Access to justice falling outside of the scope of EIA, IPPC/IED, access to information and ELD

1.1. Decisions, acts or omissions concerning specific activities falling within the scope of EU environmental legislation outside the scope of the EIA and IED Directives[1]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedures for adopting the decision, act or omission and its content (in particular, the conditions to be fulfilled and any time-limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

There is a general rule – an article which protects the constitutional right to a healthy environment – Article 14 of the Environmental Protection Act:

“In order to exercise the right to a healthy living environment, citizens may, as individuals or through societies, associations and organisations, file a request with a court that the person responsible for an activity affecting the environment should terminate the activity if it causes, or would cause, an excessive environmental burden or presents, or would present, an imminent threat to human life or health, or that the person responsible for the activity affecting the environment should be prohibited from starting the activity if there is a high probability that the activity will cause such consequences.”

According to this Article, individuals and NGOs of any kind can initiate a court procedure (regular court) against anyone (private company, state or local authorities) for acts or omissions that cause harm. There are no other provisions that would set timeframes or other conditions. There have been a few court cases based on this article. One such case, which was won, concerned the Zasavje valley farmers (mentioned in footnote 28). Usually the legal grounds for such a suit would be Article 133 and/or 134 of the Civil Code together with the above-mentioned Article 14 of the Environmental Protection Act. The judges of the courts of general jurisdiction are as well informed about environment protection as their colleagues at the Administrative Court.

Other options outside EIA, IED and ELD lie in nature protection: NGOs with the status of “public interest – nature conservation” can defend nature conservation interests in all administrative and administrative disputes in the way determined by the law. Such an NGO has to be a party in an administrative procedure in which a permit is given to be able to appeal and/or file a court claim.

NGOs with the status of “public interest – environmental protection / nature conservation / spatial planning / culture heritage protection” can file an action against some spatial plans with the Administrative Court; any person enjoys the same such right if the spatial plan affects any of this person’s other rights.

There are also some protective instruments in civil law connected with the environment:

- Law of Property Code[2] (Articles 75 and 99): Any disturbances from neighbours’ property that exceed the normal level (nuisance) are prohibited. The owner of the disturbed property may bring the action against the owner of property that causes the nuisance. Compensation can be claimed.
- Obligations Code[3] (Articles 133): Any person may request that another person removes a source of danger that might cause major damage to them or other persons, and the court shall order appropriate measures to prevent the occurrence of damage or disturbance. This is also the case if the damage arises from activities that are in the public interest and have all permits (though compensation for such damage can be claimed

only for the proportion exceeding the customary thresholds). This Article is “connected” with Article 14 of the Environmental Protection Act. In environmental matters, it can sometimes be useful to use Article 134 of the Obligations Code: in the case of violation of individuality, personal or family life or any other personal right, anyone can request that the court orders such action to be prevented or the consequences to be eliminated.
- The Administrative Court can also be the court competent for protecting constitutional human rights in the case of violation by acts of state or local authorities where there is no other court competent for such protection (Administrative Dispute Act, Article 4).

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

The scope of the administrative procedure and of the administrative dispute covers procedural and substantive legality.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

Before filing a court action, there is a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

This condition has to be fulfilled only in the case of challenging a spatial plan at the Administrative Court.

5) Are there some grounds/arguments precluded from the judicial review phase?

In the case of challenging a spatial plan, there are limited aspects of the spatial plan that can be challenged (e.g. provisions related to land use).

6) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

There are no specific provisions for environmental cases. There is a general rule about fairness of court proceedings.

7) How is the notion of “timely” implemented by the national legislation?

There are no specific provisions for environmental cases (see explanation under 1.7.1., 4th question).

8) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

There are no specific provisions for injunctive relief, only general rules (described under 1.7.2.).

9) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive, and do these include express statutory reference to a requirement that costs should not be prohibitive?

There are no specific cost rules besides those described under 1.7.3. The ‘losing party pays’ principle applies together with additional rules explained under point 6 of section 1.7.3. There are no provisions against costs being prohibitive. A party should refer directly to Article 9(4) of the Aarhus Convention and the grounds of Article 8 of the Constitution of the Republic of Slovenia (ratified and published treaties are to be applied directly) to potentially obtain a better position regarding costs in the given procedure.

1.2. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with national implementing legislation for the

Strategic Environmental Assessment (SEA) Directive 2001/42/EC[4]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedures for adopting the decision, act or omission (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

There are no provisions that would enable NGOs or individuals to have standing for administrative review or challenge in the SEA procedure. But as the Nature Conservation Act enables NGOs with the status of "public interest – nature conservation" to represent nature conservation interests in all administrative and court procedures, one NGO with this status succeeded in becoming a party in an SEA procedure (Administrative Court case II U 145/2016) after being rejected by the Ministry of the Environment and Spatial Planning. After that case, NGOs with the status of "public interest – nature conservation / environmental protection" are allowed to be a party in SEA procedures. There is no procedural timeframe for applying to be a party in the procedure, but after the ministry's decision that an SEA will be performed, it would be appropriate to participate from the earliest phases of the procedure.

For individuals, it could be used as a general rule for being a party according to the General Administrative Procedure Act (Article 43 – explained under the section 1.4., 1st question), since the SEA procedure is an administrative procedure.

Against negative SEA screening decisions or omission of decisions in a screening procedure, we do not yet have any practice or court decisions, but some rules could be used:

- the rules about standing described above in relation to negative SEA screening decisions;
- the rules about standing described above in relation to challenging omissions at the Administrative Court (Article 4 of the Administrative Dispute Act).

If the case comes before the Administrative Court, the court consistently follows the judgments of the CJEU.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

The scope of the administrative procedure and of the administrative dispute covers procedural and substantive legality.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

Before filing a court action, there is a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

There is no need to participate in the public consultation procedure. However, a person/NGO has to be a party in the SEA procedure to have standing before the Administrative Court.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

There are no specific provisions for injunctive relief, only general rules (described in section 1.7.2.). But temporary relief would be in place as a result of challenging the final SEA decision.

6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

In the case of challenging SEA decisions at the Administrative Court, the court fee has to be paid (148 EUR). The

amount is returned in the case of success. There is a general rule that the procedure should be carried out at the lowest costs possible (Article 11 of the Contentious Civil Procedure Act). There are no other safeguarding rules against costs being prohibitive.

1.3. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with the public participation requirements of Article 7 of the Aarhus Convention in respect of plans and programmes not submitted to the procedures set out in the Strategic Environmental Assessment (SEA) Directive 2001/42/EC[5]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedures for adopting the decision, act or omission (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

There are provisions for public participation (environmental plans/programmes, spatial plans, nature conservation plans/programmes, water management programmes and others), but no provisions for protecting this right. This is a weakness of the Slovenian legal system with respect to the Aarhus Convention. So there is no “direct” way of obtaining an administrative review or challenging the final decision about a plan/programme before a court. There are two possible options:

- if the plan or programme is adopted as a general legal act, it could be challenged at the Constitutional Court (conformity with the Constitution);
- if not, it could be challenged at the Administrative Court as an act or omission of the state or local authority (Administrative Dispute Act, Article 4, see under 2.1., 1st question). Legal standing can be granted to NGOs with the status of “public interest – nature conservation” and to environmental protection NGOs or individuals on the basis of Article 43 of the General Administrative Procedure Act if legal interest can be demonstrated; the person should claim to be joining the procedure in order to protect their legal benefits. The legal benefits should be direct personal benefits based on an Act or other regulation.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

The scope would be only if public consultation was enabled or not, thus if the requests of the Aarhus Convention were met.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

If there is an administrative procedure for the plan, the administrative review procedures should be exhausted.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

There is obligation to participate in the prior participation process when using a legal remedy in the spatial planning process (filing a suit with the Administrative Court against a spatial plan) – this is the only provision of such kind in the Spatial Planning Act (Article 58).

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

There are no specific provisions for injunctive relief, only general rules (described under 1.7.2.). But temporary relief would be in place as a result of challenging the plan or programme.

6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

There is no court fee for going to the Constitutional Court. For the Administrative Court, there is a court fee (148 EUR), which is returned in the case of success.

1.4. Decisions, acts or omissions also concerning plans and programmes required to be prepared under EU environmental legislation[6]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the content of the plan (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

It depends on who adopts the decision and in what legal form:

- if it is a law (act) or an executive regulation (decree, ordinance, ruling), see explanation in section 2.5., 1st question;
- if it is an administrative decision, there are legal remedies in the administrative procedure and then the administrative dispute at the Administrative Court. Legal standing can be granted to NGOs with the status of "public interest – nature conservation" for representing nature conservation interests. For other NGOs and individuals, legal standing can be granted on the basis of Article 43 of the General Administrative Procedure Act if legal interest can be demonstrated (the person should claim to be joining the procedure in order to protect their legal benefits, which should be direct personal benefits based on an Act or other regulation).

CJEU case law contributes much to effective access to national courts and definitely expands the right to access to justice in practice.

There can be a situation where a particular plan is adopted by governmental decision (but not as a general legal act) but the plan/programme is not legally binding. There are two options:

- to initiate the court procedure at the regular court to defend the constitutional right to a healthy environment (on the basis of Article 14 of the Environmental Protection Act – see explanation in section 2.1., 1st question);
- less probably, to challenge the decision at the Administrative Court as an act of a national or local authority.

2) Does the form in which the plan or programme is adopted make a difference in terms of legal standing (see also Section 2.5 below)?

As explained under the 1st question above and under section 2.5.

3) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

There are no provisions and cases yet.

4) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

There are no provisions.

5) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

There are no provisions except in the case of spatial plans. To initiate the administrative dispute, the NGO with the status of "public interest – spatial planning / environmental protection / nature conservation / cultural heritage protection" must have previously participated in the procedure with comments.

6) Are there some grounds/arguments precluded from the judicial review phase?

There are no provisions. In the case of Article 14 of the Environmental Protection Act, there are no grounds/arguments precluded.

7) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

There is only a general rule about fairness of court procedures.

8) How is the notion of “timely” implemented by the national legislation?

There are no specific provisions for environmental cases (see explanation under 1.7.1., 4th question).

9) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

There are no specific provisions for injunctive relief, only general rules (described under 1.7.2.).

10) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

There are general rules, described in section 1.7.3, 1st question.

1.5. Executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts[7]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedure for adopting or the content of the decision, act or omission of the national regulatory act (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

There are three options for challenging executive regulations:

- Laws and their executive regulations are a general legal act. As such they can be challenged only at the Constitutional Court. According to Article 24 of the Constitutional Court Act (explanation in section 1.4., 3rd question), legal standing is granted to anyone who demonstrates a legal interest in the review of the constitutionality or legality of regulations. There is no difference in the standing of NGOs, NGOs with public-interest status or other legal or natural persons – all must justify the reasons for direct intervention in executive regulations with their rights, legal interests or legal position. There are other limitations only for executive regulations: a) generally they can be challenged within 1 year after their enforcement or after the day the petitioner learns of the occurrence of harmful consequences; b) all legal remedies should be exhausted (usually meaning challenging the individual act issued on the basis of the executive regulation) – this is a general opinion of the Constitutional Court adopted in many of its decisions.
- The general legal act can be challenged also at the Administrative Court if it regulates individual relationships[8]. The 30 day limit for filing the suit to the court should be respected. If there is an individual administrative decision issued on the basis of the executive regulation, the administrative procedure has to be exhausted before going to the Administrative Court.
- There is a third, indirect option: if a decision is based on an executive regulation which the claimant considers to be illegal, they can challenge the decision and, if the court agrees, it will refuse to use the illegal regulation as is bound only by the Constitution and the law (exceptio illegalis). The decision about illegality is binding only in the actual case, but it sends a strong signal to the administration and more often than not the administrative decision is altered as a result of the decision. The Administrative Court makes use of this relatively often.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

The review of the Constitutional Court is focused on violation of the provisions of the Constitution. Also, the Administrative Court is focused on the legality of the challenged act. This can cover both procedural and substantive legality.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

Yes, as explained above under the 1st question.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

In order to have standing before the national courts it is not necessary to participate in the public consultation phase of the administrative procedure.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

A temporary injunction is only possible at the Constitutional Court. At the Administrative Court, a temporary injunction is usually proposed regarding execution regulations. Other injunctive relief is possible (general rules described under 1.7.2.)

6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

At the Constitutional Court, there are no costs (court fees). At the Administrative Court, there is the court fee (148 EUR), which is returned in the case of success.

7) Is it possible to bring a legal challenge before a national court concerning any related EU regulatory act with a view to a validity reference under Article 267 TFEU, and if so how[9]?

There are no provisions in national legislation regarding such situations and article 267 TFEU. Courts are obliged to take CJEU decisions into consideration and plaintiffs often refer to certain cases. The Supreme Court and the Administrative Court practise preliminary ruling procedures. All courts follow the recommendations for national courts on the use of preliminary ruling procedures. Plaintiffs are free to propose that the court initiate a preliminary ruling procedure.

[1] This category of case reflects recent case-law of the CJEU such as *Protect C-664/15, the Slovak brown bear case C-240/09, see as described under Commission Notice C/2017/2616 on access to justice in environmental matters*

[2] Official Gazette of RS, 87/02, 91/13, http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3242, also in English.

[3] Official Gazette of RS, 83/01, 32/04 – OROZ195, 40/07, 20/18 – OROZ631, http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1263, also in English.

[4] The SEA Directive relates to plans and programmes. These are also covered by Article 7 and Article 9(3) of the Aarhus Convention.

[5] See findings under ACCC/C/2010/54 for an example of a plan not submitted to SEA but subject to the public participation requirements of Article 7 of the Aarhus Convention.

[6] These fall within the scope of both Article 7 and Article 9(3) of the Aarhus Convention. See also relevant case-law of the Court of Justice of the European Union such as Case C-237/97, Janecek and cases such as Boxus and Solvay C-128/09-C-131/09 and C-182/10, as referred to in Commission Notice C/2017/2616 on access to justice in

environmental matters.

[7] Such acts fall within the scope of Article 8 and Article 9(3) of the Aarhus Convention. An example of such an act concerns the decision of the national administration that featured in Case C-281/16, *Vereniging Hoekschewaards Landschap*, ECLI:EU:C:2017:774

[8] This was the case of challenging the governmental ordinance that ordered the shooting of a certain number of bears and wolves. NGOs with the status of “public interest – nature conservation / environment protection” challenged the ordinance with regard to wolves at the Constitutional Court. The Constitutional Court rejected the review with the explanation that the disputable annex of the ordinance is so individualised that the court was not competent for such a decision. The ordinance was then annulled at the Administrative Court.

[9] For an example of such a preliminary reference, see Case C-281/16, *Vereniging Hoekschewaards Landschap*, ECLI:EU:C:2017:774

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