

Compliance Committee to the Convention on
Access to Information, Public Participation
in Decision-making and Access to Justice
in Environmental Matters (Aarhus Convention)

**First progress review of the implementation of decision VII/8e
on compliance by Czechia with its
obligations under the Convention**

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I. Introduction

1. At its seventh session (Geneva, Switzerland, 18–21 October 2021), the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) adopted decision VII/8e on compliance by Czechia with its obligations under the Convention (see ECE/MP.PP/2021/2/Add.1).

II. Summary of follow-up

2. At its seventy-third meeting (Geneva, 13–16 December 2021), the Committee held an open session to provide guidance on preparing the plan of action that each Party subject to a decision or request of the Meeting of the Parties was requested to submit by 1 July 2022. Representatives of the Party concerned and the communicants of communications ACCC/C/2012/71 and ACCC/C/2016/143 took part in the open session at the seventy-third meeting. The observer Justice and Environment also took part in that session.

3. On 7 February 2022, on the Committee's instructions, the secretariat sent an information note and a template for its plan of action to the Party concerned to assist it to prepare its plan of action.

4. At its seventy-fourth meeting (Geneva, 15–18 March 2022), the Committee held a further open session on the preparation of Parties' plans of action. The purpose of the session was to answer any specific questions from Parties regarding the format or content of their plan of action. The communicants of communications ACCC/C/2012/71 and ACCC/C/2016/143 as well as the observer Justice and Environment took part in the open session. Though invited, the Party concerned did not take part in that session.

5. On 1 July 2022, the Party concerned submitted a draft version of its plan of action to the Committee. On 29 July 2022, the communicant of communication ACCC/C/2016/143 submitted its comments thereon.

6. On 24 October 2022, the Party concerned submitted to the Committee the final version of its plan of action.

7. On 25 October 2022, the secretariat forwarded the Party concerned's plan of action to the communicants of communications ACCC/C/2010/50, ACCC/C/2012/70, ACCC/C/2012/71, and ACCC/C/2016/143, and registered observers, inviting their comments by 22 November 2022.

8. On 22 November 2022, the communicants of communications ACCC/C/2016/143 submitted their comments on the plan of action.

9. On 1 December 2022, the Party concerned submitted additional information, and on the same date it provided comments on the communicants' comments dated 22 November 2022.

10. On 2 December 2022, the secretariat invited the communicants of communications ACCC/C/2010/50, ACCC/C/2012/70, ACCC/C/2012/71, and ACCC/C/2016/143, and registered observers, to comment on the additional information submitted by the Party concerned on 1 December 2022 by 12 December 2022. No comments were received.

11. On 3 December 2022, the secretariat wrote to the Party concerned to inform it that, having reviewed its plan of action, the Committee had concluded that Czechia's plan of action appeared to be only partially appropriate. The Committee invited the Party concerned to attend an open session at its seventy-seventh meeting (Geneva, 13–16 December 2022) to discuss its plan of action.

12. On 9 December 2022, the secretariat wrote to the Party concerned, providing it with a summary of the Committee's concerns regarding its plan of action.

13. At its seventy-seventh meeting, the Committee held an open session to discuss the Party concerned's plan of action with the participation of the Party concerned and the communicant of communication ACCC/C/2016/143.

14. On 9 February 2023, the Party concerned submitted a request for advice regarding the implementation of paragraph 2 (b) (i) and (ii) of decision VII/8e.

15. On 28 May 2023, the secretariat invited the communicants of communications ACCC/C/2010/50, ACCC/C/2012/70, ACCC/C/2012/71, and ACCC/C/2016/143, and registered observers, to comment on the content of the Party concerned's request for advice by 12 June 2023.

16. On 12 June 2023, the communicants of communication ACCC/C/2016/143 submitted comments on the Party concerned's request for advice.

17. On 27 September 2023, the Party concerned submitted its first progress report on decision VII/8e, on time.

18. On 29 September 2023, the secretariat forwarded the Party concerned's first progress report to the communicants of communications ACCC/C/2010/50, ACCC/C/2012/70, ACCC/C/2012/71, and ACCC/C/2016/143, and registered observers, inviting their comments by 27 October 2023. No comments were received by that deadline.

19. The Committee prepared its first progress review on decision VII/8e, taking into account the information received and adopted it through its electronic decision-making procedure on 3 July 2024. The Committee thereafter requested the secretariat to forward the first progress review to the Party concerned, the communicants of communications ACCC/C/2010/50, ACCC/C/2012/70, ACCC/C/2012/71, and ACCC/C/2016/143, and registered observers.

III. Considerations and evaluation by the Committee

20. In order to fulfil the requirements of paragraph 2 of decision VII/8e, Czechia will need to provide the Committee with evidence that:

(a) It has taken the necessary legislative, regulatory and administrative measures to ensure that:

(i) 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;

(ii) The Party concerned, in future, submits plans and programmes similar in nature to the National Investment Plan to public participation, as required by article 7, in conjunction with the relevant paragraphs of article 6, of the Convention;

(b) It has provided:

(i) 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;

(ii) The necessary arrangements to ensure that:

a. 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;

- b. There will be proper possibilities for the public concerned, including the public outside the territory of the Party concerned, to participate at the subsequent stages of the multistage decision-making procedure regarding Temelín nuclear power plant.

21. In paragraph 3 of decision VII/8e, the Meeting of the Parties decided, in the light of the lack of engagement and concrete action of the Party concerned during the intersessional period 2018–2021, to issue a caution to the Party concerned, to become effective on 1 January 2024, unless the Party concerned has fully satisfied the conditions set out in paragraph 2 (a) and (b) of the decision and has notified the secretariat of this fact by 1 October 2023.

22. In paragraph 4 of decision VII/8e, the Meeting of the Parties has requested the Committee to establish the successful fulfilment of paragraph 2 (a) and (b) for the purposes of paragraph 3 of the decision.

23. In order to fulfil the requirements of paragraph 6 of decision VII/8e, Czechia will need to provide the Committee with evidence that it has taken the necessary legislative, regulatory and administrative measures to ensure that:

- (a) 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;
- (b) Members of the public concerned meeting the requirements of article 9 (2), including environmental non-governmental organizations (NGOs), 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.

General observations

24. The Committee welcomes the Party concerned’s first progress report, which was received on time, and commends its well-structured and detailed nature.

25. The Committee appreciates the strong level of engagement that the Party concerned has demonstrated in the Committee’s follow-up on decision VII/8e during the current intersessional period.

26. The Committee also welcomes the recent actions by the Ministry of the Environment to promote the implementation of the Convention in Czechia, including the translation of the Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters into Czech language.¹

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

27. In order to fulfil the requirements of paragraph 2 (a) (i) of decision VII/8e, the Party concerned will need to demonstrate to the Committee that it has taken 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.

28. In its first progress report, the Party concerned highlights that the allegation of non-compliance that ultimately led to the recommendation in paragraph 2 (a) (i) “was the lack of access to justice in relation to a special procedure under the Czech law in which a public

¹ Party’s first progress report, 27 September 2023, p. 11.

authority allows the operation of a source of noise that exceeds noise limits established by the law (these permits are usually called “noise exemptions”).”²

29. The Committee recalls that the recommendation in paragraph 2 (a) (i) of decision VII/8e stems from the Committee’s findings on communication ACCC/C/2010/50 (Czech Republic). In that case, the communicant alleged that:

members of the public, including individuals and NGOs, have no right to seek the review of permitting procedures under certain laws, such as the Public Health Protection Act (with respect to noise exceptions)[...]. Under these laws only the applicants for a permit may be parties to administrative procedures and have the right to seek review. The communicant submits this is not in compliance with article 9, paragraph 3, of the Convention.³

30. In those findings, the Committee observed that:

With respect to noise exception permits, Czech law, as interpreted by Czech courts, stipulates that only the applicant for the permit or the operator may be a party to the permit procedure and, according to Czech jurisprudence, this also defines standing before the courts.⁴

31. The Committee found that:

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 fails to comply with article 9, paragraph 3⁵

and recommended that the Party concerned:

undertake the necessary legislative, regulatory, administrative and other measures to ensure that [...] [m]embers 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.⁶

32. The Committee therefore accepts the Party concerned’s submission that the recommendation in paragraph 2 (a) (i) of decision VII/8e stemmed from the then-failure of the Party concerned to grant standing to members of the public, including individuals and NGOs, to challenge noise exemption permits issued under the Public Health Protection Act.

33. In its first progress report, the Party concerned submits that:

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. [...] 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.⁷

34. Section 65 (1) of the Code of Administrative Justice provides:

Anyone who claims that their rights have been prejudiced directly or due to the violation of their rights in the preceding proceedings by an act of an administrative

² Party’s first progress report, 27 September 2023, p. 3.

³ ECE/MP.PP/C.1/2012/11, para. 47.

⁴ ECE/MP.PP/C.1/2012/11, para. 84.

⁵ ECE/MP.PP/C.1/2012/11, para. 89 (f).

⁶ ECE/MP.PP/C.1/2012/11, para. 90 (e).

⁷ Party’s first progress report, 27 September 2023, p. 3.

authority whereby the person's rights or obligations are created, changed, nullified or bindingly determined (hereinafter "decision") may seek the cancellation of such a decision, or the declaration of its nullity, unless otherwise provided for by this Act or by a special law.⁸

35. The Committee examines the case law before it regarding standing for individuals and NGOs to challenge noise exemption permits under section 65 (1) of the Code of Administrative Justice below.

Standing for individuals to challenge noise exemption permits

36. With respect to standing for individuals to challenge noise exemption permits issued under the Public Health Protection Act, the Party concerned refers to the Supreme Administrative Court's judgment dated 2 May 2019 in File No. 7 As 308/2018 – 31. The case concerned a noise exemption permit issued under section 31 (1) of the Public Health Protection Act to operate a road that exceeded the established noise limits. The Court accepted that the legal sphere of an individual who owned and lived in a house in close proximity to the road was affected by the noise exemption permit. The Court considered that it was therefore correct that he had been granted standing under section 65 (1) of the Code of Administrative Justice to challenge the noise exemption permit.⁹

37. The Party concerned submits that the above judgment of the Supreme Administrative Court cites a large body of case law, which demonstrates that the above interpretation can currently be considered as well established.¹⁰

Standing for environmental NGOs to challenge noise exemption permits

38. With respect to the standing of environmental NGOs to challenge noise exemption permits, the Party concerned submits that, following the judgment by the Constitutional Court of 30 May 2014 in File No. I. ÚS 59/14, environmental NGOs have standing before its courts to challenge illegality if they can demonstrate that the illegality affects their legal sphere. In that case, the Constitutional Court held that:

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. [...]

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.¹¹

39. The Party concerned submits that, while the above judgment concerned a challenge by an environmental NGO against a general measure, namely a municipal spatial plan, the Constitutional Court's interpretation has subsequently been extended to challenges to other types of acts.¹² For example, in its 25 June 2015 judgment in File No. 1 As 13/2015 – 295, the Supreme Administrative Court applied the above interpretation to an environmental NGO's challenge against a decision of an administrative authority under section 65 (1) of the Code of Administrative Justice. In that judgment, the Supreme Administrative Court held that:

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

⁸ Communication ACCC/C/2017/143 (Czechia), annex 5.

⁹ Party's first progress report, 27 September 2023, p. 15.

¹⁰ Party's first progress report, 27 September 2023, p. 15.

¹¹ Party concerned's first progress report, p. 16, citing the judgment of the Constitutional Court of 30 May 2014 in File No. I. ÚS 59/14, paras. 25-26.

¹² Party concerned's first progress report, p. 15.

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.

