Access to justice in environmental matters

Czech Republic

I. Constitutional Foundations

The Charter of Fundamental Rights, which forms a part of the Czech Constitution (hereinafter “Charter”), enshrines a right to live in a favorable environment and a right to timely and complete information about the environment in its Article 35. The Charter also grants a related right to protection of health. Further, it prescribes that by exercising his or her rights no one may endanger or cause damage to the environment, natural resources, biodiversity and cultural monuments “beyond the limits set by law”. Article 7 of the Czech Constitution states that the government shall be responsible for “thoughtful utilization of natural resources and for the protection of the environment”. According to Article 36 of the Charter, each person is entitled to enforce his or her rights at an independent court or, if the law determines so, at another public body. Anyone claiming that his or her rights have been infringed by a decision of an administrative authority is entitled to ask a court to review the legality of such a decision, unless the law states otherwise. Decisions relating to fundamental rights and freedoms, as defined by the Charter, cannot be excluded from the jurisdiction of the courts. People can invoke the constitutional right to live in a favorable environment in the administrative or judicial procedures. However, according to Article 41 of the Charter, this right can be claimed only within the scope of the laws implementing such rights. According to Article 10 of the Czech Constitution, the international agreements, approved by the Parliament and binding for the Czech Republic, shall constitute a part of the Czech legal order and shall be applied prior to national laws. The jurisprudence of the Czech courts added two more requirements for direct application of the international agreements: They must be “sufficiently specific” and “grant specific rights” to private persons. In most of their decisions, the Czech Courts came to the conclusion that the provisions of the Aarhus Convention are not “directly applicable”, as they are not “sufficiently specific”. On the other hand, in some of the decisions, the courts emphasized that national laws must be interpreted consistently with the international obligations arising out of the Convention.

II. Judiciary

Czech law belongs to the continental (civil law) legal system, which is based on codified laws adopted by the Parliament. The court decisions are not considered to be a formal source of law. However, case-law of the highest courts (namely the Constitutional Court) is often used for interpretation purposes and is respected by lower courts. The structure of civil and criminal courts consists of 4 levels in the Czech Republic. It contains
the District courts,
the Regional courts (including the City Court of Prague),
the High courts and
the Supreme Court.
The civil courts protect the private rights and decide civil matters regulated by Civil Procedure Code. The criminal courts decide on the guilt and punishment for the criminal offences, defined and procedurally regulated by the Criminal Code. The prosecutor has an exclusive right to start the procedure at the criminal court. The structure of administrative courts consists of 2 levels in the Czech Republic. It contains
the Regional courts (including the City Court of Prague) and
the Supreme Administrative Court.
The administrative courts protect the public individual rights in the procedure regulated by the Code of Administrative Justice. They review the decisions of the administrative authorities, including the decisions on administrative offences (torts).
The Constitutional Court of the Czech Republic is responsible for the protection of constitutionality, including protection of fundamental rights and freedoms granted by the Constitution and the Charter. The Constitutional Court has jurisdiction to annul laws if they are in conflict with the constitutional order. It also decides constitutional complaints against final decisions of public authorities in all branches of law that allegedly infringe the fundamental rights and basic freedoms. There are special administrative authorities which decide in environmental matters on the administrative level in the Czech Republic, e.g. the Czech Environmental Inspectorate. On the judicial level, there are no organs specialized for environmental protection. The ordinary civil and criminal courts deal with the disputes and crimes related to the environment. The decisions of the administrative authorities, concerning environment, are reviewed in the first instance by the departments of the Regional courts, specialized on administrative judiciary in general. The judgments of administrative courts can be re-examined by the Supreme Administrative Court, which is a specialized judicial authority in the area of administrative judiciary.
There is little space for so called “forum shopping” in the Czech Republic, as the subject-matter jurisdiction and the local jurisdiction of the individual courts are determined by law. In the administrative jurisdiction, any kind of “forum shopping” is impossible. In the civil cases, the plaintiff can sometimes try to influence which court will be dealing with the case at the first instance (and subsequently as the appeal court) by the means how the lawsuit is designated

and the arguments presented. For example, the same case can be sued as a “neighbors action” (where a District court would decide at the first instance) or as an “action to protect the personality” (the Regional court would be the first instance court). It is, however, always up to the courts to decide which specific court has the jurisdiction, regardless of the title of the lawsuit. In the civil and criminal judicial procedures, the ordinary remedy to challenge the decision of the court of the first instance is an appeal. Regional courts deal with appeals against first-instance decisions of the District courts, while the High courts review the first-instance decisions of the Regional courts upon an appeal. The most important extraordinary remedy in both civil and criminal procedure is an “appellate review”, which is solely decided by the Supreme Court. Other extraordinary remedies are lawsuits asking for a new trial (in both civil and criminal judicial procedures), lawsuit asking to declare the decision to be void (in civil law cases) and the complaint, which can be filed in criminal cases by the minister of justice or the chief prosecutor at the Supreme Court. The remedy to challenge the decision of the courts of the first instance in administrative matters is filling the “cassation complaint” at the Supreme Administrative Court. The cassation complaint is considered to be an extraordinary remedy, as it does not postpone the legal force of the first instance decision. However, as for the frequency of using it and taking into account that the Supreme Administrative Court can change the contested decision, the cassation complaint has a character of an ordinary remedy. Another extraordinary remedy in some kinds of administrative judicial procedures is a lawsuit asking for a new trial.

The administrative courts generally only have jurisdiction to cancel the administrative decisions (power of cassation). There are however exemptions from this rule. When reviewing the decisions imposing administrative penalties (fines), the courts may, next to canceling the decision, also moderate the penalty. If the court is canceling the decision on refusing the information, it can also order the administrative authority to disclose the information. From the legal (legislative) point of view, there are no specificities of judicial procedures in environmental matters, except for the participatory and standing rights of the environmental organizations. From the factual point of view, a significant proportion of lawsuits filed by these organizations represent a specificity of the administrative judicial procedures in environmental matters. The civil judicial procedures, in which the plaintiff is asking the court to protect his or her rights infringed by interventions to the environment, are mostly difficult from the evidence point of view. It is similar for the criminal offences related to damaging of the environment. Next to that, the “environmental crimes” are described in the Criminal Code in a way, which causes a difficulty for the prosecutors to prove that all the required conditions for penalizing the offender were met.

There are no judicial procedures concerning environmental matters which the courts could start from their own motion (*motu proprio).* In administrative and criminal judicial procedures, the courts can act solely on the base of the lawsuit or other appropriate motion, never from their own initiative. The civil judicial procedure can be initiated by the court from its own motion under the occasions and in the cases expressly defined by law. The courts can start *motu proprio* e.g. procedures concerning care for children, detention of person in the medical facility, legal capacity of a person, declaration of a person to be dead, inheritance, existence or non-existence of marriage, etc.

III. Access to Information Cases

If a request for environmental information is refused (or partly refused), the person requesting the information can appeal against the decision to the superior administrative body. The same applies in case that the request for information remains without any answer or only a part of requested information is provided without any explanation. In such case, the law presumes that the decision on refusing the information was issued. If a superior administrative authority confirms the decision on refusing the information, it is possible to file a lawsuit against such decision to the administrative court. For a case where the answer is considered to be wrongful or inadequate, the only possibilities are to address the chief of the respective authority with a general complaint for maladministration or to repeat (specify) the request. The decision on refusing the information shall include information on the possibility of appeal to the superior administrative body. The decision of the superior authority, however, does not have to include information about the possibility to challenge it at the administrative court.

The request for environmental information can be made orally, in writing or in any technically available form. The request must not be anonymous and the information requested must be apparent. There are not any other specific formal requirements concerning the request. If the request is incomprehensible or too general, the requestor shall provide supplemental material and the request of the authority. The information shall be provided within the 30 days from its receipt or supplementing. This deadline can be extended, for serious reasons, on 60 days as maximum. The appeal against the decision on refusing the information must be submitted in writing within 15 days from receipt of the decision. If the decision does not include the information on appeal, the deadline for appeal is 90 days. The deadline for the lawsuit against the decision of the superior body is 2 months. There is no mandatory counsel in any stage of the procedure of requesting information and of seeking remedies against refusals

The courts shall have access to information the accessibility of which is disputed before them upon a lawsuit. If the respective authority does not provide the court such information on its own accord, the court can order the authority to do so.

According to the “general” Freedom of the Information Act, the courts can order the authority to disclose the information required. Such provision is, however, not contained in the Act on the Right to Access to Environmental Information, which shall apply preferentially with respect to requests for environmental information. It is therefore not clear if the courts can order also the environmental information to be disclosed. In practice, they have done so in some cases.

IV. Access to Justice in Public Participation

For most investments with environmental impacts, the investor needs to receive a number of separate permits. The Czech system of administrative procedures in environmental matters (of environmental permitting) is therefore considerably fragmented. The most frequent permits are issued according to

Act Number 183/2006 Coll. Building Act (land use permit being mostly the “main” or “principal” decision on the possibility to carry on the project),

Act Number 114/1992 Coll., Nature Protection Act,

Act Number 254/2001 Coll., Water Protection Act,

Act Number 86/2002 Coll., Air Protection Act,

Act Number 76/2002 Coll., IPPC Act,

Act Number 44/1988 Coll., Mining Act,

Act Number 258/2001 Coll., Public Health Protection Act,

Act Number 18/1997 Nuclear Act.

Even in cases where the “integrated permit“ is issued according to the 76/2002 Coll., IPPC Act, it integrates only part of the specific permits, required by the above mentioned acts, and the other are still issued separately.

The EIA procedure (regulated by Act Number 100/2001 Coll., on Environmental Impact Assessment) is not an integral part of environmental development consent (permitting) procedures in the Czech legal system. It represents a separate process finalized by issuing an “EIA statement”. This “EIA statement” does not have the character of a binding permit (development consent). It is an obligatory base for subsequent decisions (permits), which must be reflected (but not necessarily respected) in such decisions. These characteristics of the system of administrative procedures in environmental matters also influence the rules regulating the possibility of public participation. In the individual procedures

either the general definition of the party according to the Administrative Procedure Code (based on the principle of “affected legal interests”)applies, or there is a specific definition of parties (e.g. the affected landowners in the procedures according to the Building Code).

Next to that, there are a number of special provisions allowing environmental organizations to participate in the administrative procedures concerning the environment. From these provisions, the most frequently used is article 70 of the Act Number 114/1992 Coll., Nature Protection Act. The provision of the EIA Act (Article 23 paragraph 9), according to which the environmental organizations who actively participated in the EIA procedure are entitled to act as parties of the subsequent permitting procedures, is used less often in practice.
As a general principle of Czech administrative law, it is possible to file an appeal against administrative decisions to a superior administrative body. This principle always applies except in rare cases of acts that are not issued in the regular form of an administrative decision (e.g. the “certificates of the authorized inspectors, which, under some conditions, can substitute the building permits). There is also no appeal against so called “measures of general nature”. As a regular principle, the appeal to a superior administrative body must be exhausted before the administrative decision can be reviewed by the court. First instance administrative decisions cannot be taken to court directly. “Irregular” acts against which there is no possibility of administrative appeal, but which must be subject to judicial review if they can infringe someone’s rights or duties are one exception. Second, the “measures of general nature” can be taken to the court directly after they are issued. Last, a specific exception is a possibility to file a “lawsuit in the public interest” against the first instance administrative decision under specific conditions defined by law. Similarly, the ordinary administrative remedies, if available, must be exhausted before taking a case to administrative court also in cases of omissions (illegal inaction) of the administrative authorities or in cases of other “illegal interventions” of the administrative authorities. The extraordinary administrative remedies do not have to be exhausted before taking a case to court.
Generally, the administrative courts shall review both the substantive and procedural legality of administrative decisions subject to an administrative lawsuit. Infringement of the procedural provisions concerning the administrative procedure is a reason for canceling the contested decision, if it is likely that it could cause the substantive illegality of the decision in question. The decision of the court shall be based on the facts as they were in time when the administrative decision was issued. Normally, the courts take the materials gathered in the administrative procedure as a basis of their decisions. They are however entitled, if the parties to the court procedure suggest so, review the accuracy of such materials, repeat or amend the evidence considered in the administrative procedure. The court shall always review if the administrative authorities did not misuse exceed the scope of their discretionary powers. The scope of the court review of the administrative decisions is in practice limited by the doctrine of infringement of rights, which forms a basis for regulation of legal standing in administrative judicial procedures and influences also which arguments of individual plaintiffs are considered as admissible. This especially concerns the lawsuits of the environmental organizations. These organizations, according to the prevailing case law of the Czech courts, can claim only infringement of their procedural rights in the administrative procedures, not the substantive legality of the administrative decisions as such.
According to the Building Code, the land use plans and zoning plans are issued in the form of so called “measures of a general nature” and there is a special way in which they may be challenged. Measure of a general nature” is defined by law as binding act, which is not a piece of low neither the decision. Also some acts according to other environmental laws, e.g. rules for visiting of the national parks according to the Nature Protection Act or plans for river basins according to the Water Protection Act are issued in this form and therefore subject to judicial review. According to the law, persons who assert that their rights have been infringed by issuing of the measure of a general nature have standing to sue the measure at court. The Supreme Administrative Court has, however, developed a restrictive jurisprudence, according to which only the right *in rem,* i.e. the rights related to the ownership of real estate, can be infringed by issuing a measure of a general nature (namely the land use plan). Accordingly, only the affected landowners are considered to have standing to sue the measures of a general nature. The Supreme Administrative Court also repeatedly ruled that the environmental organizations do not have standing to sue the land use plans (despite they were granted standing to sue rules for visiting of the national parks. Until the end of 2011, the Supreme Administrative Court had the sole jurisdiction to review measures of a general nature without any further remedy. Since 2012, the Regional courts have this jurisdiction and it is possible to file a cassation complaint against their decision. The main rules of evidence are similar to the administrative judiciary in general:
the courts shall review both the substantive and procedural legality of the measures of a general nature,
in the scope of the arguments presented in the lawsuit and of the infringement of the affected rights of the plaintiff,
the courts are entitled, upon the suggestion of parties, to review or amend the evidence considered in the procedure of issuing the measure.
Hearings take place more often in this kind of administrative judicial procedure than in other ones.

