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Case ACCC/C/2010/50, Czech Republic

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Answers to the questions of the Compliance Committee

The communicant hereby answers the questions of the Compliance Committee, which were annexed to the letter of the Secretary to the Aarhus Convention Compliance Committee, dated 2 May 2011.

Question 1:
To the extent possible, please provide the Committee with excerpts of court decisions in support of your allegations

As agreed at the meeting of the Compliance Committee on 12 April 2011, this answer includes and summarizes also the excerpts of court decisions quoted in the communication and in the statement of the communicant of 14 March 2011, together with the new ones.

ad part 1.3 - Position of the Aarhus Convention in the Czech legal system

Paragraph 20 of the communication mentions the fact that while the Czech Courts referred to the Aarhus Convention in some of their decisions, they mostly came to the conclusion, in most of them, that the Convention in general, or its article 9, are cannot be directly applicable, as they are not "sufficiently specific" and it "only constitutes general obligations for the national authorities". The communicant quotes following court decisions with that regard as examples:

Decision of the Constitutional Court of 2 September 2010, no. I ÚS 2660/08[1]
Concerning the opinion of the complainant on the direct applicability of the Aarhus Convention,

[1] Translation by the communicant. The whole text of the decision is available at http://nalus.usoud.cz/Search/Search.aspx (case number must be filled-in). Extract from the decision with relevant parts highlighted is attached.

the Constitutional Courts judges that wording of this convention, which in its article 1 assumes continual fulfilling of its generally formulated goals by the parties, makes it impossible to find out that that this Convention could be a direct source of any rights or duties of the citizens, the less so of fundamental rights and freedoms. The Convention contains commitments of the parties, which are of general nature and are continually realized by the member states.

Decision of the SAC of 27 March 2010, no. 2 As 12/2006-111[2]
According to article 10 of the Constitution, international treaties ratified by the Parliament which are binding for the Czech Republic shall be applied prior to the provisions of national regulations. For this principle to apply, the respective international treaty must be "self-executing", i.e. specific enough so that it could be applied without implementing provisions of national law. The Aarhus Convention, however, is "self executing" and natural nor legal persons cannot derive their rights directly from it, without national implementing legislation.

Decision of the SAC of 24 January 2007, no 3 Ao 2/2007-42[3]
The Supreme Administrative Court was considering the Aarhus Convention, namely article 1, article 3 paragraphs 1 and 4, article 7 and article 9 paragraph 2 and came to the conclusion that it is not possible to apply them directly and prior to the national regulations. The applicants is therefore mistaken, when it tries to base its standing to sue on article 2 paragraph 5 of the Convention.

See also ***Decision of SAC 3 March 2011, no. 1 As 7/2011 – 407***, quoted below in answer on question 2.

ad part 2.1 - Limited standing of natural persons (individuals) with regard to the land use and building permits

The communicant alleges that part of the public concerned (namely the individuals who are affected or likely to be affected by, or have an interest in, the environmental decision-making, but do not have "a real right to this land or the structure", do not have granted the right to participate in the decision making procedures subsequent to EIA process and, therefore they also cannot ask for the court review of the decisions.

The communicant adds that it is theoretically possible for the individual, despite he explicitly excluded from the scope of the participants of specific administrative procedure, to file a lawsuit based on Section 65 paragraph 1 of the Act No 150/2002 Coll., Code of Administrative Justice (asserting that his rights or obligations were "created, changed, nullified or bindingly determined by the act" – see paragraph 8 of the communications for more details). However, this is very rare in practice, because the whole concept of administrative judiciary is based on the concept of subsidiarity of the court review with respect to administrative appeal, which is accessible only for the parties of the administrative procedures (there are practical problems for "non-parties" wishing to file the lawsuit concerning the time-limits, duty to exhaust the administrative remedies, etc.)

[2] Translation by the communicant. The whole text of the decision is available at http://www.nssoud.cz/files/SOUDNI_VYKON/2006/0012_2As__0600111A_prevedeno.pdf .
[3] Translation by the communicant. The whole text of the decision is available at http://www.nssoud.cz/files/SOUDNI_VYKON/2007/0002_3Ao__0700042A_prevedeno.pdf.

