Teisė kreiptis į teismus aplinkosaugos klausimais

Kroatija

Daugiau šalių pateikiamos informacijos apie teisę kreiptis į teismus aplinkosaugos klausimais rasite spustelėję vieną iš toliau pateiktų nuorodų:

1. Teisė kreiptis į teismą valstybėje narėje
2. Teisė kreiptis į teismą, nepatenkanti į PAV (poveikio aplinkai vertinimo), TIPK/PITD (Taršos integruotos prevencijos ir kontrolės (TIPK) / Pramoninių išmetamųjų teršalų direktyvos (PITD)) taikymo sritį, galimybė susipažinti su informacija ir AAAD (Atsakomybės už aplinkos apsaugą direktyva)
3. Kitos svarbios taisyklės dėl apeliacinių skundų, teisių gynimo priemonių ir teisės kreiptis į teismą aplinkosaugos klausimais

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Access to justice at Member State level

1.1. Legal order – sources of environmental law

The Constitution of the Republic of Croatia stipulates that authority in Croatia is organised according to the principle of the separation of powers, so that **legislative authority** is exercised by the Croatian Parliament, **executive authority** by the Government of the Republic of Croatia and **judicial authority** by the courts of Croatia. As holders of judicial authority, the courts administer justice according to the Constitution, laws and regulations, and international treaties which Croatia has signed and ratified as well as other valid sources of law[1].

Along with legislative, executive and judicial government, the Constitution established the Constitutional court of the Republic of Croatia (Ustavni sud) as a kind of ‘fourth branch of government’ or ‘inter-government’. The real position of the Constitutional court is seen in the authorities given to it by the Constitution, i.e. in the legal effects of constitutional-judicial decisions that have a direct impact in areas of legislative, executive, and judicial government[2].

The (Croatian) **Parliament (Hrvatski *sabor*)** holds legislative power in Croatia, so all laws (zakoni) are enacted by it.

The Government (Vlada), as the head of the executive power, is the main initiator of the legislation adopted by the Croatian Parliament as the legislator. According to the Constitution of the Republic of Croatia, every member of parliament, parliamentary parties, working bodies of the Croatian Parliament, and the Government have the right to propose legislation. Also, the Government issues specific legislative acts which comprise regulations (*uredbe*), decisions (*odluke*), conclusions (*zaključke*) and administrative orders (*rješenja*).

In addition to the above, **each Ministry** issues ordinances (*pravilnike*) for their area of responsibility and according to different laws.

Main elements of the fact sheet:

1) General introduction to the system of protection of environment and procedural rights of persons (natural, legal, NGOs) in the specific national order

In Croatia, state administration bodies are **ministries** (*ministarstva*) and state administration organisations (*državne upravne organizacije*). Ministries and state administration organisations are central state administration bodies. State administration organisations are established to conduct state administrative affairs which require exceptional autonomy, or using special conditions and methods of work, or to implement legally binding acts of the European Union. The activities of the state administration defined by a special act may be transferred to bodies of local and regional self-government units or other legal entities vested with public authority based on law. The activities of the state administration include the immediate implementation of acts, issuing regulations for their implementation, carrying out administrative oversight and other administrative and professional activities[3].

Currently, there are 16 ministries in Croatia and 12 state administration organisations. The Ministry of Economy and Sustainable Development is the main state administrative body responsible for environmental laws implementation. The scope of the Ministry covers, among other things, activities related to protection and preservation of the environment and nature in accordance with the policy of sustainable development of the Republic of Croatia, activities related to water management, and administrative and other activities in the field of energy. Until July 2020 there was a Ministry of Environment Protection and Energy.

In addition to the above institutions at the national level, each regional level government - county (*županija*) - has its own responsibility related to the environment in general, including responsibilities for water and nature management. There are 20 counties and the City of Zagreb and each of them has either separate departments for the environment (including nature and water) or these sectors form parts of other departments, e.g. spatial planning or similar. Based on the same principle, cities and even some municipalities, i.e. local level government, have their own departments for the environment and those departments are also responsible for water and nature management. Each county, city and municipality has a certain level of autonomy to decide how to organise specific departments dealing with the environment, and as a result the names of the departments and their responsibilities vary. However, lower levels of administration are responsible to all levels above them in the hierarchy of administrative power. For example, a specific project envisaged in local spatial plan must be in line with the spatial plans of the city, county, etc. The rule is also that the local authority is by default responsible for issuing permits for projects and construction in their locality and the same goes for the county and its area. However, if the project is of national interest then the central body (Ministry) issues the permits. Also, the administration of all levels must follow specific rules for different kinds of project set out in special legislation such as, for example, EIA legislation.

The competence of either level of these administrative bodies is proscribed in the sectoral laws. More generally, certain competences are guaranteed to the regional and local level government in the Constitution. Local level government is entrusted with affairs pertaining to the planning and management of space, spatial and urban planning, communal services, environmental protection and the promotion of a clean environment, to mention the most relevant ones in the context of this analysis. Regional level government is entrusted with affairs pertaining to spatial and urban planning (of regional relevance), and traffic and traffic infrastructure, among other competencies. These general constitutional competencies are further detailed in the sectoral laws, dividing them between regional/local and state administration, keeping in mind the principle of proximity. The principle of proximity is to take into account that the provision of administrative services is best provided by those bodies closest to the citizens, taking into account the efficiency of its provision. To illustrate, we will use an example of how elements of EIA procedure fall within the competence of different levels of government based on the provision of EIA legislation. The types of projects required to undergo scoping procedure are given in Annex II and Annex III of the EIA Regulation. Projects listed in Annex II, e.g. tourist zones

outside settlements of 15 ha or larger, fall within the competence of the Ministry (of Economy and Sustainable Development). Projects listed in Annex III, e.g. tourism theme parks of 5 ha or larger, fall within the competence of the regional authority for the environment protection. The logic here is that bigger and more complex projects are assessed at a higher level of government based on the premise that these levels of government have better capacities to process these requests.
The right to access to justice in environmental cases is provided for in the Environmental Protection Act as the most important piece of legislation and general act on environmental protection in Croatia. The general approach is that the EPA includes a recognition of legal interest of persons belonging to the public concerned. The impairment of the right is a prerequisite for access to justice against decisions passed in procedures governed by the Environmental Protection Act. Also, the EPA determines that a civil society organisation which promotes environmental protection has a sufficient (probable) legal interest in the procedures regulated by the EPA which provide for the participation of the public concerned if specific requirements (described later) are met.

2) Constitution – main (content of + including references) provisions on environment and access to justice in the national constitution (if applicable) including procedural rights

In Croatia environmental protection is in the category of the highest values of a constitutional order. Article 3 of the Constitution defines “conservation of nature and the environment” as the highest value of the constitutional order of the Republic of Croatia and as the basis for the interpretation of the Constitution. According to Article 50 of the Constitution “entrepreneurial freedom and property rights may exceptionally be restricted by law in order to protect the interest and security of the Republic of Croatia, its nature, the human environment and human health”. Also, state responsibility to protect the environment is strictly regulated, as Article 70 of the Constitution states: “the state provides the conditions for a healthy environment”. In principle, individuals could directly rely on this rule in specific cases. The same article also stipulates: “everyone shall, within the scope of their powers and activities, devote special attention to the protection of human health, nature and the human environment”. Also, the right of access to information held by public authorities is guaranteed by Art 30, para 4 of Constitution which is important for environmental cases.
The Constitution also, in Art 19 para 2, stipulates that “judicial control of the legality of individual acts of administrative authorities and bodies with public authority is guaranteed”.
Also, in Art 29 para 1, the Constitution stipulates that “everyone is entitled in full equality to a fair and public hearing by an independent and impartial court, in the determination of his rights and obligations and of any criminal charge against him”.
There are no specific provision related only to legal standing in environmental matters, but there are provisions related to equality of all Croatians and non-Croatians before courts (and other state or other bodies with public authorities), that court hearings and judgments are public, and under what conditions the public can be excluded.
The Croatian Constitutional Court is responsible for protecting the Constitution.

3) Acts, Codes, Decrees, etc. - main provisions on environment and access to justice, national codes, acts

The Environmental Protection Act (OG 80/13, 153/13, 78/15, 12/18, 118/18) is a fundamental law not only for Croatia's environmental policy but also for Croatia's sustainable development policy; it defines basic concepts related to sustainable development and defines state institutions, their powers and their obligations in drafting relevant policy documents related to natural resources. This Act also contains provisions on fines for anyone who violates rules, obligations or powers provided for in the Act and also, as mentioned above, it contains rules on access to justice in environmental matters.
There is also a large set of other different laws, ordinances and regulations which regulate other environmental subareas (air, climate, sea, etc.), different environmental procedures (EIA, SEA, environmental permit, etc.) and different threats to environment (waste, chemicals, etc.) but do not contain specific rules on access to justice in environmental matters.

