EKOLOGICKÝ PRÁVNÍ SERVIS

Secretary to the Aarhus Convention Compliance Committee
United Nations Economic Commission for Europe
Environment, Housing and Land Management Division
Bureau 332, Palais des Nations
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Case ACCC/C/2010/50, Czech Republic

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Reaction to the response of the Party concerned

The communicant hereby shortly reacts to the response of the Party concerned to the questions of the Compliance Committee, received on 31 May 2011.

Ad 1)

The Party concerned basically alleges in answer 1) that the administrative decisions on the "noise exceptions" (paragraph 50 of the communication) and according to the Nuclear Act (paragraph 51 of the communication) are not the (final) decisions approving the project. Therefore, according to the Party concerned, it is not contrary to the Convention if the public concerned cannot participate in the administrative procedure and subsequently does not have access to the review procedures.

The communicant is however convinced that this argumentation is not valid at all with respect to the decisions of the "noise exceptions". Such decisions are not issued prior to decisions approving the investment (e.g. the decisions according to the Building Act). They are separate decisions, which make it possible for an operator of a source of noise to continue with using it despite the noise limits are exceeded. It is obvious that the "noise exception" is issued for a source of noise which already exists and has been, as a project, already approved before. At the same time, the "noise exception" should be considered as "act of public authority relating to the environment", in the meaning of Article 9 paragraph 3 of the Convention. The fact that no other person than the operator of the source of noise can participate in the administrative procedure, concerning the request for the noise exception, and subsequently has access to the review procedures, therefore contravenes the requirements of Article 9 paragraph 3 of the Convention. The fact that the "noise exception" can be substituted by the "integrated permit" according to the 76/2002 Coll. IPPC Act does not change much on this conclusion, as the IPPC permit is not issued for all sources of noise.

As for the decisions issued according to the Nuclear Act, it is correct that they are mostly issued prior to the final approval of the project (by another decision). However, it shall be also taken in mind that the questions concerning nuclear safety are tackled only in the procedure according to the Nuclear Act and not (again) in the subsequent decisions. Next to that, in the decision of 19 May 2010, no. 2 As 9/2011-154,[1] the Czech Supreme Administrative Court concluded that despite in this case, the administrative decision according to the Nuclear Act was the only decision required by the law for extension of the operating time for a nuclear power station, it was still not contrary to the Aarhus Convention that no other person that the operator has a position of a party to the administrative procedure and that "*only possible plaintiff is the only party to the administrative procedure, i.e. the applicant"*. According to the court, the decision on extension of the operating time for a nuclear power station – contrary to the decision approving a new project of this kind – cannot "worsen environmental conditions".

Ad 2)

The Party concerned correctly describes the principles on which the differences between owners and tenants, with respect to their possibilities to participate in the procedures according to the Building Code and to access to court review of the decisions related to the environment, are based. Similarly, also the Supreme Administrative Court stated in the Decision of July 2009, no. 1 Ao 1/2009-120 that according to its opinion that 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*" (see answer 1. of the communicant answers of 1 June 2011, "ad part 2.1").

Ad 3)

Please see answer 2. of the communicant answers of 1 June 2011. The communicant is not sure if the "tendency towards an extensive interpretation of the *locus standi*" has really been "relatively apparent" in recent case law of Czech courts. The communicant would rather persist in the assert that "interpretation of the Aarhus Convention provided by the Czech courts is not too comprehensive and consistent", as stated in the conclusion of the communication. There are some decisions containing progressive interpretations, but usually more on the general level (as in the obiter dictum of the Supreme Administrative Court judgment of 21 July 2009). However, if it comes to practical application of the Aarhus Convention principles, the courts tend to be restrictive constantly.

Brno, 7 June 2011

Pavel Černý
on behalf of Ekologický právní servis

[1] It is the last court decision quoted in answer 4. of the communicant answers of 1 June 2011.