Access to Administrative Justice in Environmental Matters in the Czech Republic - Law and Practice -

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structure of the paper

- Relevant principles of the Czech administrative justice
- Right to a favourable environment
- Access to justice
  - admissibility of the action
  - scope and criteria of the review
- Limits and obstacles of the effective judicial review
  - timeliness
  - the principle of binding by the proposal
Relevant principles of the Czech administrative justice

- Administrative courts provide "only" subsequent legal review of administrative acts
  - Court does not act instead of administrative authority,
  - Court is not entitled to replace or change administrative acts

- The purpose of the administrative justice is to protect individual rights (not the legality itself)

- The administrative court is bound by the proposal of the plaintiff:
  - No review without proposal
  - Review (almost only) in the scope and in causes of the proposal
Right to a favourable environment

*Everyone has the right to a favourable environment.*

Art. 35, par. 1, Charter of Fundamental Rights and Freedoms (part of the Czech constitutional order)

- What does „the environment“ mean?
- What does „favourable“ mean?
- Who is „everyone“?

*The rights listed in Articles ... 35 ... of this Charter may be claimed only within the confines of the laws implementing these provisions.*

Art. 41, par. 1, Charter ...

- in procedural meaning
- in substantive meaning
Everyone has the right to a favourable environment.

Art. 35, para 1 of the Charter ...

• „the environment“
  „everything that creates the natural conditions of the existence of organisms including human and is a prerequisite for their further evolution“  
  Art. 2 of the Environmental Act

• „favourable environment“
  a factual or formal approach?

• Who is „everyone“? Who has the right?
  ConCourt (since 1997): „only natural person (human), legal entity is a fiction, doesn’t need any environment“
  + EIA Act (as amended in 2015) according to the EIA Directive: qualified association (NGO) as „the public concerned“ - legal presumption of an individual right
The rights listed in Articles ... 35 ... of this Charter may be claimed only within the confines of the laws implementing these provisions.

Art. 41, Para 1, Charter ...

- In procedural meaning
  - only in procedures set by laws
    - administrative procedure, administrative review
    - judicial review of administrative action (and/or inaction)

- In substantive meaning
  - the content of right to favourable environment is set by laws
  - favourable environment is that quality of the environment which correspond to the rules and requirements set by laws (e.g. immission limits)
Access to justice

Courts in administrative justice provide protection to the individual public-law rights of both natural and legal entities...

Example: action against an administrative decision

Anyone who claims that his or her rights have been negatively affected directly or due to violation of his rights in the preceding procedure by a „decision“ of an administrative authority may seek the cancelation of such a decision, or the declaration of its nullity, ...

Art. 65, par 1 CAJ

If the complaint is justified, the court revokes the contested decision as unlawful or for procedural faults ...

...or declares nullity of the act. 

Art. 78, par 1 CAJ
Admissibility of the action
(against an administrative decision)

Anyone who claims that his or her rights have been negatively affected directly or due to violation of his rights in the preceding procedure by a „decision“ of an administrative authority may seek the cancelation of such a decision, or the declaration of its nullity, ...

Art. 65, par 1 CAJ

- access to the court is based on **claimed interference** with ones rights caused by unlawful (non)acting of an administrative authority
  - the plaintiff has to claim
  - the plaintiff **has to have the right**, which affection is claimed
  - the claimed **negative impact** has to be **thinkable**
If the complaint is justified, the court revokes the contested decision as unlawful or for procedural faults ...or declares nullity of the act.  

Art. 78, par 1 CAJ

- the success of the action is based on both:
  - proved unlawfulness of (non)acting of the administrative authority
  - proved interference with ones rights due the illegal (non)acting
- it means: the plaintiff has to be negatively affected on his right by unlawful administrative decision
Right to a favourable environment and its judicial protection

Specific troubles:

- **the plaintiff has to have a right to a favourable environment**
  
  natural person, association as „the public concerned“ /other association (NGO) or municipality as representatives of natural person (their members or citizens) – ConCourt 2014/

- „a negative impact to the right“
  
  • impact to the environment has to be unlawful
  
  • there has to be a sufficient territorial (or other) relationship of the plaintiff to the part or component of the environment concerned
Limits and obstacles of the effective judicial review in environmental matters

- **Timeliness**
  - the usual length of the judicial proceeding is 1-3 years
  - the administrative decision is enforceable
  - the action itself has no suspensive effect
  - the court mainly neither grants a suspensive effect to the action nor take an interim measure
  - It’s quite often that (for example permitted building) is meanwhile built or legalised by subsequent decision
The principle of binding by the proposal

+ quite large number of active environmental NGO’s
– their capacity is limited
– public opinion is currently not in favour of them
– other plaintiffs don’t prefer environmental aspects of cases
– other plaintiffs have not sufficient experience to claim in environmental cases

The most unfair court decisions are the ones that never happens ...

Kateřina Šimáčková, judge of the Constitutional Court of the Czech Republic
Thank you for your attention!

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