Ministerstvo životního prostředí

National Report on the Implementation of the Aarhus Convention in the Czech Republic

in the period 2021–2024

The Czech Republic, as a party to the international Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (hereinafter referred to as "Aarhus Convention" or "Convention"), is obliged to submit a report on its implementation. The reports are discussed at the Meetings of the Parties in accordance with Article 10(2) of the Aarhus Convention. The current monitoring period is 2021-2024.

The content of the National Report on the Implementation of the Aarhus Convention in the Czech Republic (hereinafter the "report") follows the binding structure laid down in the guidance on reporting requirements (ECE/MP.PP/WG.1/2007/L.4). The section titled "Implementation of the provisions of the Convention" contains an overview of the implementation of the individual provisions of the Aarhus Convention in the structure prescribed for the current monitoring period, i.e. it presents the changes in the monitoring period. **The changes described in this report follow on the previous reporting period.**

The following report is submitted on behalf of the Czech Republic in accordance with decisions I/8, II/10 and IV/4.

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Implementation report

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Compliance with the provisions of the Convention

I. Procedure of the Report preparation

The report is submitted by the Ministry of the Environment as the body responsible for the implementation of the Aarhus Convention in the Czech Republic.

The draft report was prepared by the Institute of State and Law of the Academy of Sciences of the Czech Republic; the following personnel participated in the preparation: Tereza Snopková, Vojtěch Vomáčka.

The preparation of the report for the period 2021-2024 took place in several steps. Prior to the preparation of the report itself, suggestions on the implementation of the pillars of the Convention were collected from the expert community (June-August 2024). The collection of suggestions from environmental organisations was ensured by the organisation Zelený kruh. Concrete insights have been provided by Arnika, DĚTI Země, Ústecké šrouby, Greenpeace, and Frank Bold.

The preparation of the report has also been informed by the findings of a public seminar organised by the Ministry of Environment in the spring of 2023. The seminar on the implementation of the Convention in the Czech Republic was attended mainly by representatives of administrative authorities, academia and non-governmental non-profit organisations (hereinafter "NGOs").

It needs to be noted that, when it comes to addressing comments from the public, the comments that have been taken into account were from the legal context, given that the implementation report focuses on the application of the law. Therefore, requests from the public to add context to the wider social acceptance of environmental rights or issues related to funding are not the main focus of this report. Within the framework of public consultation, the report drafters further distinguished whether the comments were directly related to the requirements of the Convention (a formal criterion with a link to the activities defined in the Convention) or whether they were more general objections to the implementation of all three pillars of the Convention in the environmental field in the Czech Republic, i.e. in the context of the implementation of the right to a healthy environment, the right to freedom of information, or the right to timely and complete information on the state of the environment and access to justice. Some suggestions were relevant in the overall context of the Czech Republic's approach to environmental rights (in terms of principles), but not in relation to the narrower requirements of the Convention.

The draft report was submitted for public consultation (October 2024) – it was published on the website of the Ministry of the Environment and the general public had the opportunity to send written comments. At the same time as the public consultation procedure, the draft report was submitted for an expert review by an independent expert (Mgr. Vítězslav Dohnal). Several NGOs commented on the draft report during the consultation procedure, which was evaluated in November 2024. Their comments were noted and further incorporated into the draft as appropriate. The comments contained, among other things, suggestions or proposals for changes to the legislation, but these suggestions were only partially reflected, given the nature of the report. In the case of suggestions to reference specific court cases and practical experience, the drafters primarily based their conclusions and data that are documentable or generally known to the public. The draft report was then sent for comments also in the internal comment procedure at the Ministry of the Environment.

Beyond the above, the report has been shortened in some passages in view of its increasing scope, i.e. some passages that are still valid but redundant have been deleted.

II. Particular circumstances relevant for understanding the report

The Czech Republic has been a party to the Aarhus Convention since its signing on 25 June 1998. After ratification on 6 July 2004, the **Convention was published in the Collection of International Treaties** under No. 124/2004 Coll.

The Aarhus Convention is part of a broader framework of environmental law, the main sponsor of which in the Czech Republic is the Ministry of the Environment. The concept of comprehensive and structured environmental protection has been under development in the Czech legal system since the early 1990s. The pillars covered by the Aarhus Convention, including access to environmental information, public participation in environmental processes and access to justice in environmental matters, are often intertwoven with the national law.

Access to environmental information is vested in Act No. 123/1998 Coll., on access to information on the environment. The legislation is commonly used, but in practice low awareness of this special regulation and in some cases a lax approach by obligated entities may be encountered. One of the reasons for the limited application of the legal regulation under the Act No. 123/1998 Coll, on access to information on environment, is that there are two "access to information" laws (Act No. 123/1998 Coll. and the general Act No. 106/1999 Coll., on free access to information) which is, according to the findings, not transparent for the public. There are two systems with different procedural mechanisms and different lists of entities responsible for provision of information, which creates uncertainty about the applicable legislation (if the information required is environmental information). At the same time, however, there is an intersection of the use of case law conclusions from the general regulation into the application of the special regulation, which may also have a positive impact (e.g. clarification of the obligated entities). In the period under review, both general and special legislation on access to information was amended to address, among other things, some of their most common problems.

