

On Second progress review of the implementation of decision V/9f on compliance by Czech Republic with its obligations under the Convention – additional information

According to the Second progress review of the implementation of decision V/9f on compliance by Czech Republic with its obligations under the Convention, points 64–67, and the audio conference held on 28 February 2017 (56th meeting of the Compliance Committee), the Czech Republic has not yet fully met the recommendations set out paragraph 4 (a), (d), (e) and (f) and paragraph 6 of decision V/9f.

We provide below additional information to 66 (a) (ii) and 66 (b) points:

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

The communicant, in his comments from 21 February 2017, expresses his doubts about the practical application of legal provisions provided by Czech Republic. He claims that *„It seems quite unlikely that under these conditions, the court would accept the interpretation suggested in the statement, i.e. that other member 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. [...] Therefore, we do not believe that the recommendation has been met in full scope.“*

As the Czech Republic states (in letter from 31 January 2017), it is also possible anyone may seek the cancellation of a decision even if she/he was not party to the proceedings; this interpretation is based on both wording of Code of Administrative Justice section 65 (and following sections) and on the case-law of Supreme Administrative Court (case 4 As 157/2013); Supreme Administrative Court states that *„Exceptionally, an administrative decision may be countered by an action of a person who was not party to the administrative proceedings and who was not authorized to bring an appeal against the decision of the administrative authority“*. The case 4 As 157/2013 is relatively recent and therefore relevant. The Supreme Administrative Court's decisions are not binding for administrative courts, but its decisions have a real influence on administrative courts decisions.

Additional information to the point 66. (b) of the second progress review , the assessment of conceptions and programs (SEA)

During the audio conference, the Czech Republic was asked:

- If a plan or program has to be adopted at the regional level, how is notified to the Ministry of the Environment?
- Is there a list of future conceptions (under the SEA) publicly available? Is it possible to provide a list of future plans similar to the National Investment Plan?

Answer:

The competent authority for ensuring the implementation of the SEA proceedings in the Czech Republic is the Ministry of the Environment (MoE) or one of the 14 Regional Authorities. If the SEA proceedings are launched by the Regional Authority, the Regional Authority always informs the MoE. Ministry thus has an overview of all SEA proceedings held in the Czech Republic.

Relevant provision:

Section 10c of the Act 100/200 Coll., on Environmental Impact Assessment: *“If the notification of a conception contains the requisites pursuant to paragraph 1, the relevant authority shall, within 10 days of its receipt, send a copy thereof for a viewpoint to the affected administrative authorities and affected territorial self-governing units. Within the same period of time, it shall publish the notification on the Internet and provide for publishing information on the notification pursuant to § 16. The regional authority shall send a copy of the notification to the Ministry within the same period of time.”*

MoE has an overview of all SEA proceedings held in the Czech Republic thanks to provisions mentioned above. Relevant information is also collected by the publicly accessible Information System SEA (http://portal.cenia.cz/eiasea/view/SEA100_koncepce), accessible to the general public. The information system contains information on future conceptions, often even before they are actually drafted. If a Regional Authority sends the notification of the conception to the Ministry of the Environment, it means the proceedings are in early stage - the relevant authority sets the requirements to the SEA report via scoping; in this stage, the conception is not developed yet. Such a proceeding is fully compliant with the prevention principle in environmental protection.

On the other hand, MoE is not aware (cannot be aware) about any conception, whose preparation is only in stage of reflection, if the intention of it was not manifested explicitly. Although the notification of some conceptions can be envisaged, e.g. due to their periodicity, the MoE's has not an exhaustive list of conceptions to be approved. Therefore, the MoE has not provided a list of conceptions of similar nature to National Investment Plan, because such a list is not available, not because of unwillingness to do so. MoE's is not aware of the conception similar to the NIP being prepared in the near future.