4) Examples of national case-law, role of the Supreme Court in environmental cases

Zelena akcija/Friends of the Earth Croatia brought a case before the Administrative Court in Rijeka against the Ministry of Environmental Protection and Energy's decision on the EIA approval for the floating LNG terminal on the Island of Krk. The main arguments in the case (submitted in June 2018) were that the project was not in spatial plans (County or Municipality), there was no alternative location or procedure, very old data were used in the EIA study, separate EIAs were prepared for the floating part and the coastal part of the same project, etc.
The Administrative Court's verdict was issued after the second hearing which was held in February 2019, and the lawsuits of Zelena akcija and Zelena Istra, Omišalj Municipality and Primorsko Goranska County were all rejected. It is also important to mention that during the court proceedings the Croatian Parliament adopted the Law on LNG setting this project as one of the high priorities for Croatia. In the Administrative Court, ZA/FoE Croatia stated that this could be seen as significant pressure on the Court, which the judge rejected. Also, the verdict was announced just 15 minutes after the second hearing and the judge rejected all proposed evidence such as hearing of expert witnesses, which is not common in other Administrative cases.
All the plaintiffs appealed to the High Administrative Court, but the outcome was not successful and the verdict was issued in very rapid proceedings, which is a big news in such cases, and which we believe also shows how there was pressure from the Parliament and especially the Minister of Environment and Energy which publicly advocated for the project.
The extraordinary remedy from the Administrative Dispute Act is the only basis on which the Supreme Court (Vrhovni sud Republike Hrvatske), after the High Administrative Court, may also participate in an administrative dispute. This remedy may be filed only by the Attorney General, ex officio or at the initiative of a party. Therefore, in the vast majority of cases, the High Administrative Court is the final instance of an administrative dispute.

5) Can the parties to the administrative procedure directly rely on international environmental agreements, or can only the national and EU transposing legislation be referred to?

The Croatian Constitution stipulates that all international treaties (including environmental agreements) which have been concluded and confirmed in accordance with the Constitution, are published and are in force, are the part of the internal legal order of Croatia and are legally above Croatian law. However, in Croatian practice in environmental cases, the courts only rely on national legislation, without detailed assessment, presuming it to be in line with EU legislation as well as international environmental agreements.

1.2. Jurisdiction of the courts

1) Number of levels in the court system

Judicial authority in the Republic of Croatia is exercised by ordinary and specialised courts and the Supreme Court of the Republic of Croatia.
The ordinary courts are municipal courts which are the 1st instance courts (67) and county courts (15) which are the 2nd instance courts. Their jurisdiction is determined based on the subject matter, in principle municipal courts hearing simpler cases as 1st instance courts, and county courts acting as appellate courts. For those cases where county courts act as courts of first instance the Supreme court is the appellate court. Ordinary courts cover civil and criminal branches of the judiciary, as well as the first instance of misdemeanour branch.
The specialised courts are commercial courts (7), administrative courts (4), the High Commercial Court of the Republic of Croatia (1), the High Administrative Court of the Republic of Croatia (1) and the High Misdemeanour Court of the Republic of Croatia (1) which are the 2nd instance courts. This means that specialised courts are established as two tier courts, High courts acting as second instance (appellate) courts.
First instance misdemeanour (61) courts have been integrated into municipal courts since 1st January 2020.

Municipal and misdemeanour courts are established for the territory of one or more municipalities, one or more towns or parts of an urban area, and the county, commercial and administrative courts are established for the territory of one or more counties.
The High Commercial Court of the Republic of Croatia, the High Administrative Court of the Republic of Croatia, the High Misdemeanour Court of the Republic of Croatia and the Supreme Court of the Republic of Croatia are established for the territory of the Republic of Croatia. The establishment of the High Criminal Court was prescribed, but it was postponed until the decision of the Constitutional Court on the constitutionality of specific legal amendments.
The Supreme Court of the Republic of Croatia is the highest court in Croatia.

2) Rules of competence and jurisdiction – how is it determined if there is jurisdiction of the court, cases of conflict between different national tribunals (in different Member States)?

The question of jurisdiction depends on the legal order in the state, since it can be decided based on the location of the plaintiff.
In relation to environmental cases, the most important thing to note is that jurisdiction of the administrative courts (there are 4 in Croatia – situated in 4 larger cities – Zagreb, Split, Osijek and Rijeka) is decided based on the territory of the location on which specific environmental administrative decision will have impact. If a case is brought against a county (regional unit) of the administrative body, the case should be brought in the court in whose territory the regional unit is located. If the case could be reviewed by multiple courts, the court which is higher to both of those courts will decide on jurisdiction (and that rule applies to other courts too). In administrative cases it is the High Administrative Court.

3) Specialities as regards court rules in the environmental sector (special environmental tribunals), laymen contributing, expert judges

There is no special environmental court or even judges which are experts in environmental cases. Most of the environmental cases come before the Administrative Courts and there is no rule to determine which judge will get an environmental case. In Croatian practice various judges have ruled on environmental cases, so basically when case is submitted any judge ruling at that court could get that environmental case.

4) Level of control of judges in case of administrative appeals, concept of own motion, what are its limits? Rules on court action on its own motion.

The Administrative Court freely evaluates the evidence and establishes the facts. It takes into account the facts concluded in the proceedings in which the disputed decision was made and the parties may suggest which facts should be established and through which evidence, but the Court is not bound by any of that and it can also establish facts on its own. In three of the four administrative courts (Zagreb, Split, Rijeka) the specialisation of judges was established by internal acts[4].
In an administrative dispute, the first instance court is bound by the scope of the review requested by the party filing a lawsuit, but not by its reasons. In practice, lawsuits are drafted to challenge an administrative decision 'in its entirety'. However, the appellate court, the High Administrative Court, reviews the decision of the 1st instance courts bound by reasons invoked in the appeal.
Both levels of administrative courts have the mandate to review administrative decisions (and administrative contracts) to establish whether they meet the minimum requirements for basic legality. However, they can only do this once the party has initiated the proceedings, regardless of whether either of the parties has invoked this as an argument. The court has the official mandate to establish the existence of the minimum legal requirements of an act once this act has been brought before a court to be decided.

1.3. Organisation of justice at administrative and judicial level

1) System of the administrative procedure (ministries and/or specific state authorities)

Croatia follows a standard division of power between legislative, judicial and executive branches. Legislative power at the state level lies with the Parliament called Hrvatski sabor. The Government holds executive power and the judiciary is an independent branch in its own right.
Certain constitutionally guaranteed tasks lie with the decentralised levels of government. 20 counties plus the city of Zagreb, which due to its size has a status of a county.
The principle of division of powers is that the Ministry of the state authority at the central level is responsible for overall legislation and execution. The **municipality, town, and county can make independent decisions regarding tasks within the scope of their selfgovernment in accordance with the Constitution of the Republic of Croatia and Law on Local and Regional Self-Government (Article 20). Lower administrative bodies are responsible to administrative bodies which are above them in the hierarchy of power**. Counties are tasked with performing general public administration services at the regional level, while the units of local self-government within the scope of their self-government, perform the tasks of local importance which directly address the needs of the citizens, and which are not assigned to state bodies by the Constitution or other laws.
The Ministry of Economy and Sustainable Development covers activities related to the protection and preservation of the environment and nature, activities related to water management and administrative and other activities in the field of energy. This Ministry issues environmental permits, decisions on EIA, AA, SEA, etc. The Ministry of Spatial Planning and Construction issues location and construction permits, which are also important in environmental cases.
In addition to the above institutions established at the national level, each regional level government - county (*županija*) - has its own responsibility related to the environment in general, so some permits, decisions on EIA, AA and SEA are also issued on this level.
Based on the same principle, cities and even some municipalities, i.e. local level government, have their own departments for the environment and those departments are also responsible for water and nature management.

2) How can one appeal an administrative environmental decision before court? When can one expect the final ruling?

An administrative environmental decision can be appealed before the Administrative Court when a decision was passed by the Ministry. When a decision is passed by a lower level authority, before appealing to the administrative court an appeal to the Ministry has to be filed first. There is no strict deadline for issuing a decision, only the Environmental Protection Act determines that every environmental case is an urgent case. In practice, the timeline for a final ruling varies, so sometimes the case is ruled on within a year or even less in cases related to access to environmental information, and sometimes it takes more than a year just to get the first hearing, so a ruling can easily wait for more than 2 years.

3) Existence of special environmental courts, main role, competence

There are no special environmental courts, as stated above.

4) Appeal against environmental administrative decisions delivered by competent authorities and appeal against Court orders and decisions (levels)

Appeals against environmental administrative decisions

If an environmental administrative decision was issued by a lower level of environmental authority, for example at the city, municipality or county (regional) level, one can appeal to the Ministry of Economy and Sustainable Development
An appeal in administrative proceedings is also allowed if there is silence from the administration.
Appeals decided by the Ministry can be challenged before the administrative court. An appeal to the Ministry must be filed before going to the Court, so the Ministry issues a decision which one can then be brought to the administrative court.
When an administrative decision has been delivered by the Ministry, there is no higher body for appeal but it is possible to start an administrative dispute before the Administrative Court.

