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?

Basic rules for administrative procedures are given in the General Administrative Procedure Act of 2009 (hereinafter: GAPA). GAPA has basic provisions (Articles 1-39) which are applicable to all administrative procedures. Sectoral specificities of administrative procedures can be detailed in sectoral laws but they may not derogate from the basic provisions of GAPA. GAPA has a general provision on standing which is given in Article 4 and which determines who can be a party to the administrative procedure. A general rule stipulates that a party to the administrative procedure is “a natural person or legal entity based on whose motion the procedure was initiated, against whom the procedure is conducted or who is entitled to participate in the procedure in order to protect her rights or legal interests”.
So, according to general provisions, in addition to the direct parties to the proceedings, a party to the proceedings can also be one capable of proving the impairment of their right. Under the general provisions, only parties to the proceedings can appeal or have recourse to judicial review. Appeal is submitted within 15 days of the delivery of decision (unless stated differently), and a lawsuit is submitted within 30 days of the delivery (unless stated differently).

Sectoral laws usually define an exhaustive list of possible parties to the administrative procedure in question. E.g. the Spatial Planning Act defines the possible parties for the issuing of a location permit as a party requesting the permit, owner or holder of rights over the real-estate for which the permit is issued, and owner or holder of rights over the adjoining real-estate. In practice, parties which might prove the impairment of rights (e.g. owners of the real-estate not directly bordering the real-estate in question), and following the provision of Article 4 GAPA could be afforded legal standing in the issuing of a location permit, are usually not recognized as parties which could prove an impairment of a right under Article 4 of GAPA. Effectively, legal standing is enforced only based on express provisions on legal standing contained in sectorial laws. Special standing rights are recognized for environmental NGOs for those administrative procedures carried out on the basis of the Environment Protection Act (EIA, IED, SEA etc.). Although NGOs are not recognized as parties to those proceedings, but participate as public and interested public, they can nevertheless access courts and challenge decisions passed in those procedures.

A lawsuit may be submitted to the court against decisions which cannot be appealed, or against unsuccessful appeals. Based on the sectoral laws, only the parties to the procedure can submit a lawsuit. The lawsuits generally need to be submitted within 30 days since of delivery of the administration decision (or rejection of administrative appeal) to the parties.

However, the general law governing administrative disputes before Administrative courts contains much wider general provisions. Based on the Act on Administrative Disputes (hereinafter: AAD), parties to the administrative dispute are the plaintiff, respondent and interested (third) party. Not only is the plaintiff very broadly defined, but so is the interested party. The plaintiff is any natural or legal person whose rights or legal interests have been

impaired by an individual decision, act or omissions of the public authority or by the failure of the public authority to pass an individual decision or act within a prescribed time limit, or by the conclusion, termination or implementation of the administrative contract (Administrative contracts are concluded between a public authority and a party to the administrative proceedings for the purpose of implementing rights and obligations of the decision passed in the administrative procedure in those instances when a conclusion of such contract is expressly provisioned in the sectoral law). An interested party, one intervening in the administrative dispute between the plaintiff and the respondent, is any person whose rights or legal interests would be affected by the annulment, modification, or the passing of an individual decision, by the act or omission of the public authority, and by the conclusion, termination or implementation of the administrative contract. There is also an additional, special type of interested party – e.g. ombudsman, but parties of this type very rarely decide to take part in disputes. The Administrative Court hears lawsuits both as a court of Cassation (procedural mistakes and wrong implementation of material law) and a Reformatory court (establishment of facts). However, since the reformatory powers of the Administrative courts were only recently introduced (2010), the courts are still shy of using these powers. As a consequence, in practice the court mainly acts as a Court of Cassation, especially in complex matters such as environmental law.

Capacities of Croatian environmental NGOs are fairly limited, so they carefully choose cases to initiate. Usually these are straightforward ius standi cases regulated under the Environment Protection Act. So, the authors are unfamiliar if there are any test cases which would invoke access to justice based on ECJ case law. However, even in the "regular" cases, courts are reluctant to apply and interpret ECJ case law. They are grossly unfamiliar with the workings of the EU judicial system and lack knowledge and capacities to consult ECJ case law. Even when ECJ case law is invoked by parties and when courts decide in line with it, they usually tend to ignore invoking the ECJ case law as part of their decision-making process. Even in those cases decisions are justified in reference to domestic legal norms. Consequently, domestic legal norms are rarely, if ever, averted in favour of the ECJ case law, and ECJ case law is sometimes not even invoked by the parties due to poor chances of success.

