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Subject: ACCC/C/2010/50 (Czech Republic) - comments of the communicant on the Progress report from Party concerned
Date: 23/09/2013 11:26
For Follow Up: Urgent Priority.

Dear Ms. Marshall,

thank you for the possibility to comment on the Progress report of the Czech Republic regarding the findings and recommendations of the Compliance Committee in case ACCC/C/2010/50. Due to the shortness of time, the communicant now provides only short comments, reserving the liberty to add more details in the future if appropriate.

Basically, the Party concerned asserts that all the individual aspects of non-compliance, identified in the above findings, will be cured by systemic change of the Czech legislation, which will also react on the infringement procedure started by the EU Commission for incorrect transposition of the EIA directive. Essential characteristic of this change should be transformation of the EIA procedure in Czech legal system into a formal administrative procedure, ended by binding decision – "environmental authorization". This permit would substitute current (non-binding) "EIA statement" and also other sectoral environmental permits.

First of all, the communicant is convinced that by that means, the Compliance committee findings concerning standing of members of the public concerned with respect to noise limits and with respect to land use plans (paragraph 89. (f) of the ACCC/C/2010/50 findings) and the relevant recommendations (paragraph 90 (e) of the findings) cannot be addressed. This specific issue therefore remains fully neglected in the Progress report.

As for the rest of findings and recommendations, it is possible, in theory, that the systemic change, as indicated in the Progress report in a very general way, could contribute to solving the existing non-compliance with the Convention. However, with no information vast majority of details of the proposed changes, it is at the same time not possible to evaluate if this will really be the case in practice. The communicant would like to mention at this point that it learned about this intention of the Party concerned for the first time from the Progress report and as far as it is aware, there have been no so far no information about this plan available in public domain. Also, due to rather ambitious nature of the plan, it is according to the communicant quite uncertain that it will really be realized in near future.

At the same time, one of the aspects of the plan, as presented in the progress report, seems to be, already in this preliminary and general status of description, in contradiction with the requirements of the Convention (and the EIA directive as well). According to the Party concerned, in the "new system" of environmental permitting, members of the public concerned would have right to challenge only the "environmental authorization" at court. However, this would not be the final decision permitting the project. The zoning and construction permits would still be necessary to start with the project. It would be, however, contrary to both the Convention and the EIA directive to fully exclude possibility of the public concerned to challenge the final permit of the project at court, namely because this would mean no possibility of public control over observance of the conditions imposed by the "environmental authorization" in the subsequent permits and in practice.

Finally, according to the experience of the communicant, there have been no changes in the attitude of Czech judiciary to the rights of the public concerned in environmental proceedings, which would be relevant from the perspective of the Compliance Committee findings. From the above reasons, solving of all the problems identified in the findings by the "systemic legislative change" is uncertain and in some aspects controversial. It would be therefore highly desirable to concentrate, at the first place, on changing of the case law, which could, in fact, meet most (if not all) concerns of the Compliance Committee even without any change of the current legislation. However, as far as the communicant is informed, there have been no attempts this sense (e.g. information and/or capacity building efforts, targeting judges and courts) since issuing of the findings.

For all the above reasons, the communicants concludes that there have been so far no practical changes concerning the scope of non-compliance of the Czech Republic with the Convention, nor is it aware of any practical attempts to change this situation in short time.

Sincerely,

Martin Fadrný
on behalf of the communicant

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právník



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