40. The Party concerned reports that, in its judgment of 26 April 2017 in File No. 3 As 126/2016 – 38, which concerned judicial review of a municipal spatial plan (not a decision of an administrative authority), the Supreme Administrative Court further elaborated upon its interpretation:

...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.).¹³

41. The Party concerned also cites the Supreme Administrative Court's judgment dated 31 January 2019 in File No. 2 As 250/2018 – 68, which held:

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.

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

¹³ Party concerned's first progress report, p. 17, citing the judgment of the Supreme Administrative Court of 26 April 2017 in File No. 3 As 126/2016 – 38.

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.¹⁴

42. The Party concerned submits that the above case law demonstrates that, even if it is not a party to the administrative procedure, an environmental NGO can be granted standing under section 65 (1) of the Code of Administrative Justice to challenge a noise exemption permit if the permit affects the NGO's legal sphere.

43. In addition to the above developments in its case law, in its first progress report the Party concerned refers to a proposed amendment to section 31 (1) of the Public Health Protection Act, which it submits:

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[...]. The new online platform with information on noise exemptions that have been granted should be put into operation in the first half of 2024.¹⁵

44. The Committee welcomes the compilation of relevant case law provided by the Party concerned in annex 1 to its first progress report.¹⁶ The Committee also welcomes the forthcoming amendment to section 31 (1) of the Public Health Protection Act as a supplementary measure to support the implementation of paragraph 2 (a) (i) of decision VII/8a.

45. In contrast to the legal situation that existed at the time of the Committee's findings on communication ACCC/C/2010/50, it appears that, based on the case law in paragraphs 36 – 41 above, members of the public, including both individuals and environmental NGOs, may now have standing under section 65 (1) of the Code of Administrative Justice to challenge noise exemption permits as long as they can demonstrate that their legal sphere is affected by the permit.

46. The Committee recognizes that if, in line with the above case law, environmental NGOs are indeed now routinely granted standing under section 65 (1) of the Code of Administrative Justice to challenge permits granted in administrative procedures to which the environmental NGO was not a party, this represents a fundamental, and very welcome, shift in standing for environmental NGOs before the courts of the Party concerned. The Committee notes that, to date, no case law has been put before it by communicants or observers to indicate that this is not, in fact, the case.

47. Accordingly, in the light of case law in paragraphs 36 – 41 above, and in the absence of information to the contrary in the meantime, the Committee will report to the Meeting of the Parties that the Party concerned has met the requirements of paragraph 2 (a) (i) of decision VII/8e with respect to both individuals and environmental NGOs.

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

48. In order to fulfil paragraph 2 (a) (ii) of decision VII/8e, the Party concerned will need to provide the Committee with evidence that it has taken the necessary legislative, regulatory and administrative measures to ensure that, in future, the Party concerned submits plans and programmes similar in nature to the National Investment Plan to public participation, as required by article 7, in conjunction with the relevant paragraphs of article 6, of the Convention.

¹⁴ Party's first progress report, 27 September 2023, p. 18.

¹⁵ Party's first progress report, 27 September 2023, pp. 3-4.

¹⁶ See also the Party concerned's plan of action dated 24 October 2022, p. 14, and the Party concerned's additional information dated 1 December 2022, annex 1.

49. In its first progress report, the Party concerned reports on a number of measures it has taken to implement paragraph 2 (a) (ii) of decision VII/8e.

50. First, at the level of the Ministry of the Environment, internal Directive no. 5/2023 has been adopted, which sets out the requirements for public participation in accordance with article 7 of the Convention during the preparation of plans and programmes relating to the environment that are prepared by the Ministry of the Environment. In addition, the Ministry of the Environment has established a new subsection on its webpage dedicated to strategic documents being prepared by the Ministry, including ongoing public consultations.

51. Second, in relation to other plans and programmes, the Party concerned reports that, after having carefully considered which of its existing methodological guidelines would be the most appropriate to supplement with a reference to the requirements of article 7 of the Convention, it has proceeded with an amendment to the Ministry of Regional Development's 2019 "Methodology for the preparation of public strategies". The Methodology has been supplemented with a new annex explaining the requirements in article 7 of the Convention.

52. Third, the Party concerned reports that the Ministry of the Environment will be involved in the pilot phase of the implementation of the Office of the Government's 2022 "Methodology for the participation of non-state non-profit organizations in advisory and working bodies and in the creation of state administration documents". It reports that the Ministry of the Environment will monitor the application of the Methodology during the pilot phase and, following this, if necessary will propose that the Methodology be amended so that information about the requirements of article 7 is expressly reflected in it.

53. Finally, the Party concerned reports that, in cooperation with the Ministry of Regional Development, the Ministry of the Environment has published information on the requirements for public participation under article 7 during the preparation of plans and programmes relating to the environment on the Ministry of Regional Development's "Portal of strategic work in the Czech Republic".¹⁷ The portal is intended for persons engaged in the preparation of strategic documents in the Party concerned and contains links to related methodological documents and other sources of information.

54. The Committee welcomes the various measures taken by the Party concerned to ensure that public participation meeting the requirements of article 7 of the Convention is provided for during the preparation of plans and programmes relating to the environment. Having reviewed the texts of the Ministry of the Environment's internal Directive No. 5/2023, the Ministry for Rural Development's "Methodology for the preparation of public strategies" and the relevant webpages of the "Portal of strategic work", the Committee considers that the content of each is clear and structured in a user-friendly way and may serve as examples of good practice for other Parties. The Committee invites the Party concerned, in its final progress report due on 1 October 2024, to report on the outcome of the pilot phase of the Office of the Government's "Methodology for the participation of non-state non-profit organizations in advisory and working bodies and in the creation of state administration documents" and whether the Party concerned has determined that it is necessary to revise it to expressly include information on the requirements of article 7 of the Convention.

55. In her comments on the Party concerned's first progress report, the communicant of communication ACCC/C/2012/71 states that the public in Germany was not informed of the public participation procedure carried out by the Party concerned during the preparation of its national energy and climate plan. She submits that this demonstrates that the implementation by the Party concerned of article 7 of the Convention in the transboundary context remains problematic.¹⁸

56. The Committee has taken note of the communicant's comments. It however recalls that the recommendation in paragraph 2 (a) (ii) of decision VII/8e stems from the Committee's findings on communication ACCC/C/2012/70, in which the Party concerned

¹⁷ See <https://mmr.gov.cz/cs/microsites/portal-strategicke-prace-v-ceske-republice/nastroje-a-metodicka-podpora/zapojovani-verejnosti/aarhuska-umluva>

¹⁸ Comments by the communicant of communication ACCC/C/2012/72 on the Party concerned's first progress report, 26 October 2023, p. 1.

had disputed that its National Investment Plan was a plan relating to the environment within the scope of article 7 of the Convention.¹⁹ In its follow-up on paragraph 2 (a) (ii), the Committee does not examine whether each public participation procedure carried out under article 7 of the Convention fully meets the requirements of that article. Rather, the purpose of its follow-up on paragraph 2 (a) (ii) is to ensure that the Party concerned takes the necessary measures to ensure that, in future, plans similar in nature to the National Investment Plan will be subject to public participation under article 7 of the Convention.

57. In the light of the considerations in paragraphs 49-54 above, the Committee welcomes the measures taken by the Party concerned and, in the absence of information to the contrary in the meantime, will report to the Meeting of the Parties that the Party concerned has met the requirements of paragraph 2 (a) (ii) of decision VII/8e.

Paragraph 2 (b) (i) of decision VII/8e

58. In order to meet the requirements of paragraph 2 (b) (i) of decision VII/8e, the Party concerned will need to demonstrate that it provides a legal framework that ensures 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.

59. The Committee has examined the extent to which the measures taken by the Party concerned to date meet the requirements in its draft advice on decision VII/8e dated 3 July 2024.²⁰ In its draft advice, the Committee has concluded that those measures are not sufficient to fulfil paragraph 2 (b) (i) of decision VII/8e.

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

60. In order to meet the requirements of paragraph 2 (b) (ii) a. of decision VII/8e, the Party concerned will need 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.

61. The Committee has examined the extent to which the measures taken by the Party concerned to date meet the above requirements in its draft advice on decision VII/8e dated 3 July 2024.²¹ In its draft advice, the Committee has concluded that those measures are not sufficient to fulfil paragraph 2 (b) (ii) a. of decision VII/8e.

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

62. In order to meet the requirements of paragraph 2 (b) (ii) b. of decision VII/8e, the Party concerned will need 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 Party concerned, to participate at the subsequent stages of the multistage decision-making procedure regarding Temelín nuclear power plant.

63. In its first progress report, the Party concerned reports that the developer has not yet asked for an initiation of any subsequent proceedings regarding Temelín nuclear power plant.

¹⁹ ECE/MP.PP/C.1/2014/9, para. 42.

²⁰ Available at: <https://unece.org/env/pp/cc/decision-vii8e-concerning-czechia>

²¹ Ibid.

It states that, if and when the developer decides to advance the project in the future, public participation in the subsequent proceedings will be ensured by the legislation of the Party concerned as then in force.²²

64. In line with the above, the Committee considers that the recommendation in paragraph 2 (b) (ii) b. very much builds upon the recommendations in paragraph 2 (b) (i) and (ii) a. of decision VII/8e. Accordingly, in order to meet the requirements of paragraph 2 (b) (ii) b., the Party concerned will first need to demonstrate that it has met the requirements of paragraph 2 (b) (i) and (ii) a.

65. Since the Committee has concluded, in paragraphs 59 and 61 above, that the Party concerned has not yet met the requirements of paragraph 2 (b) (i) or (ii) a. of decision VII/8e, the Committee considers that the Party concerned has not yet met the requirements of paragraph 2 (b) (ii) b. either.

Paragraph 6 (a) of decision VII/8e

66. In order to fulfil the requirements of paragraph 6 (a) of decision VII/8e, the Party concerned will need to provide the Committee with evidence that it has taken the necessary legislative, regulatory and administrative 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.

67. In its first progress report, the Party concerned states that the update of operating conditions of a permit issued under either the 1997 or 2016 Atomic Acts happens within the procedures governed by sections 22 or 204 of the 2016 Atomic Act, in which the public concerned may participate.²³

68. Section 22 requires a procedure for a new permit to replace the original permit, *inter alia*, in cases “if there has been a substantial change in the facts on the basis of which the original permit was issued”, or “if there has been a change in the performance of the originally permitted activity that is essential from the point of view of nuclear safety”.²⁴

69. Section 204 allows the State Office for Nuclear Safety (SONS) to take a decision to impose remedial measures on an NPP operator in the case of any identified deficiencies in its activities.²⁵

70. For the purposes of sections 22 and 204 of the 2016 Atomic Act, participation is determined under the general legal regulation in section 27 of the Code of Administrative Procedure, according to which the persons concerned are also participants if their rights or obligations may be directly affected by the decision.²⁶

71. The Party concerned states that, at the time of the submission of its first progress report, it was considering the following possible further legislative changes:

- (a) Allowing public participation in administrative procedures related to licensing of nuclear activities under section 9 of the Atomic Act if:
 - (i) There is no other related decision-making procedure being held, in which the public may participate (e.g. under the Building Act), and
 - (ii) The activity in question may have an impact on the environment.

²² Party concerned’s first progress report, p. 7.

²³ Party concerned’s first progress report, p. 8.

²⁴ Party concerned’s plan of action, pp. 17-18.

²⁵ Party concerned’s plan of action, pp. 17-18.

²⁶ Party concerned’s plan of action, pp. 17-18.