Appeals against court orders and decisions

The Administrative Court is the first instance court and its decision can be appealed before the High Administrative Court. After that it can go to the Supreme Court. Apart from ensuring the uniform application of laws and equality of all citizens, the Supreme Court of the Republic of Croatia also discusses current issues related to court practice, declares regular or extraordinary legal remedies if required by the law or separate by-laws, decides jurisdictional disputes among lower courts on the territory of the Republic of Croatia, and analyses various needs for professional development of judges, advisers to the court and judicial apprentices. In addition, the Supreme Court of the Republic of Croatia performs other tasks as prescribed by law. The Supreme Court of the Republic of Croatia comprises the Criminal Department and the Civil Department employing 42 judges, including the President of the Supreme Court.
The Supreme Court of the Republic of Croatia regularly publishes the Selection of Decisions of the Supreme Court of the Republic of Croatia as a periodical of court practice available to experts as well as the general public. The Supreme Court of the Republic of Croatia also publishes court practice on its website. The access to the web site is free of charge.
It should be noted that there are also cases in which an appeal against the first-instance verdict of the administrative court is not allowed - first cassation, silence of administration, court settlement.[5]

5) Extraordinary ways of appeal. Rules in the environmental area. Rules for introducing preliminary references.

There are no specific extraordinary ways of appeal which have specific rules for the environmental area.
However, there are some extraordinary legal remedies:
in administrative procedure - renewal of the procedure, annulment and revocation of the decision, declaring a decision null and void[6];
in administrative dispute - renewal of the dispute, request for extraordinary review.[7]
The extraordinary remedy of a request for extraordinary review is the only basis on which the Supreme Court, after the High Administrative Court, may also participate in an administrative dispute. This remedy may be filed only by the Attorney General, ex officio or at the initiative of a party. Therefore, in the vast majority of cases, the High Administrative Court is the final instance of an administrative dispute.
Preliminary references may be submitted to the CJEU by any court, including, for example, by the High Administrative Court in environmental cases. Anyone can request a preliminary reference in their lawsuit submitted to the court.

6) Are there out of court solutions in the environmental area as regards solving conflicts (mediation, etc.)?

There are no specific rules or provision in specific legislation about out of court solutions in the environmental area, such as mediation or similar, but it does not mean that parties could not try to solve conflict in that manner.
Also, there is the Croatian Conciliation Association (Hrvatska udruga izmiritelja), with the purpose and mission to promote mediation, education and dispute resolution through mediation, and to make mediation a generally accepted way of resolving disputes. In the last several years this Association brought together different judicial institutions but also lawyers at different educational events for the purpose of developing dispute resolution through mediation.

7) How can other actors help (ombudsperson (if applicable), public prosecutor), accessible link to the sites?

The Criminal Law of Croatia defines crimes against the environment such as contamination/pollution of the environment, endangering the environment with a plant/facility, destroying protected natural values, destroying natural habitats, changing water regime in Croatia, etc.
In Croatia, crimes against the environment are as a rule crimes prosecuted ex officio, which means that the procedure is initiated by a public prosecutor either ex officio, or after criminal charges, if he/she estimates there is reasonable suspicion that a crime has been committed. A crime can be reported by anyone who has serious and specific knowledge of a crime and the perpetrator; crimes are as a rule reported to an authorised public prosecutor. A crime can be reported to the police as well (which is most frequent, for practical reasons), to a court or to an unauthorised public prosecutor, who must immediately forward it to authorised public prosecutor.
Also, anyone can submit a minor offence report to the authorised body. It is possible to report a minor offence for authorised inspection, for instance against the Environmental Protection Act or some other regulation from the area of environmental protection. The inspection will then, if it finds it is reasonable, take further steps to initiate the minor offence procedure. As of 1st January 2019 the State Inspectorate (Državni inspektorat) also includes Environment Inspection, Nature Protection Inspection, Forestry Inspection, Water Management Inspection, Agriculture, etc. Before 2019 inspections operated as part of the specific ministry responsible for the specific area.
Anyone, including an NGO, can submit a complaint to the Ombudswoman (*Pučka pravobraniteljica*) and environmental cases have been included in its yearly report since 2013. The Ombudswoman can issue recommendations, opinions, proposals and warnings to the bodies referred to in the complaint. These bodies are obliged to inform the Ombudswoman on the measures undertaken.
The Information Commissioner (*Povjerenik za informiranje*) is a second-instance body to deal with appeals of users on the decisions of bodies of public authorities. An appeal may be submitted by the user to the Information Commissioner within 15 days from the date of delivery of the decision, through the first-instance body that issued the decision. Also, the appeal can be filed with the Commissioner if the public authority failed to decide on the request for information application within the legal deadline (so-called silence of administration). In this case, the appeal can also be filed directly to the Commissioner.

1.4. How can one bring a case to court?

1) Who can challenge an environmental administrative decision (relevance of the concept of concerned public and NGOs)?

An environmental administrative decision can be challenged by a natural person, legal entity, group of individuals (for example neighbours, owners of the same property, etc. and NGO which fulfils specific requirements.

2) Are there different rules applicable in sectoral legislation (nature conservation, water management, waste, EIA, IPPC/IED, etc.)?

Rules on standing are the same for all environmental cases.

3) Standing rules applicable for NGOs and individuals (in administrative procedure and at judicial level, for organisations with legal personality, ad hoc groups of representatives of the public, standing for foreign NGOs, etc.)

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 the general provision, in addition to the direct parties to the proceedings a party to the proceedings can also be the one capable of proving the impairment of right. Under the general provisions only parties to the proceedings can appeal by the means of the administrative review or have recourse to judicial review.

According to the Environmental Protection Act (EPA) (OG 80/13, 153/13, 78/15, 12/18) Art 167 par 1 and Art 168 par 1, individuals have the right to file an appeal (to a 2nd instance body if the decision was issued by lower administration or ask for judicial review if the decision was issued by the Ministry if they can prove impairment of their right due to the location and/or nature and impact of the project and if they participated in the procedure as a member of the public concerned.
According to the EPA Art 167 par 2 and Art 168 par 2, an NGO has a sufficient legal interest in the procedures regulated by the Environmental Protection Act which provide for the participation of the public concerned, if it fulfils the following requirements:
if it is registered in accordance with special regulations governing associations and if environmental protection, including protection of human health and protection or rational use of natural resources, is set out as a goal in its statute,
if it has been registered for at least two years prior to the initiation of the public authority's procedure (in relation to which it is expressing its legal interest), and if it can prove that in that period it actively
participated in activities related to environmental protection in the territory of the city or municipality where it has a registered seat in accordance with its Statute. Such an NGO has the right to file an appeal with the Ministry or file a lawsuit before the competent court, for the purpose of challenging the procedural and/or substantive legality of decisions, actions or omissions.
The right of an NGO to access justice in environmental matters is not dependent on participation in administrative procedures which lead to decision which is challenged before the court.

4) What are the rules for translation and interpretation if foreign parties are involved?

According to the Act on Administrative Disputes the rule is that administrative disputes are conducted in Croatian and in the Latin script. However, parties and participants in administrative disputes have the right to use their own language with a certified translator before the court. Translation costs must be covered by the party to whom they refer unless special law provides differently. Translation costs may be included in the total costs that the party may claim in the dispute. There is no exclusion of costs envisaged for environmental cases.

1.5. Evidence and experts in the procedures

Overview on specific rules in administrative environmental matters, control of judge, calling for an expert in the procedure

1) Evaluation of evidence – are there any limits in obtaining or evaluating evidence, can the court request evidence on its own motion?

As already stated above, the Administrative Court freely evaluates the evidence and establishes the facts. It takes into account the facts concluded in the procedure in which the disputed decision was made and the parties may propose what facts should be established and through which evidence, but the Court is not bound by any of that and it can also establish facts on its own. However, in practice, administrative courts do not determine ex officio evidence if doing so would involve court costs.
In administrative proceedings the first instance court is bound by the scope of the review requested by the party filing a lawsuit, but not by its reasons. In practice, lawsuits are drafted to challenge an administrative decision 'in its entirety'. However, the appellate court, the High Administrative Court, reviews the decision of the 1st instance courts bound by reasons invoked in the appeal.
Both levels of administrative courts have the mandate to review administrative decisions (and administrative contracts) to establish whether they meet the minimum requirements for basic legality. However, they can only do this once the party has initiated the proceedings, regardless of the whether either of the parties has invoked this as an argument. The court has the official mandate to establish the existence of the minimum legal requirements of an act, once this act was put before the court for a decision.

2) Can one introduce new evidence?

One can introduce new evidence, meaning evidence which was not offered in the administrative procedure which resulted with disputed decision. These evidence proposals, as well as other evidence, are not binding for the court. In Croatian case law there are some cases in which the Administrative Court decided not to use new evidence stating that it should have been used during previous procedure (EIA; AA or such). Such cases are USI1365-17-16 from 15 th June 2018 and USI-272/15-15 and in both cases it was NGO BIOM vs Ministry of Environment and Energy and the decisions were about wind power plants.

