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ECONOMIC COMMISSION FOR EUROPE

Meeting of the Parties to the
Convention on Access to Information,
Public Participation in Decision-making and
Access to Justice in Environmental Matters

(Second meeting, Almaty, Kazakhstan, 25-27 May 2005)
(Item 6 (a) of the provisional agenda)

IMPLEMENTATION REPORT

Czech Republic*/

Based on the reporting format annexed to decision I/8

1. Provide brief information on the process by which this report has been prepared, including information on which types of public authorities were consulted or contributed to its preparation, on how the public was consulted and how the outcome of the public consultation was taken into account and on the material, which was used as a basis for preparing the report.

The report was prepared by the Ministry of the Environment (MoE) in cooperation with the Green Circle (Zelený kruh), the umbrella organization for environmental non-governmental organizations (NGOs). NGOs actively participated in the public hearing on its preparation in December 2004.

*/ This document was submitted late due to the fact that the report was received by the secretariat from the Party concerned after the deadline set out in decision I/8 and various first-time problems had to be overcome as this is the first reporting cycle under decision I/8 of the Meeting of the Parties. This was compounded by the fact that a considerable volume of other documentation being prepared for the second meeting of the Parties had to be processed during the same period.

2. Report any particular circumstances that are relevant for understanding the report, e.g. whether there is a federal and/or decentralized decision-making structure, whether the provisions of the Convention have a direct effect upon its entry into force, or whether financial constraints are a significant obstacle to implementation (optional).

The law is fully compatible with the requirements of the Convention, which was ratified in 2004. The Czech Republic is currently undergoing a reform of its public administration, and the decision-making competence in a number of areas is being transferred from the central bodies to the regional and local levels. The implementation of the Convention's third pillar remains the most problematic issue, due to inadequate enforceability of environmental law and slow decision-making by the courts. Certain difficulties also come from the repeated deferral of the entry into force of the Public Service Act, which impacts upon the quality of work of officials.

ARTICLE 3

3. List legislative, regulatory and other measures that implement the general provisions in paragraphs 2, 3, 4, 7 and 8 of article 3.

(a) During their initial training in the Enviminima course, public officials are instructed on the issue of public access to environmental information;

(b) The State Program of Environmental Education and Public Awareness was adopted by Government Resolution No. 1048/2000 and is supplemented by action plans for three-year periods;

(c) The Group B programme on public participation in environmental decision-making and sustainable development at the regional level, and the Group C programme on environmental education and public awareness, are included annually in the tender procedure for the support of projects submitted by NGOs;

(d) The principles of the Convention are applied within the framework of the Organisation for Economic Co-operation and Development (OECD); the Czech Republic was the first party to invite NGOs to the discussions on the European Pollutant Emission Register (EPER), has ratified the Espoo Convention on Environmental Impact Assessment in a Transboundary Context, etc.;

(e) It is not known that persons exercising their rights would have been penalized or otherwise sanctioned, and therefore no special measures have been taken to prevent such cases.

4. Describe any obstacles encountered in the implementation of any of the paragraphs of article 3 listed above.

NGOs frequently face attacks by politicians and the media, and are referred to as "ecoterrorists" because of their involvement in administrative proceedings where they exercise their statutory right of public participation.

5. Provide further information on the practical application of the general provisions of the Convention.

The principle of public participation has been repeatedly challenged by the submission of legislative drafts aimed at limiting participation of the general public and NGOs and ensuring the expeditious implementation of potentially controversial investments such as Act on the Highway Bypass of the city of Plzen, Motorway Construction Act, Inland Navigation Act, etc.

6. Give relevant web site addresses, if available:

http://www.ucastverejnosti.cz/

ARTICLE 4

7. List legislative, regulatory and other measures that implement the provisions on access to environmental information in article 4.

(a) Access to information is provided in Act No. 123/1998 Coll. on the Right to Information on the Environment, as amended by Act No. 132/2000 Coll., as last amended by Act No. 6/2005 Coll.

(i) From this point of view, Act No. 123/1998 Coll. is fully compatible with the Convention, as, pursuant to section 2, para. (c), applicants are natural or legal persons that have submitted a request for information;

(ii) The updating of databases and information is regulated in section 10a of Act No. 123/1998. The copying of documents is regulated in section 10 of this Act;

(iii) See section 6 of Act No. 123/1998 Coll. on the Manner and Form of Disclosing Information.

In the request, the applicant may propose the form or manner of disclosing information. If the applicant does not determine the form or manner pursuant to paragraph 1, or if the relevant form or manner cannot be used for valid reasons, the manner and form of disclosing the information shall be chosen in order to achieve the objective of the request for information and to ensure its best possible use by the applicant. In case of doubt, the form and manner used by the applicant to submit the request shall preferentially be used. If the relevant entity discloses the information, at least partly, in a form other than requested, it must state the reasons for this procedure.