Moreover, it seems that in practice, at least with respect to the procedures and decisions according to the Building Code (land – use and building permits) the courts tend to interpret the conditions for the status of the party to administrative procedure and for standing to sue as being met by identical scope of persons. I

In the ***Decision of 2 March 2005, no. 2 As 1/2005-62***[4], the Supreme Administrative Court (hereinafter also "SAC") ruled that "*the scope of the parties of the building procedure is defined by Section 59 of the Building Code. In paragraph 4 of this Section, it is explicitly declared that tenants of flats and non-residential premises are not parties to the building procedures. ... Therefore, the plaintiff (tenant) could not have status of the party to the final building approval and did not have standing to sue the decision.*"

Next to that, SAC explicitly stated in the ***Decision of July 2009, no. 1 Ao 1/2009-120*** (quoted by the Party Concerned in paragraph 44 of its submission of 14 March 2011), that "*the tenant of real property on the area regulated by the land use plan does not have standing to sue for abolishing of the respective land use plan or its part,"* because the rights of the tenants "*are not related directly to the area (land) in question, but to the person (owner) who enabled them to use it on the base of contract*". Therefore, despite this decision on general level mentioned that the courts must follow the principles of the Aarhus Convention, it at the same time confirmed the restrictive interpretation of the term "infringement of rights" with respect to the procedures according to the Building Code. Although the decision directly concerns judicial review of the land use plans, the conclusions on the position of tenants apply accordingly with respect to access to court review of land – use and building permits.

The communicant therefore concludes that in practice, it is very rare that subjects explicitly excluded from the scope of the participants of specific administrative procedure, would file a lawsuit against final decision issued in such procedure. Therefore, the communicant is not able to provide the Committee with more court decision with respect to part 2. of the communication.

ad part 2.2 - Limited scope of the judicial review of the NGOs lawsuits

In part 2.2 of the communication, the communicant deals with the problem of the doctrine developed by the Czech courts, according to which, the NGOs promoting environmental protection and meeting the requirements of national law for participation in the decision making procedures under article 6, can only challenge procedural legality of the decisions, act or omissions subject to the provisions of article 6 (related to their procedural rights), while they cannot challenge the substantive legality of such decisions, act or omissions. With that respect, the communicant quotes bellow a number of decisions of the Czech courts illustrating these allegations:

Decision of the SAC of 29 July 2004, no. 7 A 139/2001-67[5]
As the applicant is a civic association (NGO), promoting environmental protection, and not a holder of substantive rights, which were affected by the administrative decision-making, it could only challenge violation of its procedural rights in the lawsuit.

[4] Translation by the communicant. The whole text of the decision is available at http://www.nssoud.cz/files/SOUDNI_VYKON/2005/0001_2As__0500062A_prevedeno.pdf.
[5] Translation by the communicant. The whole text of the decision is available at http://www.nssoud.cz/files/SOUDNI_VYKON/2001/0139_7A___0100067A_prevedeno.pdf .

Decision of the SAC of 30 January 2008, no. 8 As 31/2006-78[6]
The right to sue of the applicant is based on its procedural rights. Therefore, the applicant can only challenge the legality of the administrative decision with respect to alleged violation of its procedural rights.

Decision of the SAC of 16 July 2008, no. 8 As 35/2007-92[7]
Environmental NGOs can only successfully claim for judicial protection against infringements of their own, i.e. procedural rights. Therefore it cannot claim infringement of the right for favorable environment (neither it's own nor for the members).

Decision of the SAC of 11 December 2008, no. 8 As 31/2008-72[8]
The applicant has also challenged the shortcomings concerning not carrying out the EIA screening procedure. However, with that regard, it only argues with the conclusions of the administrative organ and the district court. It is not possible to find out, that this alleged breach of law would relate to violation of the procedural rights of the applicant on the scope of the administrative procedure.

Decision of the SAC of 11 December 2008, no. 6 As 18/2008-107[9]
The applicant can ask court for protection against alleged violation of its own rights. If the applicant challenges violation of substantive rights, i.e. the content of the decision form the perspective of validity of the reasons for permitting the logging, suitability of a project alternative or breaching the duty of carrying out EIA, the SAC refers to its above quoted case-law.

Decision of the SAC of 31 March 2009, no. 8 As 10/2009-58[10]
The Supreme Administrative Court agrees also with the conclusions of the district court concerning the scope of the right of the applicant for access to court.... This right is based on the rights the applicant had in the procedure before the administrative authority. Therefore, the applicant, as a civic association, can claim illegality of the administrative decision only with respect to alleged violation of its procedural rights.... If the applicant challenges the violation of substantive rights, i.e. matters concerning the content of the decision from the perspective of breaching the duty of carrying out EIA, including the assessment of the impacts on the NATURA 2000 localities, or absence of biological assessment, the Supreme Administrative Court refers to its above findings concerning the scope of the right of the applicant for access to court.

Decision of the SAC of 22 July 2009, no. 5 As 5As 53/2008-243[11]
The environmental NGO, as a party to the administrative procedure, can only raise objections which are related to the protection of nature and landscape. Protection against noise falls under

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[6] Translation by the communicant. The whole text of the decision is available at http://www.nssoud.cz/files/SOUDNI_VYKON/2008/0031_8As__0800072A_prevedeno.pdf.
[7] Translation by the communicant. The whole text of the decision is available at http://www.nssoud.cz/files/SOUDNI_VYKON/2007/0035_8As__0700092A_prevedeno.pdf
[8] Translation by the communicant. The whole text of the decision is available at http://www.nssoud.cz/files/SOUDNI_VYKON/2008/0031_8As__0800072A_prevedeno.pdf.
[9] Translation by the communicant. The whole text of the decision is available at http://www.nssoud.cz/files/SOUDNI_VYKON/2008/0018_6As__0800107A_prevedeno.pdf.
[10] Translation by the communicant. The whole text of the decision is available at. http://www.nssoud.cz/files/SOUDNI_VYKON/2009/0010_8As__0900058A_prevedeno.pdf
[11] Translation by the communicant. The whole text of the decision is available at http://www.nssoud.cz/files/SOUDNI_VYKON/2008/0053_5As__0800243A_prevedeno.pdf .

the competence of public health authority; therefore, it does not concern the protection of nature and landscape, which the NGO can intervene in.

ad part 2.3 - No right to review omissions of administrative authorities in case they fail to start the procedure

The communicant claims in this part that according to the Czech law and its court interpretation, no person can initiate a review procedure at in situations when the authority fails to start the procedure *ex officio*, under occasions when a law asks it to do so. This is declared e.g. by following decisions of the SAC:

Decision of the SAC of 26 June 2007, no. 4 Ans 10/2006-59[12]
The court protection against inaction of an administrative authority is limited on cases when the administrative authority is obliged to issue an administrative decision or a certificate in the defined time-limit... It is not possible to file a lawsuit against inaction in cases when there is only a suggestion to start administrative proceeding ex officio, but not a request (application) starting the administrative proceeding. it is also not possible to claim that the court orders the administrative authority to start any proceedings; it can only order to issue a decision in the administrative proceeding which has already started.

Decision of the SAC of 29 May 2008, no. 2 Ans 2/2008-57[13]
It is not possible to ask for court protection in case of any kind of inaction of an administrative authority, but only when there is a duty of the authority to issue a decision in the (running) administrative proceedings or a certificate... If the administrative authority only receives a suggestion to start administrative procedure ex officio, there is no duty of the administrative authority to issue a decision.

ad part 3.1 - Some acts and omissions are completely excluded from the possibility of the court review

Please see the decisions quoted with respect to answers on questions 3. and 4.

ad part 3.2 - Limited access to judicial review of the land use plans

The communicant alleges in this part that despite judicial review of the land use plans is a very efficient legal tool of environmental protection, the conditions for access to court with this respect is too restrictive, considering the requirements of the Aarhus Convention.

With respect to the individuals whose rights can be affected by the land use plan, the most important court decision is the the ***Decision of the SAC Extended Senate of July 2009, no. 1 Ao 1/2009-120*** (quoted by the Party Concerned in paragraph 44 of its submission of 14 March 2011 and above with respect to section 2.1 of the communication, according to which "*the tenant of real property on the area regulated by the land use plan does not have standing to sue for abolishing of the respective land use plan or its part.*"

[12] Translation by the communicant. The whole text of the decision is available at http://www.nssoud.cz/files/SOUDNI_VYKON/2006/0010_4Ans_0600059A_prevedeno.pdf
[13] Translation by the communicant. The whole text of the decision is available at http://www.nssoud.cz/files/SOUDNI_VYKON/2008/0002_2Ans_0800057A_prevedeno.pdf

With regard to the environmental NGOs, the SAC repeatedly dismissed their lawsuits against land use plans. Following decisions can be quoted:

Decision of the SAC of 28 May 2009, no. 6 Ao 3/2007-116[14]
It is impossible that a subject who cannot be infringed in its rights by an adoption of an act of general measure (a land use plan) would have standing to sue it. The infringement of rights must be directly related to adoption of the land use plan. It is not possible that an NGO could meet this requirement.