3) How can one get expert opinions in the procedures? Publicly available lists and registries of experts.

There is a Croatian Association of court expert witnesses and valuators.
One can search this list and find specific area and subarea which is needed. Each party in the court procedure can suggest that expert witness should be called for specific matter in the case.
However, if there is no expert witness listed for a specific area (for example, habitats of specific species, or EIA process in general) parties can suggest an expert who is not in the list. The Court can also do the same. There are no formal requirements for an expert witness who is not on the list; in terms of what is expected by analogy, it would be the same as for those who are listed. A party suggesting somebody who is not on the list should prove why this witness is an expert in specific field with their CV or similar.

3.1) Is the expert opinion binding on judges, is there a level of discretion?

Expert opinion is not binding on judges so the judge evaluates this opinion in the same way as other evidence so there is a level of discretion for judges.

3.2) Rules for experts being called upon by the court

One can become a permanent Court expert witness (stalni sudski vještak) according to Ordinance on Permanent Court Expert witnesses and then she/he is included in the aforementioned list. The expert witness has to meet the deadline determined in the decision about expertise, keep confidential everything he concluded in the specific case and also upgrade his knowledge and skills for his area of expertise.

3.3) Rules for experts called upon by the parties

Each party in the court procedure can suggest that an expert witness should be called for a specific matter in the case. The court is not obliged to accept that suggestion but usually does, however, this was not granted in several environmental cases (for example EIA for LNG floating terminal the island of Krk and in wind power plant cases) since the court decided that the opinion of one or several additional experts could not be stronger than the opinion of a group of experts working on EIA study.

3.4) What are the procedural fees to be paid and when in relation to expert opinions and expert witnessing?

The expert witness has right to be rewarded for his work which is also regulated by Ordinance on Permanent Court Expert witnesses. The reward is determined by the Court according to scores and the value of 1 point is equal to 2,00 HRK (VAT not included) and 100% higher in case of night work, holiday work, etc. If the Court or State Attorney covers that fee, it is 20% less than in the case when parties suggested an expert witness from the list.
This reward includes preparation of written opinion, attendance of court hearing, travel costs, accommodation costs, etc. The Ordinance on Permanent Court Expert witnesses determines how many points (score) the expert witness can be given for the specific part of his/her work, so for example for preparing the written opinion, the reward can be between 150-4000 points, attendance of the court hearing is 100 pints, etc.

1.6. Legal professions and possible actors, participants to the procedures

1) Role of lawyers, compulsory or not, how to contact, publicly accessible internet link to registry or website of the bar, perhaps of specialised lawyers in the environmental field

The Croatian Bar Association (*Hrvatska odvjetnička komora*) has a register of all lawyers publicly available but there are no lawyers which are specialised in the environmental field listed there. This register can be searched by name of lawyers, some specialisation for example lawyers for youth, lawyers for victims of crimes, but there are no environmental lawyers listed specifically. However, there is a list of lawyers providing free legal aid which may be helpful in environmental cases. The register can also be searched by location, i.e. by cities in which they are located.

It is not compulsory to have a legal counsel in environmental court cases (or in general). The Croatian legal system only exceptionally (for specific legal procedures) requires a legal counsel, for example extraordinary legal remedy - revision of the final court decision made in civil law procedure can be submitted only by the person with the Bar exam.

1.1. Existence or not of pro bono assistance

There are some lawyers who have previously been engaged pro bono in environmental cases.

There are also lawyers employed in environmental NGOs which provide pro bono assistance in environmental cases.

It is also possible to contact the Legal Clinic at the Faculty of Law in Zagreb which is available also on some other law faculties.

1.2 If pro bono assistance does exist, what are the main elements of the procedure to receive it (perhaps links to forms, court or agency in charge, address, telephone, email, ways to contact, etc.)?

The Croatian Bar Association (*Hrvatska odvjetnička komora*) can be contacted for pro bono assistance but one can also obtain free legal aid from few specific environmental NGOs (Zelena akcija/Friends of the Earth Croatia and Sunce). There are no specific procedures, forms or similar.

It is also possible to contact the Legal Clinic at the Faculty of Law in Zagreb.

1.3 Who should be addressed by the applicant for pro bono assistance?

The Croatian Bar Association (*Hrvatska odvjetnička komora*) should be addressed for pro bono assistance but one can also obtain free legal aid from few specific environmental NGOs (Zelena akcija/Friends of the Earth Croatia and Sunce).

It is also possible to contact the Legal Clinic at the Faculty of Law in Zagreb.

2) Expert registries or publicly available websites of bars or registries that include the contact details of experts

List of expert witnesses and valuators

Croatian Conciliation Association

3) List of NGOs who are active in the field, links to sites where these NGOs are accessible

Zelena akcija/Friends of the Earth Croatia

BIOM

Sunce

Zelena Istra

Eko Pan

Hrvatsko društvo za zaštitu ptica i prirode

4) List of international NGOs, who are active in the Member State

World Wide Fund for Nature (WWF)

Greenpeace

Friend of Earth Europe and Friends of Earth International – NGO Zelena akcija is Friends of the Earth Croatia

Justice and Environment – Zelena akcija/FoE Croatia is member

European Environmental Bureau (EEB) - Zelena akcija/FoE Croatia from Zagreb, Zelena Istra from Pula and Sunce from Split are members from Croatia

Bankwatch - Zelena akcija/FoE Croatia is a member

Birdlife – Association BIOM is Birdlife partner in Croatia

1.7. Guarantees for effective procedures

1.7.1. Procedural time limits

1) Time limit to challenge an administrative environmental decision (not judicial) by an administrative body (either superior or same level).

In the General Administrative Procedure Act (Art 109) it is determined that an appeal to a higher or same level administrative body must be filed within 15 days of the date of delivery of the decision unless a longer period is determined (in lex specialis). The Environmental Protection Act does not determine different deadline for appeal.

2) Time limit to deliver decision by an administrative organ

According to General Administrative Procedure Act (Art 121) the second-instance administrative body must issue and deliver the appeal decision to the party as soon as possible and no later than 60 days from the day of appeal submission unless a shorter deadline is determined by lex specialis. There is no different deadline determined in the Environmental Protection Act.

3) Is it possible to challenge the first level administrative decision directly before court?

Administrative environmental decision can be challenged before the Administrative Court directly if there is no possibility of an appeal or if there is no second instance body. In other cases the hierarchy of legal remedies must be followed.

4) Is there a deadline set for the national court to deliver its judgment?

There is no strict deadline for issuing a decision, only the Environmental Protection Act determines that every environmental case is an urgent case (Art 172). In practice, the timeline for final ruling varies, so sometimes the case is ruled within a year or even less in cases related to access to environmental information, and sometimes it takes more than a year just to get the first hearing, so a ruling could easily wait for more than 2 years.

The Administrative Disputes Act determines that the court must deliver the judgment at a final hearing, but in complex cases the hearing for announcement of the judgment will happen in the next 8 days. Also, the Court is obliged to deliver the judgment in writing to parties within 15 days after it was delivered. This deadline is often not met.

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 frame, but there is no clear practice as to what is considered as such. However, general protection of the right to a trial within a reasonable time is regulated by the Act on Courts and the Constitutional Act on the Constitutional Court of the Republic of Croatia.

5) Time limits applicable during the procedure (for parties, submitting evidence, other possible deadlines, etc.)

Related to administrative review procedure, besides the deadline for submitting an appeal and deadline for the decision from administrative body, there are no other legal deadlines determined.

The timeframe for submitting claim to the Administrative Court is the same as in other administrative cases, 30 days from the delivery of the decision which can be challenged. There is an additional deadline if the decision was not delivered but made publicly available (for example on the website of the Ministry). In that case, the 30-day deadline for submitting the claim to Court begins after 8 days from the publication of the decision.
In relation to judicial procedure (before the Administrative Court), the court sets a time limit for responding to the claim according to circumstances of the case, which may not be less than 30 days and no more than 60 days. The defendant is obliged to submit all the evidence together with the response to a claim as well as to submit all the files pertaining to the subject matter of the dispute. However, if the defendant does not do that or informs the court that for some reason the files cannot be submitted, the court can decide without it.
Basically, the same rule applies to a plaintiff who should lay all the facts of the case and suggest all the evidence which supports those facts already in the claim.
However, the Court can ask both parties to deliver detailed explanations of the facts, to submit documents or other evidence and the Court decides about the deadline for that. Additionally, the parties can suggest additional evidence (an expert witness as already described above) and the Court decides whether to approve it and fixes a deadline.

1.7.2. Interim and precautionary measures, enforcement of judgments

1) When does the appeal challenging an administrative decision have suspensive effect?

An administrative appeal has a suspensive effect, according to the General Administrative Procedure Act (Art 112), unless otherwise provided by the law. Exceptionally, in order to protect the public interest or to take urgent action, or to prevent damages that cannot be remedied, an administrative body may decide that the appeal does not have a suspensive effect. The decision must contain a detailed explanation of why the appeal does not have a suspensive effect but this provision[8] is almost never used in the practice of administrative procedure.

2) Is there a possibility for an injunctive relief during the administrative appeal by the authority or the superior authority?

Since an administrative appeal in principle has suspensive effect, the use of injunctive relief is not often used in these procedures.
However, since it is possible for the appeal not to have a suspensive effect, there is the possibility of injunctive relief provided in the law. According to the General Administrative Procedure Act (Art 140), at the proposal of a party and in order to avoid severely irreparable damage, the administrative body which issued a decision may postpone enforcement of the decision until a legally effective decision is rendered in the administrative matter unless otherwise provided for by law and if this is not contrary to the public interest.

3) Is there a possibility to introduce a request for such a measure during the procedure and under what conditions? Possible deadline to submit this request?

As mentioned above, according to the General Administrative Procedure Act (Art 140), at the proposal of a party and in order to avoid severely irreparable damage, the administrative body which issued a decision may postpone enforcement of the decision until a final administrative decision is made unless otherwise provided for by law and if this is not contrary to the public interest. There is no deadline for submitting this request but usually it is done at the same time with the appeal or, in a judicial procedure, at the same time as the lawsuit is submitted.

4) Is there immediate execution of an administrative decision irrespective of the appeal introduced? Under what conditions?

All administrative decisions may be executed when they become enforceable. The first instance decisions become enforceable upon expiry of the administrative appeal period if the appeal is not filed, by delivery of the decision to the party if the appeal was not allowed, by delivery of the decision to the party if the appeal has no suspensive effect, by delivery of the decision rejecting of the appeal to the party.

5) Is the administrative decision suspended once challenged before court at the judicial phase?

Initiation of judicial review before the Administrative Court does not have a suspensive effect unless it is determined by special law and there is no such provision in the Environmental Protection Act.

6) Is there a possibility for the national tribunals to provide injunctive relief (conditional upon a financial deposit)? Is there separate appeal against this order on the injunctive relief or the financial deposit?

The Administrative Court may decide to suspend the administrative decision if its application could cause the plaintiff damages that can hardly be repaired and unless the specific law provides that the appeal does not have a suspensive effect and if the suspension is contrary to public interests. There is no financial deposit needed for this. The decision of the Administrative Court on injunctive relief can be appealed before the High Administrative Court within 15 days from the delivery to the parties.
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).

1.7.3. Costs - Legal aid - Pro bono assistance, other financial assistance mechanisms

1) How can one calculate what costs will be involved when one intends to initiate a procedure - administrative costs, judicial costs, costs for filing a case, experts' fees, lawyers' fees, cost of appeal, etc.

The system is primarily based on court fees that vary according to the value of the case. In administrative disputes procedure, according to the Court Fees Act, the court fees depend on the value of the case, if the court can estimate the value. There are 2 remedies against the decision on court fees, which are complaint and appeal as determined in Act on Court Fees, Art 29. Generally, the court fees are not very high. Court fees for a claim to the Administrative Court is 400 Kunas and for appeal to the High Administrative Court 500 Kunas, according to Regulation on Tariff on Court Fees. Also, the fee for the judgment has to be paid and it is 500 Kunas. The court fees for lawsuits in the administrative dispute procedure are based on a flat rate, regardless of the value of the case. However, these are not the only costs.
Before the 2012 reform (described under 1.7.3. – point 6) the costs of Administrative Court procedure were very low, in fact the only costs were the aforementioned court fees. But, after 2012, the third party in environmental cases (developer, operator) usually hires a lawyer and the plaintiff has to cover that costs if they lose the case.
The costs usually 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 usually do not 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 on which of the four courts (Zagreb, Osijek, Split and Rijeka) the procedure is conducted in. 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 associated with 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.).
Until now, no expert witnesses were allowed in environmental cases, so it is hard to envisage the costs but they could be very high. However, some experts from different faculties would also be willing to do it for free, according to experience of NGO BIOM which suggested expert witnesses in several cases but was not granted.
The biggest costs could probably occur if the developer or operator (third party in environmental case) decides to use the provision of Art 171 of the Environmental Protection Act. It provides that if an administrative decision is not valid due to the fact that this decision was challenged in accordance with EPA, and for that reason the developer, operator or another legal or natural person to which that act refers decides to wait until the legal validity of the act, then the developer, operator or another legal or natural person has the right to demand compensation for damages and a loss of profit from the person who has submitted the request. It must be established that the applicant has abused his right under the provisions of EPA. There is no such case yet but it is serving its purpose which is to discourage citizens and environmental NGOs from challenging such decisions because of the risk of being sued by big companies.

2) Cost of injunctive relief/interim measure, is a deposit necessary?

There is no direct cost for injunctive relief/interim measure or deposit necessary.

3) Is there legal aid available for natural persons?

The Croatian Bar Association (*Hrvatska odvjetnička komora*) has a list of lawyers providing pro bono legal aid which can be granted to natural persons who are not otherwise provided for.
There is also Free Legal Aid Act, and the Ministry of Justice is the main institution for a free legal aid system. The system of free legal aid allows citizens with modest resources to engage attorneys and obtain legal aid for specific legal actions and equal access to judicial and administrative procedures.
There is a difference between providing primary and secondary legal aid. Primary legal aid is for example general legal information, counselling and representation with state administration bodies, etc. while secondary legal aid is legal advice, representation before courts, etc. Primary legal aid can be granted if your material circumstances are such that the payment of professional legal assistance could jeopardize your subsistence and the subsistence of members of your household. Secondary legal aid may be granted if your financial situation meets the following conditions: that your total income and the income of your household members do not exceed the amount of the budget base per household member per month (HRK 3,326.00), that the total value of property owned by you and owned by members of your household does not exceed the amount of 60 budget bases (HRK 199,560.00).
The institutional framework of the free legal aid system is made up of state administration offices processing the requests of citizens at the first instance, while the Department for Granting Free Legal Aid at the Ministry of Justice decides on the appeals at second instance, decides at first instance on the entry of associations in the Register of associations authorised to provide primary legal aid, and carries out administrative and professional monitoring of the primary legal aid provider.
All information related to free legal aid is available here.

4) Is there legal aid available for associations, legal persons, NGOs with legal personality and without legal personality? If yes, how to request legal aid? Is there pro bono assistance?

Associations, legal persons, NGOs can seek and get paid legal aid provided from lawyers. They can use the List of lawyers provided on pages of the Croatian Bar Association or just hire whoever they want. There are no environmental law companies or lawyers but there were some lawyers assisting in some environmental cases.
In Croatia, only natural persons may get a free legal aid. Access to legal aid is denied to NGOs, which is not in accordance with the Aarhus Convention (Article 9, Paragraph 4 and Article 9, Paragraph 5, requiring 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). According to the Croatian Free Legal Aid Act, legal persons cannot be beneficiaries of free legal aid.

5) Are there other financial mechanisms available to provide financial assistance?

There are no other financial mechanisms available to provide financial assistance.

6) Does the 'loser party pays' principle apply? How is it applied by courts, are there exceptions?

The "loser party pays" principle is envisaged by the law, in different procedural acts. It is important to state that until the Administrative Disputes Act in 2012, the rule was different, meaning that before that, each party was obliged to bear its own costs.
Before the end of the procedure, each party bears its own costs, and the Court bears the costs of procedural moves undertaken ex officio. After the judgment, the losing party also has to cover the costs of the winning party, unless there are reasons to decide differently. For example, the parties could suggest that each of them covers their own part, the court could decide that NGO was acting in public interest and it does not have to cover its costs, but those possibilities have not been used yet. If there is an appeal to the High Administrative Court, this also suspends the decision on the costs.

7) Can the court provide an exemption from procedural costs, duties, filing fees, taxation of costs, etc.? Any other national characteristics linked to this topic?

According to the Administrative Disputes Act, if the party partially succeeded in the dispute, the Administrative Court can decide based on the success achieved and order that each part bears its own costs or that the costs are shared in proportion to the success in the dispute[9].

1.7.4. Access to information on access to justice - provisions related to Directive 2003/4/EC

1) Where are the national rules on environmental access to justice available? Internet link to be provided. Are there other forms of structured dissemination?

The Ministry of Economy and Sustainable Development has a long list of national legislation as well as international treaties related to environment protection. There is no subdivision related to environmental access to justice so one would have to know what they want to find. The aforementioned list can be found under Propisi iz područja zaštite okoliša.
Basic rules on access to justice can be found in Environmental Protection Act.
Provisions on access to justice in environmental matters are in Art 19 (basic principle of access to justice in environmental matters) in Art 167 – 172 in Environmental Protection Act.
Also, there are some other Acts which are relevant to access to justice in environmental matters such as:
General Administrative Procedure Act,
Administrative Disputes Act,

Civil procedure Act.
All national legislation in general can be found on website of Official Gazette (Narodne novine).
NGO Zelena Istra has some information about environmental court cases available on their web site.
NGO Zelena akcija has some publications available which are related to access to justice in environmental matters. Some publications are about different legal tools which can be used in environmental cases and some just contain information about access to justice, among other things. This also has information about specific cases.
NGO BIOM also has some information available about their court cases.
NGO Sunce has some publications available which contain information about access to justice and specific cases.