The participation of environmental associations in environmental proceedings was already resolved in the first half of the 1990s, on the basis of Section 70 of the Act No. 114/1992 Coll., on nature and landscape protection. This law allowed the participation of associations in all administrative proceedings in which the interests of nature and landscape protection may be affected. In these areas, this act used to provide a framework for the participation of environmental associations in decision-making concerning specific activities under the Aarhus Convention. In the following years, however, this role was taken over by the regulation in the area of environmental impact assessment.

In connection with the amendment to Act No. 183/2006 Coll., on zoning and building regulations (Building Act), which was passed in 2017, there was a significant reduction in the possibility of participating in administrative procedures based on Section 70 of the Act on nature and landscape protection. From 2018, environmental associations, which previously had the right to participate in all administrative proceedings in which the interests of nature and landscape protection could be affected, may participate on the basis of Section 70 of the Act on nature and landscape protection only in a limited scope of proceedings (in administrative proceedings under this Act). While this lowering of the standard did not have a direct impact on the implementation of the Aarhus Convention in terms of participation (it does not concern proceedings falling within the scope of the Aarhus Convention), the change in the scope of environmental associations' participation in nature and landscape protection proceedings introduces an unsystematic burden on the third pillar. The above-mentioned change in legislation has been reviewed by the Constitutional Court, where it passed the constitutional test (the Constitutional Court reviewed and confirmed it; see Judgment of the Constitutional Court of 26 January 2020, file No. Pl. ÚS 22/17).

There has been some rectification of Section 70(3) of the Act on nature and landscape protection during the reporting period, but the original scope of participation of environmental associations, which had been in this Act since 1992, has not been restored (however, that area is not a necessary part of the implementation of the Convention).

The **participation of the public concerned** in the permitting of specific activities under the Aarhus Convention is addressed in the legislation of the Czech Republic in connection with the environmental

impact assessment process, especially in the so-called "subsequent proceedings" (also referred to as "follow-up proceedings"), and also separately in connection with issuing of integrated permits.

The legal regulation of the environmental impact assessment process [Act No. 100/2001 Coll., on environmental impact assessment and on amendments to certain related acts, as amended (Act on Environmental Impact Assessment), hereinafter the "EIA Act"] underwent significant changes in 2015, when the existing comprehensive framework for the participation of environmental associations has been codified in relation to the subsequent decision-making on specific activities (i.e. subsequent proceedings). The valid and effective regulation in the field of EIA thus forms the basis for fulfilling the requirements of the Convention in the matter of participation and, consequently, in the matter of judicial review. The legal regulation enables consultative participation of the public in proceedings following the EIA, in which approvals of projects are being granted. Environmental associations and affected territorial self-governing units are granted full participation in these subsequent proceedings and the right to appeal against the decision made in the subsequent proceedings. In judicial review, they are granted the right to challenge both procedural and substantive issues in the subsequent proceedings.

The participation of environmental associations in the processes under the Building Act is also tied to projects subject to environmental impact assessment, specifically to the decision-making in subsequent proceedings. Alternatively, full participation in permitting processes under the Building Act is tied to property rights and other rights *in rem*. The general public has a right to consultative participation in the subsequent proceedings following the EIA.

In the 2021-2024 reporting period, several laws were passed that impact on the Convention's agenda. These are mainly the new Building Act (Act No. 283/2021 Coll., the Building Act, as amended), which was followed by Act No. 148/2023 Coll., on the Single Environmental Opinion, as amended, and further amendments to related laws. The participation of environmental associations in processes under the Building Act is still limited to projects subject to EIA and, beyond the scope of the Convention, to projects requiring a single environmental opinion if it replaces a permit for felling trees or a species protection exemption.

In relation to construction permitting, the amendment of the Act No. 416/2009 Coll., on Accelerating the Construction of Strategically Important Infrastructure, which was passed in 2023 (Act No. 465/2023 Coll.), also has an impact on the implementation of the pillars of the Convention. This amendment was aimed at speeding up the permitting processes for major linear (mainly transport) infrastructure projects, mining projects or other strategic investment projects (sites for the production of products of strategic importance) or infrastructure for carbon dioxide storage. The acceleration is to be achieved in particular by simplifying property settlements, procedural restrictions on objections and appeals, shortening the time limits for bringing lawsuits and related actions and speeding up judicial review. This increases the pressure on the attention and expertise of the public concerned and, where appropriate, the demands on the provision of adequate legal services. At the same time, the special rules generally fragment the clarity of the legal order. The experience of the environmental associations shows that the permitting of large investment projects is very time-consuming and, compared to the actual length of the permitting process, shortening the time limits for submitting a well-founded and professionally corroborated defence is essentially unnecessary and to the detriment of effective judicial protection, i.e. to the detriment of the public concerned.

