

23 September 2013, Prague

Information regarding progress of the Czech republic in implementing recommendations of the Compliance Committee

A) Subject matter of this submission

Green Circle hereby informs *the Aarhus Convention Compliance Committee* from its own perspective about Czech republic's reaction on *findings and recommendations of the Aarhus Convention Compliance Committee (ACCC) with regard to communication ACCC/C/50/2010* adopted on 29 June 2012 and provides some context to Progress Report¹ written by Czech Ministry of Environment in this matter on 12 September 2012.

B) About Green Circle

Green Circle (Zelený kruh in Czech) is an association of 28 Czech environmental NGO's with various purposes and activities. Our members include Greenpeace, Hnutí DUHA – Friends of the Earth Czech republic, Network of ecologic advisories (STEP), Děti Země (Children of Earth), and also Environmental Law Service, which submitted to ACCC original communication *ACCC/C/50/2010* regarding non-compliance by the Czech republic.

Green circle submits since 2005 annual reports on implementation of Aarhus Convention in the Czech republic.

C) About recommendations of the Compliance Committee to the Czech republic

Recommendations of adopted on 29 June 2012 are the following, as summarised by ACCC itself:

„The Committee, pursuant to paragraph 36 (b) of the annex to decision I/7 and noting the agreement of the Party concerned that the Committee take the measures requested in paragraph 37 (b) of the annex to decision I/7, recommends the Party concerned to undertake the necessary legislative, regulatory, administrative and other measures to ensure that:

a) Members of the public concerned, including tenants and NGOs fulfilling the requirements of article 2, paragraph 5, are allowed to effectively participate and submit comments throughout the decision-making procedure subject to article 6;

(b) Due account is taken of the outcome of public participation in all phases of the decision-making to permit activities subject to article 6;

(c) NGOs fulfilling the requirements of article 2, paragraph 5, have the right to access review procedures regarding any procedures subject to the requirements of article 6, and in this regard they have standing to seek the review of not only the procedural but also the substantive legality of those decisions;

(d) To the extent that the EIA screening process and the relevant criteria serve also as the determination required under article 6, paragraph 1 (b), on whether a proposed activity is subject to the provisions of article 6, the public concerned as defined in article 2, paragraph 5, is provided with access to a review procedure to challenge the procedural and substantive legality of those conclusions;

¹ could be found on ACCC's website: http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2010-50/correspondence/frCz_ProgressReport_12.09.2013.pdf

(e) Members of the public are provided with access to administrative or judicial procedures to challenge acts of private persons and omissions of authorities which contravene provisions of national law relating to noise and urban and land-planning environmental standards."

D) Reaction of the Czech republic

Green Circle welcomed recommendations of ACCC, since they closely match our own perceptions of shortcomings in the Convention's implementation. In December 2012 we prepared for Ministry of Environment technical suggestion on which areas of Czech law should be amended in order to implement those recommendations. It would also be possible to remedy at least great deal of shortcomings found by ACCC through change in Czech court's jurisprudence. Unfortunately, Czech judiciary, executive and legislative powers until now have done very little to implement those recommendations.

As stated in Progress Report, on 25 April 2013 the European Commission (EC) instituted infringement procedure against the Czech Republic due to the incorrect transposition of the EIA Directive. This Directive implements Aarhus Convention on EU level and part of EC's objections is substantially identical to part of ACCC's findings. Failure to react properly on infringement procedure might result in severe financial consequences for the Czech republic.

After that, administrative staff of several Czech executive agencies prepared plan of legislative changes outlined in Progress Report which should in their opinion alleviate concerns of both EC and ACCC.

We however see many problems with this plan:

Firstly, it is not credible in a sense that it is not clear whether it carries sufficient political support to become law of the land. Currently, Czech republic has intermediate, "non-political" government, lower chamber of Parliament has been dissolved and new parliamentary elections are due at the end of October. Opinions of future political representation, which is the one that should in theory implement this plan, are of course unknown.

This plan is also so far very vague, for instance it does not contain information about statuses, let alone concrete sections of them, which should be changed. Its compliance with Aarhus Convention hinges partially on such details. There is for example no mention whether members of the public should be able to challenge noise limit exceptions and land use plans, as ACCC recommended.

But most importantly, even rough sketch of this plan, which is available to us now, casts doubt on assertions that it will solve all shortcomings of implementation as seen by ACCC, or for that matter EC. While we welcome its part that calls for making results of EIA proces (newly called environmental authorisation) binding and for making it possible to challenge results in court directly these, we are very worried about part that calls for restricting of public participation in processes that follow EIA, such as zoning and building procedures.

Premise of the plan, that it is possible to have zoning and building procedures from which will be entirely absent decision making about environmental matters (which would be supposedly all taken care of in separate procedure), seems to us unrealistic. On most basic level, it would open wide scope for abuse, since if public would be out of zoning and building procedures, due to peculiarities of Czech administrative procedure there could be nobody with the standing to sue zoning and building decisions if they would

infringe rights of the public supposedly protected by previous environmental authorisation. Also it is difficult to imagine that environmental authorisation would be so encompassing as to solve every environment related detail of the project, and issue of subsequent changes in zoning and building decision, which are possible under Czech law, and how would they relate to environmental authorisation.

We hope that information above shall help ACCC to assess progress made by the Czech republic in implementing its recommendations.

Yours sincerely

Green Circle - Association of Environmental NGO's

Lublaňská 18, 120 00 Prague 2

+420 222 517 143

www.zelenykruh.cz

Sdružovací právo patří k základům svobodné společnosti a jako takové je zakotveno v Listině základních práv a svobod. Určitá míra státní regulace spolkového života je samozřejmě nutná, avšak neměla by být nadměrně zatěžující a měla by vždy sloužit k účelům uvedeným v Listině, totiž ochraně bezpečnosti státu, veřejné bezpečnosti, veřejného pořádku, předcházení trestným činům nebo ochraně práv a svobod druhých. Skutečnost, že je dnes rejstřík sdružení veden pod Ministerstvem vnitra, což je úřad zabývající se primárně ochranou veřejného pořádku, je reliktem doby minulé, kdy sdružování občanů bylo pokládáno za činnost a priori podezřelou a narušující veřejný pořádek. **Takový přístup se však vymyká běžným prostředkům ochrany před nezákonnou činností právnických osob**, jak jsou zakotveny obecně pro všechny právnické osoby v § 145 občanského zákoníku, a je již za hranicí legitimacy i přijatelnosti. Bohužel duch této doby na

odboru veřejné správy ministerstva vnitra stále přetrvává. Občanská sdružení se z jeho strany následně setkávají s celou řadou byrokratických překážek a požadavků, které nijak nesouvisí s platnou legislativou či prováděcími vyhláškami. **Argument, že jde o zažitý stav, tedy nelze považovat za přijatelný.**

Je nutné zajistit transparentnost neziskového sektoru, za což se mnohé nevládní organizace z níže podepsaných dlouhodobě zasazují.

Proto apelujeme na vás jako členy vlády, abyste opět zvážili toto řešení rejstříků, zejména v návaznosti na nedávné jednání LRV, a zvolili jednoznačné stanovisko ve prospěch začlenění rejstříku spolků do obecného rejstříkového zákona, které je po právní i správní stránce čistější. Zajistíte tak spolkům rovnoprávnost (a také stejné povinnosti v rámci státní regulace) s ostatními formami sdružování občanů.

Děkujeme za váš čas a pozornost, kterou této věci věnujete.
Níže podepsaní: