

Czech Republic's comments on response provided by the Communicant concerning compliance by the Czech Republic in connection with public participation and access to justice in regard to nuclear facilities (ACCC/C/2014/106)

11 July 2017

The original communication aimed against the regulation of proceedings under the Building Act¹ (as is clear from points 21-22², 24 and 28 of the communication), specifically the **building proceeding (in the communication referred to as „Building Permission Procedure“. Points 36-38 then deal with **suspensive effect** (Section 73 of the Administrative Procedure Code). In point 42, the communicant claims that **the absence of direct reviewability of the EIA statement** is non-compliant with the Convention. **No other instances of alleged non-compliance of the Czech legislation, aside from unspecified general proclamations, are stated in the communication.****

We believe that the changes in the Czech legislation have remedied these claimed instances of non-compliance and, therefore, we do not agree with the communicant's statement that his rights guaranteed under the Aarhus Convention are still being violated.

Building proceeding

The building proceeding for a project that has been assessed in the EIA procedure (a nuclear power plant is always subject to an obligatory EIA procedure) is considered as a subsequent proceeding. The recently adopted legislation (Act No. 39/2015 Coll.) significantly widened the rights of the public concerned during the whole authorization process. In subsequent proceedings, the EIA Act grants the NGOs the right to be a participant to these proceedings with all the rights that it entails, especially the right to submit comments that the authority is obliged to deal with, peruse the file and submit an administrative appeal. The NGOs are therefore in the same position as the applicant (the investor). Furthermore, the NGOs have the right to submit a legal action against the decision that has been issued in the subsequent proceeding, and the court is obliged to review both the substantial and procedural legality of the decision.

It is also worth noting that the NGOs can submit an administrative appeal (and also a legal action) against the decision issued in subsequent proceeding even if they didn't become a participant of the subsequent proceeding.

Suspensive effect

When a legal action against a decision issued in a subsequent proceeding is brought, the court is obliged, under the new legislation, to issue its decision within a deadline of 90 days of the date the

¹ Act No. 183/2006 Coll. In the reply dated 23.6.2017 called „Construction Act“. We believe that the „Building Act“ is a more precise translation.

² *"However, participation of the public concerned in these procedures is not guaranteed as the Czech Building Code has its own restrictions on who may participate in the procedures, and the public concerned - within the meaning of Article 2 section 5 of the Aarhus Convention - is not allowed to participate in the Building Permission Procedure phase, as its allowed participants are restricted to the builder and persons whose title of ownership could be directly affected by the building."*

"But representatives of the public concerned are excluded from participation in the Building Permission Procedure and cannot exercise their right therein. As the Czech National Law fails to guarantee active participation of the public concerned in the decision-making under the Building Permission Procedure, the Czech National Law is in conflict with Article 6 Section 8 of the Aarhus Convention on this point."

action was brought, and it shall always decide whether to grant the action a suspensive effect. The court shall grant the action a suspensive effect if there is a risk that the implementation of the project may cause a serious damage to the environment.

The Convention requires for the injunctive relief to be provided as appropriate and we believe that the above described regulation is in line with this requirement.

Absence of direct reviewability of the EIA

The Convention's requirements shall – as stated in article 6 para 1 – apply to the decisions on whether to permit proposed activities. Under the Czech legislation, the result of the EIA is an „EIA binding statement“. Generally, a binding statement is an administrative act issued by an administrative authority which serves as a basis for issuing a decision by another administrative authority. Therefore, the EIA binding statement itself does not permit the project; it is a binding basis for all the administrative authorities issuing decisions in subsequent proceedings (the conditions included in the binding statement must be included in the issued decisions).

Although the EIA binding statement is not a permit itself and thus cannot be challenged separately, it is fully reviewable within an appeal against any decision for which it served as a basis.

Lastly, regarding **the amendment to the Building Act** referred by the communicant to in point 16 of the 23. 6. 2017 reply – this amendment has not yet been adopted and it has not come into effect; therefore we believe its compliance or non-compliance with the Convention shouldn't be discussed.