

## **Study „Measures on access to justice in environmental matters (Article 9(3)) – Country report for the Czech Republic“ - comments of the Czech Republic**

Generally speaking, the presented report concerning the approach of the Czech Republic to legal protection of the environment is very critical.

The critique of impossibility of judicial review in relation to the process of environmental impact assessment as well as that of the statement is correct. In this relation amendment of the related legislation is under preparation (such as the act no. 100/2001 Coll. on the assessment of the effects on the environment) which should mend the current situation.

Under no circumstances can the Czech Republic agree with the unilateral conclusion (p.5, Executive summary) that Article 9/3 of the Aarhus convention has not been transposed to the Czech legal order. This article stipulates that representatives of the public, fulfilling the requisite criteria of the national legal order, should have access to administrative or legal proceedings, should be able to raise objections to the conduct, acts or neglect on the side of private persons or public administration which are in contradiction to the national law concerning protection of the environment. Individual acts in different components of environment, as act no. 114/1992 Sb. on the protection of nature and landscape, or act no. 254/2001 Sb. on water, or changes made to some other acts usually fall under the general Administrative Procedure Code – Act No. 500/2004 Coll.) and the participants, therefore, exercise all the proceeding rights attributed to them by the act in question.

The Code of Administrative Justice – Act No. 150/2002 Coll. should be added for allness purposes. This act relates to administrative ruling and, on its basis, courts provide protection for private and legal persons in accordance to this act and under the conditions given by this act (or by a special act).

The absence of “actio popularis”, as protection of the environment is concerned, has also been subjected to critiques. No European legislative act (be it directive or treaty) demands such a provision. Czech legal order, however, as in § 66 of The Code of Administrative Justice makes a provision to sue a legal or private person in the name of public order protection.

In the 2.1.2. section, the instrument of “binding position” is criticised (p. 10). The CR believes that the role of this instrument can be looked upon in either positive or negative way; whereas this report only perceives it in one way. According to § 149 (4) of the Administrative Procedure Code, provisions are made to redress potential harmful effects of the binding position. The code further facilitates the possibility to repeal or change illegal binding positions (§ 149 (5)).

### Comments on individual parts of the report:

- p. 8, section 1.2.

Art. 65 of The Code of Administrative Justice stipulates that there is no actual connection between the presence at administrative proceeding and an active legitimating to sue (this connection also appears on p. 16)

- p.10, section 2.2.1.

Superior appeal authority will examine not only the legality but also the validity of the decision of first instance authority, as is correctly mentioned on p.9.

- p. 11, section 2.2.2 (paragraph on act 114/1992 Coll.)

The same wording appears in the Czech act on water.

- p. 12, section 2.3.1., par. 1

The reopening procedure by authority is not bound by the subjective 3-months deadline (only by the objective 3-years deadline).

- p. 16, section 2.4.1, par. 3

This section lacks a conclusion and it is, therefore, not clear whether it means that participation only at later stages of the Aarhus convention is allowed or not.

- p. 16, section 2.4.2

The article leads to the conclusion that, according to act on air protection, a participant is anyone whose right to a favourable environment has been contested. This conclusion is not, in our legal interpretation, possible. Participation in administrative procedure (if not mentioned otherwise) is ruled by Administrative Procedure Code.