In case of projects not requiring EIA (where there are no subsequent proceedings), the participation of associations (but not all the public concerned) is specifically provided for in IPPC regulations, the Water Act and the Nature and Landscape Protection Act.

The third pillar, the **judicial review**, is ensured in the Czech Republic mainly by the administrative justice system, in relation to the infringement of rights as a result of a decision, a measure of a general nature, and as a result of an unlawful procedure or inaction of an administrative authority.

As far as guaranteed access to justice, reference may be made to the case law of the Supreme Courts and to the positive shift in the perception of the public concerned in relation to the protection of environmental interests. In 2014 and 2015, there was a fundamental shift in the view of associations and, in addition to procedural rights, they were also granted substantive rights. Therefore, on the basis of a direct and unmediated relationship with a certain territory, associations may claim a reduction in their

rights by an unlawful decision of administrative bodies; they may challenge an administrative decision in an administrative action (see the judgment of the Supreme Administrative Court of 25 June 2015, No. 1 - 295, or of 30 September 2015, No. 6 As 73 / 2015-40, Judgment of the Constitutional Court of 30 May 2014, file number I. ÚS 59/14). According to the courts, associations can indirectly defend the rights of their members, including the right to favourable environment, because it is pointless for individuals to lose this opportunity if they join the association. At the same time, individuals and associations can promote the public interest by protecting their rights. The case law also confirms the possibility of judicial review without a direct link to participation in previous proceedings.

Judicial review is limited in selected cases by new, shorter time limits (esp. Act on Accelerating the Construction of Strategically Important Infrastructure), which can be considered as a hindrance to access to justice. If the action is not granted suspensive effect, construction projects may be implemented before the judicial review is completed. The implementation of a project between the time of the decision and the decision to grant suspensive effect may also have an irreversible impact on the environment.

In summary, the current legislative developments at national level mostly aim at speeding up the permitting processes. In this context, the legislator takes the minimum necessary requirements of the Convention into account, however, by some restrictive measures, in particular by shortening the time limits for bringing actions, it limits its fulfilment in practice. In principle, shortening of the time limits in relation to the public does not have a significant impact on the length of the entire permitting process (especially for large-scale strategic buildings), unless it leads to the public being unable to submit comments and appeals at all due to lack of time.

On the other hand, in other areas of implementing the Convention, a positive development can be noted in public participation during the preparation of environmental legislation, where the Ministry of the Environment, as the authority responsible for the Convention, supports the participation NGOs. Zelený kruh, as an umbrella organization, has been added to eKLEP as one of the "consultative entities" for the 2023-2024 period, enabling it to monitor and provide comments on legislative proposals.

In the broader context of the Convention and the implementation of the guaranteed rights, it can be noted that public participation in permitting processes is still perceived negatively by some entities. The mere act of submitting comments or objections is sometimes presented as negative, and the filing of an appeal or even a lawsuit in court as a kind of abuse of the right, or the public participation in decision-making is presented as the ability of a few individuals to arbitrarily block any project. This in turn reinforces the political pressure to limit public participation to the minimum permissible under the Convention.

As regards **the possibility of the direct applicability** of the Aarhus Convention, the Czech courts exclude it, however, the Aarhus Convention and the rights defined by it are used as an important argument to take account of environmental interests (*"If it is possible to interpret national norms in several possible ways, the interpretation that meets the requirements of the Aarhus Convention takes precedence"*, see the judgment of the Constitutional Court of 30 May 2014, file No. I. ÚS 59/14).

With regard to the Czech Republic's membership in the EU, the obligations arising from EU law are also relevant, with regard to the requirement of **interpretation of national law *"in the light of the wording and purpose"* of EU law so as to achieve the goal intended by the law and its effectiveness, and the possible direct effect of Union directives.**

III. Legislative, regulatory and other measures that implement the main provisions of Article 3, paragraphs 2, 3, 4, 7 and 8

a) with respect to Article 3 paragraph 2

The basic legal framework **for the procedure of executive bodies, bodies of self-governing units and other bodies, or legal and natural persons, if they exercise powers in the field of public administration**, is regulated by Act No. 500/2004 Coll., the Administrative Procedure Code. The principles of the activity of administrative bodies include the principle of public administration as a service to the public regulated in Section 4 (1) of the Administrative Procedure Code. This principle is also linked to the obligation of officials to behave politely in the performance of their duties and, as far as

possible, to accommodate the persons concerned. Furthermore, Section 4 (2) of the Administrative Procedure Code stipulates a general obligation to inform about the rights and obligations of the person concerned. This is then specified in relation to the individual actions of administrative bodies in the sense of instruction on legal consequences. Pursuant to the provisions of Section 4 (3) of the Administrative Procedure Code, the administrative body is obliged to inform the persons concerned of the act it intends to perform if such information is necessary for exercising their rights and if it does not jeopardize the purpose of the act. The administrative body is also obliged to enable the persons concerned to exercise their rights and legitimate interests. The administrative authorities are also obliged to ensure the coherence of all ongoing procedures concerning the same rights and obligations of the same person concerned.

Civil servants are obliged to observe the rules of ethics, and officials of local self-governing units (municipalities and regions) are obliged, among other things, to provide information on the activities of the authority to the extent provided for by other regulations. In principle, all civil service professions are subject to requirements to improve and upgrade their qualifications and to undergo regular training and professional competence exams. The focus on environmental issues was, by nature, directed primarily at officials who work on this agenda. There is no specific regulation relating to treatment of the public by officials in environmental matters.

The implementation of the Client-oriented Public Administration 2030 policy programme is still continuing, in conjunction with the Action Plan for 2021-2023. The objectives of the policy programme include adequate staffing with officials, efficiency of public administration and active participation and awareness on the part of citizens. The programme also focuses on training in the area of sustainable development, where it has found a lack of awareness and perception of the relationships between the different areas of public administration. The Action Plan for the period envisaged the implementation of a model course on general knowledge from a sustainable development perspective; the course was to be held in 2021 under the auspices of the Ministry of the Environment and the Ministry of Regional Development; according to the Action Plan for the period 2024-2026, the course was not implemented and is no longer planned; a model course on knowledge and skills for sustainable policy-making was implemented. The Action Plan also foresaw the publication of a brochure on possible forms of public participation and an awareness-raising campaign (to be led by the Ministry of the Interior); it has been found that this task had not been implemented. The action plans also generally include tools for communication between public administration institutions and the public (without a specific focus).

The Government Council for NGOs at its meeting on 28 June 2022 approved a Methodology for the Participation of NGOs in Advisory and Working Bodies and in the Development of State Administration Documents, subtitled “How to cooperate with NGOs in the development of state administration policies?”. This methodology guidance aims to increase the level and effectiveness of participation of representatives of NGOs, their umbrella organisations and networks in governance at the central level, i.e. at the level of ministries and other central administrative authorities. The wider involvement of NGOs is reflected, for example, by the official involvement of the organisation Zelený kruh as an umbrella association of environmental organisations in the inter-ministerial consultation procedure for the preparation of new legislation, or the newly transparent delegation of NGO representatives to working bodies established for the management of European funds. The methodology works with different phases of document preparation. It requires, for example, timely publication of calls for suggestions and comments, frequent and regular communication during the drafting of the document and publication of the settlement of the comments sent. It also recommends using the opinion of NGOs to prevent identified risks and undesirable impacts. In the implementation phase, the methodology requires the document's owner to regularly inform the contributing NGOs about the results to date and the way forward, and to respond to their suggestions.

A guidance document for public participation has also been developed by, for example, the Municipal District of Prague 14 (Methodology of the system for communication and public participation). The methodology provides basic methodological and practical knowledge and recommendations in the field of public engagement/participation, both for officials and the public.

Within the framework of the staff regulations, ethics rules have been updated (Staff Regulations of the Chief Secretary of State No. 3/2023). The new regulation focuses on helpfulness and desirable conduct, and introduces the values of reasonableness, impartiality, professionalism, etc.

The **duties of civil servants** employed by regions and municipalities are regulated by Act No. 312/2002 Coll., on officials of territorial self-governing units and on the amendment of certain acts. These include the obligation to provide information on their respective agency's activities to the extent provided for in other regulations. The law also defines the basic preconditions for the performance of the official function, which includes the duty of continuous deepening of qualifications. The legal regulation enshrines the obligation of initial and continuous education of officials. The induction training includes general principles of public administration and a code of conduct of a civil servant. In addition, special professional competence is required, which ensures the testing and deepening of knowledge of a specific professional section of public administration. The principles of the Aarhus Convention are also reflected in the relevant educational programs.

The **training of civil servants** falls under the Ministry of the Interior, specifically the Institute for Public Administration in Prague, which is an institution funded and established by the state.

The Ombudsman's office plays a special role in assisting the public in relation to public administration. The institute of the Ombudsman was established by Act No. 349/1999 Coll., on the Ombudsman. The Ombudsman acts to protect individuals from the actions of the authorities if they are unlawful, inconsistent with the principles of a democratic state governed by the rule of law and good governance, as well as to protect them from inaction. In this sense, the Ombudsman can also address suggestions in specific areas in the area of environmental protection submitted by members of the public.

In general, eGovernment tools (the public administration portal) contribute to **effective communication and sharing of information** between authorities and the public.

b) with respect to Article 3 paragraph 3

Regarding the implementation of Article 3, paragraph 3 of the Convention, the Czech Republic does not have a dedicated system of education which specially covers the principles and procedures under the Convention. However, the tools of active public participation in the environmental field are generally **taken into account within the system of environmental education and training (EVVO)**.

The history of environmental education in the Czech Republic dates back to the 1960s. In the years 1990–1994, the foundations of EVVO were created and the EVVO system developed dynamically in terms of legislation and in terms of inclusion in the agenda of public administration, self-government and non-governmental institutions. International cooperation has also developed and there has been a deeper elaboration of the thematic content and methods, which have also been embedded in the educational plan of the school system.

The requirement of environmental education and awareness is enshrined in the strategic documents of the Czech Republic: The State Environmental Policy of the Czech Republic 2030 with a view to 2050, the Climate Protection Policy, the Strategy for Adaptation to Climate Change in the Conditions of the Czech Republic, etc. The development of educational programmes takes place at the level of NGOs (Teaching about Climate, https://ucimoklimatu.cz/) or educational institutions, including academic institutions.

Of the legal regulations, one of the foundation laws is the Act No. 123/1998 Coll., on access to information on the environment, which in its Section 13 stipulates in general terms the obligation to support environmental education and awareness at the national and regional level. At the same time, it makes the Ministry of the Environment responsible for the development of a state-run EVVO program.

In the field of education, EVVO is listed among the general objectives of pre-school and school education; Act No. 561/2004 Coll., on pre-school, primary, secondary, higher vocational and other education (the Education Act) declares as a goal *"learning about the environment and its protection based on the principles of sustainable development and application of this knowledge"*.

National EVVO strategy is set out in the State Program of Environmental Education, Awareness and Environmental Consulting for the years 2016–2025.

The EVVO program in the Czech Republic is comprehensive and includes an understanding of ecological relationships and laws. **The development of competencies needed for environmentally responsible behaviour** is to be developed in the following five basic areas of competences: relationship to nature, relationship to a place, ecological processes and patterns, environmental problems and conflicts, and readiness to act in the interest of the environment. The last area points to knowledge and skills for active influencing of surroundings. While the EVVO program does not specifically focus on how to access information, how to participate in decisions and how to gain access to justice under the Aarhus Convention, these elements are part of the training programs.Useful information is often also disseminated outside the EVVO framework. For example, in 2024, the association Klimatická žaloba (Climate Action) published, as part of its project "Klimarádi", a handbook Law in Action (https://klimaradi.klimazaloba.cz/index.php/pravni-prirucka/), which contains simple explanations of key legal tools for active citizens, supplemented by real-life examples of paper activism, demonstrations, policing and civil disobedience. An extensive database of legal advice is provided by Frank Bold.

In terms of awareness-raising, the Ministry of the Environment publishes its Bulletin and other publications and organises or participates in exhibitions and fairs, professional conferences, film shows and other environmental events.

c) with respect to Article 3 paragraph 4

Czech legislation allows for the formation and functioning of organised associations or unorganised groups. There are no specific rules or advantages when it comes to participation in environmental matters. The general legal provisions apply to participation in administrative procedures and to the status of a claimant before a court.

The Charter of Fundamental Rights and Freedoms guarantees the right to freedom of assembly (Article 20). Detailed aspects of the operation of non-profit organizations are regulated by **the Civil Code** (Act No. 89/2012 Coll.). The establishment and active operation of informal groups of persons is not excluded.

The Civil Code stipulates the principles of functioning of associations, the definition of their purpose or internal organization. However, in order to fully exercise participatory rights in the sense of the Aarhus Convention, an association must meet the criteria set out further in this report (operating for at least 3 years or supported by or more 200 people).

The status of NGOs and taking into account their needs falls under the auspices of the **Government Council for Non-Governmental Non-Profit Organizations** ("Council"), which is a permanent advisory, initiative and coordination body of the Czech government in this area. The Council initiates and assesses policy and implementation documents for government decisions concerning the support of NGOs, as well as legislative and policy measures concerning the framework of their activities. It also monitors the development of legal regulations in relation to NGOs and ensures the exchange of information between NGOs and government authorities. Representatives of environmental NGOs are also members of the committees of the Council.

In 2003, the **Government Council for Sustainable Development** was established as a permanent advisory, initiative and coordinating body of the Government of the Czech Republic in the area of sustainable development and strategic management.

The cooperation of the state with NGOs advocating environmental protection is generally enshrined in strategic documents such as the State Program of Environmental Education and Awareness and the Strategic Framework Czech Republic 2030.

On an informal basis, representatives of the Ministry of the Environment meet regularly with representatives of NGOs (especially Zelený kruh, the network of environmental centres Pavučina and the network of environmental consulting centres STEP).

In the last 20 years, a network of NGOs has been established in the Czech Republic, which operates dozens of environmental education centres (e.g. the network of environmental centres Pavučina, z.s., www.pavucina-sev.cz), which offer short-term and residential programs mainly for pupils and students, but also for the general public, as well as a network of environmental consulting centres. The consulting centres deal with general issues of environmental protection as well as issues of ethical consumption.

They help solve specific problems (environmental interventions, greenery protection, waste management, etc.). The focus of environmental NGOs is thus very broad, from environmental education through consulting, nature and landscape protection to the conduct of thematic campaigns focused on consumers or environmental policy. Currently, NGOs are being set up in order to promote a specific environmental interest (e.g. the association Spolek Klimatická žaloba, z.s., www.klimazaloba.cz).

In 2021, the Government approved the **Strategy for Cooperation between Public Administration and Non-Governmental Non-Profit Organisations (NGOs) for the years 2021 to 2030**. The strategy envisages NGOs as partners of the public administration in meeting the needs of Czech society. According to the strategy, the social climate for understanding and accepting the role of NGOs should improve; the government believes that the role and activities of NGOs in meeting the current needs of society are often not understood by the general public and professionals. NGOs are attributed, among other things, an advocacy function consisting in the promotion of values or public interests such as environmental protection or the rights of disadvantaged groups. According to the strategy, the perception of organisations fulfilling this advocacy function in society is rather negative. It is in this area that the strategy considers it important to recognise the benefits of the advocacy role of the non-profit sector, which should help the NGO sector's perception as a 'critical ally' acting in the public interest and promoting objectives that have a clear benefit for the section of the public affected by the issues and decision-making (typically environmental protection interests).

An interactive map of NGOs was created as part of a project at the Masaryk University.

The Ministry of Environment supports the activities of NGOs in the field of environmental protection and sustainable development through subsidies from the state budget. The public tender is usually announced in the year preceding the year of project implementation and is based on the common Government Principles for Granting Subsidies to NGOs.

d) with respect to Article 3 paragraph 7

The participation of NGO representatives at the international level in environmental protection issues is not comprehensively and uniformly addressed by the state. However, the Ministry of the Environment informs about its activities and sponsors the participation of NGO representatives in international delegations on an *ad hoc* basis.

e) with respect to Article 3 paragraph 8

There are no formal obstacles to the implementation of Article 3(8) of the Convention. The Czech legislation recognises the right to freedom of expression, freedom of association, the right to petition, the right to a healthy environment, the right to timely and complete information on the environment, and the right to judicial protection against unlawful decisions of public authorities. Freedom of expression is traditionally recognised by the Czech courts. In the context of personality protection disputes, extremely high sums are not demanded and awarded by the courts, e.g. the institute of court-ordered public apology is often used.

In practice, however, it is necessary to draw attention to how environmental associations are viewed by some entities, which is in some cases negatively. There is an emerging view that some environmental associations do not defend the interests of a certain group of the public or the public interest, but rather only prevent the implementation of certain projects, or delay them through tools for public participation and access to justice. However, in many cases, environmental associations are beneficial participants in the relevant processes, as they bring valuable discussion and proposals that can be debated. They are also often the only way for the public to participate in the permitting processes.However, in this respect it is necessary to point out the judgment of the Constitutional Court of 30 May 2014, file No. I. ÚS 59/14, in which the court stated that the ***designation of civic associations active in the area of nature and landscape protection as "environmental initiatives" "erroneously implies a mere activist and secondary role***, *which civic associations of this type would perhaps play in relation to court proceedings. However, civic associations, which are an equal subject under law, are also an important and extremely democratic element of the civil society."*

Regarding the possibility of abuse of rights, while the case law provides for the possibility of refusing the protection of rights in the event of their abuse, it nevertheless understands abuse to be the constant repetition of meaningless acts with the aim of paralyzing the actions of public administration. The exercise of participatory rights in the field of environmental protection is considered a legitimate tool for the exercise of rights and allegations of abuse are assessed very restrictively. See in particular the judgment of 14 May 2013, No. 9 As 156 / 2012-30, in which the Supreme Administrative Court described as conduct that does not enjoy legal protection *"the efforts of certain entities consisting of repeated establishment of affiliated civic associations to thwart the course of a specific proceeding and to prolong the proceedings without a factual reason, in fact in order to prevent the implementation of the project, although there are no factual reasons for this from the point of view of nature and landscape protection interests."*

In a broader context, it is necessary to highlight the new EU legislation. In April 2024, Directive (EU) 2024/1069 of the European Parliament and of the Council on the protection of persons involved in public participation, against manifestly unfounded legal actions or abusive legal proceedings ("strategic legal proceedings against public participation" - SLAPP) was adopted. The directive includes among the public interest matters to be pursued any matter that affects the public to such an extent that the public may have a legitimate interest in it, with the environment and climate being examples. It also defines vexatious legal proceedings against public participation as legal proceedings which are not conducted for the purpose of actually exercising or enforcing a right, but whose main purpose is to prevent, restrict or sanction public participation, often exploiting the imbalance of power between the parties, and in which unjustified claims are made. Significantly, the burden of proof as to the merits of the claim turns on the plaintiff who brought the action.