8. Describe any obstacles encountered in the implementation of any of the paragraphs of article 4.

1. The fact that there is no clear interpretation of cases where the requested information may be disclosed under the Act on the Right to Information (right of every person) or where it may be refused on the basis of the Construction Code (only a party to the proceedings has the right to information) is often abused in practice. Thus, in certain cases, officials take advantage of the

fact that neither the Code of Administrative Procedure nor the Construction Code – namely, the provisions of these laws providing for the consultation of files – were directly amended by Act No. 123/1998 Coll. (or Act No. 106/1999 Coll.). In order to prevent access to information, they neglect the provisions of the Act on the Right to Information on the Environment (1998), which give the applicant the right to consult the file (within the limits and scope of the right to environmental information), stating that the Code of Administrative Procedure of 1967 (or the Construction Code of 1971) excludes such rights, which are stipulated in laws adopted after the Code. Similarly, officials neglect Act No. 106/1999 Coll. This issue could be resolved through a clear definition of the relation between the Code of Administrative Procedure (and the Construction Code) and Act No. 123/1998 Coll.

The interpretation of what is and what is not information on the environment is another practical issue.

2. Insufficient legal protection under article 4, where even a court decision on the unlawful refusal of a request for information does not guarantee that the applicant will obtain access to the information that has been denied.

3. Court reviews are slow and ineffective.

Access to information should serve (amongst other things) as an instrument of public control of State power, an instrument for ensuring a healthy environment, and also as an incentive for citizens to pursue their own activities while protecting and creating a healthy environment.

In order to ensure the proper application of this instrument and for information disclosure to be meaningful, it is necessary for the applicant to obtain the information as soon as possible. Therefore, judicial protection must also be expeditious. Where the judge satisfies the claim after the expiry of six months (if the procedure is very swift: the average length is, for instance in Prague, between 28 and 36 months, with the ratio of decisions issued by the appellate court varying around 20 per cent; often, decisions are not final and cases are sent back to the lower instance for a final decision), this is often too late since the relevant information is no longer up to date (provided that the applicant actually receives the information after a successful court dispute). As some other proceedings have been closed in the meantime, irreversible harm may have been caused to the environment, or the health of hundreds of people already harmed as they continue to breathe toxic exhalations.

Success before the courts is meaningless! The applicant does not obtain any information as a result of his or her success in the case – the court merely cancels the decision by which the appellate body confirmed the rejection of the request for information (even in the case of a fictional decision, i.e. the inaction of an authority under Act No. 106/1999 Coll.) – and returns the case to the authority that refused to provide the information. For example, after losing a court dispute, the Capital City of Prague stated that it could no longer hold the proceedings on (non-) disclosure of information, as the deadline for providing the information (as of the submission of the request) had already expired; it argued that therefore it would be in violation of the law to provide the information after the expiry of the deadline (this case was governed by Act No. 106/1999 Coll.; however, officials may employ the same “argument” in relation to Act No. 123/1998 Coll.)

4. Absence of penalties: neither the officials nor the authority are penalized in any manner whatsoever for repeatedly and unlawfully denying the right to information on the environment (or information in general)!
The solution is to ensure an effective court review; when assessing the legality of a decision on the refusal of a request for information, the court must assess whether the stated reasons are in accordance with the law (i.e. the information shall not be provided) or in violation of the law (i.e. the information should have been provided) and, ultimately, issue a judgment in which it orders that the requested information be provided.

The idea that, according to the established case-law, the applicant will ultimately receive the information through the court could often dissuade officials from denying the right to such information. It would also be necessary to accelerate court proceedings; however, the situation has improved in this respect.

5. The applicant receives the information only if the official has no reason to refuse it (officials often refuse the information even without any specific reason, so that it does not become a custom to provide information). Other problems include lack of organization, unlawful decision-making on environmental matters, corruption and pressure from superiors. The practical unenforceability of the right to information means that, in cases where access to information could prevent sloppy official work or corruption, officials do not provide information and they need not worry that the applicant could enforce his or her right to it!

9. Provide further information on the practical application of the provisions on access to information, e.g. are there any statistics available on the number of requests made, the number of refusals and their reasons?

Statistics are kept on the basis of the procedures pursuant to Act No. 106/199 Coll. on Free Access to Information. Act No. 123/1998 Coll. does not contain a similar mechanism. Practical experience is monitored by NGOs, e.g. the Green Circle, Environmental Legal Service, etc.

10. Give relevant web site addresses, if available:

www.ucastverejnosti.cz
www.otevrete.cz

ARTICLE 5

11. List legislative, regulatory and other measures that implement the provisions on the collection and dissemination of environmental information in article 5.

(a) (i) The Report on the State of Environment, regional reports on the state of the environment and the Statistical Yearbook of the Environment are published annually. The underlying data is updated periodically. The form of the reports is modified annually and the sets of indicators are supplemented;

(ii) The provision of information is ensured by the Statistical Office, organizations of the MoE (e.g. the Czech Hydrometeorological Institute, the Czech Environment

Inspection and the State Environmental Fund), organizations of the Ministries of Agriculture, Interior, Transport, Industry, Trade and others, and from other central bodies, such as the State Office for Nuclear Safety and the State Health Institute);

(iii) The dissemination of environmental information during emergencies is regulated by Act No. 239/2000 Coll. on the Integrated Rescue System and on amendment to some laws, as amended, and Act No. 240/2000 Coll. on Crisis Management and on amendment to some laws (the Crisis Act), as amended by Act No. 320/2002 Coll. For the early warning of citizens, municipalities also employ text messages, broadcasting of regional electronic media and other means;

(b) All the relevant information in the following areas, including information systems, is published on the Internet:

- Environmental impact assessment (EIA) (http://www.ceu.cz/eia/is/)
- Strategic environmental assessment (SEA) (http://www.ceu.cz/EIA/SEA/UPD/Default.aspx);
- Integrated pollution prevention and control (IPPC) (http://www.ippc.cz/default.asp?zkr=1881);
- Waste management (http://ceho.vuv.cz/);
- European Environment Agency (EEA), Agenda 21 and others (http://www.ceu.cz/edu/);
- The Guide for Public Libraries and Information Services of Organizations of the MoE and Cooperating Organizations has been drawn up and published for individual users (http://www.env.cz/ais_risnews.nsf/vis-main?OpenFrameSet);

(c) Environmental legislation, plans and policies and other relevant documents are published occasionally;

(d) Reports on the state of the environment are discussed by the Government and Parliament and published annually. Reports are also published at the regional level and at the level of the big cities.

12. Describe any obstacles encountered in the implementation of any of the paragraphs of article 5.

A uniform environmental information system with required partial coverage of other areas (e.g. agriculture) is not yet operational. According to information provided by the Czech Environmental Institute, there are 37 environmental information systems which need to be interconnected and mutually coordinated.

Environmental information can be disclosed not only through publicly accessible lists or registers, but also through environmental information centres, environmental consultancy centres or other contact points for the general public. The number of these points is generally inadequate and the current centres are not evenly spread throughout the country; even the MoE itself does not have a suitable information centre for the general public.

Problems are found for instance in relation to the publication of Czech translations of EU environmental legislation, where substantial delays occur; at the present time, not all current EU legislation has been translated.

13. Provide further information on the practical application of the provisions on the collection and dissemination of environmental information in article 5, e.g. are there any statistics available on the information published?

The Czech Environmental Information Agency (CENIA) twinning project, which should contribute to ensure a high-quality flow of information between the holder, processor and user of environmental information, is currently being implemented. This project will be followed by the reorganization of the MoE's information base – the Czech Environmental Institute – and establishment of the Uniform Environmental Information System.

The support provided by the Human Resources Development Program of the European Social Fund and the Norwegian Financial Mechanism (EEA Financial Mechanism) will be partly used to extend the network of environmental education and public awareness centres and of environmental consultancy centres.

14. Give relevant web site addresses, if available:

http://www.env.cz/AIS/web.nsf/pages/poskytovani

ARTICLE 6

15. List legislative, regulatory and other measures that implement the provisions on public participation in decisions on specific activities in article 6.

Article 6 of the Convention covers public participation in decision-making on specific activities with a potentially significant environmental impact, e.g. decision-making on the proposed location of buildings, construction and activity of major facilities, and permitting placement of products on the market. The EIA process is the most typical decision-making process in which the requirements of article 6 must be fulfilled.

Pursuant to the law, a distinction must be made between consultative and "full" participation in decision-making on specific activities, where only full participation encompasses the right to contest the decision before the courts.

Consultative participation involves any natural or legal person without any limitation, and enables the general public to submit comments. Consultative participation takes place during the preparation of land-use plans (sections 17 to 31 of the Construction Code); EIA and SEA processes (Act No. 93/2004 Coll.); the discussion of safety programmes and emergency plans pursuant to Act No. 353/1999 Coll. on the prevention of major accidents; and the proceedings concerning the permission of individual forms of management of genetically modified organisms (GMOs) pursuant to the new Act on the Management of Genetically

Modified Organisms (Act No. 78/2004 Coll.), with regard to which Parliament has been discussing an amendment since the Fall of 2004.

16. Describe any obstacles encountered in the implementation of any of the paragraphs of article 6.

The above-mentioned Acts do not adequately stipulate the way in which public comments should be addressed. This could make, and often makes, public participation a mere formality, e.g. in the discussion of land-use plans. Pursuant to the Convention, all comments should be published and it should be stated whether they have been taken into account or why they were not.

There are also shortcomings in the early notification to the public and in the definition, identification and targeting of the public concerned by the administration. The public concerned is the one with an interest in the results of decision-making and which it can be assumed would participate in consultations and the subsequent permitting procedure, as appropriate. In practice, the failure to directly address the general public results in reduced public participation.

Article 6 of the Convention provides for two ways of informing the general public: by public notice or individually. A public notice involves the dissemination of specific information to the general public through the ordinary information media. For the purposes of this provision, a public notice is considered to be adequate if it is as a minimum specifically targeted to the affected public. The Convention requires that the notice be delivered to all members of the public concerned early in the decision-making process.

