech Republic, where there are review procedures in place but they’re not as clear cut. In principle there is a review procedure available in Austria but the person must prove a ‘special legal interest’ for a declaratory decision to be provided and eNGOs struggle to gain standing as registering an environmental problem to the competent authority is not a legally recognised application for a review procedure. The Czech Republic provides for omission review if all other remedies have been exhausted first, however the Court cannot order the authority to begin a procedure or give a decision and there are other eNGO standing issues. eNGOs do have other administrative possibilities in the Czech Republic though, such as bringing a claim for infringement of their rights due to an illegal intervention, thereby asking the court to prohibit the authority from continuing the intervention, to remove the results of such intervention, or declare it illegal.

c. Review of Acts by Private Persons by the Court

The review of acts by private persons is possible for all States (excluding Croatia who did not answer) but not in administrative courts; there is an exception to this rule in the Czech Republic when the
individual or legal entity acts as an administrative body, but this is not effective in practice as often no institutions are considered as such. Instead acts by private persons are reviewed elsewhere in civil procedures and under private law. There are various claims that can be made, from the violation of private rights, obligations and duties to claims to property under tort law. This applies to eNGOs and individuals.

d. Review of Omissions of Private Persons by the Court

The majority (5/7) of States provide for the possibility for the review of omissions of private persons in civil courts. The Czech Republic is the only State where this type of review is not possible as private persons cannot issue administrative acts related to environmental matter so they would not have obligations that they need to fulfil through decisions. Croatia did not answer once again.

e. Scope of Challenges Brought in a Review

All States provide for administrative court reviews of both substantive and procedural issues of law, but some States also have other possibilities for challenges brought in a review in civil law, such as the breaching of rights and causing damage or a lawsuit against a polluter (Hungary). The scope is therefore broad for most States. It is limited in the Czech Republic, though, by the doctrine of infringement of rights as the scope must relate to the breach of a particular right, whether that be substantive or procedural. Only two of the States discussed on which basis the facts of the reviews are conducted: Austria and Croatia. Croatia’s review is on the basis of the facts established by the authority at the time, but they can also review accuracy and also amend or repeat evidence, whilst Austria is not strictly bound to the facts established at the time.

The scope and depth of the reviews differs between the States in practice. The Czech Republic and Romania see the reviews conducted as prescribed whereby in the Czech Republic they only have jurisdiction to cancel the decision. In Romania, on the other hand, the Court can cancel an act, order an authority to fulfil some obligations or grant rights, or it can issue acts. Regarding administrative penalties, both Romania and the Czech Republic can grant damages/penalties, as well as cancel or moderate them. For the Czech Republic, they can also order disclosure of information if a first instance decision was made refusing the information. As for the other States, Estonia is very strict on their challenges: any illegality in the procedure of the decision/act will cause the act/decision to be unlawful. Bulgaria, Hungary and Austria on the other hand all have in depth reviews whereby the Court may examine every aspect (i.e. procedural and substantive) of the decision, but can find it illegal on the basis of only one aspect, for example the Court may find a decision illegal even if only its procedural aspects were illegal. Conversely Croatia does not have an in depth review and in practice only reviews procedural aspects of the case. Croatia, therefore, has the strongest barrier to scope and depth of review as in practice reviewing only procedural aspects is highly restrictive.

f. Injunctive Reliefs Available for Environmental Matters

All States have the possibility for injunctive relief but they differ with regards to the immediate suspensive effect of a challenge. Only Austria and Bulgaria have suspensive effect upon appeal, with Bulgaria being the only State to provide the possibility for anticipatory enforcement to counter-act the suspensive effect. The other five States have to provide a motion to the Court for injunctive relief.

Regarding the conditions to be applied for an injunctive relief, all States have certain criteria to be met, mainly in relation to the avoidance of irreparable damage or the damage would make it more difficult for the applicant to enforce their rights, such as in Estonia where relief will be granted if the rights of
the applicant will be rendered significantly more difficult or impossible. Romania is the only State whose criteria relates more to environmental prejudice and a serious threat to the environment. For injunctive relief to apply in Romania, imminent prejudice to the environment must be proved through scientific expertise. These expertise are not admissible evidence in an injunctive relief procedure, making it very difficult for injunctive relief to be applied. Hungary’s injunctive relief is also conditional, should the judge decide it so, upon the payment of a bond or a cross undertaking. Furthermore, different injunctive reliefs can be applied. In Bulgaria, whilst the appeal stays the enforcement of the act, and thus an anticipatory enforcement can be directed, there is also a motion against unwarranted actions where data must be provided immediately on the grounds of the actions performed. It also has the legal action for compensation, which can be brought after revocation of the act or together with the contestation of the act prior to the closing of the first hearing of the case. The Czech Republic, in addition to the injunctive relief, has the possibility for a preliminary injunction but only where the same effect may not be achieved by granting suspensive effect to the lawsuit. Injunctive relief is also possible for civil matters in many States, and also often conditional.