2) During different environmental procedures how is this information provided? From whom should the applicant request information?

Usually, administrative decisions related to EIA, AA, IPPC/IED are published on website of the administrative body which issued them (Ministry, County, etc,). These decisions also have to contain information on access to justice (CRO: pouka o pravnom lijeku).

3) What are the sectoral rules (EIA, IPPC/IED, regarding plans and programmes, etc.)?

There are no different sectoral rules for active dissemination of information on access to justice.

4) Is it obligatory to provide access to justice information in the administrative decision and in the judgment?

It is obligatory to provide access to justice information in the administrative decision and in the judgment of the Administrative Court together with the deadline for submission of a claim or appeal.

5) Is translation, interpretation provided to foreign participants? What are the rules applicable?

According to the Administrative Disputes Act, the rule is that administrative disputes are conducted in Croatian and in the Latin script. However, parties and participants in administrative disputes have the right to use their own language with a certified translator before the court. Translation costs must be covered by the party to whom they refer unless special law provides differently. There are no exceptional rules set in environmental legislation related to this.

1.8. Special procedural rules

1.8.1. Environmental Impact Assessment (EIA) - provisions related to Directive 2003/35/EC

Country-specific EIA rules related to access to justice

1) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)

There are no specific rules on standing and access to justice relating to screening. A decision on EIA screening or whether to carry out and EIA procedure or not is made in the form of administrative decision (*rješenje/upravni akt*)[10]. This means that such a decision can be challenged and the same rules that apply to other environmental procedures can be applied here (standing rules described under section 1.4 point 3). For example, if the authority issues a decision that the EIA is not needed, an NGO or natural person can challenge that decision before the Administrative Court. The timeframe is the same as in other administrative cases, 30 days from the delivery of the decision which can be challenged. There is an additional deadline if the decision was not delivered but made publicly available (for example on the website of the Ministry). In that case the 30-day deadline for submitting the claim to court begins after 8 days from the publication of the decision.

2) Rules on standing relating to scoping (conditions, timeframe, public concerned)

Decision on scoping is not made in the form of administrative decision[11] (rješenje/upravni akt) so this decision cannot be challenged separately but only later, together with the final decision on EIA.

3) At what stage(s) can the public challenge the administrative decisions on environmental projects? Deadline to challenge decisions?

Administrative decisions on environmental projects can be challenged when made in the form of administrative act (rješenje/upravni akt) so in the final EIA decision but also in the screening phase.

The timeframe for submitting a claim to the Administrative Court is the same as in other administrative cases, 30 days from the delivery of the decision which can be challenged. There is an additional deadline if the decision was not delivered but made publicly available (for example on the website of the Ministry). In that case the 30-day deadline for submitting the claim to court begins after 8 days from the publication of the decision.

4) Can one challenge the final authorisation? Under what conditions, if one is an individual, an NGO, a foreign NGO?

Final authorisation of the project can be challenged as described under the previous point. Standing rules are the same according to the Environmental Protection Act for all environmental procedures conducted under that Act. An EIA decision can be challenged by a natural person, group of individuals (for example neighbours, owners of the same property, etc.) and an NGO which fulfils specific requirements. However, this is more restricted in the case of a construction permit, meaning the final authorisation of the project since the legislation regulating this field determines more strictly who can be a party in the process (owners of the neighbouring properties).

According to the Environmental Protection Act (EPA) (OG 80/13, 153/13, 78/15, 12/18) Art 167 par 1 and Art 168 par 1, individuals have the right to file an appeal if they can prove impairment of their right due to the location and/or nature and impact of the project and if they participated in the procedure as a member of the public concerned.

According to the EPA Art 167 par 2 and Art 168 par 2, An NGO has a sufficient legal interest in the procedures regulated by the Environmental Protection Act which provide for the participation of the public concerned, if it fulfils the following requirements:

if it is registered in accordance with special regulations governing associations and if environmental protection, including protection of human health and protection or rational use of natural resources, is set out as a goal in its statute,

if it has been registered for at least two years prior to the initiation of the public authority's procedure (in relation to which it is expressing its legal interest), and if it can prove that in that period it actively

participated in activities related to environmental protection in the territory of the city or municipality where it has a registered seat in accordance with its Statute. Such an NGO must have the right to file an appeal with the Ministry or file a lawsuit before the competent court, for the purpose of challenging the procedural and/or substantive legality of decisions, actions or omissions. The right of an NGO to access to justice in environmental matters is not dependent on participation in administrative procedures which lead to the decision which is challenged before the court.

The Environmental Protection Act does not have specific provisions on access to justice in environmental matters for foreign NGOs, but also it does not have a provision which would forbid that. In that sense, if a foreign NGO can meet all the requirements needed for NGOs to have standing, it would probably be allowed by the Court.

5) Scope of judicial review – control on substantive/procedural legality. Can the court act on its own motion?

The Administrative Court can review substantive and procedural legality of an EIA decision-making process. In practice the Court does not review scientific accuracy of an environmental impact statement. So it actually only controls procedural legality in practice, although it can appoint experts witnesses or allow parties in the procedure to suggest experts. 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 (2012), 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. There are no specific rules for acting on a motion for environmental matters, but they are the same in all cases.

6) At what stage are decisions, acts or omissions challengeable?

As a rule, decisions, acts or omissions are challengeable together with the final administrative decision (EIA decision; permit, etc.).

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

The Court will reject the claim if the hierarchy of legal remedies was not followed. If that environmental administrative decision was issued by a lower level of environmental authority, for example city, municipality or county (regional) level, it is possible to appeal to the Ministry of Economy and Sustainable Development. Appeals decided by the Ministry can be challenged before the administrative court. The appeal to the Ministry must be used before going to the Court, so the Ministry issues a decision which can then be brought to the Administrative Court.

When an administrative decision has been delivered by the Ministry, there is no higher body for appeal but it is possible to start a dispute before the Administrative Court

8) 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., not meaning the requirement determined under point 12?

Yes for individuals and no for NGOs. Based on the wording of Article 168 of Environmental Protection Act (hereinafter: EPA), access to justice is preconditioned for members of the interested public by public participation. However, there is an 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.

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

According to the Act on Administrative Disputes, the Court will, before making a decision, give opportunity to each party to express an opinion on demands or statement of other parties and about all the fact and legal questions which are part of the dispute[12]. 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[13].

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

There is no specific rule on timeliness determined for access to justice in EIA cases. See section 1.7.1. point 4.

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

Injunctive relief is available, as in other administrative procedures there is no specific rule which would apply only to court cases related to EIA procedure.

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 only be postponed 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).

1.8.2. Integrated Pollution Prevention and Control (IPPC)/Industrial Emissions Directive (IED) - provisions related to Directive 2003/35/EC

1) Country-specific IPPC/IED rules related to access to justice

There are no specific rules on access to justice in IPPC/IED cases.

2) Standing rules, at what stages can one challenge decisions (if one is an NGO, a foreign NGO, a citizen)? Is the final decision challengeable?

Only final decisions on IPPC/IED can be challenged, meaning the environmental permit (okolišna dozvola). Standing rules are the same according to the Environmental Protection Act for all environmental procedures conducted under that Act. An IPPC/IED decision can be challenged by a natural person, group of individuals (for example neighbours, owners of the same property, etc.) and an NGO which fulfils specific requirements.

According to the Environmental Protection Act (EPA) (OG 80/13, 153/13, 78/15, 12/18) Art 167 par 1 and Art 168 par 1, individuals have the right to file an appeal if they can prove impairment of their right due to the location and/or nature and impact of the project and if they participated in the procedure as a member of the public concerned.

According to the EPA Art 167 par 2 and Art 168 par 2, an NGO has a sufficient legal interest in the procedures regulated by the Environmental Protection Act which provide for the participation of the public concerned if it fulfils the following requirements:

if it is registered in accordance with special regulations governing associations and if environmental protection, including protection of human health and protection or rational use of natural resources, is set out as a goal in its statute,

if it has been registered for at least two years prior to the initiation of the public authority's procedure (in relation to which it is expressing its legal interest), and if it can prove that in that period it actively

participated in activities related to environmental protection in the territory of the city or municipality where it has a registered seat in accordance with its Statute. Such an NGO must have the right to file an appeal with the Ministry or file a lawsuit before the competent court, for the purpose of challenging the procedural and/or substantive legality of decisions, actions or omissions. The right of an NGO to access to justice in environmental matters is not dependent on participation in administrative procedures which lead to decision which is challenged before the court.

3) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)

When the EIA and IPPC/IED are integrated procedures, a decision on EIA screening or whether to carry out an EIA procedure or not is made in the form of an administrative decision (*rješenje/upravni akt*)[14]. This means that such decision can be challenged and the same rules that apply to other environmental procedures can be applied here (standing rules described under section 1.4 point 3). The timeframe for submitting claim to Administrative Court is the same as in other administrative cases, 30 days from the delivery of the decision which can be challenged. There is an additional deadline if the decision was not delivered but made publicly available (for example on the website of the Ministry). In that case the 30-day deadline for submitting the claim to court begins after 8 days from the publication of the decision.