NGOs (rather than the public in general) benefit from <u>full participation</u> in the decision-making process, which is applicable in the following cases:

- Processes that are subject to section 70 of Act No. 114/1992 Coll. on the Protection of Nature and Landscapes (associations or their organizational units, whose main objective according to their constitution is nature conservation and landscape protection);
- Processes that are subject to section 23, para. 9, of Act No. 100/2001 Coll. on Environmental Impact Assessment, as amended (the "locally competent unit of an association or generally beneficial company, whose activities aim to protect public interests pursuant to special regulations");
- Proceedings for the issuing of integrated permits pursuant to Act No. 76/2002 Coll. on Integrated Prevention ("associations, generally beneficial companies, employers or economic interests unions, whose activities aim to enforce and protect professional or public interests pursuant to special regulations");
- Administrative proceedings held pursuant to Act No. 254/2001 Coll. on Water (associations, whose objective under their constitution is to protect the environment).

<u>The full participation of other entities</u> (individuals, municipalities, unorganized members of the public) is generally governed by section 14, para. 1, of the Code of Administrative Procedure. Thus, parties to the proceedings are all persons whose rights, duties or interests (on the basis of the ownership title) are or could be affected, or who declare their interest, unless this interest is disproved – provided, however, that there is no special regulation applicable to this issue. This is

particularly true for processes pursuant to the Construction Code and the Mining and Atomic Acts.

In proceedings on land use, construction, delimitation of the mining area and permitting mining activities, the circle of participants includes the investor, owners of the affected properties, the municipality and those who are stipulated as such in special laws (in general, section 70 of the Act on the Protection of Nature and Landscapes, No. 114/1992 Coll. or section 23, para. 9, of the Act on Environmental Impact Assessment).

In other proceedings, such as those on the establishment of protected deposit areas and those pursuant to the Atomic Act, the investor is the sole participant.

Legal shortcomings related to the Aarhus Convention

The fact that there is no uniform regulation for public participation in proceedings that have an impact on the environment allows for various interpretations regarding which law should be applied to the proceedings, thereby precluding public participation. For instance, forest management authorities rely on the absence of public participation requirements in the Forest Act to undertake in practice proceedings without public participation, even in cases where dozens of non-forest trees are to be felled and where the Act on the Protection of Nature and Landscapes should be applied.

Practical shortcoming in relation to consultative participation (EIA)

- Since they have no obligation to do so, parties submitting project proposals are not motivated to initiate an early dialogue with the general public;
- There are no guidelines or standards to ensure the quality of the relevant information;
- There are no clear procedures for addressing public comments;
- There is no control mechanism for supervising the way in which the public administration takes account of public comments;
- Adequately targeting the public concerned is neglected in practice.

Practical shortcomings in relation to full participation

The wording of the provisions on public participation gives discretion to the authorities to interpret the law regarding the involvement of associations in proceedings (e.g. on the basis of the interpretation of local competence or substantive specification of the application) and regarding which law should apply to the proceedings.

General requests by associations to be informed of all initiated proceedings with an impact on the environment are frequently neglected by the authorities, which conclude that, in the given proceedings, the interests of nature conservation and landscape protection would not be affected.

There are constant political efforts to limit public participation in decision-making.

Changes in the regulation of public participation adopted in 2003-2004

1. Following repeated attempts to substantially limit or entirely omit Section 70 of the Act on the Protection of Nature and Landscapes, an amendment was approved with effect from 28 April 2004 pursuant to which requests by associations for information on proceedings that have been initiated are valid only for one year and must be substantively and locally specified.

2. According to NGOs, the last and, unfortunately, successful direct attack against the principle of public participation in "environmentally meaningful" proceedings and procedures consisted in the approval of the new Act No. 78/2004 Coll. on the Management of Genetically Modified Organisms and Genetic Products. Not only does the Act entirely cancel the possible participation of associations in proceedings on permitting individual management of GMOs and the right of NGOs to nominate their representatives to the Czech Commission for the Management of GMOs (an advisory body to the MoE), but, departing from both the Act on the Right to Information on the Environment and EU Directive 2003/4/EC of 28 January 2003 on public access to environmental information, it even limits the right of the general public to information on the management of GMOs. The Government has already approved an amendment to the relevant law resolving the problem, which is currently being discussed by the Chamber of Deputies.

3. Act No. 22/2004 Coll. on Local Referendum entered into effect in 2004. It incorporated a fundamental change that ultimately limits public participation in the administration of public matters, namely the newly regulated electoral turnout required for the validity of a referendum. The participation of at least one half of the authorized persons registered on the lists for a given municipality, city ward or statutorily divided city is required for the validity of a local referendum. Particularly in large cities, but also in city wards, such a turnout is difficult to achieve.

4. In December 2003, a vast majority of the members of the Chamber of Deputies present voted to adopt the Act on the Construction of Motorways and High-Speed Highways, which was thereby forwarded for second reading. The authors anticipate that the Act will accelerate the construction of a network of motorways in the Czech Republic. To this end, public participation is supposed to be limited and the purchasing or expropriation of properties for line structures accelerated, in disregard with the constitutional rights of the owners of properties on the routes of the planned highways. Furthermore, the Draft Act declares certain motorways as public interest structures and stipulates their location, thereby avoiding a professional evaluation of the economically and environmentally most advantageous location. It is currently being discussed again in the Chamber of Deputies.