In practice, injunctive relief is often not applied due to the strict conditions, which enables developers to act upon the decision, causing the damage the requested injunctive relief aimed to prevent. These strict conditions and reluctance to apply injunctive relief particularly affect Romania, Czech Republic, Croatia and Austria. This causes many ‘academic winnings’, especially in Croatia when coupled with the long court procedures discussed in the next block below, where the permits for developments have already been annulled by the time the injunctive relief decision is made. When it is granted however, it functions well and achieves its aims. For Bulgaria, although the enforcement is stayed immediately from appeal of the act, anticipatory enforcement often counter-acts this and makes the suspensive effect void. Furthermore, suspensive effect does not necessarily mean courts will accept the requested injunctive relief.

With regards to whether the injunctive relief means a barrier to effective access to justice, 5 out of the 7 States believe that the injunctive relief conditions are indeed a barrier to effective access to justice. Bulgaria’s barrier is due to the use of anticipatory enforcement whilst the issue for Croatia and the Czech Republic is that injunctive relief is only generally retrospectively approved, even though the project has already occurred or caused the damage. Estonia and Hungary simply do not see the injunctive reliefs applied by the Courts frequently. For Romania, injunctive relief causes very high barriers to accessing effective justice: when ‘prejudice’ to the environment cannot be easily proven by the time the case is tried (due to lengthy procedures) or the injunctive relief is provided, the prejudice has already arisen. Austria is the only country where injunctive relief does not provide a barrier to effective access to justice, due to the effective use of the suspensory effect. Despite these restrictions, Romania and the Czech Republic are the only two States whose injunctive relief conditions cause high barriers.

g. Are judicial remedies effective when challenges are successful?

Estonia is the only State whose judicial remedies are consistently effective; Croatia and Romania’s remedies are not - Romania has considerable issues with lengthy procedures. For Bulgaria, the Czech Republic and Hungary, the effectiveness of judicial remedies depends on certain factors. In the Czech Republic, if the judicial remedies are issued then they are indeed effective but often they are not or they are issued far too late, i.e. after the environment has already been damaged, thus making them ineffective. Bulgaria’s judicial remedies are effective unless anticipatory enforcement is issued. For Hungary, the courts can now amend some acts, rather than only having cassation powers but this amendment is still too new to evaluate. Austria did not provide an answer.
h. Conclusions

5 out of the 7 States have at least one indicator for legal remedies and adequacy that creates a high or very high barrier with all 3 indicators seeing a high barrier at least once in a country. The conditions of applying an injunctive relief though cause high or very high barriers for 3 out of the 7 States (Hungary, Romania and the Czech Republic) and it has an average barrier of 3.29 – the highest indicator for legal remedies and adequacy.

Austria, Bulgaria and Romania all have intermediate barriers to accessing justice in this block but none have high or very high barriers and both the Czech Republic and Estonia have an average score of 2.33 for this barrier.

Overall, the availability of legal remedies does not provide a considerable barrier to accessing justice. In fact, only Romania sees a very high barrier for injunctive relief conditions and the rest vary from high barriers to minimal barriers, depending on the country and the type of legal remedy discussed.
TIMELINESS OF ACCESS TO JUSTICE - COUNTRY AVERAGES

Austria  Bulgaria  Croatia  Czech Republic  Estonia  Hungary  Romania

Average Actual Duration of Admin. Review Process
Average Actual Duration of Judicial Review Process
Average Actual Duration of Granting an Injunction
Total Average
a. Deadline for submitting an administrative remedy in environmental matters

There is quite a large variety in the legislation for this deadline; varying from 14 days as the shortest in Bulgaria for an act and 6 months as the longest in Romania. Austria is the only State without an administrative review per se; instead there are certain extra-judicial Ombudsperson for maladministration cases. This means that no exhaustion of administrative remedies is necessary, allowing the public to go straight to appeal in Court. Hungary, the Czech Republic and Croatia all have 15 days from the decision being communicated to submit an administrative remedy, whilst Estonia provides for 30 days, as does Bulgaria for a tacit refusal or consent.