EIA Procedures:

The EIA procedure is not an integral part of development consent (permitting) procedures in the Czech legal system; the permitting relies on a separate process, which has following main characteristics:
the EIA procedure as such is fully open to the public,
the EIA report (documentation) is accessible and everyone is entitled to make comments to it in the given time limits,
the “EIA statement” must exist before further decisions (permits) are issued, but does not have to be respected (it must only be “taken into account)”,
the process is finalized by issuing an “EIA statement”, which does not have the character of a binding permit (development consent), but is considered to be an “expert opinion” (though it is issued by the Ministry of Environment or the regional administrative authority).
Consequently, according to the jurisprudence of the Czech courts, neither the EIA screening and scoping decisions (which are united in one according to the Czech EIA Act) nor the final “EIA statement” can be reviewed by courts “independently” or “directly”. As the Supreme Administrative Courts has ruled, they shall be subject to judicial review only together with (or in the scope of) the subsequent permit or permits, e.g. with the land use permit, permits issued according to the Nature Protection Act, Water Protection Act, Mining act etc. Following this approach, it is necessary to consider the permits issued according to the specific laws for project which was subject to EIA as the “EIA decisions” (“development consents” in the sense of the EIA directive). These decisions can be reviewed by courts under the general conditions of reviewing the administrative decisions. Standing to sue is granted to:
a) persons who assert that their rights have been infringed by the decision which “creates, changes, nullifies or authoritatively determines their rights or duties” and
b) other parties to administrative proceedings for issuing the administrative decision, who assert that their rights have been infringed in these proceedings and this could cause illegality of the decision (standing to sue for the environmental organizations is derived from this provision)
Next to that, according to a recent amendment of the EIA Act (adopted in December 2009) environmental organizations which submitted comments in the EIA process, have standing to sue the development consent decision approving a project, for which the EIA statement had been issued before.
Environmental organizations also have standing in cases that they did not participate in the administrative procedure for the development consent. This special provision, however, does not make it possible to sue under the EIA screening and scoping decision or the EIA statement directly. It has also not been used in practice so far, as the participating environmental organizations may use the general standing rules. It follows that there are more “ways” namely for the environmental organizations, to get standing to sue the development consents for the project subject to EIA before the court:
a) If an environmental organization makes comments to the EIA report (documentation) within the time limits for the public consultation in the EIA procedure, it can either get status of the party to the subsequent development consent procedure (and then, as such party, file a lawsuit against the final development consent), or, theoretically, file the lawsuit against such decision also without acting as a party of the administrative procedure.
b) However, environmental organizations can get status of the party to the development consent procedure (regardless if the project is subject to EIA or not) also according to provisions of some other laws; from which article 70 of the Nature Protection Act is the most frequently used.

For an individual, participating in the EIA procedure is neither necessary, nor does it grant any special rights with respect to participating in the subsequent administrative procedures nor the access to courts. For both of these possibilities, it is necessary to be directly affected by the development consent in ones rights (if the special law does not require even stricter conditions).
The Regional courts are the forum to challenge all administrative decisions, including the development consents issued subsequent to the EIA procedure (with the possibility to file a cassation complaint against their decision to the Supreme Administrative Court. Hearings do not take place if the courts refuse the lawsuit as inadmissible, or if they cancel the development consents for procedural mistakes or for being insufficiently justified (unverifiable). Next to that, the court usually asks the parties if they agree with deciding the case without a hearing, and in many (probably majority) of cases, the parties agree with it.
The courts shall review both the substantive and procedural legality of the development consents. The rules of evidence are the same as in the administrative judiciary in general. The courts are entitled, upon the suggestion of parties, to review or amend the evidence considered in the administrative procedure. Together with the final development consent, also the substantive and procedural legality of the EIA statement and/or EIA screening and scoping decision shall be reviewed. Theoretically, the court shall, upon suggestion of the plaintiff, also verify materials and technical findings, on which the EIA statement and subsequently the development consent is based, to ensure there is not a clear conflict between these findings and the conclusions and reasoning of the administrative authorities. In practice, however, the courts are often reluctant to do so, namely in case of the lawsuits of the environmental organizations. In cases of the court review of the development consents for the projects that are subject to EIA, general conditions for injunctive relief apply. For example, the plaintiff asking for injunctive relief must prove that
executing the decision would cause him/her a harm “incomparably more serious” that which could be caused to other persons by granting the injunctive relief (compared with the condition that the plaintiff must show “irreparable harm,” in place until the end of 2011) and
issuing injunctive relief would not be contrary to an important public interest.
The only special rule is applicable for the lawsuit of the environmental organization, which would be filed against the development consent according to the special provision of the EIA Act (without previous participation of the organization in the administrative procedure). For this kind of lawsuit, the injunctive relief (in the form of suspensive effect with respect to the development consent) is not available.

IPPC Procedures:

Courts can review final IPPC decisions (integrated permits), issued according to the Act Number 76/2002 Coll. IPPC Act, under the general conditions for judicial review of the administrative acts. Standing to sue the IPPC decisions (“integrated permits”) is therefore granted to
a) persons who assert that their rights have been infringed by the IPPC decision which “creates, changes, nullifies or authoritatively determines their rights or duties” and
b) other parties to administrative proceedings for issuing the IPPC decision, who assert that their rights have been infringed in these proceedings and this could cause illegality of the decision (standing to sue for the environmental organizations is derived from this provision)
The environmental organizations have standing to sue the IPPC decision if meeting the conditions sub b), i.e. if it was a party of the IPPC administrative proceedings (finished by issuing the IPPC permit). To get the position of a party of such proceeding, the organization has to announce to the competent administrative body that it wants to participate in the proceeding in the time limit of 8 days from publishing the information about the request for the IPPC decision at the public notice. Also, an environmental organization that submitted comments in the EIA process, preceding the IPPC proceedings could probably sue the IPPC decision even if the organization would not participate in such proceeding. There is, however, no case law proving this. From the formal point of view, it is not necessary to participate actively in the public consultation phase of the IPPC procedure, in order to have standing to sue the IPPC decision before the courts. If an individual or an environmental organization meets the criteria for being a party of the IPPC administrative proceedings, it can file an administrative appeal against the IPPC decision and consequently have standing to sue the final decision, even if not being active in the IPPC administrative procedure. However, if the party is not active, it has lower chances to be successful with the appeal and/or the lawsuit, as it is harder for the party to claim that its rights were infringed in the procedure and in the issuance of the IPPC decision.
The Regional courts are the fora to challenge the IPPC decisions (with the possibility to file a cassation complaint against their decision to the Supreme Administrative Court. Hearings do not take place if the courts refuse the lawsuit as inadmissible, or if they cancel the development consents for procedural mistakes or for being insufficiently justified (unverifiable). Next to that, the court usually asks the parties if they agree with deciding the case without a hearing, and in many cases, the parties agree. The courts shall review both the substantive and procedural legality of the IPPC decisions. The rules of evidence are the same as in the administrative judiciary in general. The courts are entitled, upon the suggestion of parties, to review or amend the evidence considered in the IPPC administrative procedure. Theoretically, the court shall, upon suggestion of the plaintiff, also verify materials and technical findings, on which the IPPC decision is based, at least to the extent if there is not a clear conflict between these findings and the conclusions and reasoning of the IPPC decision. In practice, however, the courts are often reluctant to do so, namely in case of the lawsuits of the environmental organizations. In cases where the court reviews IPPC decisions, general conditions for injunctive relief apply. The plaintiff asking for injunctive relief must prove that
executing the decision would cause him/her a harm “incomparably more serious” that which could be caused to other persons by granting the injunctive relief (till the end of 2011, there was a condition of “irreparable harm”) and
issuing injunctive relief would not be contrary to and important public interest.

V. Access to Justice against Acts or Omissions

Claims against private individuals or legal entities can be submitted directly to the civil courts (within the scope of civil judiciary) in all matters concerning private rights and duties, including those which relate to the protection of the constitutional right for favorable environment. People can invoke this constitutional right only within the scope of the laws implementing such rights. It means that also in the claims submitted to the civil courts against private individuals or legal entities, the plaintiff has to claim and prove that a specific duty determined by law was breached by the defendant and that the rights of the plaintiff were infringed by that means. The typical claims against private individuals or legal entities, concerning environmental matters (a right for favorable environment) include
“neighbors’ actions”, by which the plaintiff is asking the court to order the defendant to stop annoying the neighbors “beyond proportionate degree” or “seriously threaten their rights” (e.g. by noise, emissions, etc.). The court can only order the defendant to stop the illegal activity in such cases, without further specifications how to meet this goal.
“actions for protection of the personality and/or privacy”, by which the plaintiff asks for protection against illegal interference into his or her private sphere (personality), which includes also the body, health and quality of the environment. The claim can aim for termination of the illegal interventions into the private sphere, removing of the results of such interventions, of for appropriate satisfaction
action asking for monetary compensations for the damage of the environment, which caused also a monetary loss for the plaintiff
“preventive action”, by which the plaintiff is asking the court to order the defendant to take measures for preventing a damage on (e.g.) the natural environment.

It is generally not possible to submit claims against private individuals or legal entities directly to the administrative court. An exception is a situation when an individual or legal entity acts as an administrative body (e.g. if an authorized inspector issues the certificate, which, under some conditions, can substitute the building permit). It is also not possible to submit claims against private individuals or legal entities directly to the criminal courts.

If a state body acts as a representative of the state in the private law area (commercial activities etc.), the same kind of claims can be submitted to the civil courts against the state, as against private individuals or legal entities. In the area of administrative judiciary, the lawsuits against the decisions of the state bodies (administrative authorities) in environmental matters can be filed under certain conditions. As a general rule, it is only possible to ask the court to cancel the decision, with a few exceptions (moderation of administrative penalties, order to disclose the information). Further, a person who has exhausted the administrative measures for the protection against illegal omission (inaction) of an administrative authority, which infringes his or her rights, can ask the court to order the administrative authority "to issue a decision on the merits of the matter." There is, however, a significant "gap" in this regulation (as interpreted by the Czech administrative courts), which leads to the conclusion that it is not possible to ask court to order the authority to start the procedure itself (*ex officio*), when it is obliged by law to do so (for example, if there is a project built or operated without the necessary permits). The courts repeatedly refused the lawsuits of affected neighbors in such cases. There is also no regulation concerning standing of the environmental organizations to sue administrative authorities in case of illegal omissions. It could be possible to use another kind of administrative action – so called "action against other illegal interventions of the administrative authorities" – in such cases. The legislative regulation of this kind of action has changed since 2012. According to the current wording, anyone asserting that his or her rights were infringed by "illegal intervention, instruction or enforcement" by the administrative authority can ask the court to prohibit the authority from continuing with the intervention, to order the authority to remove the results of such intervention, or just to declare that it was illegal.

There are two principal competent authorities in the field of ecological liability: The Czech Environmental Inspectorate and the Ministry of the Environment. The Ministry of the Environment exercises the competencies of the central administrative body in the whole segment of environmental protection, including environmental damage; the Inspectorate accepts the submissions and request for actions and is empowered to impose preventive or remedial measures relating to environmental damage and penalties. The procedure on imposing preventive or remedial measures relating to environmental damage may be initiated ex officio by the Inspectorate or upon request. Such request may, however, only be filed by persons affected or likely to be affected by environmental damage (such as landowners); environmental organizations are generally not regarded as affected even if protecting the environment. Environmental organizations and the general public may only file a written submission asking the Inspectorate to initiate the procedure ex officio; nevertheless, it is up to the Inspectorate to decide whether to start the procedure or not.

Parties to the proceedings concerning environmental liability matters may file the lawsuit to the administrative courts once the administrative decision is final. That means that the ordinary administrative remedy, an appeal to the Ministry of Environment, must be exhausted first. Environmental organizations, though they may not initiate the proceedings themselves, may become the party to the procedure initiated by the Inspectorate on the grounds of the Nature Protection Act. In such cases, they may also file the lawsuit against the decision of the Inspectorate. Persons whose rights have been infringed as a result of the administrative decision may also file a lawsuit. In cases where there would be no request for action and the Inspectorate would fail even to start the procedure *ex officio*, the environmental organizations or anybody from the general public may ask the Ministry for a remedy. However, if the Ministry itself fails to do so, the courts cannot order the passive authority to act (to start the procedure) and it is not possible to enforce environmental liability through the administrative procedure. It is nevertheless possible to enforce environmental liability through private claims. There may be yet another type of the enforcement of environmental liability which is the situation where the decision on preventive or remedial measures is issued but not respected. Pursuant to the Czech legislation, it is generally up to the administrative body that made a decision imposing non-financial duties (such as the decision imposing preventive or remedial measures concerning the environmental damage) to enforce it. To ensure that such decision is respected and the duties imposed are fulfilled. In case the decision is not respected, the competent authority may either impose fines upon the person obliged or ensure that another fulfills the duties imposed at the expense of the person obliged. Besides, a person empowered by the decision may enforce the decision imposing non-financial duties (i.e. the person obliged should act or refrain from action on behalf of the person empowered). The latter would be applicable in situations where the environmental damage would affect the estate of somebody else than the person liable.

VI. Other Means of Access to Justice

Apart from participation in administrative procedures and challenging the decisions at administrative courts, there are several other remedies that may be used by both the parties to administrative procedures and general public. Namely:

submissions to competent authorities to initiate procedure *ex officio*, including submissions to take measures against inaction of subordinated authority, extraordinary administrative remedies (i.e. administrative review of decisions in force, new procedure (retrial)),

submissions to the ombudsperson, criminal notification to police or public prosecution, and submissions to the public prosecutor and ombudsperson to file *actio popularis*.