4) Rules on standing relating to scoping (conditions, timeframe, public concerned)

Decision on scoping is not made in the form of administrative decision[15] (rješenje/upravni akt) so this decision cannot be challenged separately but only later, together with the final decision on EIA, if the IPPC/IED and EIA procedure were integrated.

5) At what stage(s) can the public challenge the administrative decisions on environmental projects? Is there a deadline to challenge decisions?

As a rule, administrative decisions on environmental projects are challengeable together with the final administrative decision (environmental permit/okolišna dozvola).

The timeframe for submitting a claim to the Administrative Court is the same as in other administrative cases, 30 days from the delivery of the decision which can be challenged. There is an additional deadline if the decision was not delivered but made publicly available (for example on the website of the Ministry). In that case the 30-day deadline for submitting the claim to Court begins after 8 days from the publication of the decision.

6) Can the public challenge the final authorisation?

NGO or individuals can challenge a final authorisation, meaning an environmental permit.

7) Scope of judicial review – control on substantive/procedural legality. Can the court act on its own motion? Is it possible to challenge decisions, acts or omissions?

The Administrative Court can review substantive and procedural legality of an IED decision-making process (environmental permit/okolišna dozvola). In practice, the Court does not review the scientific accuracy of IED documentation. So, it actually only controls procedural legality in practice, although it can appoint experts witnesses or allow parties in the procedure to suggest experts. 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.

Administrative courts have the mandate to review administrative decisions (and administrative contracts) to establish whether they meet the minimum requirements for basic legality. However, they can only do this once the party has initiated the proceedings, regardless of whether either of the parties has invoked this as an argument. The court has the official mandate to establish the existence of the minimum legal requirements of an act once this act was put for decision before the court. The court cannot act on its own motion.

The court can start a procedure of assessing the legality of a general act (e.g. law, spatial plan, ordinance etc.) on its own motion. However, this has to be preceded by the information received from a citizen or ombudsman or a request by another court. This narrows the concept of acting on its own motion.

8) At what stage are these challengeable?

As a rule, decisions on an IED are challengeable in the final administrative decision (environmental permit/okolišna dozvola). Exceptionally, if the IED is integrated in an EIA procedure, then there is possibility of challenging a decision on EIA screening.

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

The Court will reject the claim if the hierarchy of legal remedies was not followed. If the environmental administrative decision was issued by a lower level of environmental authority, for example city, municipality or county (regional) level, one can appeal to the Ministry of Economy and Sustainable Development. Appeals decided by the Ministry can be challenged before the administrative court. The appeal to the Ministry must be filed before going to the Court, so the Ministry issues a decision which one can then bring to the Administration court.

When an administrative decision has been delivered by the Ministry, there is no higher body for appeal but one can start a dispute before the Administrative Court

10) 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., not meaning the requirement determined under point 12?

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 requirements, of course) for whom participation in the public consultation phase is not required in order to have standing.

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

According to the Act on Administrative Disputes, the Court will, before making a decision, give each party the opportunity to express an opinion on demands or statement of other parties and about all the facts and legal questions which are part of the dispute[16]. Also, the Court is obliged to ensure that lack of knowledge and experience of the parties does not cause harm to 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[17].

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

There is no specific rule on timeliness determined for access to justice in IED cases. See section 1.7.1. point 4.

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

Injunctive relief is available, as in other administrative procedures there is no specific rule which would apply only to court cases related to IED procedure. 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 only be postponed 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).

In the case of a lawsuit made by Zelena akcija, Zelena Istra and several private plaintiffs against the environmental permit (at that time called an ecological permit) issued by the Ministry of Environmental Protection and Nature for the thermal power plant Plomin C, injunctive relief was claimed. The court denied the injunctive relief since the decision on environmental acceptability does not represent a direct executive act for the realisation of the project. However, the decision does make the necessary condition to obtain such a direct executive act in further steps of the project. The public and public concerned do not have the right to participate in these proceedings and therefore they cannot claim suspension of the enforcement of the environmental acceptability decision before the case is closed in court.

14) Is information on access to justice provided to the public in a structured and accessible manner?

There are no specific rules on information on access to justice in IED cases.

1.8.3. Environmental liability[18]

Country-specific legal rules relating to the application of the Environmental Liability Directive 2004/35/EC, Articles 12 and 13

1) Which requirements need to be fulfilled for natural or legal persons (including environmental NGOs) to have the decision taken on environmental remediation by the competent authority reviewed by a court or another independent and impartial body in accordance with Article 13(1) ELD?

The EPA[19] provides that the public affected by environmental damage (including the public concerned, i.e. also environmental NGOs) can submit an environmental damage notification (prijava) to the competent authority. The authority decides about this notification in the form of administrative act (upravni akt) which can only be challenged before the Administrative Court and no appeal to administrative authorities is allowed. Standing rules in such cases are the same as in other environmental disputes.
Authorities act ex officio through inspections. If they establish the occurrence of damage, they need to follow up by initiating any applicable legislation for the case in question. This can vary from issuing a fine, issuing an order to comply and/or restitution of the original state, or initiating criminal proceedings, if applicable.
However, no access to justice procedure for the interested public, in accordance with Article 13(1) ELD, is envisaged for those cases where the authorities acted ex officio. This means that, following the existing rules, the public would need to initiate a new environmental damage notification (prijava) only to challenge, before the administrative court, the act resolving it if unsatisfied with how the case was handled ex officio (and following the notification). This is surely a redundancy in procedure which leads to unreasonable extension of time needed to address an environmental damage case.

2) In what deadline does one need to introduce appeals?

As mentioned above, appeal is not possible but the deadline for an administrative dispute is the same as in other environmental cases.
The timeframe for submitting a claim to the Administrative Court is the same as in other administrative cases, 30 days from the delivery of the decision which can be challenged. There is an additional deadline if the decision was not delivered but made publicly available (for example on the website of the Ministry). In that case the 30-day deadline for submitting the claim to Court begins after 8 days from the publication of the decision.

3) Are there requirements for observations accompanying the request for action pursuant to Article 12(2) ELD and if yes, which ones?

The EPA[20] provides that an environmental damage notification must be accompanied by appropriate information and data supporting claims on environmental damage. There is no other specific requirement.

4) Are there specific requirements regarding 'plausibility' for showing that environmental damage occurred, and if yes, which ones?

The EPA[21] provides that upon environmental damage notification, the inspection service of the competent authority must carry out an inspection at the location to which the application relates and check if the notification convincingly indicates the existence of environmental damage. The inspection service will then give the operator the opportunity to comment on the claims in the notification.

5) Is a certain manner required and/or time limits set, and if yes, which ones, as regards the notification of the decision by the competent authority to the entitled natural or legal persons (including the entitled environmental NGOs)?

I am not aware of required certain manner or time limits set in this sense.

6) Does the MS apply an extension of the entitlement to request action by competent authority from damage to the environment in cases of imminent threat of such damage?

The operator is responsible for damage to the environment but also for imminent threat of such damage. However, it seems that the public can only make a notification (report to inspections) on environmental damage to the authority and not on the imminent threat of such damage.

7) Which are the competent authorities designated by the MS?

The Ministry of Economy and Sustainable Development is the competent authority for environmental liability.

8) Does the MS require that the administrative review procedure be exhausted prior to recourse to judicial proceedings?

As mentioned above, a decision on the notification on environmental damage and the same is with the approval of the remediation plan (sanacijski plan) are issued in the form of an administrative act (upravni akt), so only judicial review is possible.

1.8.4. Cross-border rules of procedures in environmental cases

1) Rules on involving other countries? At which stage of the procedure is there a possibility to challenge environmental decisions?

The Environmental Protection Act contains rules that if the Ministry or other administrative environmental body (on County level or level of the City of Zagreb) concludes that specific environmental decision could significantly affect the environment and/or the health of another country, the Ministry or other body is obliged to inform that country about that procedure. It can be a strategy, plan programme (SEA procedure), project, facility (EIA) procedure, industry or similar facility (IED permit). Also, the request for involvement in such a procedure can come from that country which believes it will be affected by specific decision.
The rules to challenge environmental decisions are the same for affected countries as for Croatian individuals and NGOs, so final decisions can be challenged before the Administrative Court. The exemption is the decision on SEA which cannot be challenged since it is not issued in the form of an administrative act (upravni akt).

2) Notion of public concerned?

The same rules are applied to public concerned from other countries as for domestic public concerned. There are no specific rules set only for Croatian citizens but also not specifically for citizens of other countries. Environmental administrative procedures are basically open to everyone in the sense of involvement in a specific procedure, it is another thing to have standing.

3) Do NGOs of the affected country have standing? When and to what court should they submit their appeals? What procedural assistance are they eligible for (legal aid, request for injunctive relief, interim measures, pro bono)?