b. Deadline for bringing a court action

Bulgaria has the shortest and most restrictive time periods with only 14 days provided for a person to bring a court action against an act and 1 month for a tacit refusal. Estonia on the other hand has a wide variety of time periods ranging from 30 days for an annulment or mandatory action to 10 years from the day the act was issued for filing of a compensation or reparation action (but this cannot be any later than 3 years after the applicant became aware of the harm). However, the deadlines for a general challenge of a decision of an act differ: maximum 6 months in Romania and in Estonia, for an omission or delay, the deadline is no longer than a year or 2 years if no time limit is set for issuing a decision. The other States all fall within the time periods mentioned above for various types of challenges and reviews at both first instance and appellate procedures.

c. Deadline for competent authority for administrative review

There is less of a large variation for this deadline: from 10 days to 2 months (60 days). There were two States who had mixed deadlines: Estonia allows for between 10 and 30 days and Bulgaria who provides 2 weeks for a single person authority and 1 month for a collective authority. Romania and the Czech Republic both allow the competent authority 30 days for review but this deadline can be extended in the Czech Republic to 60 days. Hungary and Croatia allow 60 days for an authority to make a decision, although Hungary does not have a clear deadline for a second instance administrative authority review. Once again, Austria is not applicable as there is no such administrative review.

In practice, the average actual duration of an admin review process varies with only Romania, Estonia and Bulgaria managing to remain within the time limits set for the Courts. Meanwhile in Hungary the Court can take anywhere between 60 days and 6 months to decide in an appellate administrative procedure and in the Czech Republic, they have 30 days (60 for a delay) to bring a decision but the duration of the process is usually several months and the average is 4 months. Croatia however has particular issues when it comes to the administrative review process as the Court should come to a decision within 2 months but cases usually last between 1 to 4 years. Croatia therefore has a considerably higher barrier to administrative review process than the other nations.

d. Deadline set for the court for judicial review

Only Austria has a set deadline of 6 months for a decision by the Court, whilst the others only have deadlines for certain aspects of the judicial review. In Hungary for example, the first hearing must be held within 60 days from the arrival of the action and in the Czech Republic, the court has 90 days to deliver a final court decision for ‘measures of a general nature’, as defined by law, but no deadline for other decisions. The Czech Republic’s proceedings were considered so lengthy by the European Court of Human Rights that they constituted a violation of the right to a fair trial as the protection could not
be considered timely or effective, therefore proceeding deadlines may be set in an attempt to deal with this issue. Bulgaria also only has a deadline for appeals of EIA’s of investment proposals for projects of national and strategic importance whereby the Court should hear the case within 6 months and pronounce the decision within 1 month after the case is completed. Croatia has no deadline and only requires the proceedings to be completed as a matter of ‘urgency’. Both Romania and the Czech Republic have methods for dealing with the lack of deadlines. In the Czech Republic a complaint can be submitted to the chairman of the court or to a superior court if the decision is taking too long, asking them to set out a deadline in which some action should be taken by the responsible judge. Romania, on the other hand, requires the parties in the first hearing to decide how long the case should last and the court sets a time period from there; the administrative regulatory phase prior to the first hearing has no deadline though.

The average actual durations of judicial review processes range considerable. Austria, as the only country with a judicial review deadline, did not answer. Estonia has the lowest duration between 7 and 13 months depending on the Court whilst the Czech Republic has the highest with 3-4 years. Hungary does not have any consistent case law yet as a new system of judicial review decisions was only recently introduced. There are much stronger barriers to accessing justice in the judicial system than the administrative one with Romania also having a very strong barrier and all States having at least an intermediate barrier.

Furthermore, the average actual duration of a judicial case against a private person also varies greatly in practice. For Hungary and Bulgaria, the duration of a judicial case against a private person depends on the complexity of the case and thus there is no set average duration. For Austria, the Czech Republic and Romania, the durations vary between 6 months in Austria at district level to 4 years in the Czech Republic for neighbours actions. The exception in the Czech Republic is that if an individual or legal entity acts as an administrative body then the decision is considered administrative and thus the case falls under an administrative decision review. Croatia and Estonia did not answer.

e. Deadline for requesting and granting an injunction

The majority of States do not have a deadline for requesting an injunction but some do have deadlines for granting one. In Hungary, the Court shall decide within 15 days whilst in the Czech Republic, the Court has 7 days for a civil case and 30 days for an administrative case. In Croatia, the deadline is again only that it be filed ‘urgently’. Austria did not answer the injunction question.

Practically, the shortest average actual duration for granting an injunction is in Estonia where it is between 1 and 2 weeks, whilst in Romania the proceedings can take longer than the annulment cases themselves. For example, in the *Defileul Juluii Gorje* case, the rejection of the injunctive relief was provided 5 months after the act in question was cancelled by the appeal court. Hungary also has a high barrier to accessing justice through injunctions.

f. Conclusions

Timeliness causes a considerable barrier to justice, although the barriers vary between the States and the indicators. Whilst timeliness only causes weak or intermediate barriers in the Czech Republic, Bulgaria and Estonia, it does create high barriers for Hungary, Croatia and Romania.