In general, it could be concluded that NGOs are not obstructed in exercising their access to justice rights by being denied a possibility to submit a lawsuit or administrative appeal. However, the poor quality of review and limited possibilities to review factual questions seriously undermine the effectiveness of legal remedies and consequently of access to justice rights.

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?

Administrative review is available when a first instance decision was passed by an authority other than the central public authority, e.g. county office for environmental matters or another type of regional/local authority. The central public authority (i.e. the Ministry) has all the powers in establishing the facts needed for passing the decision as does the first instance authority. However, the Ministry rarely establishes facts on their own and usually looks only at the procedural legality of the challenged decision and application of law. It either confirms the decision or remits it to the first instance authority for a retrial. When a Ministry confirms a first instance decision made by another authority, or when it passes such decisions itself as a first instance authority, usually no appeal is available but there is a recourse to judicial review before an administrative court via lawsuit. As mentioned above, the Administrative Court hears lawsuits both as a court of Cassation (procedural mistakes and wrong implementation of material law) and a Reformatory court (establishment of facts). Hence the court has the mandate to establish all necessary facts. In environmental matters it rarely acts on that mandate and usually only looks at the procedural legality of the decision and the application of law. It is an overwhelming experience of environmental NGOs that their substantiated requests to establish facts by way of expert testimony are overruled.

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

Yes, if such review procedures are available. If a decision is made by the authority against whose decisions there is no possibility of administrative appeal to the superior authority (e.g. the Ministry), then the first next step is a judicial review.

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.?

Yes for individuals and no for NGOs. Based on the wording of Article 168 of the Environmental Protection Act

(hereinafter: EPA), access to justice is preconditioned for members of the interested public by public participation. However, there is additional provision provided for NGOs (fulfilling other requirement, of course) for whom participation in the public consultation phase is not required in order to have standing.

In a procedure based on the Act on Spatial Planning, if a party does not respond to a call for public inquiry in the process of issuing a location permit, that party loses a right to request a renewal of the procedure.

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

In the judicial proceedings against the EIA permit, according to the established case law a fact that a project is not in line with the spatial planning documents cannot be substantially challenged. The fact that the project is in line with the spatial planning documents is proven in the EIA procedure by way of the Opinion or other document of the competent authority (which is an authority other than that competent for the EIA process). In the appeal against an EIA permit, only the existence of such an opinion or document can be challenged and not its content/veracity. The fact of conformity of a project with the spatial planning documents is established in the procedure of issuing a location permit. However, although the location permit is a development consent as defined by the EIA Directive, the public has no legal standing to challenge the location permit (as it does for the EIA permit). Hence, the public has no direct legal standing to challenge the conformity of projects with the spatial plans.

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

GAPA, in its article 6, provides that a principle of proportionality must be maintained between protecting the party's interests and the public interest. The right of a party may be limited only where such limitation is prescribed by law and only in as much as it is necessary for achieving the purpose of the law in a manner proportionate with the aim to be achieved. When, based on law, an obligation is set upon a party, the measures proscribed must be the most advantageous for the party if the purpose of the law may be achieved by those measures. The authorities are in general obligated to enable the easiest and the fastest fulfilment of party's rights. Article 8 provides for the establishment of material truth, i.e. all facts and circumstances important for reaching the correct and legal decision. The authority is free to establish all facts and assess their meaning and in doing so it must take into account all available evidence and facts, taken independently and in their correlation.

The Act on Administrative Disputes which relates to judicial review of administrative decisions further strengthens the position of the parties in administrative disputes. The disputes are conducted as direct, oral and public disputes in which each party needs to be given an opportunity to address requests and arguments of other parties to the dispute and all facts and legal questions of the case in question. It should be noted that there are a few exceptions to the obligation to hold an oral hearing (Administrative Disputes Act, Art 36), but they are rarely applied in environmental cases, where key facts are most often disputed. According to the Act on Administrative Disputes, the Court will, before making a decision, give each party the opportunity to express opinion on demands or statement of other parties and about all the facts and legal question which are part of the dispute[2]. Also, the Court is obliged to ensure that lack of knowledge and experience of the parties does not cause harm of any rights which they have.

According to the practice of the Constitutional Court, it considers the principle of equality of funds in the sense of fair balance which necessarily entails a reasonable option of parties to present the facts and support them with their evidence in a way that they do not place any of the parties in a significantly worse position than the opposite party[3].

These rights are further elaborated through a 2012 decision (U-III6002/2011) of the Constitutional Court. In the cited decision, the court establishes the elements of a fair trial as proscribed in the Article 6.1. of the European Convention on Human Rights and in Article 29.1 of the Croatian Constitution. It finds that administrative proceedings are inherently at risk of being biased towards the state's authority and that this risk needs to be mitigated through careful consideration of all aspects of the case in question and by giving all parties equal opportunities to prove facts they deem important and to provide evidence for such facts. This is especially important given the fact that administrative dispute is the only recourse against a decision of the public authority in the administrative proceedings. Irrespective of this decision, administrative courts as a rule reject all evidence to establish facts proposed by environmental NGOs.

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

The general provision is that administrative matters in which the public authority acts upon the request by the party and directly resolves the matter in question should be handled immediately and no later than 30 days from the application. In cases when the authority needs to establish facts the deadline is 60 days. Deadlines vary depending on the type and complexity of procedure and they can be differently set in sectoral legislation.

Judicial review is not bound by any deadlines which would be provided in the legislation. The speed of resolving administrative disputes is mostly impacted by the court’s workload. Whereas previously the average time for resolving administrative disputes was between 2 and a half and 3 and a half years, lately this was reduced to a year and a half on average.

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?

An appeal in the administrative procedure generally postpones the enforcement of the decision, unless stated differently. Submitting a lawsuit in an administrative dispute procedure before the court generally does not delay the enforcement of the administrative decision.

It must be explained here that the Administrative Disputes Act provides for two precautionary measures: the delaying effect of the lawsuit (Art 26) and the interim measure (Art 47). The first can be rendered at the request of a party or ex officio (although the courts do not exercise this power for the time being), and the second can be issued only at the proposal of a party.
The enforcement of the disputed administrative decision may be postponed only through the special institute of the delaying effect of the lawsuit (Art 26). Interim measures from the Administrative Disputes Act have other functions, which are rarely present in an administrative dispute (e. g. measures in proceedings in which no administrative act is passed, prohibition of disposition of property, etc.). There is no appeal against the decision on the delaying effect of a lawsuit (Administrative Disputes Act, Art 67, para 1 and Art 26 para 2).

Interim measures exist as a possibility under the provision of Article 47 AAD. The types of interim measures are not specified so, logically, any measure capable of achieving the purpose for which it is granted is allowed. Most commonly, these would be connected to the postponing of the effects of administrative decision. The purpose of allowing an interim measure is to prevent grave and irreparable damage to the party requesting the interim measure. E.g. this can be either from the direct damaging effects of the administrative decision or by the acts of the authority which would prevent the party from benefiting from a judicial decision should it be different from the administrative decision.

The other instrument is the Enforcement Postponement. As mentioned already above, a lawsuit against an administrative decision does not postpone its enforcement. However, two different instruments enable the postponement of administrative decisions.
First is the provision of Article 140/1 GAPA. Under this provision, a deciding public authority can decide to postpone the enforcement of its decision if the following conditions are cumulatively met:

1. postponement was requested by the party to the proceedings;
2. the purpose of the postponement is to avoid the occurrence of damage which would be hard to amend (but not impossible, i.e. not irreparable damage),
3. that the postponement is not expressly forbidden by law for the particular decision,
4. that the postponement does not contravene the public interest.

Second is the provision of Article 26/2 AAD. Under this provision the administrative court can decide that the filing of a lawsuit postpones the enforcement of the administrative decision if the following conditions are cumulatively met:

1. If the enforcement would result in a damage for the plaintiff which would be hard to amend,
2. if the law does not provide that the appeal (in administrative procedure, not in administrative dispute) against that particular decision does not postpone its enforcement (as it usually does),
3. if postponement does not contravene the public interest.

However, this request is hardly ever used. One of the major reasons is that the courts rarely ever allow it, and in most cases do not even decide on it. Instead, in most cases they reach a decision about the request for

enforcement postponement together with the decision about the main issue, in the final judgment, rendering enforcement postponement completely purposeless.