The Environmental Protection Act does not have specific provisions on access to justice in environmental matters for foreign NGOs, but neither does it have provisions which would forbid that. In that sense, if a foreign NGO can meet all the requirements needed for NGOs to have standing, it would probably be allowed by the Court. Unfortunately, there is still no case in which an NGO from an affected country has submitted or joined an environmental case, so it is not certain what the court would decide.
Regarding other questions, the rules which are set out for Croatian NGOs would probably be used for foreign NGOs – free legal aid is not provided to NGOs but only to natural persons, administrative decisions can be challenged before Administrative Court, injunctive relief is possible but rarely granted in environmental cases. The timeframe is the same as in other administrative cases, 30 days from the delivery of the decision which can be challenged. There is an additional deadline if the decision was not delivered but made publicly available (for example on the website of the Ministry). In that case the 30-day deadline for submitting the claim to Court begins after 8 days from the publication of the decision.

4) Do individuals of the affected country have standing? What procedural assistance are they eligible for (legal aid, request for injunctive relief, interim measures, pro bono)?

According to the Environmental Protection Act[22], individuals have the right to file an appeal if they can prove impairment of their right due to the location and /or nature and impact of the project and if they participated in the procedure as a member of the public concerned. So, if a foreign citizen can prove impairment of his/her right in the sense of that provision of EPA, he/she can have standing.
Regarding other questions, administrative decisions can be challenged before the Administrative Court, injunctive relief is possible but rarely granted in environmental cases, the timeframe is the same as in other administrative cases, 30 days from the delivery of the decision which can be challenged. There is an additional deadline if the decision was not delivered but made publicly available (for example on the website of the Ministry). In that case the 30-day

deadline for submitting the claim to Court begins after 8 days from the publication of the decision. Non-Croatian citizens can obtain legal aid in Croatia, so can hire lawyers easily but it could be hard to obtain free legal aid as it is also quite limited to get it for Croatian citizens.

5) At what stage is the information provided to the public concerned (including the above parties)?

The information to the public concerned of another country is provided in the same time and under the same conditions as for domestic public concerned. This is not so clearly stated in the EPA but for each procedure (SEA, EIA, IED) it is determined that rules on access to information must be provided with provisions of the EPA and Ordinance on Access to Information and Public Participation in Environmental Matters.

6) What are the timeframes for public involvement including access to justice?

The timeframe is the same as in other administrative cases, 30 days from the delivery of the decision which can be challenged. There is an additional deadline if the decision was not delivered but made publicly available (for example on the website of the Ministry). In that case the 30-day deadline for submitting the claim to Court begins after 8 days from the publication of the decision. Non-Croatian citizens can obtain legal aid in Croatia, so can hire lawyers easily but it could be hard to obtain free legal aid as it is already also pretty hard to get it for Croatian citizens.

7) How is information on access to justice provided to the parties?

There is no special rule provided regarding information on access to justice to foreign parties. All administrative decisions, including environmental decisions, have to contain information on access to justice (CRO: pouka o pravnom lijeku).

8) Is translation, interpretation provided to foreign participants? What are the rules applicable?

According to the Administrative Disputes Act, the rule is that administrative disputes are conducted in Croatian and in the Latin script. However, parties and participants in administrative dispute have the right to use their own language with a certified translator before the court. Translation costs must be covered by the party to whom they refer unless special law provides differently.

Regarding documents submitted to Court, the rule is that all documents are in Croatian or translated into Croatian. In practice if some documentation is submitted in a foreign language, the Court can order the party to translate it, the Court can order a translation or it disregards documentation which is not in Croatian.

Ministry of Justice also provides a list of Permanent Court Interpreters (stalni sudski tumač) for different languages.

9) Any other relevant rules?

I am not aware of any other important rule besides those already described in this chapter.

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[1] Constitution, Art 118/3
[2] **Šarin** D.; Constitutional Court of the Republic of Croatia, Zagreb, Croatia
[3] Act on the State Administration system (Zakon o sustavu državne uprave) (O.G. 150/11, 12/13, 93/16, 104/16)
[4] According to Administrative judge in Rijeka Alen Rajko statement
[5] Administrative Dispute Act, Art 66.
[6] GAPA, Art 123-132
[7] Administrative Dispute Act, Art. 76-78.
[8] General Administrative Procedure Act, Art. 112 par 3
[9] Article 79, Administrative Disputes Act
[10] Article 90 of Environmental Protection Act, NN 118/18
[11] Article 86 of the Environmental Protection Act
[12] Art 6 of the Act on Administrative Disputes
[13] Dr.sc. Šarin D., page 736. and 737, Aspekti prava na pravično suđenje.
[14] Article 90 of Environmental Protection Act, NN 118/18
[15] Article 86 of the Environmental Protection Act
[16] Art 6 of the Act on Administrative Disputes
[17] Dr.sc. Šarin D., page 736. and 737, Aspekti prava na pravično suđenje.
[18] See also case C-529/15
[19] Environmental Protection Act, OG 12/2018, Art 191
[20] Environmental Protection Act, OG 12/2018, Article 191
[21] Environmental Protection Act, OG 12/2018, Article 191
[22] EPA; OG 80/13, 153/13, 78/15, 12/18 Art 167 par 1 and Art 168 par 1

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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:

postponement was requested by the party to the proceedings;

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),

that the postponement is not expressly forbidden by law for the particular decision,

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:

If the enforcement would result in a damage for the plaintiff which would be hard to amend,

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),

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.

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[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.
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Other relevant rules on appeals, remedies and access to justice in environmental matters

It is important to note that in Croatia an administrative dispute and/or judicial review may be initiated if an administrative body has not issued an administrative decision that it was obliged to issue, in the case of the silence of the administration (šutnja uprave). One needs to distinguish here between two types of administrative procedures based on which the time limits for reviews are calculated. One is a simpler administrative procedure when the court can immediately establish the relevant facts (no opposing parties to the proceedings) (Cro: neposredno rješavanje upravne stvari). The deadline to pass a decision in such cases is 30 days. The other is an investigative administrative procedure in which the authority needs to establish the relevant facts in order to pass a decision (Cro: ispitni postupak). The deadline to pass a decision in such cases is 60 days. Second instance decisions on appeals are also due in 60 days.
For example, if a second instance body, in Croatia within 60 days, failed to render a decision on the party’s appeal against the first instance decision, such party may institute a judicial review as if the appeal was rejected. It should be noted that the judicial review can only be initiated, whereas there is no such condition for the administrative appeal, no earlier than 8 days before the appeal should have been decided (so 60 + 8 days). The following relate to cases where somebody does not comply with the rules of a judgment:
According to the Act on Courts[1] (Zakon o sudovima), everyone in the Republic of Croatia is obliged to respect the final enforceable and executive court decision and obey it. Although it is a general duty, it is particularly binding on the defendants in an administrative dispute since these are public law bodies, which form part of the apparatus in the function of legal order[2].
One of the principles of the administrative disputes is the obligatory status of the court decisions[3]
Failure to execute a final administrative court judgment constitutes a criminal offence against the judiciary – non-execution of a court decision[4]. When execution of a judgment represents an obligation of a public official then it is a violation of official duty to public service legislation[5]
The Criminal Code determines that an official or responsible person who does not execute the final court decision which was obliged to be executed (if any other criminal offence for which heavier sentence is determined), will be punished by imprisonment of up to 2 years.
Failure to execute a final administrative court judgment represents a serious breach of official duty since it is considered as non-performance, negligent, untimely or careless performance of official duties according to the Civil Servants Act, as well as of the Law on Civil Servants and Employees in Local and Regional Self-Government (OG 86/08, 61/11, 04/18, 112/19). The Court on Civil Servants (Službenički sud) decides about these breaches of official duties. This court, as well as the Higher Court on Civil Servants, are established by the Government for one or more public bodies.
There are cases that show that the timeline for final judgment and then for the execution of the judgment are very important in environmental matters. Despite the requirement for urgency envisaged by the EPA, the reality is different. For example, in a decision of 2009 the Administrative Court ordered that the EIA procedure for asphalt base must be repeated as public participation was not enabled in the public consultation process. The action was brought by a group of citizens in 2003, and the project was implemented in the meantime. The procedure lasted for 6 years. Upon the court’s decision, the public discussion was organized, all the objections of the citizens were dismissed, and the asphalt base constructed 6 years ago for the purposes of a quarry still exists near citizens’ houses. It can be seen in this case that although the court decision was executed it actually did not make any sense, it was just correction of the procedural mistake and without any impact on the EIA decision.

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[1] Zakon o sudovima, Article 6, Par 3
[2] Dr.sc. Rajko Alen, Razlozi neizvršenja odluka upravnog suca i sredstva pravne zaštite, page 247
[3] Act on Administrative Dispute, Article 10
[4] Criminal Code, Art 311
[5] Civil Servants Act, Art 38 OG 92/05, 140/05, 142/06, 77/07, 107/07, 27/08, 34/11, 49/11, 150/11, 34/12, 38/13 and 37/13
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