

In this last progress report, we summarise actions made since 2010 by the Czech Republic for achieving the correct implementation of the Aarhus Convention.

In June 2010, complaint of the Ecological Legal Service was registered by the Compliance Committee as ACCC/C/ 2010/50, and in 2012, the complaint made by the same organization was accepted under the number ACCC/C/2012/70.

The first case concerns the implementation of the Aarhus Convention in general, mainly the implementation of Articles 2(5), 3(1), 6(3), 6(8), 9(2),9(3) and 9(4); the second one is focused on a particular case of non-compliance with article 7.

Since 2010, significant legislation changes have been made in the area of public participation and access to justice in environmental matters, mainly due to the amended EIA Act (No. 100/2001 Coll.):

- In 2010, the European Commission is urging the Czech Republic to comply with a European Court of Justice ruling on public involvement in environmental impact assessments¹. ECJs findings were of the same nature as those of Compliance Committee adopted by MOP5, Decision V/9f.
- The first important change in the Czech legislation was so called "small" amendment to the EIA Act, adopted in January 2012; it stipulates the possibility to bring an action against a final decision to administrative courts even if the EIA process was launched before the amendment.
- In 2013, another amendment to the EIA Act was prepared, stipulating the binding nature of EIA opinions and extending possibilities bring a legal action against the EIA decision. The draft amendment was refused by EC and complete modification of EIA Act was demanded, so that the Czech legislation meets at all points the requirements of the EIA Directive.
- In very short time space of two months, February and March 2014, MoE managed to prepared the amendment to the EIA Act and the Building Act.
- In 2015, the EIA Act amendment was adopted by the government; all existing requirements of the European Commission, and thus the requirements/recommendation made by the Meeting of the Parties to the Aarhus Convention V/9f, were satisfied:
 - o the Act sets the "Binding Statement on the EIA", whose content is binding for authorities issuing final administrative decisions;
 - o it is possible for the public concerned to bring a legal action to an administrative court against a "negative" conclusion to the fact-finding procedure;
 - o the possibility for environmental NGOs to take part in the whole range of proceedings subsequent to EIA procedure is guaranteed; moreover, it enables NGOs to appeal to higher administrative authorities against administrative decisions taken in these subsequent administrative procedures regardless of their participation or non-participation in those administrative procedures;
 - o NGOs to bring legal action to administrative courts against final decisions (permits, licences, authorizations...) of administrative authorities taken in procedures subsequent to the EIA procedure. The judicial review shall cover both substantive and procedural issues.

On specific points of V/9f Decision:

¹ (<http://curia.europa.eu/juris/liste.jsf?language=fr&num=C-378/09>):

En ne prenant pas, dans le délai prescrit, les dispositions législatives, réglementaires et administratives nécessaires pour se conformer à l'article 10 bis, premier à troisième alinéas, de la directive 85/337/CEE du Conseil, du 27 juin 1985, concernant l'évaluation des incidences de certains projets publics et privés sur l'environnement, telle que modifiée par la directive 2003/35/CE du Parlement européen et du Conseil, du 26 mai 2003, la République tchèque a manqué aux obligations qui lui incombent en vertu de cette directive.)

- a) + b) Anyone, i.e. any natural person or legal entity, may submit comments both in the various stages of the EIA process and in proceedings following the EIA process (“subsequent proceedings”), which are proceedings in accordance with Article 6 of the Convention. The authority conducting the EIA process (“EIA authority” or “competent authority”) is obliged to state how it has settled such comments in its EIA statement and, similarly, any authority conducting a subsequent proceeding is obliged to include such information in its decision. Moreover, NGOs can become parties to subsequent proceedings related to the EIA process, which gives them additional rights enabling their effective involvement – e.g. a right to peruse the file or a right to appeal.

Relevant provisions:

- Section 6, paragraph 7 of the EIA Act: *“(7) The public, the public concerned, the affected administrative authorities and the affected local governments may submit written comments on the notification to the competent authority within 20 days of the date of the publication of information on the notification. The competent authority need not take into account any comments submitted after the deadline.”*
 - Section 8, paragraph 3 of the EIA Act: *“(3) The public, the public concerned, the affected administrative authorities and the affected local governments may submit their written comments on documentation to the competent authority within 30 days of the date of the publication of information on the documentation. The authority need not take into account any comments submitted after the deadline.”*
 - Annex No. 5 to the EIA Act - *Requirements of the [EIA] statement: “Settlement of all comments received on the documentation (notification)”*
 - Article 9, paragraph 8 of the EIA Act: *“(8) The public, the public concerned, the affected administrative authorities and the affected local governments may submit comments on the expert report to the competent authority in writing within 30 days of the date of publication of information on the expert report or to comment on the expert report at a public hearing pursuant to Section 17. The authority need not take into account any comments submitted after such deadline going forward.”*
 - Annex No. 6 to the EIA Act - *Requirements of the [EIA] statement*
“7. Settlement of comments received on the documentation (notification)
8. Settlement of comments on the expert report”
 - Section 9c, paragraphs 1 and 2 of the EIA Act:
“(1) The public may submit comments on the project in a subsequent proceeding. Comments may be submitted within 30 days of the date of publication of the information according to Section 9b, paragraph 1 on an official board [of the authority responsible for conducting the subsequent proceeding], unless a longer deadline is stipulated by a special legal regulation or by the administrative authority responsible for conducting the subsequent proceedings.
(2) The administrative authority is obliged to refer to the settlement of the comments from the public in the grounds of its decision.”
- c) NGOs according to Article 2, paragraph 5 of the Convention shall have access to a review procedure before a court of law (by submitting a legal action) in order to challenge any decisions issued in subsequent proceedings, i.e., proceedings in accordance with Article 6 of the Convention. It is possible to challenge both the substance of the issued decision and compliance of the content of the decision and the procedure that preceded it with legal regulations. In the legal action, i.e., in the framework of the judicial review, NGOs can

challenge both procedural and substantive legality of the issued decision. The court shall grant suspensory effect to the legal action or order a preliminary injunction if there is a risk that the implementation of the project may cause serious environmental damage. In the interests of ensuring broad access to court protection, NGOs can submit an appeal and then take legal action even if they were not parties to the proceedings preceding the issuance of the challenged decision (in the subsequent proceeding).

Relevant provisions:

- Section 3(i) of the EIA Act:
“i) the public concerned means
 1. *a person who may be affected in his or her rights or obligations by a decision issued in subsequent proceedings*
 2. *a legal entity of private law, whose subject of activity is according to its founding act the protection of the environment or public health, and whose main activity is not business or other for-profit activity, and which was founded at least three years before the date of the publication of the notice of initiation of the subsequent proceeding pursuant to Section 9b, paragraph 1, or alternatively before the date of the decision issuance according to Section 7, paragraph 6, or which is supported by the signatures of at least 200 persons.”*
 - Section 9c, paragraphs 3 and 4 of the EIA Act:
“(3) The following also becomes a party to the subsequent proceedings if it registers with the administrative authority responsible for the subsequent proceeding by submitting a written notification within 30 days from the date of the publication of the information pursuant to Section 9b, paragraph 1:
 - a) *the municipality affected by the project, or*
 - b) *the public concerned referred to in Section 3(i), point 2.**(4) An appeal against a decision issued in subsequent proceedings may be filed by the public concerned referred to in Section 3(i), point 2, even if it was not a party to the proceedings in the first instance.”*
 - Section 9d of the EIA Act:
“(1) The public concerned referred to in Section 3(i), point 2, is entitled to bring a legal action to protect the public interest against the decision issued in a subsequent proceeding and challenge substantive or procedural legality of this decision. For the purposes of the procedure under the first sentence it shall be deemed that the public concerned referred to in Section 3(i), point 2, has rights which may be impaired by the decision issued in a subsequent proceeding.
(2) The court shall decide on the legal actions against decisions issued in subsequent proceedings within 90 days of the legal action being delivered to the court. The court shall decide even without a petition whether to grant suspensory effect to the legal action or order a preliminary injunction pursuant to the Code of Administrative Justice. The court shall grant suspensory effect to the complaint or order a preliminary injunction if there is a risk that the implementation of the project may cause serious environmental damage.”
- d) A decision is issued at the end of the EIA scoping and screening procedure, under which it has been determined that a certain project is not subject to the EIA process. This means that NGOs under Article 2, paragraph 5 of the Convention may file an appeal and legal action against this decision under the same conditions as set out in the previous point.

Relevant provisions:

- Section 7, paragraph 6 of the EIA Act:
“(6) If the competent authority concludes that a project or change of project is not to be assessed under this Act, it shall issue a decision in this respect, which is the first act in the proceedings. The decision shall provide basic information about the project, in the extent of points B.I.1 to B.I.4 and B.I.6 of Annex 3 to this Act, and thoughts that the competent authority followed when assessing the principles set out in Annex 2 to this Act. The decision shall be published pursuant to Section 16 and delivered by way of a public notice. The developer and the public concerned referred to Section 3(i), point 2 shall have the right to challenge the decision. The public concerned shall demonstrate the compliance with the conditions under Section 3(i), point 2, in the appeal.”
- Section 7, paragraphs 9 and 10 of the EIA Act:
*“(9) The public concerned referred to in Section 3(i), point 2, is entitled to bring a legal action to protect public interest against a decision issued in the scoping and screening procedure, that the project or change of a project will not be assessed under this Act, and challenge substantive and procedural legality of this decision. For the purposes of the procedure under the first sentence it shall be deemed that the public concerned referred to in Section 3(i), point 2, has rights which may be impaired by the decision issued in the scoping and screening procedure, that the project or change of a project shall not be assessed under this Act.
(10) The court shall decide on a legal action against a decision issued in the scoping and screening proceeding within 90 days of the legal action being delivered to the court.”*

- e) As regards noise, the Civil Code states that if pollution (which includes noise) is the result of the officially approved operations of a factory or similar facility, a neighbour has the right to financial compensation, and if the operations exceed the officially approved scope, the neighbour has the right to have the operator refrain from such excess operations and can take legal action to this end. It should be added that, generally, in other cases – i.e., in cases where noise is not the result of a factory or similar facility operations – a neighbour can take legal action against any noise that is excessive to the location and substantially restricts normal use of the land.

Relevant provisions:

- Section 1013 of Act No. 89/2012 Coll., the Civil Code:
*(1) The owner shall refrain from everything that makes waste, water, smoke, dust, gas, odour, light, shading, noise, vibrations and other similar effects (immission) penetrate the property of another owner (neighbour) to a degree that is excessive for the location and that substantially restricts normal use of the land; this also applies to animals entering the land. Directing pollution to a different owner's land is prohibited regardless of the degree of such pollution or level of intrusion, unless doing so is based on a specific legal reason.
(2) If the immission is due to the officially approved operations of a factory or similar facility, a neighbour only has the right to financial compensation for loss or damage, even if the loss or damage was caused by circumstances that officials did not take*

into consideration when approving the operations. The above shall not apply if the operations exceed the officially approved scope.”

- Section 1042 of Act No. 89/2012 Coll., the Civil Code:
“An owner can seek protection against anyone who wrongfully infringes on intervenes in his ownership rights other than by withholding the item.”

The land-use plan is issued in the form of a measure of a general nature. The law allows to file a request for review of its compliance with legal regulations as well as a proposal for its annulment. It can be assumed that if the land-use plan is issued “in contravention of urban and land-planning standards or other environmental protection law”, it can be considered at variance with legal regulations and made subject to review proceedings. Commencement of the review proceedings is left to the discretion of the appropriate administrative authority, but anyone can file a proposal for the commencement of such review. A proposal for annulment of the land-use plan can be filed within three years (of the date when the land-use plan became effective) by the person who claims that his or her rights have been impaired thereby. The court shall decide on such proposal.

Relevant provisions:

- Section 174, paragraph 2 of Act No. 500/2004 Coll., the Code of Administrative Procedure:
“(2) The compliance of a measure of a general nature with legislation may be considered in review proceedings. A resolution to commence review proceedings may be issued within 3 years of the measure becoming legally effective. The effects of the decision made in the review proceedings shall commence on the day of the decision becoming legally effective.”
- Section 101a, paragraph 1 of Act No. 150/2002 Coll., Code of Administrative Justice:
“(1) The petition seeking the annulment of a measure of a general nature or any part thereof may be filed by the person who claims that his or her rights have been prejudiced by a measure of a general nature issued by an administrative authority. If according to the Act such person is entitled to file a complaint or other petition in a matter that the measure of a general nature was applied to, such proposal to annul the measure of a general nature may only be made together with such petition.”
- Section 101b, paragraph 1 of Act No. 150/2002 Coll., Code of Administrative Justice:
“(1) The proposal can be filed within three years of the day when the measure of a general nature challenged by the proposal took effect. Missed deadlines for filing the proposal may not be excused.”

On recommendations of the Committee in regard to ACCC/C/2012/70:

- i) The EIA Act (which includes regulation of SEA process) specifies the projects and programmes that are to be assessed under the SEA process. It is not possible to compile in advance a specific list of plans and programmes with respect to which public participation under Article 7 of the Convention can be ensured during their approval. Generally speaking, public participation in approving plans and programmes is ensured in the Czech Republic by the SEA process and it is possible to generally define the plans and programmes where public participation is ensured. This includes such plans and programmes (and changes thereto) that lay down the framework for future allowance of projects assessed under the EIA process and that are drawn up or commissioned by a

public authority and subsequently approved by the public authority or submitted for approval.

ii) Even here the criteria referred to in the previous point shall be applied.

iii) No plans or programmes similar in nature to the National Investment Plan have been adopted since the National Investment Plan and there are no such plans or programmes foreseen to be considered in the near future that would need to be subjected to public participation under Article 7 of the Convention.