The main difference between the two instruments, interim measures and enforcement postponement, is in the conditions which need to be met for their application. The first and obvious difference is the quality of the impending damage – for the interim measure, the damage needs to be irreparable and for the enforcement postponement it needs to be hard to amend. Public interest is another condition which differently applies. Enforcement postponement cannot contravene the public interest, whereas an interim measure can go even against the public interest if the impending damage is grave and irreparable. Also, interim measures can be issued even in situations where the law proscribes that the appeal does not postpone the enforcement of the decision.

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?

The court fees for lawsuits in the administrative dispute procedure are based on a flat rate, regardless of the value of the case. A fee for submitting a lawsuit and a fee for passing a judgment is paid. They amount to about 150 Euros. However, these are not the only costs.

Usually the costs relate to the representation of the plaintiff and the interested party by a lawyer, and to the presentation of evidence. The defendant/respondent (a public body) cannot be represented by a lawyer, but some defendants (central state bodies) can be represented by the state attorney's office (which is rare in practice). This office is entitled to representation costs (equal to attorneys).
For each submission and each access to the hearing, the lawyer can request a reward of HRK 2,500.00 (approximately EUR 330) + VAT (25%). Courts do not usually award costs related to submissions that do not contain additional arguments, or, after the lawsuit has been filed, contain reasons that may also be presented at the hearing.

The loser pays rule is applied. So, costs of the case may also include material costs of travelling to court for any of the parties. These vary depending in which of the four courts (Zagreb, Osijek, Split and Rijeka) the procedure is conducted. The costs are usually calculated as 2 HRK per km for car travel + per diem (ca. 170 kn per day). Accommodation costs are usually not invoked and could hardly be justified due to Croatia’s size.

The most significant cost is legal representation costs (a lawyer’s fee) which can be requested if an interested party is represented by a lawyer, which it usually is. At least one hearing is held, but usually two or three are held. Any additional costs, such as expertise on a particular issue, vary depending on the complexity of the issue at hand and the amount of work connected to it. They are generally paid in advance by the requesting party. There is no express statutory reference that costs should not be prohibitive. The case law of the Constitutional Court regarding the proportionality of awarded costs is applicable and this practice mainly refers to the case law of the ECHR (e. g. *Klauz v. Croatia*, etc.).

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?

The process of a Strategic Environmental Assessment is concluded by issuing a Report on the results of the Assessment (Article 73/2 EPA). The Report is not considered a decision on the specific issue passed in the administrative procedure- administrative decision (cro: upravni akt). Appeals in the administrative procedure and lawsuits in the administrative dispute procedures are initiated against an administrative decision. Hence, there is no recourse to judicial review.

However, plans and programmes for which the SEA is conducted are considered general acts. Review of their

legality is possible before the High Administrative Court in a sui generis review procedure. Although anyone has the right to initiate the review of legality of general acts, this right is however limited by the condition that the review can only be initiated based on the individual act passed based on the general act, e.g. location permit issued based on the spatial plan in question.

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?

Administrative review is practically not applicable here, but most likely in the case when a superior body decides on a first instance decision, it 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?

Yes, in other cases. But, as there is no possibility of administrative review of decisions which are the case here, there is no such requirement here.

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.?

5) It is not necessary to participate in the public consultation phase of the administrative procedure but there is no possibility of judicial review here. 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?

As it is highly unlikely that such decisions are disputed before the Administrative Court, the use of injunctive relief here is also unlikely.

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 are no costs as access to justice is currently not possible in these cases.

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]

Example of plan or program not submitted to the procedure set out in the Strategic Environmental Assessment can be:

- any strategy, plan or program which is issued for use of small areas on local level or
- minor changes and/or amendments of any strategies, plans or programs for which SEA is obligatory when authority decides that the draft of the plan should not be submitted to SEA.

This means that for aforementioned strategies, plans and programmes as well as minor changes of strategies, plans and programmes for which SEA is obligatory, the authority (ministry or County administrative body) conducts an assessment to determine if SEA is needed and decides that it is not needed. The main issue here is that such a decision is not issued in the form of an administrative act (upravni akt/rješenje), as well as the decision on SEA itself, too.

