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Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

Fifth session

Maastricht, the Netherlands, 30 June and 1 July 2014

Item 5 (b) of the provisional agenda

Procedures and mechanisms facilitating the implementation of the Convention: compliance mechanism

Compliance by the Czech Republic with its obligations under the Convention

Report by the Compliance Committee

Summary

The present document was prepared by the Compliance Committee pursuant to the request set out in paragraph 10 of decision IV/9 of the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (see ECE/MP.PP/2011/2/Add.1), and in accordance with the Committee's mandate set out in paragraphs 13 (b), 14 and 35 of the annex to decision I/7 on review of compliance (ECE/MP.PP/2/Add.8).

The document reviews the progress made by the Czech Republic in the intersessional period in implementing the recommendations set out in the Committee's findings on communication ACCC/C/2010/50, adopted on 29 June 2012 (ECE/MP.PP/C.1/2012/11), in particular with regard to the implementation of the Convention's provisions on public participation and access to justice.

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1. Communication ACCC/C/2010/50¹ was submitted by the Czech organization Environmental Law Service (Ekologický právní servis) alleging a failure by the Czech Republic to comply with its obligations under article 3, paragraph 1, article 6, paragraphs 3 and 8, and article 9, paragraphs 2, 3 and 4, of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).

2. The communication alleged that the law and practice of the Party concerned provided for a restrictive definition of who might be parties in environmental decision-making due to the so-called “impairment of rights doctrine”, thus restricting standing for individuals in a number of cases, relating, among others, to land-use and building permits. The communication further alleged that the Party concerned provided limited rights to non-governmental organizations (NGOs) to challenge the substantive and procedural legality of environmental permits falling under article 6 of the Convention; and that the Party concerned did not provide for review procedures with respect to administrative omissions regarding activities subject to article 6. For these reasons, the communication alleged that the Party concerned failed to comply with article 9, paragraph 2, of the Convention, especially with respect to the review of issues under article 6, paragraphs 3 and 8. The communicant also alleged that, in the light of the above, article 2, paragraph 5, was not properly transposed into Czech legislation.

3. The communication further alleged that because a considerable part of the members of the public, including NGOs, had no access to court procedures for the review of acts and omissions relating to the environment, including those relating to land-use plans, the Party concerned failed to comply with article 9, paragraph 3, of the Convention. It also alleged that because courts could order injunctive relief only in very few cases, remedies were ineffective in environmental matters and that the Party concerned thus failed to comply with article 9, paragraph 4, of the Convention. Finally, the communication alleged that the Party concerned in general failed to provide for a sufficiently clear, transparent and consistent framework on access to justice, as required by article 3, paragraph 1, of the Convention.

4. Having considered the communication in accordance with the procedure set out in section VI of the annex to decision I/7, the Committee at its thirty-seventh meeting (Geneva, 26–29 June 2012), found that:

(a) Through its restrictive interpretation of “the public concerned” in the phases of the decision-making to permit activities subject to article 6 that come after the environmental impact assessment (EIA) procedure, the system of the Party concerned failed to provide for effective public participation during the whole decision-making process, and thus was not in compliance with article 6, paragraph 3, of the Convention;

(b) By failing to impose a mandatory requirement that the opinions of the public in the EIA procedure are taken into account in the subsequent stages of decision-making to permit an activity subject to article 6, and by not providing an opportunity for all members of the public concerned to submit any comments, information, analyses or opinions relevant to the proposed activities in those subsequent phases, the Party concerned failed to comply with the requirement in article 6, paragraph 8, of the Convention to ensure that in the decision due account is taken of the outcome of the public participation;

(c) The rights of NGOs meeting the requirements of article 2, paragraph 5, to access review procedures regarding the final decisions permitting proposed activities, such

¹ The communication and other documents relating to it are available on the Committee’s website from <http://www.unece.org/env/pp/pubcom.html>.

as building permits, are too limited, to the extent that the Party concerned failed to comply with article 9, paragraph 2, of the Convention;

(d) By limiting the right of NGOs meeting the requirements of article 2, paragraph 5, to seek review only of the procedural legality of decisions under article 6, the Party concerned failed to comply with article 9, paragraph 2, of the Convention;

