

Compliance Committee to the Convention on
Access to Information, Public Participation
in Decision-making and Access to Justice
in Environmental Matters (Aarhus Convention)

**First progress review of the implementation of decision V/9f
on compliance by Czech Republic with its
obligations under the Convention**

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I. Introduction

1. At its fifth session (Maastricht, 30 June–1 July 2014), the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) adopted decision V/9f on compliance by the Czech Republic with its obligations under the Convention (see ECE/MP.PP/2014/2/Add.1).

II. Summary of follow-up action with decision V/9f

2. By letter of 28 November 2014, the Committee sent a reminder to the Party concerned of the request by the Meeting of the Parties to provide its first detailed progress report to the Committee by 31 December 2014 on the measures taken and the results achieved thus far in implementation of the recommendations set out in decision V/9f.

3. The Party concerned provided its first progress report on the implementation of decision V/9f on 30 December 2014.

4. At the Committee's request, on 2 January 2015 the secretariat forwarded the Party concerned's first progress report to the communicant of communications ACCC/C/2010/50 and ACCC/C/2012/70 inviting it to provide its comments on that report by 23 January 2015. The communicant provided its comments on 22 January 2015.

Party concerned's first progress report

5. With respect to the recommendations set out in paragraph 4 of decision V/9f and concerning the Committee's findings on communication ACCC/C/2010/50, the Party concerned in its first progress report reported that on 25 April 2013, the European Commission had instituted an infringement procedure against the Czech Republic for incorrect transposition of the EIA Directive.¹ The Party reported that some of the Compliance Committee's concerns regarding the Party's national legislation were essentially the same as the Commission's objections. Following a detailed analysis, the Party had prepared a legislative amendment to address both the European Commission's and the Compliance Committee's concerns. The proposed legislative amendment had been approved by the Chamber of Deputies and was currently before the Senate for its consideration. The proposed legislative amendment included, inter alia, the following elements of relevance to the recommendations in paragraph 4 of decision V/9f:

- the term “public concerned” was explicitly defined. Besides legal persons, including foreign entities who met the criteria in question, the definition of “public concerned” would include those natural persons who may be affected by a project.
- the public concerned (including foreign entities) would have the opportunity to take part in proceedings on an environmental authorisation and the right to challenge both the substantive and procedural aspects of that authorisation in court (including an action for inaction;
- the public concerned would be able to challenge the authorisation in court with no requirement of prior participation (the submission of comments) in proceedings.

¹ Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment

6. With respect to the recommendation set out in paragraph 6 of decision V/9f and concerning the Committee's findings on communication ACCC/2012/70, the Party concerned in its first progress report stated that the recommendation that in future plans and programmes similar in nature to the National Investment Plan should be subjected to public participation as required by article 7 had been communicated to the relevant section and should be followed in future, in similar cases.

Communicant's comments on Party concerned's first progress report

7. With respect to the recommendations set out in paragraph 4 of decision V/9f concerning communication ACCC/C/2010/50, the communicant commented that the proposed legislative amendments would substantially change the conditions for public participation in decision-making procedures for projects requiring environmental impact assessment (EIA). Some of the proposed changes would increase the standards of public participation and access to justice in such procedures. On the other hand, they did not address all the recommendations of the ACCC/C/2010/50 findings, and in some aspects, they would worsen existing opportunities for public participation.

8. More specifically, the communicant stated that if the amendments were approved in the form proposed, they should meet the recommendation in paragraph 4(c) of decision V/9f as the EIA Act would explicitly establish the rights of environmental NGOs that fulfill the requirements for standing to have the right to access review procedures regarding all permits for the projects subject to EIA to challenge the procedural and substantive legality of those decisions.

9. Similarly, the communicant stated that the amendments should meet the recommendation in paragraph 4(d) of decision V/9f, as it should be possible for environmental NGOs to challenge the EIA screening decision, and therefore also to challenge whether it was subject to the provisions of article 6 of the Convention.

10. With respect to the recommendation in paragraph 4(b) of decision V/9f, the communicant remarked that the proposed amendments included some relevant changes, but their efficiency in practice was hard to estimate.

11. The communicant, however, stated that the proposed amendments would not meet the recommendation set out in paragraph 4(a) of decision V/9f, as tenants would still be explicitly excluded from being parties of the permitting procedures and from standing to challenge the permits at courts.

12. With respect to the recommendation in paragraph 4(e) of decision V/9f, the communicant stated that the proposed amendments were solely related to the permitting procedure for projects requiring EIA and thus did not address the standing of members of the public with respect to noise limits and with respect to land use plans and therefore the recommendation in paragraph 4(e) at all.

13. The communicant remarked that, moreover, the proposed amendments would introduce new requirements for environmental NGOs to participate in administrative procedures with a status of a party and/or challenge decisions in the courts, namely NGOs would either have to prove that they were active in environmental protection for more than 3 years, or gather at least 200 signatures supporting their participation in the administrative procedure or their lawsuit.

14. With respect to the recommendation set out in paragraph 6 of decision V/9f, the communicant welcomed the information provided by the Party concerned in its first progress report. It however proposed that the Party concerned should apply more formal measures to ensure the application of the recommendation in practice, including at least written internal and/or methodological instruction, if not a legislative amendment.

15. At its forty-eighth meeting (Geneva, 24-27 March 2015), the Committee reviewed the implementation of decision V/9f in open session taking into account the comments received from observers present. Following the discussion in open session, the Committee commenced the preparation of its first progress review on the implementation of decision V/9f in closed session. The Committee adopted its first progress review at its fiftieth meeting (Geneva, 6- 9 October 2015) and instructed the secretariat to thereafter send it to the Party concerned and the communicants of communications ACCC/C/2010/50 and ACCC/C/2012/70.

III. Considerations and evaluation by the Committee

16. In order to fulfil the requirements of the decision V/9f, the Party concerned would need to provide the Committee with evidence 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 a 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), as to 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;
- (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.

17. The Committee welcomes the first progress report of the Party concerned, which was submitted on time, and the information contained therein.

18. The Committee also welcomes the helpful analysis contained in the communicant's comments of the Party concerned's first progress report and in particular its views on the extent the legislative amendments proposed by the Party concerned will meet the requirements of each of the recommendations set out in paragraph 4 of decision V/9f.

19. As the Committee has not been provided with the text of the proposed legislative amendments, it is not in a position to make any findings regarding the extent to which they fulfil each of the recommendations set out in paragraph 4 of decision V/9f. However, it

takes note of the analysis provided by the communicant on each of the recommendations on that paragraph, and invites the Party concerned, in its second report to clearly outline the measures it has taken to fully address each of the recommendations set out in paragraph 4 of decision V/9f.

20. In the light of the above, the Committee finds that the Party concerned has not yet fulfilled the requirements of paragraph 4 of decision V/9f, but welcomes the initial steps taken by the Party concerned to date in that direction.

21. The Committee invites the Party concerned, in its second progress report due on 31 October 2015 or otherwise by 31 December 2015, to explain clearly the measures it has taken and/or proposes to take to address each of the recommendations in paragraph 4 of decision V/9f and to submit the texts of any legislative, regulatory or administrative measures intended to implement those recommendations that are available either in draft or final form at that time, together with English translations thereof, as well as an approximate timeline for the adoption of any of the proposed measures still then in draft form.

22. With respect to the recommendation set out in paragraph 6 of decision V/9f, the Committee welcomes the report by the Party concerned that it has communicated that recommendation to the relevant section and it should be followed in similar cases in the future. The Committee invites the Party concerned in its second progress report due on 31 October 2015 or otherwise by 31 December 2015 to provide:

- (i) The list of types of plans and programmes that it will in future ensure are subjected to public participation under article 7; or
- (ii) The list of criteria which it will apply in future to determine which plans and programmes are “similar in nature to the National Investment Plan” and thus will be subjected to public participation under article 7; or
- (iii) A list of types of plans and programmes that it has already determined will be subjected to public participation under article 7 together with a set of criteria to identify which other as yet unknown types of plans and programmes may in fact be “similar in nature to the National Investment Plan” and thus need to be subjected to public participation under article 7.

IV. Conclusions

23. The Committee finds that the Party concerned has not yet fulfilled the recommendations set out in paragraph 4 and 6 of decision V/9f, but welcomes the initial steps taken by the Party concerned to date in that direction.

25. The Committee invites the Party concerned in its second progress report or otherwise by 31 December 2015:

- (a) With respect to the recommendation set out in paragraph 4 of decision V/9f, to explain clearly the measures it has taken and/or proposes to take to address each of those recommendations and to submit the texts of any legislative, regulatory or administrative measures intended to implement those recommendations that are available either in draft or final form at that time, together with English translations thereof, as well as an approximate timeline for the adoption of any of the proposed measures still then in draft form.

- (b) With respect to paragraph 6 of decision V/9f to provide:
- (i) The list of the types of plans and programmes that it will in future ensure are subjected to public participation under article 7 of the Convention; or
 - (ii) The list of criteria which it will apply in future to determine which plans and programmes are “similar in nature to the National Investment Plan” and thus will be subjected to public participation under article 7 of the Convention; or
 - (iii) A list of the types of plans and programmes that it has already determined will be subjected to public participation under article 7 together with a set of criteria to identify which other as yet unknown types of plans and programmes may in fact be “similar in nature to the National Investment Plan” and thus need to be subjected to public participation under article 7 of the Convention.
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