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?

The rules on standing for both individuals and NGOs wishing to obtain administrative review and legal challenge before national court are limited in such cases. The main problem is that decision on such plans or programmes is not made in the form of an administrative act (upravni akt). This means that such decisions (odluke) cannot be the subject of an administrative review or disputed before the Administrative Court. Such decisions do not even have information on legal remedies at the end.

Such decision (odluke) can be annulled by the administrative body which issued them. Also, in cases where the first instance decision was issued by the county level administrative body, the Ministry (as a superior body) can initiate an annulment. Individuals and NGOs could most likely send a request for annulment but there is no obligation for the administrative body to do that. Given the high level of discretion on side of the administrative authorities to act in such cases, this cannot be considered a means of access to justice.

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?

Administrative review is practically not applicable here, but most likely in cases where a superior body decides on a first instance decision, it 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?

Yes, in other cases. But, as there is no possibility of administrative review of decisions which are the case here, there is no such requirement here.

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.?

Standing is not applicable here, so this is no precondition.

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 special rules applicable to each sector apart from general national provisions on injunctive relief.

It must be explained here that the Administrative Disputes Act provides for two precautionary measures: the delaying effect of the lawsuit (Art 26) and the interim measure (Art 47). The first can be rendered at the request of a party or ex officio (although the courts do not exercise this power for the time being), and the second can be issued only at the proposal of a party.
The enforcement of the disputed administrative decision may be postponed only through the special institute of the delaying effect of the lawsuit (Art 26). Interim measures from the Administrative Disputes Act have other functions, which are rarely present in an administrative dispute (e. g. measures in proceedings in which no administrative act is passed, prohibition of disposition of property, etc.). There is no appeal against the decision on the delaying effect of a lawsuit (Administrative Disputes Act, Art 67, para 1 and Art 26 para 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?

Since there is not possibility of access to justice in these areas, there are no costs.

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

The Waste Management Plan of Croatia is one example of a plan required to be prepared under EU environmental legislation. The Waste Management Plan of Croatia for 2017-2022 was issued by the Government in the form of a decision (odluka), which is legislation such as government regulation. The Plan was adopted by the Government based on the Act on the Sustainable Waste Management, Art 173, OG 94/13.

The other example is the River Basin Management Plan of Croatia for 2016-2021. This Plan was also issued by the Government in the form of decision (odluka), which is a piece of legislation such as a regulation. The Plan was adopted by the Government based on the Act on Water, Art 36, OG 153/09, 63/11, 130/11, 56/13 i 14/14.

In general, there is still no case law in Croatia which can demonstrate application of the Janacek case, but in my opinion current Croatian legislation does not provide for the efficient application of the Janecek case. In that case, the Court required that an individual, whose health was endangered by high levels of prohibited emissions in the air, was directly entitled to require the competent authorities to prepare an action plan to remove such emissions. Thus, it requires that an individual has judicial means against failure of public authorities to enact an act of general application.

Under general rules of judicial review, when a person claims that a public body has failed to enact certain decision, he may initiate judicial review against such failure if he shows probable legal interest, which may consist in the violation of his right to a healthy life. However, the action can only be brought before the Administrative Court if the decision at issue was an individualised decision. Thus, judicial review cannot be initiated against the failure of public authorities to enact an act of general application[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 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?

If the Plan is adopted in the form of legislation, the only possibility of its direct judicial review is before the Constitutional Court. In Croatia, the Constitutional Court decides on the compliance of laws with the constitution, on the compliance of other regulations with the constitution and laws, and on the compliance of laws with international treaties. There are three ways to institute the procedure of assessing the constitutionality and legality at the Constitutional Court: by the request of authorised institutions, by the decision of the Constitutional Court based on the proposal of any natural or legal person, and by the initiative of the Constitutional Court itself. Authorised persons for filing a request to institute the procedure of the assessment of the constitutionality and legality are one-fifth of the members of the Croatian Parliament, a working body of the Croatian Parliament, the President of the Republic of Croatia, the Government (in relation to by-laws, but not laws), the Supreme Court or another court (if the question of constitutionality and legality appears in court process), the ombudsman, and the representative bodies of local and regional government (about the issues of structure, scope and funding of local authorities). The Constitutional Court must make a decision on such a request following an urgent procedure within 30 days.

Everyone, i.e. any natural or legal person (so also NGOs), may submit a proposal to the Constitutional Court to institute the procedure of assessment of whether laws comply with the Constitution and whether other regulations comply with the Constitution and laws. The Constitutional Court decides in a session whether to accept the proposal and start the procedure, in which case it will begin the procedure no later than within a year from the date of filing the proposal.

If a law is proclaimed unconstitutional by the decision of the Constitutional Court – it shall be repealed. If some other regulation (by-laws) is found unconstitutional or illegal – it shall be repealed or annulled (ceases to be valid from the date of the promulgation). The difference between a repeal and annulment is that if the regulation is annulled, it is as if that regulation has never been in force at all, and all the legal consequences that occurred between the date of becoming effective and the date of annulment are also annulled. However, if the regulation[8] is repealed, the relevant moment is the date of the decision of the Constitutional Court. All legal consequences that occurred prior to that moment remain in force, but the regulation is from that date onward without any legal effect. Legal consequences of the repeal are such that anyone successful in requesting the assessment of constitutionality/legality of law or regulation, whose rights have been violated by a decision based on the repealed regulation or law, has the right to file a request with competent authority for the amendment of that decision. All others have that right only if the regulation was annulled. The proposal may be filed within six months from the moment the decision of the Constitutional Court is announced.

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)?

It does make a difference since if a plan or programme is adopted in the form of legislation then access to justice is

provided only before the Constitutional Court. The formal nature of the act is decisive.

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?

Administrative review and judicial review are not applicable here. In Croatia, the Constitutional Court decides on the compliance of laws with the constitution, on the compliance of other regulations with the constitution and laws, and on the compliance of laws with international treaties. There are three ways to institute the procedure of assessing the constitutionality and legality at the Constitutional Court: by the request of authorised institutions, by the decision of the Constitutional Court based on the proposal of any natural or legal person, and by the initiative of the Constitutional Court itself. Authorised persons for filing a request to institute the procedure of the assessment of the constitutionality and legality are one-fifth of the members of the Croatian Parliament, a working body of the Croatian Parliament, the President of the Republic of Croatia, the Government (in relation to by-laws, but not laws), the Supreme Court or another court (if the question of constitutionality and legality appears in court process), the ombudsman, and the representative bodies of local and regional government (about the issues of structure, scope and funding of local authorities). The Constitutional Court must make a decision on such request following an urgent procedure within 30 days.

Everyone, i.e. any natural or legal person (so also NGOs), may submit a proposal to the Constitutional Court to institute the procedure of assessment whether laws comply with the Constitution and whether other regulations comply with the Constitution and laws. The Constitutional Court decides in a session whether to accept the proposal and start the procedure, in which case it will begin the procedure no later than within a year from the date of filing of the proposal.

If a law is proclaimed unconstitutional by the decision of the Constitutional Court – it shall be repealed. If some other regulation (by-laws)[9] is found unconstitutional or illegal – it shall be repealed or annulled (ceases to be valid from the date of the promulgation). The difference between a repeal and annulment is that if the regulation is annulled, it is as if that regulation has never been in force at all, and all the legal consequences that occurred between the date of becoming effective and the date of annulment are also annulled. However, if the regulation is repealed, the relevant moment is the date of the decision of the Constitutional Court. All legal consequences that occurred prior to that moment remain in force, but the regulation is from that date onward without any legal effect. Legal consequences of the repeal are such that anyone successful in requesting the assessment of constitutionality/legality of law or regulation, whose rights have been violated by a decision based on the repealed regulation or law, has the right to file a request with competent authority for the amendment of that decision. All others have that right only if the regulation was annulled. The proposal may be filed within six months from the moment the decision of the Constitutional Court is announced.

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

Yes generally, but it is not applicable here.[10]

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 is a possibility to comment on draft legislation during the public consultation process but this is not a requirement for individuals or NGOs to ask judicial review when this legislation is adopted.

