Ministerstvo životního prostředí

Secretariat of the Aarhus Convention
Palais des Nations
1211 Geneva
Switzerland

In Prague on 27 September 2023

Progress report 2023 – Czech Republic

Dear Aarhus Convention secretariat,

In its decision VII/8e concerning compliance by Czechia with its obligations under the Convention, the Meeting of the Parties requested the Czech Republic to provide a detailed progress report on the measures taken and the results achieved in the implementation of the plan of action and the recommendations in paragraphs 2 and 6 of the decision VII/8e. We are attaching the requested progress report below and we kindly ask you to forward it to the Compliance Committee. Thank you very much.

Kind regards

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Ministry of the Environment of the Czech Republic

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Progress report 2023 – Czech Republic

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1. Introduction

As requested by the Meeting of the Parties in its decision VII/8e concerning compliance by Czechia with its obligations under the Convention, the Czech Republic prepared a plan of action regarding the implementation of the recommendations in paragraphs 2 and 6 of the decision. The plan of action was submitted to the Committee on 24 October 2022, after consideration of the comments received during public consultation.

Communicants of communication ACCC/C/2016/143 provided their comments on the final plan of action on 22 November 2022. Their comments were taken into account and a reply with several clarifications was sent to the Committee on 1 December 2022.

Having reviewed the plan of action on decision VII/8e submitted by Czechia, the Committee has concluded that Czechia's plan of action appears to be only partially appropriate. The Committee therefore invited Czechia to attend an open session which was held on 15 December 2022. In this session, Czechia provided a response to the concerns expressed by the Committee regarding its plan of action.

In the meantime, Czechia has been working on the implementation of the measures it proposed in its plan of action. A detailed progress report regarding the recommendations in paragraphs 2 and 6 of the decision VII/8e is provided below.

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2. Paragraph 2 (a) (i) of decision VII/8e

In paragraph 2 (a) (i) of decision VII/8e, the Meeting of the Parties requested Czechia to take the necessary legislative, regulatory and administrative measures to ensure that members of the public are granted access to administrative or judicial procedures to challenge acts and omissions by an operator or competent authority when an operator contravenes provisions of national law relating to noise.

2a. Permitting of noise exemptions

As explained already in the open session before the Committee, the issue that was originally challenged by the communicant in this case was the lack of access to justice in relation to a special procedure under the Czech law in which a public authority allows the operation of a source of noise that exceeds noise limits established by the law (these permits are usually called "noise exemptions"). For this reason, both the Ministry of the Environment and the communicant were referring to this procedure in most of the documents related to this case since 2010 until today.

In the past, there have indeed been problems regarding the access to justice in cases related to the permitting of "noise exemptions", however, the situation changed significantly as the case law evolved. Therefore, with regard to this recommendation, we are primarily referring to the selection of case law with commentary which was sent to the Committee on 1 December 2022 (see **annex 1** to this progress report).

As shown in the case law provided in annex 1, if the public concerned cannot be a party to the administrative procedure (which is the case of permitting of "noise exemptions"), but the decision taken therein may affect its legal sphere, it can file a lawsuit against this decision according to § 65(1) of the Code of Administrative Justice. When doing so, it must claim and prove that the decision affects its legal sphere, i.e. it must claim that it owns subjective rights that are affected by the given decision. Such a subjective right can also be the right to a favourable environment, if the alleged intervention has consequences for achieving the goals that the affected public (typically an NGO) is aiming for.

As a supplementary measure to the above, the plan of action also referred to a legislative amendment of Sec. 31(1) of the Public Health Protection Act. This amendment will help facilitate access to information about noise exemptions that have been granted, which can be considered a basic precondition for an effective exercise of the above-mentioned rights. The amendment has already been approved by the Parliament and it will become effective on 1 January 2024 (i.e. later than foreseen by the plan of action due to reasons unrelated

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to this particular provision). The new online platform with information on noise exemptions that have been granted should be put into operation in the first half of 2024 (relevant information will be posted to this new platform in several phases, starting with selected sources of noise such as roads and railways).

2b. Challenging contraventions of noise limits

In preparation of the open session in December 2022, the Committee explained that the focus of its recommendation in this case is on the right of members of the public to challenge a contravention of a noise limit in general. When studying this concern of the Committee in more detail, it occurred to us that the text of the recommendation was formulated in line with the text of Article 9(3) of the Aarhus Convention, however, in doing so, it significantly changed the subject of the case – until then, the permitting of "noise exemptions" was the only issue discussed in this case, which is legally a completely different issue from situations when an operator contravenes provisions of national law relating to noise. Unfortunately, the Ministry did not comment on this discrepancy when the draft findings of the Committee were published, owing most likely to the large scale of the case ACCC/C/2010/50, in which this issue originally played only a very small part.

In order to satisfy the request made by the Committee in the open session, we are enclosing information on the possibilities of the members of the public to challenge a contravention of a noise limit (see **annex 2** to this progress report). We believe that it is not necessary to take any further measures in this matter, since it does not constitute any non-compliance with the Aarhus Convention that would be challenged before the Compliance Committee and addressed by it in more detail.

3. Paragraph 2 (a) (ii) of decision VII/8e

In paragraph 2 (a) (ii) of decision VII/8e, the Meeting of the Parties requests Czechia to take the necessary legislative, regulatory and administrative measures to ensure that plans and programmes similar in nature to the National Investment Plan are in future submitted to public participation, as required by article 7, in conjunction with the relevant paragraphs of article 6, of the Convention.

In the plan of action, Czechia proposed a set of two measures to address this recommendation, which have both been implemented.

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First, at the level of the Ministry of the Environment, an internal Directive has been adopted, which contains requirements regarding public participation in preparation of plans and programmes relating to environment according to Article 7 of the Aarhus Convention (see translation of its relevant provisions in **annex 3** to this progress report). This internal Directive addresses the preparation of general plans and programmes relating to the environment that are being prepared by the Ministry of the Environment. As an additional measure, the Ministry of the Environment has established a new subsection on its webpage dedicated to strategic documents that are being prepared by this Ministry, including information about ongoing public consultations.

Second, in relation to other plans and programmes, we have identified several methodological guidelines dealing with related topics, which could be supplemented by a reference to the requirements of Article 7 of the Aarhus Convention. After careful consideration[1], we decided to proceed with an amendment of a template dedicated to communication with the public which is a part of *Methodology for the preparation of public strategies* (Ministry of Regional Development, 2019). The template has been supplemented with a new annex explaining the requirements arising from Article 7 of the Aarhus Convention (see translation thereof in **annex 3** to this progress report).[2]

The Ministry of the Environment will also be involved in the pilot phase of the implementation of the *Methodology for the participation of non-state non-profit organizations in advisory and working bodies and in the creation of state administration documents* (Office of the Government of the Czech Republic, 2022). We will monitor the interactions between the application of this methodology and the requirements of the Aarhus Convention and, following this, we will consider if it is necessary to propose modification also of this Methodology so that information about the requirements arising from Article 7 of the Aarhus Convention is also expressly reflected in it.

In addition to the measures proposed in the plan of action, we have taken one more supplementary measure in order to raise awareness of the obligations arising from Article 7 of the Aarhus Convention. In cooperation with the Ministry of Regional Development, we

[1] *Methodology for involving the public in the preparation of government documents* (Ministry of the Interior, 2009) and *Manual for involving the public in the preparation of government documents* (Ministry of the Interior, 2010) are not currently widely promoted. *Methodology for the participation of non-state non-profit organizations in advisory and working bodies and in the creation of state administration documents* (Office of the Government of the Czech Republic, 2022) shall not be amended before the end of the pilot phase of its implementation (i.e. in 2025). For these reasons, the *Methodology for the preparation of public strategies* (Ministry of Regional Development, 2018) was identified as the most suitable methodological guideline for immediate amendment.

[2] The original version of the template (in Czech) is available here: https://www.mmr.cz/cs/microsites/portal-strategicke-prace-v-ceske-republice/nastroje-a-metodicka-podpora/vystupy-projektu/metodika.

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have prepared information about public participation requirements to be followed during the preparation of plans and programmes relating to the environment – this information is now published on the Portal of strategic work in the Czech Republic. As the Portal is primarily intended for persons engaged in the preparation of strategic documents in the Czech Republic, the text is published only in Czech. The information concerns requirements arising from Article 7 of the Aarhus Convention, as well as obligations arising in connection with SEA and in relation to spatial planning. It contains a number of links to related methodological documents and to other sources of information.

4. Paragraphs 2 (b) (i) and (ii) a of decision VII/8e

In paragraph 2 (b) (i) of decision VII/8e, the Meeting of the Parties requests Czechia to demonstrate that it provides a legal framework to ensure that, when selecting means of notifying the public under article 6 (2), public authorities are required to select such means as will ensure effective notification of the public concerned, bearing in mind the nature of the proposed activity and including, in the case of proposed activities with potential transboundary impacts, the public concerned outside the territory of the Party concerned. In paragraph 2 (b) (ii) a of decision VII/8e, the Meeting of the Parties requests Czechia to demonstrate that it provides the necessary arrangements to ensure that when conducting transboundary procedures in cooperation with the authorities of affected countries, the competent public authorities make the necessary efforts to ensure that the public concerned in the affected countries is in fact notified in an effective manner.

In line with the plan of action, we have proposed and implemented a technical measure which increases the efficiency of notifying the foreign public about the ongoing EIA processes. It consists in the introduction of a new search filter within the existing CENIA information system, which facilitates an easy way to display information about all new projects that are subject to transboundary assessment (i.e. in relation to which cross-border effects are expected) at any time and always in one place. All entities interested in this type of information can use this simple tool to access current information about ongoing transboundary assessments at any time, without checking the official boards,

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websites of various public administration bodies or other sources of information. This measure has already been implemented.[3]

Furthermore, based on the concerns expressed by the Committee in preparation of the open session, the Ministry of the Environment has sent a request for advice regarding the implementation of this recommendation to the Compliance Committee. The request was sent to the Committee on 9 February 2023 and it contains a detailed explanation of the current situation regarding this case and several questions to the Committee. As of today, we have not received any reply from the Compliance Committee.

5. Paragraph 2 (b) (ii) b of decision VII/8e

In paragraph 2 (b) (ii) b of decision VII/8e, the Meeting of the Parties requests Czechia to demonstrate that it provides the necessary arrangements to ensure that there will be proper possibilities for the public concerned, including the public outside the territory of the Czech Republic, to participate at the subsequent stages of the multistage procedure regarding Temelín nuclear power plant.

According to the information that is currently available to us, the promoter of the project addressed in this recommendation has not yet asked for an initiation of any of the subsequent proceedings (i.e. the subsequent stages of the multistage procedure). If and when the promoter decides to advance with the project in the future, public participation in the subsequent proceedings will be ensured by the current legislation of the Czech Republic (see the explanation provided in the plan of action). Furthermore, in the plan of action, we have also referred to a new provision of § 9f of the Act on the Environmental Impact Assessment, which shall govern the mechanism of public participation in subsequent proceedings in more detail. The new provision has been approved by the Parliament and it will enter into force on 1 January 2024 (i.e. later than foreseen by the plan of action due to reasons unrelated to this particular provision).

We are aware that the Committee expressed certain concerns regarding this recommendation in preparation of the open session, namely that "[u]*nder proposed section 9f (1) and (3) of the EIA Act, if the affected State decides not to exercise its rights under those provisions or to notify its public of their right to participate in the transboundary*

[3] *Click on this link "https://portal.cenia.cz/eiasea/view/eia100_cr" to enter the CENIA information system – choose "EN" for English version (upper right corner of the page) – Filter by "Transboundary assessment projects" – click on "Show results".*

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procedure, that is the end of the matter and there would be no further obligation on the competent authority of the Party concerned to ensure that the public concerned in the affected State is effectively notified. The Committee makes clear that, as already explained above, such an approach is not consistent with the Aarhus Convention, pursuant to which the rights of the public concerned in the affected State remain owed by the Party concerned even if the affected State itself does not wish to participate." This concern is closely connected to the issues addressed in the above-mentioned request for advice.

6. Paragraph 6 (a) of decision VII/8e

In paragraph 6 (a) of decision VII/8e, the Meeting of the Parties recommends that Czechia takes the necessary legislative, regulatory, administrative or other measures to ensure that when the operating conditions of a permit issued under the 1997 or 2016 Atomic Act, or any legislation that supersedes the 2016 Atomic Act, are reconsidered within the meaning of article 6 (10) of the Convention, the provisions of article 6 (2)–(9) will be applied *mutatis mutandis* and where appropriate, bearing in mind the objectives of the Convention. This includes, but is not limited to, the reconsideration of the duration of the permit or the 10-year periodic safety reviews.

In the plan of action (incl. its annexes), in the response to the comments to Czechia's plan of action, and in the statement delivered at the open session, the Ministry of the Environment in close cooperation with the State Office for Nuclear Safety (hereinafter the "Office") provided detailed explanations about the process in which the operating conditions of an Nuclear Power Plant may be reconsidered or updated within the meaning of Article 6(10) of the Aarhus Convention. The update of operating conditions would happen within the procedures according to § 22 or § 204 of the Atomic Act, in which the public concerned may participate.

Following further communication with the Committee on the issue of public participation in connection with periodic safety reviews, we are currently considering the need and possibilities for further legislative amendments. However, before we move on, we first need to know the definitive answer of the Compliance Committee regarding the request for advice made by the Netherlands in connection with case ACCC/C/2014/104. Czechia has submitted its comments on Committee's draft advice on 9 November 2022 in which it asks the Committee to reconsider or clarify its interpretation regarding the scope of Article 6(10)

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of the Aarhus Convention. Without a definite interpretation, the wording of any new legislative amendments may not correspond to the Committee's view.

Currently, we are considering the following legislative changes (please, note that this is a proposal, which has not yet passed any part of the legislative process, and it can therefore still change fundamentally):

- Allowing public participation in administrative procedures related to licensing of nuclear activities under § 9 of the Atomic Act if (1) there is no other related decision-making procedure being held, in which the public may participate (e.g. under the Building Act), and (2) the activity in question may have an impact on the environment (i.e. the licensing procedure in question falls within the scope of the Aarhus Convention). As stated in our previous communication, such situation should be extremely rare, however, if it occurs, this legal amendment would make sure that the rights of the affected public are protected.
- Introduction of a new obligation to inform the public about the licensing procedures that are being commenced (the information would be posted on the official website of the Office). Based on this information, the public would have an overview about the procedures that are being commenced and it may request to be included as a party to the procedure. This would cover the procedures under § 9 of the Atomic Act (if the legislative change according to the previous point is enacted), while procedures on changes to an activity under § 22 and § 204 of the Atomic Act (see the plan of action, p. 17) are fully open to public participation, as stated previously.
- Introduction of a new obligation to inform the public about the results of the periodic safety review (the information would be posted on the official website of the Office). Based on this information, the public would have an overview about the results of periodic safety reviews based on which the Office considers what further steps should be taken including if any of the above-mentioned procedures should be commenced, and it may request the Office to commence an *ex officio* procedure (the Office is generally obliged to hear such requests, investigate the situation and commence the procedures – for more information see our response to the comments of the communicants, p. 4).
- Introduction of a new obligation to inform the public about any facts important from the point of view of nuclear safety, radiation protection etc. which emerged during the performance of the licensed activity (this information would be provided

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via a website by the licence holders, i.e. mainly by the operator of nuclear facilities). This information would include also information about periodic safety reviews that are being planned or performed. If this information reveals any legal deficiencies or that further steps need to be taken, the public may request the Office to commence an *ex officio* procedure (see previous point).

As a supplementary measure proposed in the plan of action, we also intend to perform an analysis of public awareness about the possibilities of participation in proceedings under the Atomic Act followed by additional measures to increase the level of awareness (if necessary). The intended procedure is outlined in **annex 4** to this progress report.

7. Paragraph 6 (b) of decision VII/8e

In paragraph 6 (b) of decision VII/8e, the Meeting of the Parties recommends that Czechia takes the necessary legislative, regulatory, administrative or other measures to ensure that members of the public concerned meeting the requirements of article 9 (2), including environmental non-governmental organizations, have access to a review procedure to challenge the substantive or procedural legality of decisions, acts and omissions under the 1997 or 2016 Atomic Act, or any subsequent legislation, that are subject to the provisions of article 6 of the Convention.

As explained in the plan of action, according to Czech law and its interpretation by the Czech courts, the public concerned has the possibility to go to court and request a review of the legality of the decision taken. This possibility is given both in cases where the public concerned is a party to the administrative procedure before an administrative body (i.e., in particular, procedure pursuant to § 22 or pursuant to § 204 of the Atomic Act, or procedures for the issuance of zoning permits and building permits pursuant to the Building Act, including if it is a subsequent proceeding pursuant to the Act on Environmental Impact Assessment), and in cases where the public concerned is not a party to this procedure (i.e., in particular, a permit procedure pursuant to § 9 of the Atomic Act). A detailed explanation is provided in the selection the from case law with commentary which is enclosed to this progress report as its **annex 1** to this progress report.

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8. Awareness rising activities

On 30 May 2023, the Ministry of the Environment held a meeting with the public on issues related to the implementation of the Aarhus Convention in the Czech Republic, the purpose of which was to provide space for a broader discussion of current issues related to the implementation of the Aarhus Convention in practice. The meeting was attended by representatives of the Ministry of the Environment, State Office for Nuclear Safety, NGOs, academia etc. It was held in Czech. Presentations from the meeting, incl. a presentation about the above cases, are available on the website of the Ministry of the Environment.

Currently we are working on the translation of the *Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters prepared under the Aarhus Convention* into Czech language. We hope that having a Czech version of this document will support not only the implementation of Articles 6, 7 and 8 of the Aarhus Convention in general, but also the implementation of several of the abovementioned recommendations of the Compliance Committee.

9. List of annexes

Annex 1	Selection from case-law with commentary – possibility to file an action by a person who was not a party to an administrative procedure
Annex 2	Basic information – challenging contraventions of noise limits
Annex 3	Translation of new provisions and of an annex – public participation in preparation of plans and programmes relating to the environment
Annex 4	Outline of procedure – informing the public about the possibilities of participation in proceedings under the Atomic Act

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Annex 1: Selection from case-law with commentary – possibility to file an action by a person who was not a party to an administrative procedure

[*Information in this annex has already been sent to the Committee on 1 December 2022*]

Introduction

By decision VII/8e adopted by the Meeting of the Parties to the Aarhus Convention on 18–20 October 2021, the Czech Republic was requested to draw up and submit a plan of action proposing specific measures to implement several recommendations of the Aarhus Convention Compliance Committee concerning the four open cases before this Committee. The Ministry of the Environment prepared the plan of action with consideration of the comments received during public consultation and after consulting other relevant state administration bodies. It was sent to the Convention Secretariat on 24 October 2022.

In the part of the plan of action referring to the recommendation **para. 6 (b) of decision VII/8e**, it is stated that this recommendation does not require further measures, as it has already been fulfilled. According to Czech law and its interpretation by the Czech courts, the public concerned has the possibility to go to court and request a review of the legality of the decision taken. This possibility is given both in cases where the public concerned is a party to the procedure before an administrative body (participation in the administrative procedure establishes the right to appeal and to file an action), and in cases where the public concerned is not a party to the administrative procedure. In the latter case, the condition for the standing to file an action is the fact that the adopted decision affects the "legal sphere" of the plaintiff, i.e. that the plaintiff is public concerned. The same applies also in relation to the Committee's recommendation referred to in **para. 2 (a) (i) of decision VII/8e**, which concerns access to justice in cases of granting of noise exemptions.

As a basis for this statement, we would like to submit to the Committee a wider selection of case law of the Czech courts, which refers to the right to file an action in cases where the plaintiff is not a party to the procedure before an administrative authority, and also to the interpretation of Czech law in accordance with the Aarhus Convention.

Participation in the administrative procedure and subsidiarity of judicial review

In order to understand the case-law below, it is first necessary to explain under what circumstances an action can be filed in the administrative court in cases where the plaintiff was a party to the administrative procedure. These are common situations governed by the general law (Code of administrative procedure, Code of administrative justice). As stated in the plan of action, in a number of cases dealt with in para. 6 (b) of decision VII/8e, the public concerned would be a party to the administrative procedure, which means that the standard means of access to justice described in this section would apply.

The determination of parties to an administrative procedure is generally regulated in § 27 of Act No. 500/2004 Coll., Code of Administrative Procedure. According to § 27(2) of the Code of Administrative Procedure, parties to the procedure shall be also "*other persons concerned if their rights or obligations may be directly affected by the decision*". In

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addition, the public can also become a party to the administrative procedure on the basis of special laws, which include Act No. 100/2001 Coll., on the Environmental Impact Assessment (this law establishes the participation of NGOs in the so-called subsequent proceedings).