The granting of an injunction and the duration of the judicial review process are the indicators that
cause the most issues in the States with their barriers both averaging well above intermediate. Given that only one of the reporting States has a set deadline for a decision in the judicial review process, it is unsurprising that judicial review is a lengthy procedure and thus causes barriers.

Hungary has a high barrier for injunction duration and Romania has very high barriers for both the judicial review process duration and the injunction granting duration. Croatia has very high barriers for all the indicators in this block and therefore has a particular issue with timeliness. These lengthy procedures in Croatia may be down to the vague deadlines where the only limit is ‘urgency’.
Costs of Access to Justice - Averages for Each Indicator

- Average Actual Fees for Admin. Review
- Bearing Costs of Procedures in Env. Matters
- Functioning of Cost Capping Mechanisms, Legal Aid, Etc.

Austria
Bulgaria
Croatia
Czech Republic
Estonia
Hungary
Romania

Costs of Access to Justice - Country Averages

- Austria
- Bulgaria
- Croatia
- Czech Republic
- Estonia
- Hungary
- Romania

Average Actual Fees for Judicial Review
Typical Costs in Environmental Matters
Average
a. Fees for administrative review in environmental matters

Only Hungary and Austria charge fees for administrative reviews. In Austria, there are filing fees costing €240, whilst in Hungary, there are two types of payment obligations: fees and dues. Dues are paid for administrative procedures. They can be waived for certain types of persons, for example, an NGO that is not subject to corporate tax the preceding year, is exempt from paying dues in administrative procedures. For environmental cases, however, a different payment obligation prevails: fees. These can be prohibitively high for NGOs but often in environmental cases, eNGOs only pay 1% of the fee for an appeal that is otherwise applicable to the applicant, greatly easing the burden of fees. When they do not enjoy these preferential fees in other procedures, the fees can indeed be prohibitively high to an extent that may bar them from accessing justice.

In practice, Hungary and Austria remain the only ones with fees. Costs for regular administrative procedures in Austria are under €100, however, for legal remedies in the highest courts, the costs are very intensive as an attorney must file the complaint, which can cost tens of thousands of Euros. The filing fees also remain and the prevailing party can claim reimbursement of these by the opponent. The administrative procedural due in Hungary is between €100 and €300, whereas the administrative procedural fee starts at €300EU and can reach €10000.

Given, therefore, that the majority of States do not have fees, these are not considered a barrier to accessing justice and only in Hungary are the fees and dues a barrier, although only a low one as in the most important environmental cases, the 1% preferential fee prevails, allowing access to justice.

b. Fees for Judicial Review in Environmental Matters

Unlike administrative reviews, almost all States have fees for judicial reviews, with Croatia being the only State who does not have fees. The fees have quite an extensive range and vary depending on the type of fee. Administrative fees are often set, whereas civil fees depend and are calculated on the basis of the complexity, object, and value of the case. For example, in Austria, the filing fee for an administrative court is €30 but in civil cases, the fees depend on the amount in dispute. In Romania, for pecuniary cases, the fees are calculated according to a percentage of the value of the case, whereas for non-pecuniary, the fees are a fixed amount depending on the object of the case. The fees in the Czech Republic are paid according to the action they are requesting in court and fees for individual administrative lawsuits are based on a flat rate depending on the action: administrative act review lawsuits and cassation complaint fees are €115 whilst fees for lawsuits against land use plans are €225. The lowest fee is €5 in Bulgaria for both individuals and NGOs whilst the highest fee is in Austria for the highest administration and constitutional Courts at €240.

Generally however, it is not the specific filing fees that are an issue, but the lawyers' fees. These can be very prohibitive, as for example, in Austria, in the highest court legal remedies the attorney’s fees can be tens of thousands of Euros. This is very cost intensive which means access to justice is particularly restricted in Austria. In Romania, there is a minimum recommended fee by the Union’s Bar for an annulment case: €500. This means that lawyers’ fees always remain prohibitively expensive and NGOs often face high amounts for lawyer’s fees (between €25,000 and €35,000) if they lose their cases.

c. Rules of Bearing Costs of Procedures

In all the questioned States, the loser pays principle applies, in various forms. The civil procedure in Austria sees the parties carry their own costs and the prevailing party claim reimbursement of the necessary costs, as established by the court. Many States provide for administrative authorities to bear
their costs (Estonia and Austria), or the costs of expertise as they should be able to bear them and it cannot be expected that the applicant be made to bear the costs of an authority. In Croatia and Hungary, if a party is only partially successful the court may determine that each party pays its own costs or that the costs are allocated proportionally according to the dispute success. There is an issue in Croatia, however, with bearing the costs of procedures as if it is established that the applicant abused their right to begin proceedings then the developer can demand compensation for damages and a loss of profit. This is contrary to the Aarhus Convention and causes many arbitrary proceedings.