(e) To the extent that the EIA screening conclusions serve also as the determination required under article 6, paragraph 1 (b), members of the public should have access to a review procedure to challenge the legality of EIA screening conclusions. Since this was not the case under Czech law, the Party concerned failed to comply with article 9, paragraph 2, of the Convention;

(f) By not ensuring that members of the public are granted standing to challenge the act of an operator (private person) or the omission of the relevant authority to enforce the law when that operator exceeds some noise limits set by law, the Party concerned failed to comply with article 9, paragraph 3. Similarly, in cases of land-use planning, by not allowing members of the public to challenge an act, such as a land-use plan, issued by an authority in contravention of urban and land-planning standards or other environmental protection laws, the Party concerned failed to comply with article 9, paragraph 3, of the Convention.

5. The Committee, pursuant to paragraph 36 (b) of the annex to decision I/7, and noting the agreement of the Party concerned that the Committee take the measures requested in paragraph 37 (b) of the same, recommended that the Party concerned undertake the necessary legislative, regulatory and administrative measures to ensure that:

(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 the decision-making procedure subject to article 6;

(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;

(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;

(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), on 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;

(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.

6. The above findings and recommendations of the Committee were submitted to the thirty-ninth meeting of the Compliance Committee (Geneva, 11–14 December 2012) as document ECE/MP.PP/C.1/2012/11.

7. The Committee invited the Party concerned to provide information, by no later than 16 September 2013, on its progress in implementing the recommendations of the Committee.

8. The Party concerned provided its progress report on 12 September 2013 and the communicant provided comments on 23 September 2013. Comments were also received from an observer, Green Circle, an association of 28 Czech environmental NGOs, on 23 September 2013.

9. The Party concerned informed the Committee about its plans to carry out a broadly conceived change to national law related to its EIA procedure. A short description of the planned legislative changes was provided. The draft amendments were to be submitted for adoption by the parliament in 2014.

10. The communicant and observer both expressed the view that the planned legislative reform would not address a number of the Committee's findings, namely those concerning standing of members of the public concerned with respect to noise limits and with respect to land-use plans (ECE/MP.PP/C.1/2012/11, para. 89 (f)), and the related recommendations (ibid., para. 90 (e)). The communicant also stressed that complying with the Committee's findings also would require a change in the case-law, but to its knowledge there had been no steps taken in this respect, e.g., information and/or capacity-building efforts targeting judges and courts.

11. The Committee notes that the Party concerned has planned practical steps for achieving compliance with the Convention, but that the parliamentary legislative process has not yet been started and that the Party concerned has not reported that any administrative or other measures have been taken. The Committee also recalls that the scope of the Convention is wider than the scope of the European Union EIA Directive,² and thus additional efforts may be needed for fully meeting the Committee's recommendations. In the view of the Committee, enhanced involvement of the public and the judiciary would positively affect the implementation of the Convention by the Party concerned.

12. At its forty-second meeting (Geneva, 24–27 September 2013), the Committee reviewed the progress report submitted by the Party concerned and the comments of the communicant and observer and prepared the draft of the present report and recommendations. The draft was then sent to the Party concerned and the communicants on 18 November 2013 for comments by 9 December 2013. By e-mail of 5 December 2013, the Party concerned indicated that it had no comments on the draft report. No comments were received from the communicant. The Committee adopted its findings and recommendations at its forty-third meeting (Geneva, 17–20 December 2013) and agreed to submit it to the Meeting of the Parties at its fifth session.

13. The Committee recommends to the Meeting of the Parties, pursuant to paragraph 35 of the annex to decision I/7, and taking into account the cause and degree of non-compliance and measures taken by the Party concerned in the intersessional period, to:

- (a) Endorse the findings and recommendations of the Committee as adopted at its thirty-seventh meeting;
- (b) Welcome the efforts made by the Party concerned to start a process of legislative changes and encourage it to speed up the process;
- (c) Invite the Party concerned to submit to the Committee periodically (on 31 December 2014, 31 October 2015 and 31 October 2016) detailed information on further progress in implementing the recommendations set out above;
- (d) Undertake to review the situation at its sixth session.

² Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment.