

RECENT DEVELOPMENTS IN CZECH NATIONAL ENVIRONMENTAL LAW

Ilona Jancarova

1. New Criminal Code was passed with the effect from 1.1.2010. One part of it is devoted to environmental crimes, however, only natural persons can be penalized according to this Code. In this sense, it does not transpose the Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law. The first attempt to introduce criminal liability of legal persons into the Czech legal system was made already in 2004 in the form of a special statute. Its draft was rejected by the Czech Parliament at the beginning of the legislative procedure. Since the EC Directive requirements should be implemented before the end of 2010, it can be anticipated that the draft of a new special law will be prepared.

2. In 2008, the Act on the Environmental Damage Liability No. 167/2008 Sb. came into effect (with the exemption of some provisions coming into effect later). It aims to transpose the EC Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage. According to the Preamble of the Directive, "persons adversely affected or likely to be adversely affected by environmental damage should be entitled to ask the competent authority to take action. Environmental protection is, however, a diffuse interest on behalf of which individuals will not always act or will not be in a position to act. Non-governmental organizations promoting environmental protection should therefore also be given the opportunity to properly contribute to the effective implementation of this Directive. The relevant natural or legal persons concerned should have access to procedures for the review of the competent authority's decisions, acts or failure to act." With respect to it, the Czech law implements this requirement only partially, because only persons affected or likely to be affected by the environmental damage are entitled to request the competent authority to take action and to become participants of the decision-making procedure with access to the review procedure. According to the Directive, NGOs should also have access to a court or other independent and

impartial public body competent to review the procedural and substantive legality of the decisions, acts or failure to act of the competent authority. The Czech Environmental Damage Liability Act does not meet this requirement. In specific cases, when the damage is related to the nature, the Nature Protection Act can be applied here enabling NGOs to participate in the administrative proceedings held according to the Environmental Liability Act and giving them the access to the review procedure. In cases that are not covered by the nature protection interest, the direct effect of the Directive is possible to apply.

3. The new amendment to the EIA Act was already approved by the Parliament, even though it is not in force yet. Based on the amendment, NGOs are entitled to claim the abolition of the development consent that comes out of the environmental impact report/statement on the condition the NGO commented upon the EIA documentation and/or its review at the administrative court. Thus, the public interest action provision contained in the CAJ will be implemented (§ 66/3: The action can be brought (beside others) by the person, who is explicitly entitled to it by a special law or by the international convention which is a part of the national legal system). The amendment does not solve another gap in the Czech legislation, which is FONSI (finding of no significant impact on the environment) issued in the EIA procedure. Some projects determined by the law have to be assessed always, some of them are subject to the EIA procedure only if the screening procedure set so. If the result of the screening procedure is negative, FONSI cannot be reviewed and NGOs are excluded from the participation in the decision making procedure.

4. Requirements contained in the Directive 2006/21/EC of the European Parliament and of the Council on the management of waste from extractive industries were transposed to the Czech national legal system by the Act. No. 157/2009 Sb. on the waste from extractive industries.

5. The last judicial decisions of the Supreme Administrative Court are almost identical in denying the access to the EIA reports/statement review. The court held that the access to the review of final decision (development consent) is consistent with the Art. 9 of the Aarhus Convention. This provision cannot be interpreted as a duty to ensure the review of all individual acts (or omissions) issued in the

permitting procedure in an independent proceedings. EIA report is subject to the judicial review in the later stage of the administrative procedure - after the final decision was issued. The compliance with the Directive was expressed in a similar way - according to the SAC, (despite of the statement of the EC Commission (2007)2927 claiming non-compliance with Art. 10a of the EIA Directive), the Czech legislation does comply with the EC law, even though it does not enable the review of the EIA report/statement in an independent procedure.

6. In legal theory and practice, it is generally accepted that the right to the favourable environment belongs only to natural persons (finding of the Constitutional Court I. ÚS 282/97. Lately, the ACJ in the decision 2 As 12/2006 held, that this right belongs to natural persons, but also to those legal persons (typically NGOs) which represents a group of natural persons, for whom is such NGO a "medium" for protection of the right to the favourable environment of each member of the group as a natural person. This can be seen as an important move to admit that NGOs can claim the infringement of the right to the favourable environment.