In practice, the rules of bearing costs are applied as they laid down in the legislation for environmental matters. There is common practice for the administrative bodies to bear their own costs in administrative proceedings, including expert fees, and they should prevent the costs being too high. This practice is designed to prevent persons being unable to afford the costs of bringing a case against an administrative body, particularly as expert fees are often far too high for persons to afford them. In Estonia, the costs of the proceedings had to be reduced as they were deemed so prohibitively costly that the right to file a claim in environmental matters was being restricted. The Supreme Court therefore reduced the costs imposed on applicants to be paid out to third parties from €11,880 to €6800.

The rules of bearing costs of procedures create comparatively more barriers than the basic review fees. Given the excessive costs of certain fees, particularly lawyers’ fees and expert fees, it is understandable that Austria, Croatia, Estonia and Romania all have high or very high barriers to accessing justice when it comes to the rules of bearing costs of procedures as they cannot necessarily afford these fees. The Czech Republic and Bulgaria are the only States who do not have high barriers to accessing justice.

d. Costs for/Necessity of Expertise

All States have a necessity for experts, particularly in civil cases, as in administrative ones the administrative files provided are often sufficient to come to a decision. It is a general rule that the party calling for the expert pays for the expert in advance, and the loser pays principle applies once a decision has been made.

In Hungary, the costs are prohibitively high with the highest example being €5000 for an expert to do a complex analysis in an environmental liability case.

The costs of experts do tend to vary though from €50 usually to several thousand (€15,000 in Romania is the largest sum), depending on the type of case or its complexity. For the Czech Republic, in some cases dealing with chemical pollution of the land, the costs may be much higher than the average variation of between €100 and €4500.

e. Cost capping mechanisms, legal aid etc.

In all States, there is some form of legal aid or a waiver mechanism system. Much of the regulation of the legal aid in the States comes with criteria related to the poor financial situation of the applicant. For Austria the criteria for legal aid is that the applicant has such a low income, they require legal aid; Bulgaria allows attorneys to provide legal assistance to persons in financial difficulty; in the Czech Republic the same criteria applies for both waivers of court fees and legal aid where the financial situation of the applicant is such that they lack the funds to pay for it; Estonian legal aid does not

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usually apply as the applicant has to be extremely poor to get it; and finally Hungary’s legal aid is only provided for those individuals who meet specific financial criteria set by the respective legislation. There are also three countries who specified legal aid for NGOs: Hungary, Romania and the Czech Republic. Hungary provides for legal aid for NGOs who are registered as ‘public benefit’ and who start lawsuits in the public interest but it does not provide cost capping or fee waiver mechanisms applicable to NGOs. The Czech Republic provides for a waiver of court fees to NGOs if they do not have the funds to pay the fee in full but the NGO cannot be consistently awarded waivers as it is deemed that the NGO must raise basic resources to protect the environment should they wish to do so and not transfer the funds onto the state. This is burdensome upon the NGO as it has to raise the funds to pay for the costs. In Croatia, access to legal aid is denied for NGOs – contrary to the Aarhus Convention which requires fair and equitable legal remedies and the duty to examine the possibility of establishing appropriate assistance mechanisms to remove or reduce financial barriers to access to justice.

Only Bulgaria and the Czech Republic report that the mechanisms work in practice; the others vary depending on the mechanism and the level of usefulness. In Austria, for example, free legal aid for civil cases is financed by the State, however it cannot be guaranteed that the attorney will be an expert in environmental law as the applicant cannot choose which attorney they are given. The main issues with legal aid is that it’s generally difficult to obtain due to the high thresholds for who is eligible for it; it is often not applicable to NGOs; and the hours provided are not enough for meaningful input. Where cost capping mechanisms are present, such as in Hungary, they are effective, especially in cases initiated by individuals.

Croatia, Estonia, Hungary and Romania all suffer from high or very high barriers due to the lack of effective legal aid mechanisms or cost capping mechanisms. It seems it is only the Czech Republic whose mechanisms don’t create a considerable barrier to accessing justice.

f. Typical Costs in Environmental Cases

Legal fees and expert fees are the main costs to be paid in environmental cases, particularly judicial ones. The administrative cases only have main filing fees for the cases that are decided on the basis of administrative files, this is particularly true for Hungary and the Czech Republic. Most cases in the judicial phase are dealt with in administrative courts therefore the typical costs are low. In judicial cases though the legal and expert fees can be extortionate and have caused considerably high barriers in Estonia, Hungary and Romania. In Austria, it is difficult to determine the level of barrier to accessing justice caused by the costs as the standing requirements create such a high barrier that cases have not been permitted in the first place. There are also sometimes injunction fees, expenses of the winning party and state taxes to deal with; in the Czech Republic the injunctive relief fee for civil cases is a deposit of approximately €360.

g. Conclusions

The average actual fees are not barriers for any of the examined countries as few actually have fees for administrative procedures but the general costs of procedures is prohibitive in many cases – particularly for Croatia, Estonia and Romania who had high barriers for the various costs in environmental cases. Hungary also has high barriers but the barriers its cost bearing procedures creates are only intermediate.

Romania has the highest barriers in this section with 3 out of the 5 indicators being very high and only the fee indicators causing intermediate or low barriers. As for the Czech Republic, it has the lowest barrier score out of the States for costs meaning they do not cause considerable barriers to accessing justice in the Czech Republic.
5 out of the 7 States have at least one indicator causing a high or very high barrier. This block, therefore, has the most restrictive indicators and yet the average for the cost barrier is lower than that of timeliness.

The expert fees are particularly high in environmental cases with Estonia, Hungary and Romania all struggling with these fees. These are especially an issue in environmental cases as experts are often required to prove environmental damage or risk and thus typical unavoidable costs in environmental matters – which means they are often very expensive.

Considering the above regarding expert fees, it is unsurprising that bearing the costs of procedures causes a high or very high barrier for 4 out of the 7 States, given that the loser pays principle applies in all States. Costs of expert fees and lawyers’ fees are inherently too high for people to afford to bring an action, especially if it is the individual who bears the cost of both parties in the end if they lose. Furthermore, cost capping and legal aid mechanisms are also an issue as there simply are not easily accessible mechanisms in place, if any at all, to alleviate the aforementioned costs of procedure. For example, legal aid is often only provided to those who are very poor, and thus the threshold is difficult to meet for many who wish to bring an action. This indicator creates the highest barrier within the costs block at 3.86 average because if the costs are excessively high and there is no support for this to allow for persons to access environmental justice then this is extremely prohibitive.
It must be noted here that the Czech Republic and Romania did not answer this block of questions so they have not been factored into the data or analysis of such data.
None of the States have an obligation for guidance. In practice though, there is some guidance on accessing justice in environmental matters published by various NGOs or environmental ministries through comments, studies, reports etc. in Austria, Croatia and in the Czech Republic, these provide material on how the public can defend their rights in court. These various pieces of guidance lack a central authority and are often not at a national level. Austria, Bulgaria and Croatia all consider this lack of guidance to be a high or very high barrier to accessing environmental justice.

b. Trainings prescribed for public officials and judges in access to justice

In Austria, Hungary and Estonia, there is no training required. In Croatia, the Czech Republic and Bulgaria, however, there are trainings prescribed for public officials and judges, such as compulsory initial training for junior magistrates by the National Institute for the judiciary as a whole in Bulgaria but these trainings do not relate specifically to accessing justice necessarily or on environmental matters. Croatia does have trainings for judges and in 2018 ran an educational programme for administrative law entitled ‘Aarhus Convention – Admin or Civil Law Aspect – Env. Protection and Practice of the EU Court’. The State and local officials are also educated through the State School for Public Administration. In the Czech Republic, the public officials are legally obliged to educate themselves through education provided and paid for by the authorities, but the law does not specify which fields of education are compulsory. As for judges in the Czech Republic, the same obligation applies but specifically to the legal and other fields they need to properly exercise their profession; there is no systematic education in access to justice though. The Judicial Academy, the courts of the universities provide education to the judges, and the Judicial Academy prepares annual education plans for judges, based on their specific needs and requests.

In practice there are some general trainings provided, such as the training of members of the judiciary at the Hungarian Justice Academy where numerous courses are dedicated to procedural and substantive legal matters. In Estonia, there is a possibility that there may be trainings on access to justice but as these are not public knowledge, it is unclear what the content of the trainings are. The Minister of Environment holds some educational events in the Czech Republic that are usually open to all the public to attend. The ACCC is currently reviewing how well Austria has implemented an MOP
decision, which contained provisions concerning capacity building. A number of events have been held but it is not yet determinable whether the requisite target groups were reached as only one lawyer was present at a major capacity-building event in 2017.

Once again, Austria, Bulgaria and Croatia have high or very high barriers to accessing justice due to the lack of trainings for public officials and judges.

c. Is access to information regarding judgements in environmental cases ensured?

Only Croatia suffers from a big issue with this lack of information. The other States do have access to information as many of the judgements are published or can be read online. Although in Hungary and the Czech Republic, there is no specific legislation on accessing information regarding environmental judgements, in Hungary the general Freedom of Information Act prevails. However this would not allow access to information if such access would adversely affect the course of justice or personal data. The central public website of the judiciary in Hungary provides a search function allowing environmental judgement results made anywhere in the country to be displayed if a proper combination of the search words is used. In the Czech Republic, there is an act providing for the right to environmental information but not explicitly relating to judgements and thus environmental judgements are regulated under the general access to information and justice legislation. There is also no database containing basic information on environmental cases. Austrian decisions by administrative authorities are not published online though and neither are judgements in environmental matters in Bulgaria but they are through a general administrative procedure, as judgements have general principles of public openness, reliability and comprehensive coverage of the information in administrative proceedings. Furthermore, in Bulgaria, parties do have a right to access the information in proceedings, according to the Code of Administrative Procedure and the Access to Public Information Act.

The only State in which accessing information is a very high barrier is Croatia as the lack of information regarding judgements prevents the public from accessing these judgements and finding more information regarding a particular case. This makes it more difficult to find case precedent for environmental matters or simply to find out how a case is progressing.

d. Environmental legal advisory services and eNGOs recognised by law

Only 4 of the States answered the question. Environmental NGOs are recognised by law as having specific standing and/or rights in the Czech Republic for certain proceedings and may have extended access to environmental information during administrative environmental proceedings. The environmental legal advisory services are, however, not recognised by law. Austria has 9 environmental ombudspersons and is the only State where eNGOs are fully recognised by the Ministry for Sustainability and Tourism, whilst in Hungary NGOs are recognised by law but eNGOs are treated equally to other NGOs and not specifically recognised according to their particular character. Legal aid NGOs can be recognised however at the Ministry of Justice as Legal Aid Organisations if they possess an office space suitable for receiving clients and a licensed attorney contract who would provide legal services in the name of that organisation. Bulgaria does not have any regulation on legal advisory services for NGOs in general, nor for eNGOs. Only under the Bulgarian Legal Aid Act is legal assistance provided for to physical persons in criminal, civil and administrative cases by lawyers and funded by the State. This legal assistance is usually provided pro bono or as grants funded by donors with the aim of ensuring equal access to justice by providing effective legal assistance.
In practice, there is little specific recognition for environmental services. In Croatia there is no specific fund provided for free legal aid in environmental cases – on the Act on Free Legal Aid. In Estonia, there is a programme running until 2020 by the Ministry of Justice providing 2 hours of free legal advice to citizens on all matters, including environmental law, conditional upon the persons’ income being less than 1.5 times the national average. Hungary has a government funded scheme called the National Cooperation Fund which supports NGOs work but there has been criticism that the beneficiaries selected are not free from political implications and eNGOs are not specifically chosen. Only the Ministry of Agriculture has a specific fund for eNGOs but it is very limited and there are no specific earmarked grants for environmental legal advisory services. However, any grants dedicated to eNGOs may be awarded to legal advisory NGOs. The eNGOs and environmental legal advisory services in the Czech Republic do have access to national funding schemes from the Ministry of Environment and Ministry of Education and EU sources of funding.

There are clearly barriers to accessing justice due to the lack of support for environmental legal advisory services and eNGOs, with Bulgaria, Croatia and Hungary suffering from very high barriers and Austria and Estonia having limited support in practice and thus intermediate barriers too.

Croatia has very high barriers to accessing justice due to a lack of availability of capacity building and Bulgaria is struggling with accessing justice in this regard too.

e. Conclusions

This is the worst barrier to accessing justice with an average score of 3.3 and the lack of support for environmental legal advisory services and eNGOs as well as the lack of trainings for judges and public officials causing the most restrictive barriers at 3.8. It should be noted though that one of the States did not answer this final block and so is not factored into the scores. All the indicators, apart from access to information - which is a considerably low barrier, are a barrier of 3.5 or above on average, meaning they are above intermediate as barriers to justice.

The lack of support provided in most States (although only 4 States answered this indicator) to environmental legal advisory services and eNGOs causes a high barrier to accessing justice. If they cannot find ways to support themselves financially to be able to bring actions to the Court or assist those who wish to bring an action, they likely will begin charging fees (which adds to the issue of costs above) or they go bankrupt and thus cannot provide the services they want to anymore. Even Estonia, who has relatively low barriers in this block, deems this indicator to be an intermediate barrier to accessing justice. Furthermore, often the legal aid that is provided will not be specialised in environmental matters which may restrict the effective access to justice.