- (b) Introducing 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). The Party concerned states that, based on this information, the public would have an overview about the procedures that are being commenced and it can request to be included as a party to the procedure. This would include procedures under section 9 of the Atomic Act, if the possible legislative change referred to in the preceding point is enacted. The Party concerned submits that changes to an activity under sections 22 and 204 of the Atomic Act are already fully open to public participation.²⁷

72. The Party concerned also states that, as a supplementary measure, it intends to perform an analysis of public awareness about the possibilities of participation in proceedings under the Atomic Act and, based on the outcome of its analysis, may if necessary take additional measures to increase the level of public awareness.²⁸

73. Having reviewed the information provided by the Party concerned in its plan of action, first progress report and statements, together with the comments received thereon from the communicants of communications ACCC/C/2012/71 and ACCC/C/2016/143, the Committee in the present progress review draws the attention of the Party concerned to the following four aspects:

- (i) *Participation of the “public concerned” in procedures under sections 22 and 204 of the Atomic Act*

74. Based on the information before the Committee, it appears that the possibility to participate in procedures under sections 22 and 204 of the 2016 Atomic Act is limited to those entitled to be a “party” to the procedure under article 27 of the Code of Administrative Procedure. The Committee understands that individuals and NGOs can request to be a party to the procedure, as long as they can demonstrate that their “rights and obligations may be directly affected by the decision”.²⁹

75. The Committee welcomes the fact that NGOs and individuals can request to be a party to procedures under sections 22 and 204 of the Atomic Act and can thereby enjoy the rights that being a party to such procedures provides. The Committee however considers that the scope of the potential “public concerned” under article 2 (5) of the Convention is not limited to natural or legal persons who can demonstrate that their “rights or obligations may be directly affected” by the decision.

76. Pursuant to article 2 (5), “the public concerned” means “the public affected or likely to be affected by, or having an interest in, the environmental decision-making”. As to the meaning of “having an interest”, *The Aarhus Convention: An Implementation Guide* states:

With respect to the criterion of “having an interest”, the definition appears to go well beyond the kind of language that is usually found in legal tests of “sufficient interest” [...]. In particular it should be read to include not only members of the public whose legal interests or rights guaranteed under law might be impaired by the proposed activity. Potentially affected interests may also include social rights such as the right to be free from injury or the right to a healthy environment. It also applies, however, to a category of the public that has an unspecified interest in the decision-making procedure.

It is significant that article 2, paragraph 5, does not require that a person must show a legal interest to be a member of the public concerned. Thus, the term may encompass both “legal interest” and “factual interest” as defined under continental legal systems, such as those of Austria, Germany and Poland. Under national law, persons with a mere factual interest do not normally enjoy the full panoply of rights in proceedings accorded to those with a legal interest. In contrast, the Convention accords the same

²⁷ Party concerned’s first progress report, p. 9.

²⁸ Party concerned’s first progress report, p. 9.

²⁹ Party concerned’s comments, 1 December 2012, p. 3.

status (at least in relation to article 6) regardless of whether the interest is a legal or factual one.³⁰

77. The Committee makes clear that article 2 (5) does not require that all members of “the public” necessarily need to be granted “party” status. However, any member of the public who expresses an interest in participating in the decision-making should be entitled to participate therein.

78. It follows from the above analysis that, in order to meet the requirements of paragraph 6 (a) of decision VII/8e with respect to procedures under sections 22 and 204 of the 2016 Atomic Act, the Party concerned will need to demonstrate to the Committee that any member of the public who expresses an interest to participate in those procedures, including a “mere factual interest”, is entitled to do so.

79. The Committee therefore invites the Party concerned, together with its final progress report due on 1 October 2024, to provide the necessary evidence to demonstrate to the Committee that any member of the public who expresses an interest, including a “mere factual interest”, to participate in procedures under sections 22 and 204 of the 2016 Atomic Act is entitled to do so.

(ii) *Effective notification of the “public concerned”*

80. In order to request to be a party to the procedure, the public concerned obviously first needs to be aware of the procedure and the possibilities to participate therein. On this point, the Party concerned states that:

Regarding the application of § 27 and § 28 of the Administrative Code, the relevant administrative authority must actively examine whether there are any parties that may be affected by the decision (and the State Office for Nuclear Safety performs such consideration routinely).

...the Czech legal framework contains various tools to inform possible participants about the initiation of administrative procedures. Specific right to be informed is established by section 70 (2) of the Act no. 114/1992 Coll. on Nature and Landscape Protection (any NGO, whose main purpose is protection of nature and landscape can ask to be informed about initiation of any procedures that may affect the interests protected by this Act; the request is valid for 1 year and it may be raised repeatedly). The administrative authority also publishes a public notice about the initiation of the administrative procedures on its official board (§ 25 (1) and § 26 of the Administrative Code) in order to inform any unknown parties.³¹

81. Based on the above explanation, the Committee understands that, with the exception of those parties who are required by section 70 (2) of the Act on Nature and Landscape Protection or other special law to be notified directly, members of the public concerned will be notified only if they happen to check the SONS electronic noticeboard.³²

82. In line with the considerations set out in paragraphs 19, 27, 40 and 44-48 of its draft advice on decision VII/8e dated 3 July 2024, the Committee considers that, in procedures to reconsider or update the operating conditions of permits issued under the 1997 or 2016 Atomic Acts, notification only through the SONS electronic noticeboard is not sufficient to meet the requirements of article 6 (2) of the Convention.

(iii) *Whether reconsideration or update of duration constitutes a “substantial change” under section 22 of the Atomic Act*

83. Section 22 of the 2016 Atomic Act provides that:

³⁰ Second edition (2014), United Nations publication, Sales No. E.13.II.E.3, p. 57.

³¹ Party concerned’s comments, 1 December 2012, pp.3-4.

³² Available at: <https://www.sujb.cz/elektronicka-uredni-deska>.

The Office will initiate a new procedure and issue a new decision on the issuance of a permit:

- (a) Based on the request of the permit holder,
- (b) If there has been a substantial change in the facts on the basis of which the original permit was issued, or
- (c) If there has been a change in the performance of the originally permitted activity that is essential from the point of view of nuclear safety, radiation protection, technical safety, non-proliferation of nuclear weapons, monitoring the radiation situation, handling a radiation emergency or security.

84. In its findings on communication ACCC/C/2014/104 (Netherlands), the Committee held that “except in cases where a change to the permitted duration is for a minimal time and obviously would have insignificant or no effects on the environment, it is appropriate for extensions of duration to be subject to the provisions of article 6”.³³

85. The Committee is concerned that nothing in the wording of section 22 makes clear that any change in duration, save for a minimal time, constitutes a “substantial change” for the purposes of that provision. Nor has the Party concerned provided the Committee with the text of any other legislative or regulatory measures or a line of case law which would make clear that any proposed change in duration of more than a minimal time constitutes a “substantial change” under section 22.

86. The Committee therefore invites the Party concerned, together with its final progress report due on 1 October 2024, to provide the text of the relevant legislative or regulatory measure or line of case law which makes clear that any proposed change in duration of more than a minimal time constitutes a “substantial change” for the purposes of section 22 of the 2016 Atomic Act.

(iv) *Public participation required during the regulatory review stage of each 10-year periodic safety review*

87. In its statement at the open session on its plans of action held at the Committee’s seventy-seventh meeting, the Party concerned stated that:

The State Office for Nuclear Safety [SONS] is the competent authority, which is responsible for reviewing the [Periodic Safety Review] PSR report and determining whether the licencing basis for the nuclear power plant remains valid. Is this the activity of a public authority which should be considered as a reconsideration of operating conditions under Article 6(10) of the Convention...?

If yes, we can confirm that in principle, we can agree with this interpretation.³⁴

88. With respect to the Party concerned’s above query, the Committee confirms that, as it explained in its findings on communication ACCC/C/2016/143,³⁵ it is indeed the stage when the SONS reviews the PSR report and determines whether the licensing basis for the NPP remains valid which is the “regulatory review” stage at which the requirements of article 6 (10) apply.

89. In its statement at the open session on its plan of action held at the Committee’s seventy-seventh meeting, the Party concerned also stated that:

the public concerned actually has an opportunity to participate in the decision-making which follows after [SONS] reviews the PSR report: ...[SONS] reviews the report and then decides if it is necessary to initiate one of the administrative procedures which were mentioned in the plan of action. It will initiate it if a situation foreseen in the given legal provision occurs, for example if there has been a change in the

³³ See ECE/MP.PP/C.1/2019/3, para. 71.

³⁴ Party concerned’s statement at open session on its plan of action at Committee’s seventy-seventh meeting, 15 December 2022, p. 2.

³⁵ ECE/MP.PP/C.1/2021/28, para. 124.

performance of the originally permitted activity that is essential from the point of view of nuclear safety, radiation protection, etc. ... In these cases, the public concerned can be a party to the procedure according to Section 27(2) of the Administrative Code. The Committee asked for a clarification about which members of the public would qualify as persons whose rights or obligations may be directly affected by the decision. It could be anybody who might be directly affected in his or her rights by the decision. Environmental NGOs have a right to a favourable environment, which might be affected by the decision. It depends on the activities of the NGO in question and on the nature of the decision to be taken – there has to be a certain connection between these two aspects. ... If SONS decides not to initiate any administrative procedure but the public feels that some administrative procedure should have been initiated, there is a possibility to file a motion to commence an ex officio procedure.³⁶

90. In its first progress report, the Party concerned states that it is currently considering the need and possibilities for further legislative amendments related to public participation in connection with periodic safety reviews and, in that regard, it was awaiting the Committee's advice to the Netherlands on paragraph 3 (a) of decision VII/8m, on which it had itself submitted comments.³⁷

91. In its first progress report the Party concerned also states that it is considering:

The 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).³⁸

92. In addition, in its first progress report the Party concerned states that it is considering:

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 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.³⁹

93. The Committee takes note of the information provided by the Party concerned. The Committee makes clear, however, that the measures described are deficient in at least two key respects. First, it is not sufficient that, upon receiving a PSR report, the SONS will decide at its discretion whether to provide for public participation. Second, it is not sufficient that members of the public may petition the SONS to commence an ex officio procedure in which they may participate. Rather, in order to meet the requirements of paragraph 6 (a) of decision VII/8e, the SONS must be required to provide for public participation fully meeting the requirements of article 6 (2)–(9) when carrying out the regulatory review of each 10-yearly periodic safety review (PSR). On this point, the Committee recalls its findings on communication ACCC/C/2016/143:

The regulatory review stage of a PSR is accordingly “capable of changing the basic parameters” of the NPP, including determining whether the licensing basis and operating conditions for the NPP remain valid or should be changed. The Committee therefore considers it is “appropriate” and thus required, for the Party concerned to

³⁶ Party concerned's statement at open session on its plan of action at Committee's seventy-seventh meeting, 15 December 2022, p. 2.

³⁷ Party concerned's first progress report, p. 8.

³⁸ Party concerned's first progress report, p. 8.

³⁹ Party concerned's first progress report, pp. 8-9.

apply the provisions of article 6 (2)–(9) when carrying out the regulatory review of each 10-yearly periodic safety review.⁴⁰

94. Accordingly, in order to fulfil paragraph 6 (a) of decision VII/8e, the Party concerned will need to take the necessary legislative, regulatory and other measures to ensure that, upon receiving the PSR report for each 10-year periodic safety review, the SONS is required to carry out a public participation procedure meeting the requirements of article 6 (2) – (9) of the Convention.

Concluding remarks on paragraph 6 (a) of decision VII/8e

95. While welcoming the progress made by the Party concerned to date, in the light of the considerations set out in paragraphs 74 – 94 above, the Committee considers that the Party concerned has not yet met the requirements of paragraph 6 (a) of decision VII/8e with respect to the reconsideration or update of the operating conditions of permits issued under the 1997 or 2016 Atomic Acts.

Paragraph 6 (b) of decision VII/8e

96. In order to fulfil the requirements of paragraph 6 (b) of decision VII/8e, the Party concerned will need to provide the Committee with evidence that it has taken the necessary legislative, regulatory and administrative measures to ensure that members of the public concerned meeting the requirements of article 9 (2), including environmental NGOs, have access to a review procedure to challenge the substantive or procedural legality of decisions, acts and omissions under the 1997 or 2016 Atomic Acts, or any subsequent legislation, that are subject to the provisions of article 6 of the Convention.

97. In its first progress report, the Party concerned states that the public concerned has the possibility to go to court to request a review of the legality of decisions taken under the Atomic Acts. It submits that this possibility exists both in cases where the public concerned is a party to the administrative procedure (in particular, procedures under sections 22 or 204 of the 2016 Atomic Act, or procedures for the issuance of zoning permits and building permits under the Building Act, including a subsequent proceeding under the Act on Environmental Impact Assessment), and in cases where the public concerned is not a party to the procedure (in particular, the procedure under section 9 of the 2016 Atomic Act for an operating licence).

98. The Committee examines each of these below:

(i) Review of decisions taken under sections 22 or 204 of the 2016 Atomic Act

99. With respect to the review of the legality of decisions in which the public concerned may be a party to the administrative procedure, such as decisions taken under sections 22 or 204 of the 2016 Atomic Act, the Party concerned submits that, as a party to the administrative procedure, the public concerned has the right under section 81 of the Code of Administrative Procedure to file an appeal against the decision to an administrative review body. If the party to the proceedings is not satisfied with the outcome of the appeal, it may file a lawsuit before the administrative court under section 65 (2) of the Code of Administrative Justice.⁴¹

100. The Committee welcomes that a member of the public concerned who, pursuant to section 27 of the Code of Administrative Procedure, is accepted to be a party to an administrative procedure under sections 22 or 204 of the 2016 Atomic Act has access to administrative review of the decision, under section 81 of the Code of Administrative Procedure, and judicial review of the decision, under section 65 (2) of the Code of Administrative Justice.

⁴⁰ ECE/MP.PP/C.1/2021/28, para. 123.

⁴¹ Party concerned's first progress report, p. 13; Party concerned's plan of action, 22 October 2022, p. 25.

101. However, in the light of the considerations in paragraphs 74 – 77 above, the Committee is concerned that the scope of the “public concerned” under article 2 (5) of the Convention is not limited to natural or legal persons who can demonstrate, pursuant to section 27 of the Code of Administrative Procedure, that their “rights or obligations may be directly affected” by a decision taken under sections 22 or 204 of the 2016 Atomic Act.

102. In paragraph 79 above, the Committee has requested the Party concerned, in its final progress report due on 1 October 2024, to provide the necessary evidence to demonstrate that any member of the public who expresses an interest, including a “mere factual interest”, to participate in procedures under sections 22 and 204 of the 2016 Atomic Act is entitled to do so. Should the Party concerned provide such evidence, then the Committee will report to the Meeting of the Parties that the Party concerned has met the requirements of paragraph 6 (a) of decision VII/8i with respect to procedures under sections 22 and 204 of the 2016 Atomic Act.

103. In the absence of such evidence, the Party concerned will in its final progress report need to demonstrate that members of the public concerned, including both individuals and environmental NGOs, who do not have the status of a “party” to the procedure under section 27 of the Code of Administrative Procedure may still challenge decisions under sections 22 and 204 of the 2016 Atomic Act on some other legal basis, for example, on the ground that their “legal sphere” is affected pursuant to section 65 (1) of the Code of Administrative Justice. On that point, the Committee refers the Party concerned to the considerations in paragraphs 108 – 112 below.

(ii) Review of licensing decisions issued under section 9 of the 2016 Atomic Act

104. With respect to the review of the legality of decisions in which the public concerned is not a party to the administrative procedure, such as licensing decisions under section 9 of the 2016 Atomic Act, the Party concerned submits that, in accordance with established case law, provided that the “legal sphere” of an individual or environmental NGO is affected by the decision, it may file a lawsuit against the decision under section 65 (1) of the Code of Administrative Justice.⁴²

105. The Committee notes that, in its plan of action and first progress report, the Party concerned cites only one judgment concerning a challenge to the legality of a decision taken under section 9 of the 2016 Atomic Act, namely the judgment by the Supreme Administrative Court dated 15 October 2014 in File No. 10 As 59/2015 – 42. That case concerned a challenge brought by three environmental NGOs regarding a decision on the location of blocks 3 and 4 of the Temelín nuclear power plant.

106. The Committee regrets that the Party concerned has not provided the Committee with an English translation of the judgment. The Committee is therefore not in a position to assess whether, in that judgment, the Supreme Administrative Court held that the environmental NGOs had standing under section 65 (1) of the Code of Administrative Justice to challenge the legality of the decision on the location of Temelín blocks 3 and 4 on the grounds that their “legal sphere” was affected.

107. Neither has the Party concerned provided the Committee with any judgments in which individual members of the public concerned have been granted standing to challenge the legality of a decision under article 9 of the 2016 Atomic Act.

108. In paragraph 46 above, the Committee has welcomed the apparent fundamental shift by the courts of the Party concerned in granting standing under section 65 (1) of the Code of Administrative Justice to members of the public concerned, including environmental NGOs, to challenge a decision in an administrative procedure to which they were not a party if the decision affects their “legal sphere”.

109. The Committee however notes that section 65 (1) explicitly states that it applies “unless otherwise provided for by this Act or by a special law” (see para. 34 above). Since

⁴² Party concerned’s first progress report, p. 13; Party concerned’s plan of action, 22 October 2022, p. 25.

the Atomic Act is a special law, the Committee will need to be provided with recent judgments by the superior courts of the Party concerned in which individuals and environmental NGOs have each been entitled to challenge the substantive and procedural legality of a decision under article 9 of the 2016 Atomic Act on the ground that the challenged decision affects their “legal sphere” pursuant to section 65 (1) of the Code of Administrative Justice.