Decision of the SAC of 13 August 2009, no. 9 Ao 1/2008-34[15]
An environmental NGO is not subject to substantive rights, infringement of which (by adoption of the land use plan) it could assert... Therefore, the court concluded that the NGO does not have standing to sue the land use plan as an act of general measure.

As rightly mentioned in paragraph 45 of the submissions of the Party concerned dated 14 March 2011, SAC conferred to an environmental NGO a right to sue an "act of general measure", other than land use plan (concretely, it concerned the rules for visiting the National Park of Sumava) by its decision of 13 October 2010, no. 6 Ao 5/20010 – 43. The court has even derived the standing of the NGO directly from the Aarhus Convention.

Despite of that, the SAC seems not to apply the logic of the latter decision in cases concerning review of the land use plans and on the contrary, it keeps its restrictive interpretation of standing requirements with that respect. In the ***Decision of 27 January 2011, no. 7 Ao 7/2010 – 133***,[16] the SAC ruled that "*it is necessary to insist on the requirement of infringement of right by the act of general measure which is subject to review... Only a person who has direct relation to the area, regulated by the land use plan, can be infringement on his right by adoption of the plan. Therefore, an environmental NGO is not entitled to file a lawsuit against the land use plan.*

ad part 4.1 - Restrictive limits for granting the injunctive relief

In part 4.1, the communicant alleges that it is very difficult to meet the legal conditions for granting injunctive relief (especially for the NGOs) and therefore, it the judicial protection in environmental matters is often inefficient. Following court decisions can be mentioned with that respect:

Decision of the District court in Plzeň of 5 November 2004, no. 57 Ca 14/2004 (published in the collection of administrative court decisions issued by the SAC under no. 455/2004)
The nature of the land use permit excludes, on the general level, to cause the "irreparable harm" as supposed by Section 73 paragraph 2 of the Code of Administrative Justice, because such decision does not constitute the right of the investor to start with building of the project.

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[14] Translation by the communicant. The whole text of the decision is available at http://www.nssoud.cz/files/SOUDNI_VYKON/2007/0003_6Ao__0700116A_prevedeno.pdf
[15] Translation by the communicant. The whole text of the decision is available at http://www.nssoud.cz/files/SOUDNI_VYKON/2008/0001_9Ao__0800034A_prevedeno.pdf
[16] Translation by the communicant. The whole text of the decision is available at http://www.nssoud.cz/files/SOUDNI_VYKON/2010/0007_7Ao__100_20110311110822_prevedeno.pdf

This decision was subsequently quoted in many decisions of regional courts (including decisions concerning requests of the NGOs, in which the courts in some cases combined the above quoted argument with the assertion that NGOs can never by hurt in their substantive right, namely right for favorable environment (e.g ***Decision of the District court in Brno of 21 December 2009, , no. 10Ca 299/2009 –*** *"meeting the requirement, that the execution or other legal consequences of the decision would mean irreparable harm for the plaintiff, is not possible for the NGO, which is normally not a subject of any substantive right, neither right for favorable environment"*.

Some courts continued to apply the above argumentation, namely with respect to the land use permits, also after the decisions of the SAC, quoted in paragraphs 69 and 75 of the communication (e.g. ***Decision of the District court in Brno of 23 January 2008, , no. 31 Ca 156/2007, Decision of the District court in Usti nad Labem of 25 January 2010, , no. 15 Ca 91/2008***). In other cases, the courts abandoned the argument that it is virtually impossible for the public concerned (the NGOs) to meet the requirements for granting the injunctive relief. However, in practice, it is still very rare that the injunctive relief is issued. Typical, repeatedly used argumentation contained in decisions refusing the requests for injunctive relieves, is that "*granting the injunctive relief would in practice mean stopping of the construction works, which would cause "delays in the timetable of the (highway) constructions", extra costs with serious impacts on public budgets" and would influence the protection of life and health of the inhabitants of the affected municipalities. Therefore, the court concluded, the injunctive relief would be in conflict with the public interest*" (e.g. ***Decision of the City court of Prague dated 3 July 2007, ref. no. 6 Ca 7/2008***).

ad part 4.2 - EIA screening decisions and "final opinions" are excluded from the possibility of direct court review

In this part the communicant referred to the decisions of the SAC, which in a number of cases refused the complaints of both individuals and NGOs, who originally asked district courts to directly review "EIA statements"

For example, in the **Decision of 28 August 2007, no. 1 As 13/2007-63**,[17] the SAC specifically stated that ""*Article. 9 of the Aarhus Convention shall not be interpreted in a way that it requires separate review of any decision, act or omission in the scope of permitting the activities subject to Article 6 in a separate review procedure*" and that "*it is sufficient if such acts are subject to the review procedure at the stage when they can infringe the subjective rights of the affected persons.. In accordance with the constant case law of the European Court of Justice (see e.g. the decision of 6 October 1982 in case C238/81, CILIFT), if the interpretation of the EC law is completely apparent and clear, there is no duty of the court to submit a preliminary question. In this respective case, it is so, because... the EIA Directive states that "Member States shall determine at what stage the decisions, acts or omissions may be challenged"... Submitting of the preliminary question by the Supreme Administrative Court is therefore not necessary*."

[17] Translation by the communicant. The whole text of the decision is available at http://www.nssoud.cz/files/SOUDNI_VYKON/2007/0013_1As__0700063A_prevedeno.pdf Similar opinion was expressed by the SAC in the decisions dated 14 June 2006, ref. no.2 As 59/2005-136, dated 14 June 2007, ref. no.1 As 39/2006-55, dated 26 June 2007, ref. no.4 As 70/2006-72, dated 28 June 2007, ref. no.5 As 53/2006-46, or dated 22 February 2008, ref. no.6 As 52/2006-155.

Also the screening decisions shall be, according to the SAC, subject to judicial review only together with the subsequent development consents (permits) for the respective activities (investments). The SAC has expressed this opinion e.g. in the ***Decision of 5 September 2008, no. 2 As 68/2007-50***: "*Article 9 of the Convention does not require that any of the decisions, acts and omissions according to the provisions of article 6 is subject to judicial review in a separate procedure. ... It is therefore in compliance with the Convention, if the screening decisions are subject to the judicial review together with the final permit.*" [18]

Question 2:

With respect to article 9, paragraph 2 of the Convention, and relating to the rights of NGOs, please provide, if possible, more recent court decisions than the 2010 decision mentioned in paragraph 45 of the submissions of the Party concerned (dated 14 March 2011) ... Especially clarify whether any recent court decisions apply the obiter dictum in the judgment of the 2009 decision of the Supreme Administrative Court of 21 July 2009.

Answer:

The communicant is not aware of any recent court decision, which would apply the obiter dictum in the judgment of the 2009 decision of the SAC of 21 July 2009, no. 1 Ao 1/2009 -120, related to the application of Article 9 of the Aarhus Convention, in the same or similar way as the decision of SAC of 13 October 2010, no. 6 Ao 5/2010 – 43 – i.e., deriving standing to sue for a member of public concerned (an NGO) directly from the Aarhus Convention. It is possible to mention ***Decision of SAC of 15 December 2010, no. 7 Ao 6/2010 – 44***, which, as well as the previously mentioned decision, dealt with the rules for visiting the National Park of Sumava as an "act of general measure". In this decision, the SAC stated that "*taking in mind the fact that the rules are limiting possibility of entrance of any person into some parts of the national park, any person is affected by this act in their subjective rights*". This approach, not followd by the SAC in any other kind of cases, is in accordance with the principles of the Aarhus Convention, despite the convention is not explicitly mentioned in the latter decicion.

On the other hand, in the ***Decision of 3 March 2011, no. 1 As 7/2011 – 407,***[19] the SAC referred to and confirmed its above mentioned older case law, concerning the general position of the Aarhus Convention in the Czech legislation, by stating that the Aarhus Convention "*is not an "self-executing and directly applicable treaty*", and therefore, "*standing of the NGOs cannot be derived directly from the Aarhus Convention*".

Question 3:

Please substitute your allegations in paragraph 50 of your communication concerning noise exceptions.

In paragraph 50, the communicant alleges that the public concerned (namely the affected individuals) cannot participate in the administrative procedure concerning granting "noise exceptions" – decisions which authorize an operator of a source of noise which is exceeding the

[18] Translation by the communicant. The whole text of the decision is available at http://www.nssoud.cz/files/SOUDNI_VYKON/2007/0068_2As__0700050A_prevedeno.pdf.

[19] Translation by the communicant. The whole text of the decision is available at http://www.nssoud.cz/files/SOUDNI_VYKON/2011/0007_1As__110_20110322031147_prevedeno.pdf

maximum limits to continue with the operations – and also does not have access to court review of such decisions.

