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United Nations Economic Commission for Europe
Environment, Housing and Land Management Division
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Comments of the Frank Bold Society on the statement by the Czech Republic to the second progress review of implementation of decision V/9f on compliance by Czech Republic with its obligations under the Convention

Frank Bold Society, as the communicant in cases ACCC/C/2010/50 and ACCC/C/2012/70 (under its previous name Environmental Law Service), provides its comments to the statement by the Czech Republic to the Committee Second progress review of implementation of decision V/9f.

With reference to its previous comments in the scope of the “follow up” procedure, we agree with the findings of the Committee in its second progress review (paragraphs 64 - 66.), which requirements and recommendations of the decision V/9f have been already fulfilled by the Czech Republic and which of them have not been fulfilled yet. We have following comments to the Czech Republic statements concerning the latter ones:

Ad para 66 (a) (i) of the second progress review – participation of tenants in the procedures under art. 6

The Party concerned refers to the provisions of the new EIA Act, which it considers relevant in that respect. These provisions, except article 9b of the Act apply during the EIA procedure, which is, in the Czech legal system, a separate procedure preceding the “actual” development consent (decision-making) procedure, to which the recommendation concerning tenants applies.

The Building Act still explicitly excludes the tenants from the possibility to become parties to the administrative procedures, in which the land use and building permits are issued (on page 4 of the statement of the party, the relevant provision – art. 87 para 3 of the Building Act – is quoted explicitly). This prevents them i.a. from the possibility to check the administrative files, to participate at the hearings, if taking place, and to launch administrative appeals.

In accordance with the Convention, members of the public have a right to participate in the proceedings themselves, not through other natural or legal entity as indicated in the progress review. According to the Czech legislation, is it not clear and obvious whether NGO could defend interests of its members (tenants) or could defend just the public interest. We can add that an amendment of Building Act is now pending in the Parliament, which would restrict the rights of NGOs to participate in the proceedings.

The reference to possibilities of participation in the preparation of the land use plans is irrelevant, as these procedures are out of the scope of art. 6 of the Convention and therefore also of the respective provision of the V/9f decision.

Therefore, we do not believe that the recommendation has been met with respect to tenants.

Ad para 66 (a) (ii) of the second progress review – possibilities to challenge the EIA screening decision

The amendment of the EIA Act established the right of the NGOs to ask the court to review the screening decision, if its conclusion is that there will be no EIA. This is a specific right of action for a specific kind of legal persons according to specific provision of the EIA Act.

It seems quite unlikely that under these conditions, the court would accept the interpretation suggested in the statement, i.e. that other members of the public could challenge the screening decisions under general rules on access to justice according to article 65 of the Code of Administrative Justice. Moreover, the EIA Act (art. 7 paragraph 6) explicitly declares that only the NGOs have right to submit an administrative appeal, which is the pre-condition for the court action.

Therefore, we do not believe that the recommendation has been met in full scope.

Ad para 66 (a) (iii) of the second progress review – acts concerning noise standards

We do not consider the provisions of the Civil Code, quoted by the Party concerned, as relevant for the recommendation concerning the right to challenge acts of private persons and omissions of authorities which contravene provisions of national law relating to noise. There is no direct link between the general possibility of private nuisance lawsuit according to the Civil Code and the need for instruments to challenge exceeding the noise limits, as settled by the environmental regulations. There completely no such link between the Civil Code and challenging the omissions of the authorities in this respect.

Moreover, as concerns the private nuisance cases, article 1013(2) of the Civil Code, quoted by the Party concerned, has worsened the legal position of the neighbors in cases where the nuisance, including noise, is due to the officially approved operation, as it is no longer possible to ask the civil court to issue injunction to stop or limit such operation.

According to article 31 of Act no. 258/2000 Coll., Public Health Protection Code, if the noise operator is not able to comply with noise limits, the operator must apply for a permit (exception) to carry on the source of the noise. The operator, as an applicant, is according to the explicit provision of the Act an only party to the proceedings.

Therefore, we do not believe that the recommendation has been met in respect to acts (decisions) of the public authorities concerning the noise standards, namely the exceptions from the noise limits.

Ad para 66 (b) of the second progress review – public participation with regard to certain categories of plans and programmes

We have no indication of any formal or informal (e.g. methodical instructions) measures taken to meet the recommendations set out in paragraph 6 of decision V/9f. We welcome the statement by the Czech Republic that “any documents similar in nature to the National Investment Plan fulfilling the definition of conception under the EIA Act would need to be subjected to public participation under as stipulated by the Convention”.

However, without any further steps taken, we not believe that the recommendation should be considered as fulfilled. With regard to the plans/programmes similar to NIP in which multi-level decision making between the individual country and European Union takes place, we would especially welcome official instructions on how to ensure early and effective public participation.

Sincerely,

Mr. Vojtěch Dědek
on behalf of Frank Bold Society