110. Moreover, with respect to access to justice for environmental NGOs to challenge decisions under article 9 of the 2016 Atomic Act, the Committee reminds the Party concerned that, pursuant to article 9 (2) of the Convention, NGOs meeting the requirements of article 2 (5) of the Convention are deemed to have standing. The Committee is therefore concerned that, based on the case law before it (none of which concerned challenges to decisions under article 9 of the 2016 Atomic Act), standing under article 65 (1) of the Code of Administrative Justice appears to be granted as the “exception”, and not as a rule. For example, in its judgment of 18 April 2014 in File No. 4 As 157/2013 – 33, the Supreme Administrative Court held:

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.⁴³ (emphasis added)

111. In this regard, the Committee recalls its findings on communication ACCC/C/2016/143 in which it held:

134. In its decision No. 4 As 157/2013-33, the Supreme Administrative Court held that participation in an administrative proceeding under the Building Code cannot be stipulated as a condition for the applicant’s standing under section 65 (1) of the Code of Administrative Justice to bring an action against the decision resulting from that administrative proceeding. In its judgment, the Court asked itself “whether there can be any cases in which there would be a decision of an administrative authority that would infringe on the rights of someone who is not a party to the administrative proceeding”.⁴⁴ The Court held that “although such a situation is extremely undesirable, it cannot be ruled out a priori that it may exceptionally occur”.⁴⁵ It went on to hold that “it is therefore not decisive whether the entity concerned was treated as a party to the administrative proceedings or not, but whether the decision issued affected his legal sphere in the sense described above”.⁴⁶

135. The Committee understands that, based on the judgment of the Supreme Administrative Court, if a claimant can show that the decision affected its “legal sphere” then although “extremely undesirable” it may be “exceptionally” entitled to standing to challenge the decision even though it was not a party to the administrative proceeding. The Committee makes clear that providing standing to challenge decisions subject to article 6 as an exceptional occurrence falls far short of meeting the requirements of article 9 (2).⁴⁷

112. In line with the foregoing analysis, since pursuant to article 9 (2) of the Convention environmental NGOs meeting the requirements of article 2 (5) are deemed to have standing, in order to meet the requirements of paragraph 6 (b) of decision VII/8e with respect to environmental NGOs, the Party concerned will need to take the necessary measures to ensure

⁴³ Party concerned’s first progress report, p. 14.

⁴⁴ Party’s reply to Committee’s questions, 8 February 2021, annex 4, para. 29.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ ECE/MP.PP/C.1/2021/28, paras. 134-135.

that standing for environmental NGOs to challenge decisions under section 9 of the Atomic Act is not only granted on an exceptional basis.

(iii) Review of acts and omissions subject to article 6 of the Convention

113. Article 9 (2) provides the right to challenge not only decisions but also “acts and omissions” subject to article 6 of the Convention.

114. On this point, the communicants of communications ACCC/C/2016/143 and ACCC/C/12/71 submit that:

even if the Czech authorities would guarantee the public concerned party status in the abovementioned proceedings according to sections 22 and 204 of the Atomic Act, this is only of any use if such proceedings are started up. The legal situation as currently planned leaves it entirely up to the authorities/the permit holder to decide whether there has been a material change of facts or a change in performance of the NPP, requiring the issuing of a new license according to section 22 Atomic Act or the imposing of measures according to section 204 Atomic Act – the public does not have a petition right.⁴⁸

115. In order to meet the requirements of paragraph 6 (b) of decision VII/8e with respect to review of acts and omissions, the Party concerned will need to demonstrate to the Committee that members of the public concerned, including both individuals and environmental NGOs, have standing to challenge a failure by the SONS to initiate a procedure under sections 9, 22 and 204 of the Atomic Act.

Concluding remarks on paragraph 6 (b) of decision VII/8e

116. While welcoming the progress made by the Party concerned to date, in the light of the considerations in paragraphs 101 – 115 above, the Committee considers that the Party concerned has not yet demonstrated that it has met the requirements of paragraph 6 (b) of decision VII/8e.

IV. Conclusions

117. The Committee welcomes the Party concerned’s first progress report, which was received on time, and commends its well-structured and detailed nature.

118. The Committee appreciates the level of engagement that the Party concerned has demonstrated in the Committee’s follow-up on decision VII/8e during the current intersessional period.

119. The Committee welcomes the actions taken by the Party concerned to implement paragraph 2 (a) (i) and (ii) of decision VII/8e. In the absence of information to the contrary in the meantime, the Committee will report to the Meeting of the Parties that the Party concerned has met the requirements of paragraph 2 (a) (i) and (ii) of decision VII/8e.

120. While welcoming the progress made by the Party concerned to date, the Committee considers that the Party concerned has not yet met the requirements of paragraph 2 (b) (i) and (ii) and 6 (a) and (b) of decision VII/8e.

121. The Committee recalls that, in paragraph 3 of decision VII/8e, the Meeting of the Parties decided to issue a caution to the Party concerned, to become effective on 1 January 2024, unless the Party concerned had fully satisfied the conditions set out in paragraph 2 (a) (i) and (ii) and (b) (i) and (ii) of decision VII/8e and had notified the secretariat of this fact by 1 October 2023.

⁴⁸ Comments by the communicants of communications ACCC/C/2016/143 and ACCC/C/2012/71 on Party concerned’s plan of action, 22 November 2022, pp. 4-5.

122. Since the Party concerned has not yet fully satisfied the conditions set out in paragraph 2 (b) (i) and (ii) of decision VII/8e, the caution became effective as of 1 January 2024.

123. The Committee reminds the Party concerned that all measures necessary to implement decision VII/8e must be completed by, and reported upon, by no later than 1 October 2024, as that will be the final opportunity for the Party concerned to demonstrate to the Committee that it has fully met the requirements of decision VII/8e.