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

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

In its article 6, GAPA provides that a principle of proportionality between protecting the party’s interests and the public interest must be maintained. The right of a party may be limited only where such limitation is prescribed by law and only in as much as it is necessary to achieve the purpose of the law in a manner proportionate with the aim to be achieved. When, based on law, an obligation is set upon a party, the measures proscribed must be the most advantageous for the party if the purpose of the law may be achieved by those measures. The authorities are in general obligated to enable the easiest and the fastest fulfilment of party’s rights. Article 8 provides for the establishment of material truth, i.e. all facts and circumstances important for reaching the correct and legal

decision. The authority is free to establish all facts and assess their meaning and in doing so it must take into account all available evidence and facts, taken independently and in their correlation. The Act on Administrative Disputes further strengthens the position of the parties in the administrative disputes. The disputes are conducted as direct, oral and public disputes in which each party needs to be given an opportunity to address requests and arguments of other parties to the dispute and all facts and legal questions of the case in question. According to the Act on Administrative Disputes, the Court will, before making a decision, give each party the opportunity to express opinion on demands or statement of other parties and about all the fact and legal question which are part of the dispute[11]. Also, the Court is obliged to ensure that lack of knowledge and experience of the parties does not cause harm of any rights which they have.

According to the practice of the Constitutional Court, it considers the principle of equality of funds in the sense of fair balance which necessarily entails a reasonable option of parties to present the facts and support them with their evidence in a way that they do not place any of the parties in a significantly worse position than the opposite party[12].

These rights are further elaborated through a 2012 decision (U-III6002/2011) of the Constitutional Court. In the cited decision, the court establishes the elements of the fair trial as proscribed in Article 6.1. of the European Convention on Human Rights and in Article 29.1 of Croatian Constitution. It finds that administrative proceedings are inherently at risk of being biased towards the state's authority and that this risk needs to be mitigated through careful consideration of all aspects of the case in question and by giving all parties equal opportunities to prove facts they deem important and to provide evidence for such facts. This is especially important given the fact that an administrative dispute is the only recourse against a decision of the public authority in the administrative proceedings. Irrespective of this decision, administrative courts as a rule reject all evidence to establish facts proposed by environmental NGOs.

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

The Croatian legislation (Act on Courts, Act on Civil Court Procedure) as well as the Constitution mention the importance of delivering the judgment within a reasonable time-limit. but there is no clear practice as to what is considered as such. However, it is important to note that the Constitutional Court is not willing to recognize a violation of the right to a trial within a reasonable time if the party has not used the legal instruments available to it by the Law on Courts to protect this right[13]. These instruments are a request for protection of the right to a trial within a reasonable time and a request for payment of appropriate compensation for violation of the right to a trial within a reasonable time (Article 64, paragraph 1, items 1 and 2 of the Courts Act).

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 is no "traditional" injunctive relief available in this case, but pending the final judgment the Constitutional Court may provisionally suspend the application of the act at issue.

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?

Access to the Constitutional Court is free, there are no fees envisaged. However, if individuals hire lawyers (which is not obligatory) then lawyers' fees must be covered. Third parties are not introduced in the proceedings and loser pays principle does not apply here.

1.5. Executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts[14]

The Waste Management Plan of Croatia is an example of a plan required to be prepared under EU environmental legislation. The Waste management Plan of Croatia for 2017-2022 was issued by the Government in the form of decision (odluka), which is legislation such as a government regulation. The Plan was adopted by the Government based on the Act on the Sustainable Waste Management, Art 173, OG 94/13.

Another example is the River Basin Management Plan of Croatia for 2016-2021. This Plan was also issued by the Government in the form of decision (odluka), which is piece of legislation such as regulation. The Plan was adopted by the Government based on the Act on Water, Art 36, OG 153/09, 63/11, 130/11, 56/13 i 14/14.

The Plan for air protection, ozone layer and climate change mitigation of the Republic of Croatia is also issued in the form of Government decision (odluka), so it is also legislation. This Plan was adopted under the Air Protection Act, OG 127/19.

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?

In Croatia, the Constitutional Court decides on the compliance of laws with the constitution, on the compliance of other regulations with the constitution and laws, and on the compliance of laws with international treaties. There are three ways to institute the procedure of assessing the constitutionality and legality at the Constitutional Court: by the request of authorised institutions, by the decision of the Constitutional Court based on the proposal of any natural or legal person, and by the initiative of the Constitutional Court itself. Authorised persons for filing a request to institute the procedure of the assessment of the constitutionality and legality are one-fifth of the members of the Croatian Parliament, a working body of the Croatian Parliament, the President of the Republic of Croatia, the Government (in relation to by-laws, but not laws), the Supreme Court or another court (if the question of constitutionality and legality appears in court process), the ombudsman, and the representative bodies of local and regional government (about the issues of structure, scope and funding of local authorities). The Constitutional Court must make a decision on such request following an urgent procedure within 30 days.

Everyone, i.e. any natural or legal person (so also NGOs), may submit a proposal to the Constitutional Court to institute the procedure of assessment of whether laws comply with the Constitution and whether other regulations comply with the Constitution and laws. The Constitutional Court decides in a session whether to accept the proposal and start the procedure, in which case it will begin the procedure no later than within a year from the date of filing the proposal.

If a law is proclaimed unconstitutional by the decision of the Constitutional Court – it shall be repealed. If some other regulation (by-laws)[15] is found unconstitutional or illegal – it shall be repealed or annulled (ceases to be valid from the date of the promulgation). The difference between a repeal and annulment is that if the regulation is annulled, it is as if that regulation has never been in force at all, and all the legal consequences that occurred between the date of becoming effective and the date of annulment are also annulled. However, if the regulation is repealed, the relevant moment is the date of the decision of the Constitutional Court. All legal consequences that occurred prior to that moment remain in force, but the regulation is from that date onward without any legal effect. Legal consequences of the repeal are such that anyone successful in requesting the assessment of constitutionality/legality of law or regulation, whose rights have been violated by a decision based on the repealed regulation or law, has the right to file a request with competent authority for the amendment of that decision. All others have that right only if the regulation was annulled. The proposal may be filed within six months from the moment the decision of the Constitutional Court is announced.

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?

There is no possibility of administrative review of a piece of legislation.

The only possibility is judicial review by the Constitutional court which then covers both procedural and substantive legality and constitutionality.

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

There is a general requirement to exhaust all legal remedies before going before Constitution Court. However, as in this case there is no other legal remedy against legislation, one can go to the Constitutional court without any prior procedure.

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 a possibility to comment on draft legislation during public consultation process but this is not a requirement for individuals or NGOs to ask judicial review when this legislation is adopted.

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 is no "traditional" injunctive relief available in this case but pending the final judgment, the Constitutional Court may provisionally suspend the application of the act at issue.

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?

Access to the Constitutional Court is free, there are no fees envisaged. However, if individuals hire lawyers (which is not obligatory) then lawyers' fees must be covered. Third parties are not introduced in the proceedings and loser pays principle does not apply here.

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[16]?

I am not aware of any specific procedure according to national law to challenge directly piece of legislation adopted by the EU institution or body before the national court.

[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 the Commission Notice C/2017/2616 on access to justice in environmental matters*

[2] Art 6 of the Act on Administrative Disputes.

[3] Dr.sc. Šarin D., page 736. and 737, "Aspekti prava na pravično suđenje".

[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 under the Commission Notice C/2017/2616 on access to justice in environmental matters.

[7] Study on the Implementation of Article 9.3 and 9.4 of Aarhus Convention in 10 of the Member States of the European Union + Croatia – 2nd part Report of Croatia

[8] The term "other regulation" from the Constitutional Act on the Constitutional Court of the Republic of Croatia is used to separate it from the law (which is also a type of regulation) with regard to the different legal effects of the institute of constitutional review and legality.

[9] The term "other regulation" from the Constitutional Act on the Constitutional Court of the Republic of Croatia is used to separate it from the law (which is also a type of regulation) with regard to the different legal effects of the institute of constitutional review and legality.

[10] In the administrative dispute sui generis, the assessment of the legality of a general act, the control of the objective legality of general acts that are not laws or other regulations as they are determined by the

Constitutional Act on the Constitutional Court of the Republic of Croatia is carried out.

[11] Art 6 of the Act on Administrative Disputes.

[12] Dr.sc. Šarin D., page 736. and 737, "Aspekti prava na pravično suđenje".

[13] Decision of the Constitutional Court of the Republic of Croatia number: U-IIIA-591/2017 of 7 May 2019.

[14] Such acts come 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

[15] The term “other regulation” from the Constitutional Act on the Constitutional Court of the Republic of Croatia is used to separate it from the law (which is also a type of regulation) with regard to the different legal effects of the institute of constitutional review and legality.

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

Last update: 28/07/2021