

Aarhus Convention secretariat
United Nations Economic Commission for Europe
Environment, Housing and Land Management Division
Room 407, Palais des Nations
CH-1211 Geneva 10
Switzerland

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Comments of the Frank Bold Society on the Progress report of the Czech Republic of 30 December 2015 related to Decision V/9f concerning compliance by Czech Republic with its obligations under the Aarhus 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) Progress report by the Czech Republic of 30 December 2015 on the measures taken and the results achieved in the implementation of the recommendations set out in the decision V/9f of the Meeting of the Parties.

The communicant, with reference on its previous letter of 27 November 2015 and information provided by this letter, comments on the Progress report.

1. Recommendations with regard to communication ACCC/C/2010/50

(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

The Party concerned refers to the provisions of the new EIA Act, which it considers relevant for the first 2 recommendations, related to article 6. These provisions, except the last one (article 9c) 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 recommendations apply.

Article 9c of the EIA Act requires that any member of the public may submit comments at the development consent stage (stages) and the administrative authority is obliged to deal with the comments. This provision can improve the possibilities of general public to influence the decision making.

However, the recommendation (a) was primarily targeting on the scope of members of the public concerned and of their rights in the decision making procedures, explicitly mentioning tenants. In this respect, the amendment of the EIA Act brings little improvement. 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. 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.

Therefore, we do not believe that recommendation (a) was fully met. As for recommendation (b), it is necessary to wait for long-term application of the EIA amendment in practice.

(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

The information provided by the Party concerned are correct. As mentioned in the previous comments, there are also examples of court decisions which accept that NGOs are entitled to seek the review of both procedural and substantive legality of the environmental permits. If this becomes a standard practice of the courts, it would be possible to consider recommendation (c) as fulfilled.

(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

As described in the previous comments, the amendment of the EIA Act established the right of the NGOs the above requirements of article 3(i) of the EIA Act, to ask the court to review the screening decision, if its conclusion is that there will be no EIA. However, other members of the public concerned do not have this right. Recommendation (d) is therefore not met in full scope.

(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.

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.

With regard to the judicial review of the land use plans, as mentioned in the previous comments, there seems to be a shift in the jurisprudence of the administrative courts, opening the standing for the NGOs to challenge the land use plans.

2. Recommendation with regard to communication ACCC/C/2012/70

The statement of the Party concerned under "i)" is not very clear. As stated in the previous letter, we have no indication that any formal measure was taken to meet the recommendations.

Further, as regards the note that "*no plans or programmes similar in nature to the National Investment Plan have been adopted since the National Investment Plan*", we note that there was Transitional National Plan adopted under the Industrial Emissions Directive 2010/75/EC and one could presume that similar plans and programmes will occur in the future.

Sincerely,

Ms. Kristína Šabová
on behalf of Frank Bold Society