Frank Bold

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 information provided by the Czech Republic on its progress in implementing the recommendations set out in the Decision V/9f concerning compliance by Czech Republic with its obligations under the Aarhus Convention

By the letter of 31 December 2014, the Czech Republic as the Party concerned provided information on its progress in implementing the recommendations set out in the Decision V/9f of the Meeting of the Parties of the Aarhus Convention, which endorsed the findings and recommendations of the Compliance Committee with regard to communications ACCC/C/2010/50 and ACCC/C/2012/70. Frank Bold Society, as a communicant in both these cases (under its previous name Environmental Law Service) welcomes the opportunity to provide comments to the progress report.

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

As well as in its letter of 12 September 2013, the Party concerned refers solely to proposed legislative changes, related to permitting procedures for projects requiring EIA, which it asserts to remedy all the individual aspects of non-compliance, identified in the ACCC/C/2010/50 findings. Therefore, the communicant repeats, as already stated in its comments on the above mentioned letter, that the findings concerning standing of members of the public with respect to noise limits and with respect to land use plans (paragraph 89. (f) of the ACCC/C/2010/50 findings) and the relevant recommendations (paragraph 90 (e) of the findings) cannot be addressed by that means.

Next to that, with regard to the legislative amendments concerning the EIA and permitting procedures, the Party concerned seems to mix up 2 different legislative proposals, which are of substantially diverse content and also at different stages of legislative procedure.

At the first page of the letter of 31 December 2014, it, the Party concerned refers to the legislative amendments of the EIA Act and other related legislation, which are currently discussed by the Parliament. Primary goal of these amendments, as the Party concerned also mentions, is to react on the infringement procedure, started by the EU Commission against the Czech Republic in April 2013 for incorrect transposition of the EIA directive.

However, the content of these proposed legislative amendments, currently discussed by the Parliament, to a large extent does not correspond with the summary of “basic elements” as listed by the Party concerned at the second page of its letter. The communicant can only speculate that these “basic elements” might relate to the so far very general and undeveloped idea of future more systemic change of environmental decision making procedures in the Czech Republic, which main

characteristic should be integration of the currently fragmented system of the permits and which has been, again in very general terms, discussed and agreed by the government. However, if this is a correct presumption, than according to the information available to the communicant, the "basic elements" again do not summarize correctly the proposal of the future systemic change, as it now is.

Coming back to the content of the legislative amendments currently discussed in the Parliament, it can be summarized that they substantially change the conditions for the possibilities of the public participation in the decision-making procedures for project requiring the EIA. Some of the proposed changes can be evaluated as indisputably increasing the standards of public participation and access to justice in these procedures. On the other hand, they do not address all the recommendations of the ACCC/C/2010/50 findings, and at the same time, in some aspects, they even worsen the current possibilities of public participation.

More specifically, if the amendments are approved in the form currently discussed in the Parliament, and applied correctly, they should ensure meeting of the recommendations of the Compliance committee according to paragraph 90 (c) of the ACCC/C/2010/50 findings, as the EIA Act would explicitly establish the rights of the environmental NGOs, fulfilling the requirements for standing, have the right to access review procedures regarding all permits for the projects subject to EIA, and in this regard to seek the review of both procedural and substantive legality of those decisions.

Similarly, the amendments should also ensure meeting of the recommendations according to paragraph 90 (d) of the ACCC/C/2010/50 findings, as according to the amended EIA Act, it should be possible for the environmental NGOs to challenge at courts the screening decision, determining whether a proposed activity is subject to the EIA procedure, and therefore also whether it is subject to the provisions of article 6 of the Convention.

As for the recommendations according to paragraph 90 (b) of the ACCC/C/2010/50 findings, the amendment include some related changes of the formulations, but their efficiency in practice is hard to estimate.

Next to that, the amendments could contribute to more timely judicial review by setting time limits for court decisions related to projects subject to EIA and introducing specific rules for granting injunctive relief in such cases. These rules, however, are likely to be changed by the proposals by the Senate, which would diminish their efficiency.

On the other hand, the currently discussed amendments do not meet the recommendations according to paragraph 90 (a) of the ACCC/C/2010/50 findings, as the tenants would be still explicitly excluded from being parties of the permitting procedures and from standing to challenge the permits at courts. As already mentioned above, the amendments are not related to the recommendations according to paragraph 90 (e) of the findings at all.

Moreover, the amendments aim to establish additional requirements, not existing in the current legislation, for the environmental NGOs, willing to participate in the administrative procedures with a status of a party and/or challenge the decisions at courts. For this, 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.

As the legislative amendments of the EIA and other related acts, currently discussed in the Parliament, have on one hand not been approved yet, and on the other hand, they are presented only as “provisional solution” before the more systemic legislative changes are prepared and approved, the communicant does not consider it necessary to analyze them in the more detail. If the amendments are approved and enter in force, it is likely that in its reaction to a next progress report of the Party concerned, the communicant will describe the first practical experience with these legislative changes.

As concerns the indicated future systemic changes of the legislation, aiming namely to integrate the permitting procedures, the communicant has no precise information about their concrete likely content. However, according to the information which is available, it seems that the intention is to integrate the EIA procedure and all or most of the permitting procedures, including the land use (zoning) and building permit procedures. This does not correspond to the “basic points” as described in the letter of the Party concerned of 31 December 2014.

Taking these facts into consideration, the communicant finds it premature to comment in any more details on the possible future systemic legislative changes. The communicant only repeats that as already expressed in the comments to the previous letter of the Party concerned (of 12 September 2013), if the public concerned would have right to challenge only the "environmental authorization" at court, and the subsequent (final) decision permitting the project, as the Party concerned describes in the “basis points”, this would be contrary to Convention and it would mean no possibility of public control over observance of the conditions imposed by the "environmental authorization" in the subsequent permits and in practice.

With regard to the recommendation according to paragraph 90 (e) of the ACCC/C/2010/50 findings, the communicants finds it appropriate to mention, though the letter of the Party concerned omits this, that a decision of the Constitutional Court of 30 May 2014, and subsequent case law of the administrative courts, seems to establish, at least under some conditions, the right of the environmental NGOs to challenge the land use plans at courts. On the other hand, there seem to be no substantial developments in the attitude of the Czech judiciary to the rights of the public concerned in environmental proceedings in any other areas, relevant with regard to the ACCC/C/2010/50 findings.

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

The Party concerned states, with respect to the recommendation of the Compliance Committee with regard to communication ACCC/C/2012/70, that the recommendation was communicated to the relevant section and should be followed in the future in similar cases. The communicant welcomes this information. It however proposes that the Party concerned should apply more formal measures to ensure application of the recommendation in practice, including at least written internal and/or methodological instruction, if not a legislative amendment.

Sincerely,

Ms. Kristína Šabová
on behalf of Frank Bold Society