A party to an administrative procedure has the right to file an appeal against the first-instance decision of the administrative authority (cf. § 81 of the Code of administrative procedure). This constitutes an administrative review of the decision; appeal procedure is conducted by the appellate administrative authority. If the party to the proceedings is not satisfied with the outcome of the appeal procedure, it has the right to file a lawsuit in the administrative court. According to Act No. 150/2002 Coll., the Code of Administrative Justice, a lawsuit against the decision of an administrative authority can be filed by two groups of persons:

- pursuant to § 65(1) of the Code of administrative justice, a person who claims that his/her rights have been curtailed directly or as a result of a violation of his/her rights in the previous proceeding by an act of an administrative authority that establishes, changes, cancels or bindingly determines his/her rights or obligations (i.e. by a decision of an administrative authority) and
- pursuant to § 65(2) of the Code of administrative justice, also a party to a procedure before an administrative authority who is not entitled to file a lawsuit pursuant to paragraph 1, if he/she claims that he/she was curtailed on his/her rights due to the procedure of the administrative authority in such a way that it could have resulted in an illegal decision.

The principle of subsidiarity of judicial review applies in this context, according to which an action is inadmissible if the plaintiff has not yet exhausted the proper remedies in the procedure before the administrative authority, i.e. if he/she has not filed an appeal (this is stated in § 68(a) of the Code of Administrative Justice). This is based on the fact that everyone should actively and consistently take care of their rights already in the procedure before the administrative authority and only then, when their efforts are unsuccessful, go to the court. This is the main reason why the question of whether a lawsuit can be filed even if the plaintiff was not entitled to file an appeal was repeatedly addressed in the case-law below.

Right of action of persons who were not parties to the administrative procedure

Special (exceptional) situations must be distinguished from the above, when the participation of third parties in an administrative procedure is excluded according to special laws. This includes, *inter alia*, the case of permitting the operation of a noise source which is exceeding the hygienic limits (§ 31(1) in conjunction with § 94(2) of Act No. 258/2000 Coll., on Protection of Public Health) and the case of certain proceedings under the Atomic Act (§ 9 in connection with § 19(1) of Act No. 263/2016 Coll., Atomic Act). Since, as a rule, in these cases the public concerned is not a party to the administrative procedure, it does not have the right to file an appeal according to § 81 of the Code of administrative procedure. However, there is an extensive and already established case-law that allows

these persons to have a standing to file a lawsuit according to § 65(1) of the Code of administrative justice, if they are affected by the decision of the administrative authority in their legal sphere.

To begin with, the courts have found that the provision of § 65(1) of the Code of administrative justice must be interpreted in the sense that a right of action must be given for all cases where the plaintiff's legal sphere is affected (i.e. for all cases where a unilateral act of an administrative authority, relating to a specific matter and specific addressees, bindingly and authoritatively affects his/her legal sphere). This issue is addressed especially in the Supreme Administrative Court ruling of 23 March 2005, File No. 6 A 25/2002 – 42 (cf. the full text of the ruling here), in the Supreme Administrative Court ruling of 22 February 2011, File No. 2 Afs 4/2011 – 64, para. 17 (cf. the full text of the ruling here) and in the Supreme Administrative Court ruling of 17 April 2014, File No. 7 As 30/2014 – 26 (cf. the full text of the ruling here).

Following this, the courts had to deal with the question of whether the above-mentioned principle of subsidiarity of judicial review applies in cases where the plaintiff was not a party to an administrative procedure, but the decision taken therein may affect his/her legal sphere. For the answer to this question, see the **ruling of the Supreme Administrative Court of 18 April 2014, File No. 4 As 157/2013 – 33** (cf. the full text of the ruling here):

[26] *Furthermore, it was necessary to address the question of whether the proper remedy allowed by the special law, which the plaintiff is obliged to exhaust before filing a lawsuit, is an appeal in the case of a plaintiff who was not a party to the procedure. This question must also be answered in the negative.* […]

[27] *The principle of subsidiarity of judicial review* […] *cannot go so far as to make judicial protection in the proceedings on an action against the decision of an administrative authority conditional on the submission of an extraordinary, inadmissible or non-compulsory remedy. If the law stipulates the condition of exhausting a proper remedy admissible according to a special law (here the code of administrative procedure), it means the appeal in an administrative procedure in cases when the law does not exclude the filing of an appeal, and only in relation to the persons to whom the law allows the filing of an appeal, i.e. to parties in administrative procedure.* […] *If the law does not provide for such an admissible proper remedy, it is necessary to admit a lawsuit directly against the first-instance decision of the administrative authority (cf. ruling of the Supreme Administrative Court of 17 April 2013, File No. 6 Ans 16/2012 - 62, No. 2959/2014 Coll. NSS).* […]

[30] *The Supreme Administrative Court thus concludes that (in general terms) it is conceivable that the contested decision affects the legal sphere of the complainants (or some of them), although they were not parties to the procedure before the administrative authority. In such a situation, their right to file a lawsuit cannot be conditioned by filing an appeal against the contested decision of the defendant, to which they were clearly not entitled and which would have to be rejected as inadmissible. In such a case, a lawsuit against the final decision of the first-instance administrative authority may be exceptionally heard.* […]

Similar conclusions can be found in a number of other rulings. In the context of the cases dealt with before the Compliance Committee, the following can be highlighted in particular:

Ruling of the Supreme Administrative Court of 15 October 2015, File No. 10 As 59/2015 – 42, points 23, 24 and 26 (cf. the full text of the ruling here): In a ruling concerning the location of blocks 3 and 4 of the Temelín NPP, the Supreme Administrative Court stated that it is not possible to reject an action as inadmissible on the grounds of a failure to exhaust proper remedies, when in the given case the plaintiff had no remedy that he/she could effectively use (because he/she was not a party to the procedure). In the rest, however, the ruling is based on a different legal situation compared to the present (in the meantime, there have been significant changes to the Act on Environmental Impact Assessment), it is therefore necessary to read the ruling taking these later changes into account.

Ruling of the Supreme Administrative Court of 2 May 2019, File No. 7 As 308/2018 – 31, paras. 13, 14, 16 (cf. the full text of the ruling here), excerpts of which were quoted in Annex No. 1 of the plan of action: The ruling refers to a time-limited permission to operate a road that exceeds the established noise limits (i.e. a procedure for the permission of a noise source which is exceeding the hygienic limits pursuant to § 31(1) of the Act on the Protection of Public Health). The Supreme Administrative Court inferred the right of action of the owner and user of the neighbouring family house to file a lawsuit against this noise exception. The ruling also contains a large number of references to other case-law, which demonstrate that this interpretation can be currently considered as well established.

More recently, similar conclusions can be found, for example, also in the ruling of the Supreme Administrative Court of 30 August 2022, File No. 1 As 115/2022 – 35, paras 14, 15 and 16 (cf. the full text of the ruling here).

Right of action of the non-governmental organisations (NGOs)

The above also applies to the case where the plaintiff is a non-governmental organization (NGO). The **Constitutional Court** commented on the right of action of associations in its key **finding of 30 May 2014, File No. I. ÚS 59/14** (cf. the full text of the finding here). The finding addressed the right of associations to submit a proposal for the cancellation of a general measure (it was a case of contesting a municipal spatial plan, which is being issued in the form of a general measure), however, this interpretation was later extended also to other cases:

22. […] *Civic associations, or now associations (as will also be mentioned later, see § 214 et seq. of Act No. 89/2012 Coll., Civil Code) mainly bring together citizens; it is a separate legal entity established for the purpose of achieving an agreed activity and common interest. Therefore, it is not possible to prevent associations completely from accessing the courts and not allow them to propose the cancellation of a municipal spatial plan.*

24. *An association requesting the cancellation of a general measure (here a municipal spatial plan or a part of it) must first of all claim that its subjective rights were affected by this measure. Such a statement must precisely define the intervention that the self-*

governing unit was supposed to commit, in accordance with the diction of § 101a(1) of the Code of administrative justice (cf. also Article 2(5) of the Aarhus Convention mentioned in para 13). It is not enough for a civic association to claim that the general measure or the procedure leading to its issuance were illegal – without at the same time claiming that this illegality affects its legal sphere.

25. *The essential criterion here must certainly be a local relationship of the plaintiff to the locality regulated by the municipal spatial plan. If the association has its registered office in this territory or if its members are the owners of real estate potentially affected by the measures resulting from the municipal spatial plan, then in principle the association should have a right to submit the proposal. Substantive (material) grounds, based on the subject of the association's activity, then derive precisely from the local relationship to the contested general measure. In some cases, local and substantive reasons can work in synergy, and it doesn't even have to be an "ecological" association.* […]

26. *In other situations, for the purposes of assessing the right of action of an association, the focus of the association on an activity that has a local justification (protection of a certain species of animals, plants) can play an important role. In general, it can be said here that from the point of view of assessing the legal condition of curtailment of rights, local "establishment", i.e. a longer period of association activity, will be more credible. However, it is not possible to exclude the establishment of an ad hoc association for a purpose related to the municipal spatial plan. The fact that a citizen prefers to promote his interest in the form of an association with other citizens cannot be attributed to his burden.* […]

27. *The Constitutional Court states, not obiter dictum, that the criteria it has mentioned do not have to apply only in relation to those associations whose main activity is the nature and landscape protection. The indicated criteria, which will no doubt be made more concrete by the case-law, can be applied to associations regardless of the subject of their activity, namely to those for which there will be a presumption of a curtailment of rights by a general measure in the sense of § 101a(1) of the Code of administrative justice.*

In the **ruling of the Supreme Administrative Court of 25 June 25, File No. 1 As 13/2015 – 295** (cf. the full text of the ruling here), this interpretation has been applied to the case of a lawsuit against a decision of an administrative authority. At the same time, the local relationship criterion has been further developed:

[79] *The Supreme Administrative Court is aware that the above-quoted case-law refers to the review of a general measure, but the conclusions regarding the affecting of the substantive legal sphere of the potential plaintiff and the necessity of a local element can also be applied to the question of the possible application of § 65(1) of the Code of administrative justice.*

[80] *The Supreme Administrative Court assessed whether the plaintiff, who is based in Brno but operates within the territory of the entire Czech Republic, could have been affected by the contested decision in his substantive legal sphere, which is a prerequisite for the existence of his right of action.*

[82] *According to the court's belief, the plaintiff in this particular case could have been affected by the contested decision in his substantive rights. Although the project KO EPR II is located in the Ústí Region, the operation of a power plant of such importance undoubtedly exceeds the borders of the region in question, or has an impact on the entire territory of the Czech Republic. The plaintiff is demonstrably performing long-term and erudite activities related to nature and landscape protection throughout the Czech Republic (e.g. implementation of the so-called "Prague Circle", implementation of projects in the Jeseníky Protected Landscape Area, construction of the R52 road or felling of trees in the Šumava National Park). In the ruling of 18 September 2014, File No. 2 Aos 2/2013 – 69, the Supreme Administrative Court decided that the main criterion for granting the association a right of action is the existence of a sufficiently strong relationship of the applicant to the given territory. The Supreme Administrative Court considers that, in the case of the given projects with impacts on the territory of the entire Czech Republic, it is possible to conclude that the plaintiff, who performs an activity within the entire Czech Republic, is affected in the substantive sphere, or that in this particular case the criterion of a sufficiently strong relationship of the plaintiff to the territory in question is fulfilled.*

[83] […] *Therefore, § 65(1) of the Code of administrative justice can be applied to the given case, i.e. the plaintiff is entitled to file objections of both procedural and substantive nature.*

Furthermore, the interpretation was also elaborated in the **ruling of the Supreme Administrative Court of 26 April 2017, File No. 3 As 126/2016 – 38** (cf. the full text of the ruling here). In this case, the subject of judicial review was again a municipal spatial plan (not a decision of an administrative authority):

In any case, however, it is necessary to take into account the fact that the Constitutional Court in its finding of 30 May 2014, File No. I. ÚS 59/14, did not limit the conclusion regarding the infringement of material rights only to the infringement of the property right or other right in rem of a member of an association, who seeks the protection of his/her rights through this legal entity, but expressly in the context of the Aarhus Convention also admitted the infringement of the rights of members of the association to a favorable environment (without being derived from an existing property right in the regulated territory), if the alleged intervention has consequences for achieving the goals that the given association focuses on (in addition to associations for the protection of nature and landscape, one can imagine, e.g. gardening associations, associations organizing recreational use of a certain location, etc.).

At the same time, the Supreme Administrative Court admitted that the emphasis on the local relationship of the association may differ depending on how wide are the impacts associated with the adoption of the plan (ruling dated 25 June 2015, File No. 1 As 13/2015-295, regarding the plan for the comprehensive restoration of the Prunéřov II Power Plant), or also according to the importance of the protected natural and landscape values, as in the ruling of 6 November 2016, File No. 1 As 182/2016-28, the Supreme Administrative Court admitted that "…it is possible to imagine a situation where an association established for the purpose of nature and landscape [protection] *could have the right of action even if it usually operates in a different place than the object whose protection is sought. Such a*

situation could typically arise if an object with a certain degree of national protection (e.g. a national park) would be concerned in the administrative procedure."

A clear summary of the above can be found in the **ruling of the Supreme Administrative Court of 31 January 2019, File No. 2 As 250/2018 – 68** (cf. the full text of the ruling here):

[13] *Ecological associations can defend both their procedural and substantive rights in proceedings before the administrative court. They either do so from the position of the so-called "interested parties" according to § 65(2) of the Code of administrative justice, in case that they could not be affected in their legal sphere in the previous proceeding, but they have exercised a certain interest protected by the law there (hence the interested parties), or, under specified conditions, they may seek protection of their substantive rights according to § 65(1) of the Code of administrative justice, in case that the given decision affected their legal sphere (see ruling of the extended senate of 23 March 2005, File No. 6 A 25/2002 - 42, publ. under No. 906/2006 Coll. NSS). According to the extended senate, standing to file a lawsuit pursuant to Section 65(1) of the Code of administrative justice, in contrast to Section 65(2) of the Code of administrative justice, is not tied to the fact that the plaintiff was a party to the previous proceeding, from which the contested decision resulted (i.e. from the point of view of the formal concept of participation), but the essential question is whether the decision of the administrative authority actually affects the plaintiff's legal sphere.*

[16] *The association is thus entitled to derive its right of action from § 65(1) of the Code of administrative justice, if it claims that there are subjective rights belonging to it that are affected by the intervention in question. It does not have to be only the property right or other right in rem of the members of the association, the intervention may also affect the right of the members of the association to a favourable environment (without being derived from an existing property right in the regulated territory), if the alleged intervention has consequences for achieving the goals that the association focuses on* […]. […]

These conclusions were recently repeated also by the **Constitutional Court in its finding of 26 January 2021, File No. Pl. ÚS 22/17** (cf. the full text of the finding here):