Access to information is the least problematic of the indicators as 3 out of the 5 States who answered said it was a very low barrier to accessing justice and only had an average barrier of 2.1.

Availability of capacity building as a whole is a strong issue for Croatia as each indicator is a very high barrier to accessing justice, even access to information is limited in Croatia. This means that it is difficult for individuals to access justice as they cannot get the support they may require and they cannot easily find the information they may need to help them access justice – whether that be the ways in which they may bring an action or finding information on judicial decisions. It is also difficult for environmental matters to be resolved fully as judges and other public officials are not trained in environmental matters.
# Averages of Each Barrier

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<th>Timeliness of Access to Justice</th>
<th>Costs of Access to Justice</th>
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# Total Average of Each Country for Each Barrier

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In general this report has evidenced that whilst there are certain indicators that cause high barriers to accessing justice, such as injunctive relief or costs and rules of procedure, none of the barriers, once averaged across all the participating States, cause a high or very high barrier to effectively accessing justice.

Sufficient legal standing causes the least barrier to accessing justice as all States provide, albeit with sometimes strict conditions, standing to individuals and eNGOs, whilst availability for capacity building and timeliness cause the highest barriers. Although sufficient legal standing does not pose a considerable barrier to accessing justice, the issue of building permits and land use plans should not be forgotten as these create barriers by often imposing greater conditions upon them for persons to meet, like the prior participation requirements, as they are not deemed directly environmental matters.

Injunctive relief is a considerable issue within the barrier of availability of legal remedies and adequacy as the strict conditions laid down in many legislations mean that the conditions are often not met and so injunctive relief is not granted, and the environment damaged prior to the decision of a case – regardless of the outcome of the case itself. Procedural issues, such as the length of procedure, the costs of procedure and the rules for bearing those costs, are the most prevalent indicators causing a barrier to accessing justice. The costs of procedure, such as extortionate expert and lawyers’ fees in relation to environmental matters, when coupled with the loser pays principle and the lack of effective legal aid or cost capping mechanisms mean that many persons, particularly individuals, cannot afford to bring an action and are thus prohibited from even attempting to find justice for the environment. Even when they can afford to bring an action, the lack of injunctive relief possibilities and the length of procedures (due to a lack of set deadlines) mean that it can take a long time for justice to even arise. This is likely why timeliness caused the highest barrier at 3.36 for the 4 barriers that all States answered, particularly with Croatia answering that all the indicators within that barrier cause a very high barrier for Croatians to access justice. It is therefore clear that the barriers overlap in many States and one barrier, such as that of costs (which did not average particularly high as a barrier) can impact another barrier, such as that of availability of legal capacity building (which is the highest average barrier). Easing the barriers to accessing justice will require a multi-faceted approach that sets restrictions on certain procedural legislation and builds the capacity of the public to access justice and of the judiciary to effectively provide justice to the environment.
There are, however, considerable variations between the States regarding the extent to which the blocks are barriers: Croatia having the strongest barriers and Estonia having the weakest. Croatia is the hardest country to access justice in, for the five blocks reviewed, with a total average of 3.73, therefore the majority of the barriers are at least intermediate, if not high or very high. Out of the possible 18 indicators across all the barriers, Croatia scored at least an intermediate 12 of those times (and did not answer 1). For Croatia, there are various issues causing high or very high barriers, with all the indicators in timeliness and in availability of capacity building causing very high barriers. The lengthy procedures, injunctive relief issues, a lack of effective judicial remedies, prior public participation requirements for individual legal standing, the application of the strict impairment of rights doctrine and a lack of availability for capacity building all create high barriers to accessing justice in Croatia.

Estonia has the least barriers overall with a total of 2.23, meaning it has relatively low barriers for most of the indicators. Out of the possible 18 indicators, Estonia scored a low or very low for 12 of those questions. 5 out of the 7 States rate the barriers on average between very low to intermediate but Croatia and Bulgaria also have average scores for some of the barriers at a high or very high.

While it cannot be said that there are particularly high barriers to accessing justice across the European Union States questioned, there are still collective issues that must be addressed. Accessing justice for environmental matters is key to ensuring environmental protection within the various States. If individuals and eNGOs cannot gain access to justice, due to barriers that can be altered through legislation or a change in perception, then they cannot hope to have their environmental rights protected. Injunctive relief is a key starting point as without this, the environment may be damaged before the other barriers are overcome. States need to ensure the public can gain access to environmental justice, and know how to gain access. Environmental protection must be prioritised over economic gain.

Contact information:
name: Kristina Smith
organization: J&E
address: Udolni 33, 602 00 Brno, Czech Republic
tel: +36 1 3228462
e-mail: info@justiceandenvironment.org
web: www.justiceandenvironment.org

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