

Aarhus Convention secretariat
United Nations Economic Commission for Europe
Environment, Housing and Land Management Division
Room 407, Palais des Nations
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Comments of the Frank Bold Society on the letter of the Czech Republic of 30 January 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) received a letter sent by the Czech Republic to the Secretariat, which the Czech Republic seems to consider as its second Progress report 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 is convinced that the letter cannot qualify as a progress report. Though there are no formal requirements for the report, it must, in our opinion, contain information which would make it possible to evaluate if and how the recommendations of the above decision were, or are being, implemented. This should be done specifically with regard to each specific recommendation, as expressed in the decision, and as they were also listed in Compliance Committee's first progress review of the Government of the Czech Republic's first progress report, which was sent to the Czech Republic with the letter of the Secretariat of 20 October 2015.

The communicant therefore asks the Committee and the Secretariat to require the Czech Republic to re-submit its second progress report, so that it would specifically evaluate implementation of each of the recommendations.

With nearly none information provided by the Czech Republic in this respect, the communicant only very briefly summarizes, from its perspective, the general situation in the Czech Republic with respect to the individual recommendations:

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

No legislative or any other measure was taken to ensure that tenants are allowed to effectively participate and submit comments throughout decision-making procedure subject to article 6 of the Convention. The Building Act explicitly excludes the tenants from the possibility to become parties to the administrative procedures, in which the land use and building permits are issued. The amendment of the EIA Act, mentioned in the letter of the Party concerned, has not changed anything on this situation.

As for the NGOs, the EIA Act amendment established some additional requirements, not existing in the current legislation, for their participation in the administrative procedures with a status of a party and for their standing at courts. The NGOs would either have to prove that they are active in the environmental protection for more than 3 years, or gather at least 200 signatures supporting their participation in the administrative procedure or their lawsuit.

(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 amendment of the EIA Act requires that in the decision making procedures subsequent to the EIA, the outcomes of the public participation shall be taken into account. If really followed in practice (for evaluation of which there are still not sufficient data), this could fulfill the recommendation.

(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 amendment of the EIA Act explicitly established that the NGOs meeting the above requirements are deemed to have substantive rights with respect to decisions following the EIA procedure. If properly followed by courts in practice, this should fulfill the recommendation. There are examples of court decisions which accept that NGOs are entitled to seek the review of both procedural and substantive legality of the environmental permits.

(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

The amendment of the EIA Act established the right of the NGOs meeting the above requirements can ask the court to review the screening decision, if its conclusion is that there will be no EIA, i.e. that the proposed activity does not have significant impacts on the environment. With respect to the NGOs, this fulfills the recommendation. However, other members of the public concerned do not have this right.

(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.

No legislative or any other measure was taken to ensure that 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. The situation is exactly the same as at the time of adopting of the findings of the Committee, which were endorsed by the decision V/9f.

With regard to the judicial review of the land use plans, there seems to be a shift in the jurisprudence of the administrative courts, based on decision of the Constitutional Court of 30 May

2014. According to that decision and subsequent case the NGOs, under some conditions, should have standing to challenge the land use plans at courts.

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

There is no indication that any formal measure were taken to meet these recommendations. The amendment of the EIA Act, mentioned in the letter of the Party concerned, has no relevance in this respect.

Sincerely,

Ms. Kristína Šabová
on behalf of Frank Bold Society