This situation is based on the explicit legal regulation in Act No. 258/2000 Coll., Health Protection Act. According to Section 31 paragraph 1 of this Act, the operator can use sources of noise or vibrations, except the airports, which "*from important reasons cannot meet the hygienic limits*", if he is granted a permission by the public health authority. The authority shall issue the permission, if the operator "*proves that the noise or vibrations will be limited on reasonably attainable amount*", *reasonably attainable amount*" means "*proportion between the costs of the noise-protection measures and the extent in which they would diminish the burden of affected persons, taking in mind also the number of the affected persons*." According to Section 94 paragraph 2 of the Health Protection Act, "*the only party to the administrative procedure according to* (i.a) *section 31 paragraph 1 of this act shall be the applicant"* (i.e. the operator).

The communicant is aware of only one case in which the affected person asked the court to review the noise exception (after unsuccessfully asking for the position of a party to the administrative procedure). The City Court of Prague has refused the lawsuit by the ***Decision of 26 September 2007, no. 12 Ca 47/2006***, stating that as the plaintiff was not a party to the administrative procedure, she also could not have standing to sue the decision (noise exception). The SAC has canceled this decision of the City Court of Prague by ***Decision of 29 April 2009, no. 4 Ads 79/2008-61,***[20] for formal mistakes. However, the SAC did not express clear opinion whether the plaintiff had standing to sue or not; at the same time, the SAC declared that fat that the operator is the only party to the administrative procedure is not contrary to the constitutional rights of the affected persons. As far as the communicant knows, the plaintiff did not continue with the case.

Question 4:
Please substitute your allegations in paragraph 51 of your communication concerning the Nuclear Act.

In paragraph, the communicant alleges, similarly to the previous point, that the public concerned cannot participate in the administrative procedures concerning permits issued according to the Act no.18/1997 Coll., "On Peaceful Exploitation of Nuclear Energy (Nuclear Act) – and also does not have access to court review of such decisions.

This situation is based on the explicit legal regulation in Section 14 paragraph 1 of the Nuclear Act, which stipulates that "*the operator shall be the only party to the procedures according to this act*." The list of permits issued according to the Nuclear Act is contained in Section 9 of the Nuclear Act and includes e.g. approval of the State Agency for Nuclear Safety with building or starting operations of nuclear facilities and of dumping grounds of nuclear waste.

There is a number of court decisions, including very recent ones, approving the interpretation that public concerned (environmental NGOs) cannot participate in the procedures according to the Nuclear Act and do not have standing to sue the permits issued in such procedures (and that they cannot derive such right from the Aarhus Convention). Following decisions can be quoted:

[20] Translation by the communicant. The whole text of the decision is available at http://www.nssoud.cz/files/SOUDNI_VYKON/2008/0079_4Ads_0800061A_prevedeno.pdf

The courts, including the SAC, concluded that as NGOs can participate in other decision-making procedures which must take place before starting the operations, it is not necessary that they would also have right to participate in the procedures according to the Nuclear Act and access to the court review of their outcomes.

Decision of the SAC of 9 October 2007, no. 2 As 13/2006-110[21]
"To start with operating of a nuclear power plant, many of administrative decisions according to other acts than the Nuclear Act must be issued... The procedures according to the Nuclear Act are concentrated on ensure safety of using the nuclear energy. .. Therefore, it is not necessary, neither taking in mind the requirements of the Aarhus Convention, that the public concerned should necessarily have right to participate in all such procedures"

Decision of the Constitutional Court of 2 September 2010, no. I ÚS 2660/08[22]
"NGOs cannot claim a right for a favorable environment, as it can self-evidently belong only to natural, not legal persons... In the administrative procedure concerning permission for starting the operations in the nuclear power plant, rights of an environmental NGO for protection of life, privacy or favorable environment could not be affected, because these rights cannot belong to legal persons. Therefore, they also cannot claim violation of the right for access to court (due process of law) with that respect.

Decision of the SAC of 19 May 2010, no. 2 As 9/2011-154[23]
Judicial review the decisions issued according to Section 14 of the Nuclear Act is possible, but the only possible plaintiff is the only party to the administrative procedure, i.e. the applicant. The plaintiff (an NGO) *does not have standing to sue such decision.*

Brno, 1 June 2011

Pavel Černý
on behalf of Ekologický právní servis

[21] Translation by the communicant. The whole text of the decision is available at http://www.nssoud.cz/files/SOUDNI_VYKON/2006/0013_2As__0600110A_prevedeno.pdf
[22] See footnote 1.
[23] Translation by the communicant. The whole text of the decision is available at http://www.nssoud.cz/files/SOUDNI_VYKON/2011/0009_2As__110_20110523095246_prevedeno.pdf