Related provisions

1. The amendment to section 43 of the Act on the Protection of Nature and Landscapes introduced a provision to the effect that all exemptions in specially protected areas are permitted by the Government. However, the proceedings should be held pursuant to the Code of Administrative Procedure where the Government is not an administrative body. Currently, the Government is considering a procedure whereby applications for an exemption would be submitted to the MoE and then probably decided upon through a resolution of the Government. However, there is no remedy against a Government resolution and it would thus obtain an

instrument to rule out all associations and to satisfy all proposals that were previously unacceptable.

2. Another Member of Parliament (MP) initiative limiting the standard of environmental protection, as well as, indirectly, public participation in decision-making, concerned the Water Act. The MPs excluded, *inter alia*, the application of the Act on the Protection of Nature and Landscapes to cases of "remedying damage to watercourses caused by floods", and thus substantially extended the number of cases that are subject to an exemption from the ban on creating barriers to the movement of fish and aquatic fauna in the modification of watercourses. The remedying of damage can cover a number of absolutely non-functional construction modifications of mountain watercourses, whose objective is merely to transfer State funds to construction companies.

3. The motion submitted by the MP and former Minister of Transport in the context of the discussion on the Inland Navigation Act was aimed at entirely repealing the relevant provisions of the Act on the Protection of Nature, i.e. the rules on nature conservation in national parks, reserves and protected landscape areas in relation to watercourses of international importance. Consequently, construction would in all cases automatically be given priority over nature conservation, and the right of the general public to be involved in the permitting process would also be substantially reduced. This was another example of a "custom made law", whose objective was to ensure a smooth permitting procedure for waterworks construction on the Elbe. The Chamber of Deputies approved this Draft, but, fortunately, the Senate canceled its worst sections with the support of the current Government.

4. The Chamber of Deputies has approved the Code of Administrative Procedure, which contains a number of provisions limiting public participation. The control of the performance of the public administration is reduced particularly by the proposed limitation of the scope of review of decisions within appellate proceedings. According to the draft, the appellate body should review the validity of the decision only within the scope of objections stated by the party to the proceedings in its appeal. This will fundamentally affect those persons who choose not to use a lawyer and to write the appeal themselves, where they fail to specify an error in the original decision (although apparent and fundamental). In this case, it would not be possible to cancel an incorrect decision and return the case for new discussion. Furthermore, in a number of cases, the authority will be able to exclude the suspensory effect of the appeal.

The possibility to deposit a document not only at the post office but also at the given authority itself (even where it is located at hundreds of kilometers from the place of residence of the party) should also be mentioned with respect to the limitations put on parties' rights. In practice, this will mean that a party might not ever have knowledge of a decision concerning him or her.

The right of the authority to stipulate that a group of parties "with identical interests" (as evaluated by the authority itself) shall have a joint representative in the proceedings is absolutely scandalous. The authority can thus prevent the individual parties from defending their rights themselves and in fact deprive them of full participation in the proceedings.

Recent drafts

From the point of view of public participation, the Draft Construction Code constitutes another disputable law, particularly with respect to the concept of a public representative for

participation in the approval of land-use documents. Pursuant to section 24, para. 2, the general public may participate in processes under the Construction Code (in fact, only with respect to land-use planning) through a public representative. Such a representative shall be authorized by at least one tenth of the inhabitants of a municipality with less than 2,000 inhabitants or at least 200 inhabitants of any other relevant municipality. By stipulating the minimum number of citizens, the Code limits public participation in proceedings held pursuant to it. While every person may lodge his or her comments, a decision will be made only on the basis of comments from the public representative and from a party or municipality. Thus, the land-use planning body will need to adopt a decision only on the basis of such comments. This decision is not made according to the Code of Administrative Procedure and is not subject to appeal; however, it may be subject to court review (section 25).

The Draft Construction Code also amends a number of other laws, where it reduces the possibility of public participation in the land-use planning process. For instance, the Clean Air Act should expressly stipulate that the consent of the air protection body regarding the location of a structure shall in no case be issued within administrative proceedings.

The updating of Act No. 100/2001 Coll. on Environmental Impact Assessment is the only positive example, since its amendment included SEA and public participation procedures.

17. Provide further information on the practical application of the provisions on public participation in decisions on specific activities in article 6, e.g. are there any statistics or other information available on public participation in decisions on specific activities or on decisions not to apply the provisions of this article to proposed activities serving national defence purposes.

A problem related to public participation has been encountered during the surveying of locations for deposits of spent nuclear fuel, where municipalities in whose jurisdiction surveying was to take place and the potential deposit built were excluded from the decision-making process.

18. Give relevant web site addresses, if available:

http://www.ceu.cz/eia/is/ (EIA).
http://www.ceu.cz/EIA/SEA/UPD/Default.aspx (SEA).
http://www.ippc.cz/default.asp?zkr=1881 (IPPC).

ARTICLE 7

19. List the appropriate practical and/or other provisions made for the public to participate during the preparation of plans and programmes relating to the environment. Describe the transposition of the relevant definitions in article 2 and the non-discrimination requirement in article 3, paragraph 9.

The requirement of the Convention is incorporated in the legislation through the Act on Environmental Impact Assessment.

20. Explain what opportunities there are for public participation in the preparation of policies relating to the environment.

At the present time, there are only few practical examples. The Act came into effect on 1 May 2004, but in practice SEA processes have been initiated since September 2004. The greatest number of notifications have understandably been submitted in the area of EIA for land-use planning. The greatest number of problems have also been encountered in this area.

21. Describe any obstacles encountered in the implementation of article 7.

From the standpoint of the SEA process and public participation, the part of the Act concerned with SEA is in accordance with the Convention and the public can participate in each step of the process. At the present time, the Act does not have any shortcomings from the point of view of public participation. It is now necessary to ensure that good practices are implemented in fulfilling its various provisions; see on this point the practical positive and negative examples described below (question 22).

22. Provide further information on the practical application of the provisions on public participation in decisions on specific activities in article 7.

From the point of view of access to information, it can be underscored that, in the opinion of NGOs, there is a lack of public control over the factual impact of approved projects on the environment and public health. Section 10h of the Act on Environmental Impact Assessment stipulates the duty of the entity submitting the project (strategic document) to provide for monitoring and analysis of the impact of approved project on the environment and public health. Unfortunately, the Act does not provide whether and in what manner this information will be provided to the public.

<u>Positive practical examples</u>

- Introduction of a central information system for EIA and its active implementation;
- Issuing methodology for SEA processes, including recommendations for public participation;
- Publication of notifications and active participation by the public and NGOs in submitting comments (e.g. SEA of the Updated Strategic Plan for the Capital City of Prague);
- Utilization of the media (press, radio and Internet) for public participation in the SEA process (e.g. SEA of the Waste Management Plan for the City of Prague);
- Holding of public discussions in the initial phases of the SEA process; beyond the framework of the Act, a suitable time and place for holding public discussions and adequate addressing of comments from citizens through response tables (e.g. SEA of the Waste Management Plan for the City of Prague);
- Cooperation between the entities submitting projects and SEA assessors, and the working groups formed by the professional public (e.g. SEA for the Sustainable Development Strategy of the Ústí Region), which goes beyond the framework of the Act.

Negative practical examples

- Unsuitable times for holding public meetings to suit officials and not the public;
- Unsuitable provision of information on the holding of public meetings (official notice board, Internet, distribution amongst the municipalities' offices, lack of identification of the affected public, no targeting of NGOs, utilization of the local press, etc.) which could lead to greater public interest;
- Poor collection and unsuitable addressing of comments from citizens, including failure to specify the responsibility for addressing comments (relevant particularly to land-use planning);
- Low public interest in participating in the SEA process (between three and 40 persons);
- Lack of knowledge of the public administration of techniques for public participation, and lack of professionalism;
- Lack of information on the advantages of public participation in the processes.

These examples of positive and negative practices were obtained on the basis of completed or ongoing SEA processes pursuant to Act No. 93/2004 Coll. Five documents are being assessed in the area of projects, 526 in the area of land-use planning, and two in the area of land-use planning documents for large territorial units.

23. Give relevant web site addresses, if available:

ARTICLE 8

24. Describe what efforts are made to promote effective public participation during the preparation by public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment. To the extent appropriate, describe the transposition of the relevant definitions in article 2 and the non-discrimination requirement in article 3, paragraph 9.

The Legislative Rules of the Government, which do not provide for any of the requirements of the Convention, deal with the procedure for participation in the preparation of laws, regulations and decrees. They specify the compulsory places (central State administrative bodies and other institutions) and deadlines for submitting comments, and the basic rules for addressing them. In relation to the participation of the public and NGOs pursuant to article 5, para. 3, the relevant body also sends the draft law for comments to other entities (professional associations, special interest groups of entrepreneurs or consumers, and the scientific and professional public) if they consider it useful. They do even not require the publication of draft laws, decrees and regulations on the Internet.

Only the environmental sector has issued an internal directive, MoE Directive No. 3/2001 on the Procedure in Legislative Practice, which calls for the publication of draft legislation on the website of the Ministry and the establishment of non-compulsory places to provide comments. The Directive also contains an invitation to submit comments on prepared drafts.

25. Describe any obstacles encountered in the implementation of article 8.

In the framework of the establishment of the action plan for the implementation of the State information policy, the Office of the Government has created a dynamic information library called eKLEP (eLLP- electronic library of the legislative process), which serves for the exchange of authorized and reliable information required for managing the circulation of documents. Unfortunately, this library is not currently supplied with up-to-date information and is not open to the public. Only authorized persons from the Ministries have access. There is a lack of political decisiveness on the question of whether to publish documents submitted to the Government for discussion or only documents that the Government has approved.

26. Provide further information on the practical application of the provisions on public participation in the field covered by article 8.

Draft solution: amendment to the legislative rules of the Government, including the following steps:

- Obligation to publish on a website designed for this purpose all draft legislation which the Ministry is currently preparing, with specification of the preparation phase (substantive intent, articled wording);
- Publication on a website designed for this purpose of all draft laws, regulations and decrees with information on the beginning of the external consultative procedure, as well as on the procedure for making comments;
- Introduction of a list of non-compulsory places for submitting comments, which will also include NGOs meeting certain criteria (professionalism or the fact that they represent a high number of entities);
- Establishment of the institute of collective comments for the general public;
- Introduction of rules for addressing comments submitted at non-compulsory places or in the form of collective comments, and publication of a protocol for addressing comments within a specific deadline on the Internet.

27. Give relevant web site addresses, if available:

http://kormoran.vlada.cz
www.vlada.cz

ARTICLE 9

28. List legislative, regulatory and other measures that implement the provisions on access to justice in article 9.

Access to justice in environmental matters entails in particular the possibility to challenge administrative acts or omissions before an independent and impartial body established by law. In the Czech Republic, these bodies consist exclusively of the courts, since no special bodies (e.g. environmental tribunals) have been established by law. Therefore, the area of access to justice in

environmental matters is part of the general regulation of administrative justice. On 1 January 2003, Act No. 150/2002 Coll. on the Code of Administrative Justice came into effect in this area.

With regard to the implementation of article 9 of the Convention, the key provisions concern, in addition to an action for inactivity, proceedings for an action against a decision of the administrative body under section 65 *et seq*. of the Code of Administrative Justice. The entitlement to sue is also granted to persons having the right to participate in proceedings before the administrative body under a special law; however, these proceedings are not concerned with the substantive, subjective rights of the person to whom the position of a party to the proceedings has been granted. A special entitlement to sue with the aim to protect the public interest is granted by law to the supreme State attorney (section 66, para. 2), and it also belongs to a person explicitly authorized under a special regulation or international agreement that is part of the law.

The institution of the ombudsman is also closely related to article 9, para. 5, of the Convention. It was created in Scandinavia and spread amongst others to the countries of Central and Eastern Europe. In the Czech Republic, the office of the ombudsman is regulated by Act No. 349/1999 Coll. on the Public Guardian of Rights (Ombudsman), as amended by Act No. 265/2001 Coll. Similarly to a majority of countries, this is a parliamentary institution: the Chamber of Deputies elects the Ombudsman and he or she reports to it. While the Ombudsman does not issue legally binding decisions, his or her activities (investigations of individual matters, right to demand a remedy, recommendations, etc.) and informal procedure (free-of-charge petitions, etc.) undoubtedly constitute a mechanism which tends to eliminate or reduce financial and other obstacles to access to justice according to article 9, para. 5, of the Convention.

In relation to the third pillar of the Convention, it is also important to note that citizens can address requests, proposals and complaints to the administrative authorities. The Charter of Fundamental Rights and Freedoms guarantees the right to petition, which is regulated in detail in Act No. 85/1990 Coll. on the Right to Petition. Complaints are also regulated in part under Government Decree No. 150/1958 of the Official Journal on dealing with complaints, notifications and queries of workers, which has not been repealed to date.

29. Describe any obstacles encountered in the implementation of any of the paragraphs of article 9.

Problems in the legislation with regard to the implementation of the Convention have been identified by NGOs as follows:

- Excessively restrictive interpretation of provisions on standing on the part of the bodies providing for court review;
- Difficulties in challenging substantive errors in administrative decisions;
- Unwillingness of the courts to recognize the suspensory effect of legal actions;
- Court reviews do not lead to the effective remedy of errors.

<u>Restrictive interpretation of standing</u>

The courts usually state that the contested decision must infringe on the subjective rights of the plaintiff in order to meet the required conditions for bringing an action. Such an infringement

may frequently not be established for a civic association, as it can usually successfully demonstrate only an infringement of its procedural rights. A broader interpretation of the conditions for bringing an action is undoubtedly in accordance with article 9, para. 3, of the Convention which has already become part of the internal legal order. This article stipulates that when acts or omissions of the public authorities contravene provisions of the national law relating to the environment, members of the public must have access to administrative or judicial procedures. This undoubtedly also means contravention of substantive provisions on environmental protection.

In addition, the Constitutional Court has ruled that the right to a healthy environment mentioned in article 35, para. 1, of the Charter is the constitutionally guaranteed right of everyone and can thereby be enforced. However, judicial practice frequently diverges from this rule, since the courts have adopted unlawful and unconstitutional limitations on the entitlement to sue and on court review of alleged violations of the plaintiff's subjective rights

Substantive errors in administrative decisions

The limited access to court review mentioned in the previous paragraph prevents the substantive review of administrative decisions in cases brought by associations whose objective is the protection of nature and landscapes. The participation of associations in proceedings is regulated in relation to provisions for environmental protection, with preventative action as the most effective method. The possibility of requesting a substantive review for associations is also derived from the constitutionally guaranteed principle that all the participants in proceedings have equal rights before the courts.

Unwillingness of the courts to recognize the suspensory effect of administrative actions

The provisions of section 73 of the Code of Administrative Justice presupposes the fulfilling of such vaguely formulated conditions that, in each individual case, it is always possible to find a reason for not recognizing the suspensory effect. In particular, the condition of the existence of irreparable damage to the plaintiff for granting suspensory effect can, according to many lawyers, be met only through fatal consequences, i.e. death.

In order to fulfil the requirements of the Convention, the easiest approach would be to establish suspensory effect as an initial measure for an action, provided that the presiding judge could reject the possibility of suspensory effect under certain conditions.

Court reviews do not lead to effective remedies

The requirement found in article 9, para. 4, of the Convention according to which the review of a decision should lead to an adequate and effective remedy is not met in practice. Even in cases where the plaintiff is successful, the review does not have an effect in practice. The disproportionately long court proceedings, and especially the unrecognized suspensory effect of the action, mean that a successful outcome of the court action is useless to the plaintiff because, for instance, the construction has long been completed and the State administrative authorities are not willing to put the judgement into effect.

In connection to this, section 38, para. 3, of the Code of Administrative Justice, which states that a proposal for issuing a preliminary injunction is not permissible if suspensory effect can be granted for the plaintiff, is perplexing. If the rules for granting suspensory effect are imprecisely defined, this means that the right to issue a preliminary injunction is also simultaneously revoked for the participants, where, similarly to suspensory effect, this could provide effective protection for the rights of the plaintiff.

The right of access to justice is thus defined only in general terms in the Code of Administrative Justice, according to which an action may be lodged by a person who states that his or her rights have been infringed upon by a official decision "whereby his rights or duties are established, changed, cancelled or determined with binding effect", as well as by a party to administrative proceedings that states that its rights have been violated by the procedure of the administrative authority in a manner that could lead to an unlawful decision. This is interpreted in such a way that the former definition should apply to applicants (e.g. investors) concerning whose rights a decision is made "directly", while the latter applies to other parties, including associations. Thus, theoretically, the concept remains according to which associations can successfully lodge an action only if their procedural rights have been violated in an administrative proceeding in which they participated in a manner such that this could, according to the court, cause an unlawful decision. Court practice is not uniform; there exist both cases where the courts attempt to reject the action of the association "at any cost" and do not consider its merits, as well as judgements on such actions that are concerned with the merits of the issue and interpret broadly the conditions for entitlement to sue.

The provisions of section 66 of the Code of Administrative Justice on the possibility for lodging an action in the public interest remain reserved exclusively for the supreme State attorney. This situation should change when the Convention comes into effect.

The formulation of the conditions for the suspensory effect of an action remain an unambiguous inadequacy and factual obstacle to effective protection of public interests before the courts, since these conditions can basically not be fulfilled if the plaintiff is an association; in combination with the standard multi-year duration of proceedings, this means that a decision is frequently cancelled at a time where the infringement has already occurred.

30. Provide further information on the practical application of the provisions on access to justice pursuant to article 9, e.g. are there any statistics available on environmental justice and are there any assistance mechanisms to remove or reduce financial and other barriers to access to justice?

The main problem regarding legal protection in environmental matters (as well as in general) remains the slow pace of the courts, the length for resolving individual causes and the high percentage of decisions that are issued at the second appellate level.

The number of criminal offences in the area of the environment, which exhibits an increasing trend, is monitored statistically. An amendment to the Criminal Code was adopted in 2002 (Act No. 134 of 15 March 2002, amending Act No. 140/1961 Coll., the Criminal Code) which defines more precisely the elements of criminal offences. Up-to-date statistics are not available.

The activities of the Czech Environment Inspection can also be used as an indicator.

Activities of CEI in 1993, 1995, ±

Type of activity	1993	1996	1998	1999	2001	2002	2003
Number of inspections, revisions and controls	10,427	14,505	15,182	16,125	19,454	17,774	18,359
Decision-making in administrative proceedings	7,808	10,940	9,192	7,380	9,375	7,971	3,186
Standpoints for other State administrative bodies	6,586	7,336	7,443	8,259	9,592	10,264	10,845
Participation in dealing with accidents	320	171	175	112	104	252	159
Dealing with complaints, notifications and queries	421	628	737	712	764	864	1 253

31. Give relevant web site addresses, if available:

www.env.cz
www.cizp.cz

32. If appropriate, indicate how the implementation of the Convention contributes to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being.

The process of ratification of the Convention, and the related amendments brought to national legislation, have undoubtedly contributed to meeting the objectives of the Convention. Nonetheless, it is necessary to continue to carefully monitor actual practice in implementing environmental democracy.

Conclusions and recommendations

1. Establish a mechanism for monitoring the implementation of the Convention with participation by all affected parties (sectors and special-interest groups).
2. Create an informal flow of information from NGOs towards the MoE on weaknesses, failures and misinterpretations of the laws, as well as on good practices, with dissemination of this information to the relevant branches (legislative, methodical directing of the public administration, nature conservation, computer science, etc.). The Green Circle could potentially play a role in providing information from NGOs.

3. Greater involvement of the MoE in interpreting laws and in methodical leadership for the implementation of articles 4, 5, 6 and 7, of the Convention in the Government bulletins.
4. Improve the active provision of data pursuant to article 5 of the Convention.
5. Implement the principles of public participation more effectively (timeliness, comprehensibility, taking into account of comments) by using the potential of methodical leadership and training of public administration employees.
6. Open the process of creation of laws to the public, e.g. through amendment of the Legislative Rules of the Government.
7. Improve legal protection, e.g. through the training of judges. In cooperation with the MoE and Ministry of Justice, environmental issues can be included in the training and on-going education of judges.
8. Analyse the impacts of public administration reform on the quality and impartiality of decision-making in environmental matters, in particular inadequacies of the interconnections between local government and the State administration, the role of MoE as the appellate body and the preparation of measures for remedies.