84. *If, despite the above-mentioned arguments, associations, as well as other persons to whom the legislation does not grant participation in certain administrative procedures, feel that their rights and freedoms have been affected by the decision of the administrative authority* […]*, they may, in accordance with Article 36(1) and (2) of the Charter* [of Fundamental Rights and Freedoms] *go to the administrative court. Review of administrative decisions by an administrative court is not excluded; the procedural right to file a lawsuit against a decision of an administrative authority pursuant to § 65(1) of the Code of Administrative Justice is based on a simple claim of curtailment of one's rights by an administrative decision, either directly or as a result of a violation of rights in the previous procedure. Therefore, participation in the administrative procedure is not a condition for procedural right to file a lawsuit according to § 65(1) of the Code of Administrative Justice. If the plaintiff's rights were actually curtailed by an administrative decision is not a matter of a procedural right of action, but of the substantive right, i.e. of the question if the administrative action is reasonable. These conclusions are in accordance*

not only with the opinions of legal doctrine, but also with the approach of the Supreme Administrative Court, […].

Interpretation of the Czech law in accordance with the Aarhus Convention

The Aarhus Convention was repeatedly referred to in the above case-law of the courts. First of all, it is possible compare the above-mentioned **ruling of the Supreme Administrative Court of 18 April 2014, File No. 4 As 157/2013 – 33** (cf. the full text of the ruling here):

[37] *Last but not least, when assessing the right of action of the plaintiffs, the Municipal Court must also take into account the fact that the project is subject to an environmental impact assessment (EIA), and as a result, the interpretation of the procedural laws regarding the admissibility of the action must also be based on the Aarhus Convention and the 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. According to para. 21 of the recitals of the said Directive, the objective of the Directive is, among other things, the implementation of the provisions of the Aarhus Convention, which provides for access to judicial or other procedures for challenging the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of Article 6 of that Convention. Court of Justice of the European Union further stated in its judgment of 8 March 2011, in case C-240/09, Lesoochranárske zoskupenie VLK, para. 45 et seq.: "It must be held that the provisions of Article 9(3) of the Aarhus Convention do not contain any clear and precise obligation capable of directly regulating the legal position of individuals. Since only members of the public who meet the criteria, if any, laid down by national law are entitled to exercise the rights provided for in Article 9(3), that provision is subject, in its implementation or effects, to the adoption of a subsequent measure. However, it must be observed that those provisions, although drafted in broad terms, are intended to ensure effective environmental protection. In the absence of EU rules governing the matter, it is for the domestic legal system of each Member State to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from EU law, in this case the Habitats Directive, since the Member States are responsible for ensuring that those rights are effectively protected in each case (see, in particular, Case C-268/06 Impact [2008] ECR I-2483, paragraphs 44 and 45). (…) Therefore, it is for the referring court to interpret, to the fullest extent possible, the procedural rules relating to the conditions to be met in order to bring administrative or judicial proceedings in accordance with the objectives of Article 9(3) of the Aarhus Convention and the objective of effective judicial protection of the rights conferred by EU law (…)"* […]

The above-mentioned **finding of the Constitutional Court of 30 May 2014, File No. I. ÚS 59/14** (cf. the full text of the finding here) was also crucial in this respect:

19. *The Constitutional Court does not intend to question the current interpretation of the Aarhus Convention when it comes to its lack of direct effect. However, it is necessary to take into account the status of the Aarhus Convention [see Article 10 of the Constitution*

of the Czech Republic (hereinafter referred to as the "Constitution")] from the point of view of its application priority over the law. It is not possible to act relevantly without taking into account the Aarhus Convention as a source of interpretation. […] *The Constitutional Court did not grant direct effect to the obligations arising from any of the provisions of the Aarhus Convention. However, the Constitutional Court is obliged to interpret the provisions of the constitutional order, which affect the right to judicial protection, in such a way as to enable the effective protection of the rights of natural and legal persons. Therefore, if it is possible to interpret national law in several possible ways, the interpretation that fulfils the requirements of the Aarhus Convention takes precedence. By Council Decision No. 2005/370/EC of 17 February 2005, the European Community also acceded to the Aarhus Convention* […] *and the Aarhus Convention became part of the Community law in the regime of the so-called mixed agreements. Although the conditions for a direct effect are not fulfilled [sufficient clarity and unconditionality - cf. case 26/62, Van Gend en Loos (1963) ECR 1 or case C-8/81, Becker v. Finanzamt Münster-Innenstadt (1982) ECR 53], the authorities of the member states (including the courts, of course) have the obligation of consistent interpretation, i.e. the obligation to interpret its own legislation in accordance with the international legal obligation of the European Community [cf. case C-300/98 and C-392/98, Parfums Christian Dior SA (2000) ECR I-11307, paragraphs 47-48].*

Similar conclusions can be found, for example, in the finding of the Constitutional Court of 17 March 2009, File No. IV. ÚS 2239/07 (cf. the full text of the finding here), in the ruling of the Supreme Administrative Court of 25 June 2015, File No. 1 As 13/2015 – 295, para 72 (cf. the full text of the finding here), or in the ruling of the Supreme Administrative Court of 31 January 2019, File No. 2 As 250/2018 – 68, para. 14 (cf. the full text of the finding here). The ruling of the Supreme Administrative Court of 26 April 2017, File No. 3 As 126/2016 – 38 (cf. the full text of the ruling here) also contains a number of references to the Aarhus Convention.

Conclusion

The above can be summarized as follows:

- If the public concerned is a party to an administrative procedure, it is entitled to file an appeal and subsequently to file a lawsuit in the administrative court directly on the basis of general legislation. If it files a lawsuit pursuant to § 65(2) of the Code of Administrative Justice, it acts as an interested party and does not have to prove that the decision takes interferes with its legal sphere.
- If the public concerned is not a party to the administrative procedure, but the decision taken therein may affect its legal sphere, it can file a lawsuit against this decision according to § 65(1) of the Code of Administrative Justice. In this case, it must claim and prove that the decision affects its legal sphere, i.e. it must claim that it owns subjective rights that are affected by the given decision. In can be also the right to a favorable environment, if the alleged intervention has consequences for achieving the goals that the affected public (typically an NGO) is aiming for. The

local relationship criterion must be interpreted with consideration of the nature of the activity to which the decision relates and of the activity targeted by the NGO.

- If it is possible to interpret Czech law in several possible ways, the interpretation that meets the requirements of the Aarhus Convention takes precedence.

In connection with the above, the situation examined before the Aarhus Convention Compliance Committee in case ACCC/C/2016/143 (specifically in relation to the recommendation according to **para. 6 (b) of decision VII/8e**) can be specified. In the proceedings, reference was made in particular to this case law:

Ruling of the Supreme Administrative Court of 27 October 2011, File No. 7 As 90/2011 – 144 (cf. the full text of the ruling here): The subject of this court proceeding was only the question of whether the plaintiff could be a party to the procedure before an administrative authority (i.e. a party to the procedure pursuant to § 9 of the Atomic Act). Participation in the administrative procedure is excluded in this case, which was confirmed by the Supreme Administrative Court. However, it is necessary to distinguish this fact from the issue of standing to file a lawsuit in administrative court. Here, the plaintiff had the right of action, but the judicial review only concerned the decision on the plaintiff's participation in the administrative procedure, not the decision in the case itself. Therefore, the ruling does not really address the above-discussed issue regarding access to justice.

Resolution of the Constitutional Court of 11 June 2012, File No. IV. ÚS 463/12 (cf. the full text of the resolution here): The same applies here as was said about the previous ruling of the Supreme Administrative Court – the Constitutional Court does not change in any way the interpretation of the Supreme Administrative Court.

Ruling of the Supreme Administrative Court of 15 October 2014, File No. 10 As 59/2015 – 42 (cf. the full text of the ruling here): This ruling was already mentioned in the text above. The Supreme Administrative Court confirmed that it is not possible to reject an action as inadmissible on the grounds of a failure to exhaust proper remedies, when in the given case the plaintiff had no remedy that he/she could effectively use (because he/she was not a party to the procedure). In the rest, however, the ruling is based on a different legal situation compared to the present (in the meantime, there have been significant changes to the Act on Environmental Impact Assessment), it is therefore necessary to read the ruling taking these later changes into account.

Ruling of the Supreme Administrative Court of 29 January 2020, File No. 4 As 267/2019 – 35 (cf. the full text of the ruling here): In this case, the plaintiff again only sought participation in the procedure before the administrative authority, not a review of the decision taken in the procedure. The subject of the procedure was therefore not the decision on the merits, but a decision that the plaintiff is not a party to the administrative procedure for granting of a permit for the operation of a nuclear facility. Therefore, the Supreme Administrative Court has only repeated its previous conclusions, according to which in this case the participation of the public concerned in this administrative procedure is not possible.

Resolution of the Constitutional Court of 8 September 2020, File No. II. ÚS 940/20 (cf. the full text of the resolution here): Here again, the same applies as what

was said about the previous ruling of the Supreme Administrative Court – the Constitutional Court did not change in any way the interpretation of the Supreme Administrative Court regarding the participation of the public in administrative procedure according to Section 9 of the Atomic Act.

With the exception of ruling 10 As 59/2015 – 42, the case law mentioned in this section does not address the question of whether access to justice is ensured in cases under the Atomic Act, as they only deal with the question of participation in the administrative procedure. With the exception of this one case, the public concerned did not file lawsuits against the decision in the matter itself. In the case of 10 As 59/2015 – 42, the filing of this lawsuit was successful – the Supreme Administrative Court clearly stated that the lawsuit is admissible. For that reason, it is necessary to compare also other case law concerning access to justice, which is referred to in the text above. It is clear from this case law that access to justice is provided. **We therefore believe that the recommendation in para. 6 (b) of decision VII/8e is currently fulfilled and that it does not require adoption of further measures (the same also applies to the recommendation in para. 2 (a) (i) of decision VII/8e).** In relation to the ACCC/C/2016/143 case, it is primarily necessary to address issues other than the issue of access to justice. These issues are reflected in recommendation para 6 (a) of decision VII/8e.

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Annex 2: Basic information – challenging contraventions of noise limits

Protection by the relevant administrative authorities

According to Act No. 258/2000 Coll., on the Protection of Public Health, a person who uses or operates machinery and equipment that is a source of noise is obliged to ensure by technical, organizational and other measures that the noise does not exceed the hygienic limits established by the implementing legislation.

If anyone suspects that the noise limits are being exceeded, they can request, in accordance with § 42 of Act No. 500/2004 Coll., Code of Administrative Procedure, the regional hygiene station to initiate relevant proceedings. **Anyone** can make this request.

Based on the request, the regional hygiene station will either (1) initiate state health surveillance pursuant to § 82(2) of the Act on the Protection of Public Health and ensure that noise measurements are conducted by an accredited laboratory (i.e. the Health Institute based in Ostrava or the Health Institute based in Ústí nad Labem), or (2) notify the person who made the request, that there is no reason to initiate any proceedings in the given case (it is necessary to ask for such notification in the request). If the regional hygiene station finds that the noise limits have been exceeded, it will impose sanctions according to the Act on the Protection of Public Health (it can impose a fine, but also, e.g. suspend the performance of activities that are causing the noise in question).

If the person who made the request is not satisfied with the course of action taken by the regional hygiene station, they can file a complaint according to § 175(4) of the Code of Administrative Procedure. This complaint is primarily dealt with by the regional hygiene station itself. In the next step, they can file a complaint according to § 175(7) of the Code of Administrative Procedure to the Ministry of Health.

Access to justice

There are several types of lawsuits that may be used in this context. However, it would be most usual to file an action according to § 1042 in conjunction with § 1013 of Act No. 89/2012 Coll., Civil Code. This action can be filed by the **owner**. If the court finds that there is noise disturbance to the extent that is disproportionate to the local circumstances and which substantially restricts normal use of the property, it will order the person who is causing the noise to refrain from further noise disturbance.

Participation in procedures under the Building Act

According to § 1013(2) of the Civil Code, there is one significant restriction that applies to the above-mentioned lawsuits – if the noise is the result of the operation of an enterprise or a similar facility which has been officially approved, the plaintiff only has the right to monetary compensation (this restriction does not apply if the operation exceeds the extent to which the facility has been officially approved).

The restriction will only apply if the noise is the result of the operation of a facility that has been officially approved. In the process leading to official approval, the relevant authorities

are dealing with, *inter alia*, the effects of the facility's operation on the environment. The restriction is therefore based on the fact that any affected persons should defend their rights against such a source of noise primarily in the approval process.

In the process leading to official approval, the **affected persons** (neighbours and, under certain circumstances, also some environmental NGOs – especially if the project is subject to EIA) have the right to become a party to the administrative procedures under the Building Act. As parties to these procedures, they can file objections against the project and, after a decision has been issued, they have the right to file an appeal with a superior administrative body, an action against the decision with the regional court and then, if necessary, a cassation complaint with the Supreme Administrative Court.

Other means of protection against excessive noise

The police can be called in the event of a disturbance at night. According to the law, the night hours are to be observed from 10:00 p.m. to 6:00 a.m. Municipalities may establish by a generally binding decree exceptions to this rule, such as celebrations and social or family events, during which the night hours are shorter do not have to be observed at all. However, as a general rule, disruption of night hours can be punished as an offence under Act No. 251/2016 Coll., on certain offences.

Access to justice in cases of a decisions to permit the operation of a noise source which is exceeding the hygienic limits (so-called "noise exemption") is discussed in detail in **Annex 1** of this progress report. If a noise exemption is permitted, the **affected persons** can file a lawsuit against the decision in accordance with § 65(1) of the Act No. 150/2002 Coll., the Code of Administrative Justice.

In addition, the Public Defender of Rights has been dealing with the issue of noise for a long time, it is therefore also possible to contact him with any problems regarding the steps taken by the relevant authorities or regarding their inaction.

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Annex 3: Translation of new provisions and of an annex – public participation in preparation of plans and programmes relating to the environment

1. Translation of relevant provisions of Directive of the Ministry of the Environment No. 5/2023 on the creation and impact assessment of MoE's strategic documents

Part One, Chapter I, Article 1, Paragraph 1 (Introductory Provisions)

This Directive of the Ministry of the Environment (hereinafter referred to as the "Ministry") regulates the creation, updating and impact assessment of strategic documents in the area of environment under the responsibility of the Ministry of the Environment. If the requirements for strategic documents are regulated by valid law, it is necessary to take these requirements into account when setting up the project.

Part One, Chapter II, Article 1, Paragraphs 1, 2 and 13 (Definitions)

A **strategic document**[4] is a policy, strategy, concept, (implementation, action) plan, programme that determines the strategic direction of the addressed area.

A **strategic document relating to the environment** is a strategic document that concerns the state of the elements of the environment, the interaction among these elements, factors (e.g. substances, energy, noise), activities or measures affecting or likely to affect the elements of the environment, or that includes economic analyses and assumptions used in environmental decision-making, the state of human health and safety, conditions of human life, cultural sites and architectural structures, insomuch as they are or may be affected by the state of the elements of the environment or through elements, activities or measures that can affect the state of the elements of the environment[5].

Public participation means public participation in the preparation of strategic documents relating to the environment. Public participation must be ensured at least to the extent required by Article 7 of the *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention)*. If the strategic document is to be assessed within SEA, public participation is ensured by the procedure according to the Act on Environmental Impact Assessment.

Part Two, Chapter I, Article 2, Paragraph 4 (Public Participation)

4. The coordinator, in cooperation with the creation team, identifies the need for public participation in the creation of the strategic document. In case of doubt as to whether it is a strategic document relating to the environment (in the sense of the Aarhus Convention),

[4] Definition according to the Methodology for the preparation of public strategies, especially its annex Typology of strategic and implementation documents [link].

[5] The definition of the term is based on the requirements of the Aarhus Convention and is broader than the term plan or programme in the sense of Act No. 100/2001 Coll., on Environmental Impact Assessment. Within its framework, in particular, significant effects on the environment are not required, there is no limitation to certain sectors, the strategy does not have to establish a framework for the future authorization of certain projects, and the exceptions contained in § 10a(4) of the Act on Environmental Impact Assessment do not apply. It can also be strategic documents, the purpose of which is to help protect the environment. The term concerns essentially all the strategic documents within the responsibility of the MoE.

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the coordinator can consult with the contact point for the Aarhus Convention at the MoE, preferably already in the project setting phase,

4.1 the coordinator specifies the chosen procedures in the Governing Document (framework plan for cooperation and communication), in particular:

a) identifies the public that is affected or could be affected by the strategic document relating to the environment, or that could be interested in this document,

b) form of communication – public consultation, public discussion, round tables, etc., incl. specification of communication channels and schedule for public involvement in relation to the relevant phase of preparation,

4.2 public participation according to the Aarhus Convention is required for all strategic documents relating to the environment and it shall be made possible for the general public, i.e. to individual natural or legal persons as well as their associations, organizations or groups. Public involvement is voluntary for other strategic documents,

4.3 the public must be given sufficient time to familiarize themselves with the information provided and to submit comments, taking into account, inter alia, the nature, complexity and scope of the strategic document. Public participation must be ensured at an early decision-making stage, when all options and alternatives are still open and effective public participation can take place,

4.4 the public must be provided in a timely manner with all the necessary information on the possibilities of participation, as well as the information available to the competent authority that is relevant for the decision-making on the strategic document,

4.5 the public should be informed by appropriate means. To reach the general public, at least the communication channels (web, social media) of the MoE or other organizations according to the Governing Document, shall be used. It is advisable to inform the affected public (identified according to paragraph 5.1 letter a) actively, e.g. by e-mail.

Part Two, Chapter I, Article 6, Paragraph 4

In the strategic document relating to the environment, the creation team will take into account relevant input obtained from the public, in particular in accordance with the Aarhus Convention (Part Two, Article 2, Paragraph 4).

2. Translation of the new annex to the template dedicated to communication with the public which is part of Methodology for the preparation of public strategies

In the case of strategies relating to the environment, another purpose of the Cooperation and Communication Plan is also to ensure public participation in the preparation of the strategy, at least to the extent corresponding to the requirements of Article 7 of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention).

If the strategy is to be assessed in the SEA procedure, public participation is ensured by the procedure according to Act No. 100/2001 Coll., on Environmental Impact Assessment.

If the strategy is not to be assessed in the SEA procedure but still relates to the environment, the rules under Article 7 of the Aarhus Convention apply independently.

Participation should be open for the general public, i.e. for individual natural or legal persons as well as their associations, organizations or groups. At the same time, it is appropriate to specifically identify interested parties and actively encourage them to participate in the preparation of the strategy.

The minimum requirements for public participation are as follows:

- Public participation must be ensured at an early decision-making stage, when all options and alternatives are still open and effective public participation can take place.
- The public must be provided in a timely manner with all necessary information about the process of the preparation of the strategy and about the related opportunities for participation, as well as with the information that is available to the competent authority and that is relevant for the decision-making on the strategy.
- The public must be given sufficient time to familiarize themselves with the information provided and to submit comments, taking into account, inter alia, the nature, complexity and scope of the strategy.

Due account shall be given to the results of public participation. Although not all submitted comments, reservations or opinions need to be accepted, it is important that the public is provided with the resulting text of the strategy and an explanation of how the results of public participation were taken into account.

In the case of general environmental policies (especially those that do not set a framework for future authorization of certain categories of projects), the requirements of Article 7 of the Aarhus Convention are softer. The public should be provided a reasonable opportunity to participate in these cases. The above requirements can be taken into account, but they can be modified appropriately.

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Annex 4: Outline of procedure – informing the public about the possibilities of participation in proceedings under the Atomic Act

Framework proposal – to be specified:

1. Establishment of a team consisting of a PR specialist, a lawyer, and a representative of each of the expert sections of the State Office for Nuclear Safety, with specific tasks:

- **a)** preparation of a campaign to raise awareness and strengthen communication,
- **b)** implementation of the campaign by an external entity (if necessary) after the approval of the campaign by the chairperson of the State Office for Nuclear Safety,
- **c)** evaluation of the results of the campaign.

Phase a) Preparation of the campaign (until June 2024)

2. Questionnaire or poll survey with the aim of revealing the level of awareness of the public about their rights and about the State Office for Nuclear Safety and its activities.

3. Mapping of existing information sources on the topic and their level, quality, relevance in terms of content and form, accessibility and user-friendliness.

4. Mapping of procedures used by other state authorities in the Czech Republic and by nuclear regulators in other countries (benchmarking).

5. Preparation of a campaign based on the results of the survey and mapping, targeted:

- in terms of addressees (certain social groups, professions, people living in specific areas, etc.),
- in terms of the subject-matter (specific rights, specific processes, specific types of regulated activities or interests),
- in terms of forms and channels of communication (one of the appropriate forms of communication might be e.g. a brief brochure or leaflet with a simple and user-friendly description of the options available to the public in the licensing processes of the State Office for Nuclear Safety).

Phase b) Implementation of the campaign (until 1 October 2024)

6. Implementation of the campaign and ensuring a long-term applicability of some of its elements (e.g. information on the website, continuous reprint of leaflets).

Phase c) Evaluation of the campaign

7. Evaluation of the effectiveness of the campaign and of the chosen procedures and, based on the results of the evaluation, decision about the next steps.

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