However, these remedies are – in general – rather weak. They do not formally initiate any procedures. It is up to the competent authorities to decide whether to start the procedure or not while the submitter has only the right to be informed of the follow-up of his submission.

There is one general ombudsperson in the Czech Republic who deals with all cases where administrative bodies act or omit to act in breach of law, principles of democratic state of law or principles of good administration; this also covers environmental cases. The ombudsperson may initiate its inquiry *ex officio*. Further, everybody may approach the ombudsperson with the submission (specific conditions are set forth as to when the ombudsperson may decide not to deal with the submission, e.g. the violation is older than 1 year). However, even If the ombudsperson concludes that the administrative authority has violated the law, he/she may only recommend to the authority to take corrective measures, not impose it. If not respected, ombudsperson may contact superior authority or government and inform the general public.

It is not possible for anyone to bring a private criminal lawsuit. All crimes are prosecuted by the state (represented by the public prosecutors), Anybody may, however, notify the prosecuting authorities (police or the public prosecution) if he or she has suspicion of committing a crime; afterwards, he or she may be only informed about the follow-up of such notification. Aggrieved persons (persons who have suffered injury, property loss, or moral or other damage as a result of the committed crime) have procedural rights and may have influence on the criminal procedure (e.g. may file a complaint against cessation of criminal prosecuting).

Both the ombudsperson and the Chief public prosecutor may file the "lawsuit in the public interest" against any administrative decision, if they "find" (the Chief public prosecutor) or "prove" (the ombudsperson) an important public interest to do so.

The main complaint-handling mechanisms, concerning inappropriate administrative actions, administrative inactions or omissions, can be summarized as follows:

a submission to the ombudsperson

a lawsuit against inaction (it is available only in cases where the administrative procedure is running but the authority refuses to issue a decision)

complaint about inappropriate behavior of officer or course of actions of the administrative body (however, such complaint is handled primarily by the same authority which is complained about – only in case it was not dealt with properly, it is possible to approach the superior administrative body),

in the most serious cases, notifying the prosecuting authorities (police or the public prosecution)
There are no other institutions or bodies that have competence in providing access to justice in environmental matters, apart from those described above. i. e.:
the administrative authorities which are responsible for the public administration concerning specific environmental or environmentally related areas,
courts,
the ombudsperson and
public prosecution.

VII. Legal Standing

Legal Standing	Administrative Procedure	Judicial Procedure
Individuals	"rights possibly directly affected"	impairment of right
NGOs	protection of public interests	impairment of right / protection of public interests (special lawsuit according to the EIA Act)
Other legal entities (including municipalities)	"rights possibly directly affected"	impairment of right
Ad hoc groups	only EIA consultation procedure and land use plans adoption – open for anyone to make comments	no possibility
foreign NGOs		impairment of right
Any other (organizations of employers and business chambers – IPPC procedure, Chief public prosecutor and ombudsperson – public interest lawsuit)	"rights possibly directly affected"	impairment of right / protection of public interests (Chief public prosecutor and ombudsperson)

In the administrative proceedings, the basic rule for "standing" (right to have a position of the party), is the concept of one's "rights or duties being possibly directly affected" by the decision. This concept is generally expressed in the Article 27 of the Act Number 500/2004 Coll., Administrative Code, according to which, persons "whose rights or duties can be directly affected by the administrative decision" are considered as parties to the administrative procedures (next to the persons who submitted request for a permit (applicants), persons whom the decision shall create, abolish or alter their rights and duties and persons to whom a position of party is stipulated by a special act). This general rule is modified by some sectoral acts:
a) For the environmental protection, the most important one is the Act Number 183/2006 Coll., Building Act. This act includes autonomous definitions of parties of the administrative proceedings for issuing the land use and building permits. According to these definitions, only the individuals and legal entities whose property rights or another rights *in rem* to can be directly affected by the permit have a status of party of the proceedings.
b) Similar is the regulation of parties of the administrative procedures according to the Act Number 44/1988 Coll. Mining Act.
c) In some other procedures, related to the environment, the applicant is the only person with the rights of party. Such situation exists for example with regard to the "noise exceptions" – decisions which authorize an operator of a source of noise which is exceeding the maximum limits to continue with the operations for a limited period of time (with possibility of repeated prolongation). Other examples are the permits issued according to the Act Number 18/1997 Coll., Nuclear Act.
d) On the other hand, the EIA consultation procedures (which are not finished by a binding permit) and procedures of adopting land use plans are open for anyone to make comments; these are also the only procedures in which the ad hoc groups can participate.
The environmental organizations can get a status of the party to the environmental administrative proceedings according to a number of specific acts; including the Nature Protection Act, EIA Act, IPPC Act, Water Protection Act, and some others. The environmental organizations meeting the requirements of these acts shall have right to be parties to all proceedings in which interests protected by these acts are influenced (namely in the proceedings according to the Building Act). It is confirmed by the jurisprudence, that the reason for this possibility is that it should be made possible for the organizations to promote public interest on the protection of the environment and its specific components in the position of party. However, neither the environmental organizations can become parties in cases that the law explicitly states that the applicant is the only party to the proceedings.
The municipalities have right to be parties of administrative proceedings according to the same principles as other legal entities (upon the concept of "rights possibly directly affected"). In the IPPC procedure, the organizations of employers and business chambers can get a status of party under similar conditions as environmental organizations; they are however considered to defend their interests and interests of their members. At the level of the judicial procedures, the utterly prevailing concept for standing for all categories of subjects is the concept of impairment of right. The general standing provision for administrative judiciary (Article 65 of Act Number 150/2002 Coll., Code of the Administrative Judiciary), states that standing to sue the administrative decisions is granted to
a) persons who assert that their rights have been infringed by the decision which "creates, changes, nullifies or authoritatively determines their rights or duties" and
b) other parties to administrative proceedings for issuing the administrative decision, who assert that their rights have been infringed in these proceedings and this could cause illegality of the decision (standing to sue for the environmental organizations is derived from this provision).
In most cases, standing to sue in judicial procedure is closely related to the status of a party to the relevant administrative procedure. Therefore, except the few possibilities of so called "public interest lawsuits", there is no special regulation for standing rights for a specific legal area or actors. At the same time, the scope of subjects with standing in the given area is strongly influenced by the scope of parties of the relevant administrative procedures. For example, as only the "neighbors" (persons whose property rights are affected) are parties to administrative procedures according to the Building Act (next to the investor, municipality and possibly the NGOs), only these persons can also have standing to sue a final decision issued according to the Building Act. In cases where the applicant is the only party to the administrative proceedings, it is also only the applicant who has standing to sue the decision at court. The environmental organizations, according to the prevailing case law of the Czech courts, can claim only infringement of their procedural rights in the administrative procedures, not the substantive legality of the administrative decisions as such. It is the consequence of strict application of the concept of impairment of right on their lawsuit; despite the reason for their participation in the administrative proceedings is protection of the public interest, it means that the organizations can ask the court to review the following:
if they could see all the documents related to the environmental permit,
if they had enough time to study them and express their opinion,
if they were invited to the public hearing, etc.
However, if the doctrine is interpreted strictly, they cannot claim that the decision breaches the requirements of environmental laws (e.g. limits of emissions or provisions prohibiting some activities in protected areas), as this is not related to any of their "personal rights". This approach is further supported by the case law of the Constitutional Court, according to which legal entities, including environmental organizations, cannot claim a right for a favorable

environment, as it can “self-evidently” belong only to the individuals. On the other hand, there are also decisions in which the courts have, *de facto*, dealt with the “substantive” objections of the NGOs.

There is no *actio popularis* (in the sense of standing of anyone to sue some kind of decisions) in any area of law in the Czech Republic. The Code of Administrative Judiciary contains a provision according to which a “lawsuit in the public interest” can be filed by

the Chief public prosecutor

the ombudsperson

other public authority entitled to do so by a special law

a person explicitly entitled to do so by a special law

The Chief public prosecutor and the ombudsperson can file the “lawsuit in the public interest” against any administrative decision, if they “find” (the Chief public prosecutor) or “prove” (the ombudsperson) an important public interest to do so. There is no piece of legislation giving the right to file a lawsuit in the public interest, or any other kind of administrative lawsuit, to any other public authority. As for other persons, the only specific kind of standing for a “lawsuit in the public interest”, existing in the Czech law (since December 2009) is contained in the EIA Act. According to Article 23 paragraph 10 of this act, environmental organizations or municipalities, which submitted comments in the EIA process, have standing to sue the development consent approving a project, for which the relevant EIA statement had been issued. If they choose to file a lawsuit according to this provision, it is not necessary for them to participate in the administrative procedure for the development consent as parties. Theoretically, the concept of impairment of right shall not apply also in this case and the environmental organizations should with no doubt have a right to challenge also the substantive legality of the contested decision. On the other hand, if this kind of lawsuit would be filed, injunction relief would not be available. In practice, there have still been no attempts to use this opportunity.

So far, environmental organizations have most frequently used the provision of the Nature Protection Act and, only as the second and third respective options, the provisions of EIA and IPPC acts. As already described above, there are more “ways”, namely for the environmental organizations, how to become a party to the administrative proceedings, and by that means (indirectly) also to get standing to sue the administrative decisions in environmental matters at courts. The individuals mostly derive their standing from the position of “directly affected neighbor” (with respect to the decisions issued according to the Building Act) or “person whose rights or duties are possibly directly affected” with respect to most of the other decisions.

VIII. Legal Representation

Legal representation by an attorney is compulsory in the judicial procedures before the Supreme Administrative Court, the Supreme Court and the Constitutional Court, regardless of the nature of the case heard, including environmental cases. Natural persons who themselves have legal education corresponding with the education necessary to become an attorney or legal persons whose employee or member has such education do not have to be legally represented by another counsel except in the Constitutional Court. Before other courts, legal counsel (representation) is not compulsory. Anybody may choose to be legally represented by attorney or any other person capable of legal acts. Therefore, it is possible also for non-governmental environmental organizations to represent parties in environmental cases. However, courts may prohibit the representative from representing in case that he or she represents in different cases repeatedly (this relates only to judicial procedures, not administrative). There are several counseling legal centers run by the non-governmental environmental organizations in the Czech Republic. These centers provide for free legal help to anybody who approach them in environmental matters. They generally offers their clients explanation of legal provisions concerning their query, suggest solutions, comment their submissions or advice legal procedures. The Czech Bar Association publishes and updates the list of all attorneys on the internet, including their specialization. However, there are not many who focus on environmental law.

IX. Evidence

In environmental administrative matters, the vast majority of cases are decided merely on the base of the administrative files and eventually other official documents. Each of the parties may, however, introduce evidence to support the lawsuit. In the civil cases it is absolutely necessary to bring enough evidence to support the lawsuit. Generally, it is the claimant who bears the burden of proof; either s/he proves that his claims are justified or s/he loses the case. Evidence is evaluated by the court in line with the principal of independent assessment of all evidence. The court is not bound by any regulation as to what evidence should be given priority or higher plausibility etc.; it is up to the court to carefully evaluate all the evidence. In the decision on the merits, the court has to thoroughly reason which evidence the decision is based on, which evidence was taken into account, which was given priority and why. If not, the decision is likely to be cancelled by the superior court. All parties may introduce evidence to support their claims. However, the court does not have to reflect all the proposals. In such a case, in the decision on the merits the court has to reason why the evidence was not performed. It is not up to the courts to provide evidence; generally, the courts only request the expert opinions if necessary for to decide on the merits. Nevertheless, it is possible for the court to indicate to one of the parties that as it seems not to be able to bear the burden of proof, it should present some further evidence, or it is likely to lose the case. Further, on the request of one of the parties, the court may request the evidence from the other party or even third persons. The parties themselves may introduce expert opinions that have the same weight and plausibility as the expert opinion requested by the court. The parties may choose the expert from the official list of experts, ask him to make the opinion, and pay for his services. In a case where each party introduces its own expert opinion and they are contradictory, the court shall request another expert opinion. The expert opinions are not formally binding on judges. However, in the vast majority of cases, the court will respect them. If there is a doubt concerning the plausibility or quality of the expert opinion, the court shall ask another expert to review the preceding expert opinion.

X. Injunctive Relief

An appeal to a superior administrative body has a suspensive effect. Only in rare cases, and generally not in the environmental matters, the appeal does not have a suspensive effect and may be preliminarily executed. The submission of a lawsuit against a decision of an administrative authority generally does not have a suspensive effect. The court may, however, grant it in accordance with Article 73 paragraph 2 of the Code of Administrative Judiciary at the request of the claimant, but only under following conditions

executing the decision would cause the applicant a harm “incomparably more serious” than that which could be caused to other persons by granting the injunctive relief

issuing injunctive relief would not be contrary to an important public interest.

Once the superior administrative body approves the decision, it may be executed regardless the lawsuit filed against it. Only at the time the court grants a suspensive effect to the lawsuit or issues a preliminary injunction, a person empowered by the decision must stop its execution. Apart from granting a suspensive effect to the lawsuit, the administrative courts may further issue a preliminary injunction on the grounds of Article 38 of the Code of Administrative Judiciary in case there is a need of an interim arrangement of the relation between the parties. There must be a threat of a “serious” harm, and it is not necessary that it is the claimant personally who is under this threat. The court may order to the parties of the dispute, or even to third person, to make something, abstain from something or endure something. Nevertheless, it is very rare for administrative courts to issue preliminary injunctions. In civil cases this happens much more often. In civil court procedures, the court may, at the request of a party, impose injunctive relief “if it is necessary to provisionally amend the conditions of the parties, or if there is a risk that the enforcement of the (subsequent) court decision could be threatened” (Article 74 of the Code of Civil Judiciary). The court may apply injunctive relief to forbid the handling of things, laws, or particular transactions.

In administrative cases, there is no time limit in which the request for a suspensive effect or preliminary injunction has to be filed once the deadline for filing the lawsuit is respected. In civil cases, it is possible to ask for the preliminary injunction first and file the lawsuit in some period afterwards. In administrative matters, it is not possible to appeal to the Supreme Administrative Court against interim decisions which are also the decision on suspensive effect or preliminary injunction. The court may reconsider its decision on suspensive effect or preliminary injunction at any time and it is hence possible to file a request for such reconsideration. In civil cases¸ it is always possible to appeal the decision on the preliminary injunction to the superior court; however, the appeal does not have a suspensive effect.

XI. Costs

Generally, no costs are connected with the participation in administrative procedures in environmental matters; only the judicial stage is charged. There are costs connected directly with the applicant's actions towards the courts, namely:

fee to start judicial procedure

fee for an appeal or cassation complaint,

fee for a request for a suspensive effect or injunction relief.

All of these fees must be paid by the applicant/appellant. Further, there are costs of persons different from the court such as experts, interpreters, witnesses etc., and the cost of parties to the procedure themselves.

The court fees for individual kinds of administrative lawsuits are based on a flat rate regardless of the value of the case. A fee for a lawsuit to review an administrative decision is 3000 CZK (around 125 EUR); the same fee applies for a cassation complaint. Fee for a lawsuit against a land use plan is 5000 CZK (around 200 EUR). If a remedy is requested in the civil court action, such as claims for damages connected to environmental pollution or devastation, the system of calculating the fees is generally based on value of the case. This principle applies when the claim is pecuniary; there are specific rules for calculating fees in disputes involving non-pecuniary claims. Fee for a cassation complaint is 5000 CZK (around 200 EUR). The fee for an appeal in civil cases is the same as for the lawsuit in the same case. Costs of expert opinions may vary; the cost can be from EUR 100 to 4500. However, the vast majority of administrative cases are decided on the basis of the administrative files and, eventually, other official documents. On the other hand, in civil cases it is necessary to bring enough evidence to support the lawsuit, hence, the expert opinions are often necessary. For example, in cases in which the plaintiffs ask courts to order the owners of the roads to take measures to reduce the noise caused by the traffic and exceeding the noise limits, the costs of the expertise (assessment) may vary between EUR 1900 and 4200. Theoretically, in some other cases such as cases dealing with chemical pollution of the land, the costs for the expertise may be much higher.

The fees of attorneys may also vary distinctively. Typically, there is the hourly fee which is agreed with the client and may range from EUR 20 to 200; however, there are also other possibilities of determining fee such as fee for the complete representation or fee calculated on the grounds of the tariff of attorneys (legally binding by-law). Since 1st September 2011, a fee of 1000 CZK (around 40 EUR) has been implemented for a request for injunctive relief in the administrative cases (which had been free of charge before); however, no deposit to cover any compensation is required. On the other hand, in the civil matters anyone requesting a court to impose an injunctive relief is obliged to pay a deposit of 10000 CZK (approximately 360 Euro) to cover any compensation for damage or other loss which could be caused by the injunctive relief; a fee of 1000 CZK (around 40 EUR) is obligatory as well.

The loser pays principle applies as a general rule: the losing party is obliged to pay for the cost of the successful party as well as the cost of expert opinions and testimonies. The latter is, however, rare in the administrative judiciary, as the courts mostly base their decisions on the administrative files and evidence gathered thereto. In addition, there is a fixed case law of administrative courts, that the costs of the legal representation are not eligible costs for the administrative authority, as they shall have their own employees – lawyers, who can represent them at the dispute. Also, under special circumstances (it depends on the consideration of the court) the court may decide that each party has to bear its own costs.

XII. Financial Assistance Mechanisms

The courts, in both civil and administrative judiciary, can mitigate the costs of the proceedings by granting the waiver of the court fees when the applicant proves the need for waiver. This possibility is applicable at all instances of the proceedings, including the appeals. The administrative courts shall grant a partial waiver of the fees if the applicant proves he/she does not have the funds to pay the fee in full; the full waiver of the fee can be granted only under special circumstances. The civil judges can grant full or partial waiver of the court fees if the applicant proves the lack of funds and the action itself is not arbitrary or the action is nearly certainly without a chance of being successful.

Case law in environmental cases further specified this rule in a way that an NGO cannot be awarded with waivers repeatedly; if the NGO wants to protect the environment in court, it must raise basic sources for that and "not transfer them on the state". The civil judges can grant full or partial waiver of the court fees if the applicant proves the lack of funds and the action itself is not arbitrary or the action is nearly certainly without a chance of being successful. Also, under special circumstances (it depends on the consideration of the court) the court may decide that each party has to bear its own costs. Concerning other possibilities of financial assistance, it is possible for a party to judicial dispute to ask the court to appoint him/her a legal representative and at the same time to liberate this part from the duty to pay for the legal assistance (fully or partially). The conditions are the same for waiver as for the court fees; the financial situation of the applicant is considered. Further, it is also possible to ask the Czech Bar Association for appointment of an attorney to provide a free legal aid (normally only for one act or few acts, not for complete representation). The condition is, apart from the financial situation, that for some reason the above-mentioned possibilities of appointment of the representative by court could not be used. This system of the Czech Bar may theoretically be used already at the stage of administrative procedures. It follows that it is not possible for a party to choose his/her own attorney and then ask the court for waiver of the costs of legal representation. Officially, waiver of these costs is always related to appointment of the representative by the court (or by the Bar Association). As a rule, only attorneys can provide legal aid as a paid service, and also only an attorney can be appointed as a representative to a party who is asking for free legal aid. On the other hand, it is possible that someone other than an attorney represents a party before court or administrative organ. In practice, the NGOs often provide basic free legal aid (as counseling centers) in the fields of their specialization, and sometimes also represent parties at courts. Legal aid is used relatively frequently in environmental cases and the frequency seems to grow constantly. There are law firms that provide pro bono legal aid; however, not many of them specialize in environmental matters. Around 30 attorneys and law firms are involved in the project of the non-governmental organization called Pro bono alliance called "Pro Bono Centrum" which specializes on ensuring pro bono legal aid. This legal aid is provided to clients of NGOs in environmental matters and to non-for-profit organizations themselves in the areas such as labor law, taxes or other legal problems concerning their non-for-profit functions.

Generally, law faculties have rather disapproving approaches as far as legal clinics are concerned. There is one legal clinic run by the Faculty of Law of the University of Palacky in Olomouc operating as a counseling center for people who not have the funds to pay for the services of an attorney. Further, there has been a project of legal clinic run by the ELSA (European Las Students' Association) Prague under the similar conditions (lack of funds). However, the majority of their agenda deals with civil, not environmental matters. There are several counseling legal centers run by the non-governmental environmental organizations in the Czech Republic. These centers provide for free legal help to anybody who approach them in environmental matters; they generally offers their clients explanation of legal provisions concerning their query, suggest solutions, comment their submissions or advice legal procedures.

XIII. Timeliness

Generally, administrative authorities are obliged to deliver administrative decisions within the period of 30 days, with the option to extend it up to 60 days. In case the administrative authority does not respect the set out deadlines, it is possible to submit a request to the superior body to take measures against inaction of the subordinated authority. Afterwards, it is possible to file a lawsuit and request that the court obliges the administrative authority to issue a decision on the merits of the matter. However, it is not likely that the administrative body which is in delay is going to be sanctioned in any way. In case that verifiable damage is caused to the party to the procedure as a result of the unlawful inaction of the administrative authority, it is possible to demand the compensation in courts. However, even if awarded to the person aggrieved, in a majority of cases no redress is sought from the persons responsible.
The parties to the administrative procedure must challenge the decision before courts within 2 months from the time they were delivered the final administrative decision (which is the decision of the superior body on the appeal against the 'first-instance decision'). In cases concerning some large infrastructure projects, the deadline is 1 month. The lawsuit against “measures of a general nature” such as the land use plans must be filed within 3 years from the time they became effective. The lawsuit in cases of unlawful inaction of administrative authorities must be filed within the period of 1 year. In civil environmental matters (such as the case of a noise claim, prevention claim etc.), there are generally no deadlines stipulated except for the damage claim which must be filed within 3 years from the time the damage was causes and, at the same time, 2 years from the time the claimant found out about the damage and the person responsible.
Generally, there are no specific deadlines for the courts to issue their judgments. Proceedings in the civil and administrative judiciary (in one level) may last from a few months to several years. In many cases the European Court of Human Rights has already ruled on the Czech Republic’s obligation to pay participants compensation for infringing their rights to a fair trial as a result of the length of the court proceedings. In combination with the difficulty, or in many cases impossibility of obtaining the injunctive relief or suspensive effect of a lawsuit, this fact leads to the conclusion that the protection cannot be considered as “timely” and “effective”. Specific deadline to deliver the final court decision is set forth only in cases of the so-called “measures of a general nature” such as the land use plans or special acts on some aspects of development of the traffic infrastructure projects where the Code of Administrative Judiciary prescribes a deadline of 90 days. The same deadline applies for decisions on administrative lawsuits concerning some large infrastructure projects. Interim decisions on a suspensive effect of the lawsuit or injunctive relief must be delivered within the period of 30 days in administrative cases and 7 days in civil cases (however, this deadline is frequently over-stepped). There are no sanctions set out for the courts that delay the delivery of the decision. It is possible to submit a complaint concerning the delay to the chairman of the court in question, or submit a request to the superior court (or other senate of the supreme courts) to set a deadline in which some action should be taken by the responsible judge. Even if no deadlines are generally set forth by the legislation, it is the duty of the court to deliver the decision in an adequate deadline. If not delivered, it is the case of so-called “improper official procedure”. In such cases, it is possible to demand the compensation or financial satisfaction for the unreasoned delay caused by the courts.

XIV. Other Issues

The typical situation for all kinds of projects with environmental impacts is that investors need to receive a number of separate permits before starting with the operations. The land use permits and building permits can be considered as “principal decisions” for most of the investments and these are also usually challenged by the public. Nevertheless, other administrative decisions such as IPPC decision or exemptions from the protection of nature and landscape are also being challenged in practice. As a principle, it is necessary for the public concerned to participate in the administrative procedure in question to have standing before courts; generally, only final administrative decisions may be challenged. Information on access to justice is provided mainly by the non-governmental organizations providing environmental legal counseling to public. Information concerning possible remedies (such as right to appeal, right to file a lawsuit, deadlines) has to be given in each administrative decision and also in every court decision. Legislation in force is publicly available and it is hence possible for the public to have access to the relevant laws and regulations.
There is no system of Alternative Dispute Resolution available to use in environmental matters. The only alternative to the court procedures is arbitration, which is, however, admissible only in the property disputes. Mediation is practically never used in environmental matters.

XV. Being a Foreigner

It is stated in the procedural laws that all parties to the judicial procedures must have equal rights and be treated equally and the courts are obliged to guarantee that. Similar principles apply in administrative procedures where administrative authorities are obliged to act impartially and treat the parties equally. These clauses relate also to language and country of origin and may be considered as general anti-discrimination clauses. In court procedures, all parties are entitled to act in their mother tongue. Every person who does not speak the Czech language may ask for the interpreter (translator); this right is guaranteed directly by the Charter of fundamental rights and freedoms. It is the state who bears the cost of translation in court procedures, contrary to the administrative procedures where the party who does not speak the language has to bear the cost of translation itself.

XVI. Transboundary Cases

In case that there is a project with possible environmental impacts being assessed in the neighboring country, it is possible for the Czech citizens and NGOs to participate in the EIA procedure. The Ministry of the Environment must publish all information provided by the country of assessment and anybody is entitled to submit comments. These comments are to be sent to the country of assessment together with the opinion of the Ministry and the relevant administrative authorities. Participation in other types of procedures in the neighboring countries is not regulated by the Czech legislation and has to be based on the legislation of the country in question. There is no special provision concerning the possibility of the public or the NGOs of the affected country to participate in the Czech administrative procedures. Only those persons, including foreigners, who prove that they fulfill one of the conditions stated by law can become parties to the administrative procedures in question. Individuals must hence prove that their rights may be infringed by the decision. Foreign NGOs should be able take part in the subsequent administrative procedures on the grounds of their participation in the EIA procedure. There is no special clause concerning foreign NGOs’ participation, however, in line with the “euroconform” interpretation of EIA legislation, they should have the same rights as the Czech NGOs. No procedural assistance such as legal aid, request for injunctive relief, interim measures, and pro bono legal advice is generally available in such cases. On the other hand, special provisions are included in the Czech legislation in relation to the affected states. The EIA Act grants any „affected state” which is the state whose “territory can be affected by significant environmental impacts of a project”, to initiate a transboundary assessment procedure. Similarly, it is obligatory for the administrative authorities to inform the affected states about the relevant IPPC procedures and enable them to submit their statements and discuss the issue with them when required so. Theoretically, it should be also possible for the affected states to participate in the subsequent administrative procedures such as procedure on the land use permit and building permit, on the grounds of the above mentioned general rule saying that anyone whose rights or duties could be directly affected by the outcome of an ongoing administrative procedure is entitled to participate. However, no such case has ever arisen and it is questionable whether the Czech authorities would acknowledge the participation of the affected state or not. In case the decision of the Czech administrative authorities is being challenged, it is always necessary to file a lawsuit at the Czech courts. In civil matters such as claim for damages, however, it is conceivable that the defendant is domiciled abroad. In such cases, Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I) is applicable. In accordance with the Regulation, it is e.g. possible to choose whether to sue somebody in the state of his domicile (Article 2) or in the state where the harmful event occurred (Article 5(3)).

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