In terms of the potential of Article 3(8) of the Convention, in the context of EU legislative developments and also in the context of growing climate protests, it is recommended to further evaluate specific examples or consequences of environmental activism, e.g.:

- the case of the occupation of the excavator in the Bílina brown coal mine in 2023 in protest against the extension of fossil fuel extraction; in this case, the participants in the action were fined by the mining authority for what was classified a misdemeanor (up to CZK 10,000);
- a lawsuit filed by Severočeské doly against the participants of the blockade of the Bílina brown coal mine, demanding payment of damages in the total amount of CZK 661 thousand;
- Judgment of the Municipal Court in Prague of 22 January 2022, No. 9 A 206/2017-168, which responded to the intervention of the Police of the Czech Republic to disrupt the environmental event Klimakemp 2017 consisting, inter alia, of protests against coal mining; the Municipal Court found the conduct of the Police of the Czech Republic (consisting, for example, of humiliating and insulting the detained participants) to be unlawful;
- the Constitutional Court ruled in favour of freedom of expression in 2023 (Constitutional Court ruling I. ÚS 2956/23 of 10 January 2024), which upheld the original concepts of Greenpeace against the advertising of a large national energy company; these were videos mocking the greenwashing efforts by the national energy giant; the company sued Greenpeace and demanded an apology and the withdrawal of the videos, which they claimed violated copyright; however, the Constitutional Court instead upheld the NGO's activity and thus the essence of parodic or satirical artistic expressions and their value as a contribution to public debate and social dialogue.

Given that strategic legal proceedings against public participation (abuse by litigation) have not yet been closely and comprehensively explored in the Czech legal environment, it is possible that further research will highlight the broader scope or need for a broader perspective on the subject.

IV. Obstacles that prevent the implementation of Article 3

There is no ongoing special monitoring of the implementation of Article 3 of the Convention. A few strategic documents deal with education and awareness-raising, the attitude of officials or the status of NGOs, but they do not focus specifically on environmental issues (e.g. concepts devoted to EVVO are an

exception). Strategic documents do not generally reference the Convention directly; an explicit reference to the Convention could support the objectives pursued.

With regard to environmental activism, there is still a negative view of environmental NGOs in society, especially with regard to their role in permitting procedures or protest actions. There is no relevant opposition in the public discourse to the accusations of NGOs of unprofessional and/or arbitrary exercise of rights in permitting procedures. There has been no relevant analysis of the real impact of public participation in decision-making and the real reasons for the prolongation of permitting processes; issues relating to the overall public perception of the work of NGOs are not systematically addressed. However, the importance of NGOs in environmental protection and their role in protecting the public interest is recognised by the courts (e.g. the Supreme Administrative Court judgment of 4 May 2011, No. 7 As 2/2011-52, or its judgment of 23 February 2022, No. 3 As 304/2019-79).

V. Further information on the practical application the provisions of Article 3

Practical application is not uniformly monitored; the application of partial requirements must be followed across the legal order.

Data from regular public opinion surveys on environmental protection can be taken as an indirect indicator of implementation. For example, in 2022, the activity of municipal authorities (59% of responses) and environmental organisations (55% of responses) were the most highly rated in this area, accounting for more than half of the responses. On the other hand, a negative assessment in the field of environmental protection was expressed in the case of the activities of the Parliament (59% of responses) and also the Government (53% of responses). Compared to 2014, when the same survey was carried out, there was an improvement specifically when it comes to the activities of regional and municipal authorities, according to the Report on the Environment of the Czech Republic for 2022.

VI. Website addresses relevant to the implementation of Article 3

https://vlada.gov.cz/cz/ppov/rnno/dokumenty/metodika-participace-nestatnich-neziskovych-organizaci-v-poradnich-a-pracovnich-organech-a-pri-tvorbe-dokumentu-statni-spravy-197878/

https://www.mvcr.cz/clanek/koncepce-klientsky-orientovana-verejna-sprava-2030.aspx

https://www.praha14.cz/app/uploads/sites/3/2021/02/05d_Metodika-Systemu-komunikace-s-verejnosti.pdf

https://ucimoklimatu.cz/

https://vlada.gov.cz/assets/ppov/rnno/aktuality/Strategie_NNO_2021_2031.pdf

https://mapaneziskovek.cz

https://klimaradi.klimazaloba.cz/index.php/pravni-prirucka/

www.mzp.cz/cz/statni_program_evvo_ep_2016_2025

www.cr2030.cz/strategie

www.ochrance.cz

www.zelenykruh.cz/cz

www.pavucina-sev.cz

www.portal.gov.cz

https://cenia.gov.cz/publikace/statisticka-rocenka-zivotniho-prostredi-cr/

https://www.mzp.cz/cz/zpravy_o_stavu_zivotniho_prostredi_publikace

https://www.spolkovyrejstrik.cz/

VII. Legislative, regulatory and other measures that implement the provisions on access to environmental information in Article 4

The legal regulation of access to information is recognized on the constitutional level, in the Charter of Fundamental Rights and Freedoms. It guarantees both access to information and a special right to timely and complete information on the state of the environment and natural resources. Both sections of the right to information are governed by separate laws, i.e. Act No. 106/1999 Coll., on freedom of information, and, as regards environmental information, Act No. 123/1998 Coll., on the right of access to information on the environment (Act on Access to Information on the Environment).

Disclosure of environmental information is further set forth in a number of legal regulations focused on specific agendas and procedural processes (e.g. the Building Act, the EIA Act, the Administrative Procedure Code).The Act on Access to Information on the Environment regulates both passive and active disclosure of information about the environment, i.e. the obligation to actively disclose information and at the same time to respond to requests for information from applicants.

Obligated entities according to Act on Access to Information on the Environment are as follows:

- administrative authorities and other organizational units of the state and bodies of territorial self-governing units;
- legal or natural persons who, on the basis of special legal regulations, perform activities in the field of public administration directly or indirectly related to the environment;
- legal persons established, set up, managed or mandated by the bodies referred to in the previous points, as well as natural persons mandated by those bodies which, by law or agreement with those bodies, provide services which influence the state of the environment and its elements.

According to the Act on Access to Information on the Environment, **environmental information** means information in any technically feasible form. The law lists an exemplary list of information: e.g. the state and development of the environment, planned and implemented activities and measures that have or could have an impact on the state of the environment and its elements, the state of the elements of the environment, the use of natural resources and its consequences for the environment, the effects of buildings, activities, technologies and products on the environment, administrative proceedings and petitions in environmental matters, analyzes etc. This list is illustrative, which means another type of information that concerns the environment or its elements may also constitute environmental information.

The amendment to the Act on Access to Information on the Environment adopted in 2022 expanded the subject of active disclosure of information to support disclosure of information through application programming interfaces.

In the area of disclosure of information about the environment on request, a new regulation on the denial of information on the grounds of vexatious filing (abuse of the right) was introduced, and the possibility for the obligated entity to request, in addition to the reimbursement of costs up to the amount of the costs associated with the acquisition of copies or the provision of technical media, the reimbursement of the costs of an exceptionally extensive search for information (which also takes into account the time and work of personnel of the obligated entities) was explicitly added.

In addition, the process of reviewing the denial of information by a superior administrative body or court has been modified, which should prevent repeated filing of appeals and instead lead to ordering direct provision of information (information order, judicial information order).

In the area of case law development, a ruling of the Constitutional Court in 2024 (I.ÚS 3254/22 of 26 June 2024) concluded a court case concerning the restriction of the right of access to information on the environment. In this case, the Constitutional Court held that the amount requested by the obligated entity for the provision of spatial data (a digital model of the relief of the Czech Republic) should be assessed in terms of its (dis)proportionality, which the court justified by the requirements of the Convention.

a) with respect to Article 4 paragraph 1

The Act on Access to Information on the Environment makes it possible to request information without having to state the reason for such a request [Section 3 (1)) of Act No. 123/1998 Coll.].

Making information available means its provision in any technically feasible form, i.e. also in the form of obtaining extracts, transcripts or copies [§ 2 letter. c) of Act No. 123/1998 Coll.]. Pursuant to Section 6 of the Act on Access to Information on the Environment, the applicant may propose in the application the form or method to be used in making the information available. If the form or method is not specified by the applicant, or if such forms or methods cannot be used for serious reasons, the obligated entity shall choose the method and form of disclosure of information with regard to meeting the purpose of the request for disclosure and its optimal use by the applicant. If the obligated entity makes the information available, even if only partially, in a form other than the one requested, it must justify its action. In the era of digitisation in the context of official proceedings and the transition to electronic filing, the provision of information (if the request is granted) can be quite flexible.

In the case of a request for information already published, the obligated entity may communicate to the applicant data which allows for the already published information to be searched for and obtained. However, this does not apply if the applicant has stated that he does not have the opportunity to obtain the published information in another way, or if he insists on the direct provision of the published information (Section 5 of Act No. 123/1998 Coll.)

b) with respect to Article 4 paragraph 2

According to Section 7 of the Act on Access to Information on the Environment, obligated entities must make the information available without undue delay, no later than within 30 days of receiving the request. In exceptional circumstances which necessitate an extension of the time limit, the information may be made available within 60 days. The applicant must be notified of such circumstances and of the extension within 30 days.

The current legal regulation is in line with the requirements of the Convention. However, NGOs have pointed out that these time limits were different from the general legislation, where the time limits are shorter and therefore friendlier to the applicant (disclosure within 15 days, extension by 10 days).

c) with respect to Article 4 paragraphs 3 and 4

Restrictions on access to environmental information are regulated by Section 8 of the Act on Access to Information on the Environment. Disclosure of information may be refused in accordance with the Convention:

- if it concerns data which has not yet been processed or has not been evaluated, or internal policies of the obligated entity, or the request is incomprehensible or too general;
- if the information was passed on to the obligated entity by a person who was not obligated by law and did not give prior written consent to the disclosure of this information;
- if disclosure of the information could adversely affect the protection of the environment in the locations to which the information relates;
- Disclosure of information may also be refused if the applicant seeks information relating to ongoing criminal, misdemeanour or disciplinary proceedings; if its disclosure would jeopardise or frustrate the purpose of the proceedings, in particular ensuring the right to a fair trial; and if disclosure of the information could jeopardise the equal standing of the parties in a judicial, arbitration, administrative or similar proceedings.

National law does not explicitly take into account the grounds for refusing access to information in connection with international relations, national defence or public security.

Disclosure of information will be refused if it is excluded by the protection of classified information, protection of personal or individual data or protection of personality, protection of intellectual property or protection of trade secrets. However, the protection of the interest in the protection of personality may be broken in favour of providing information on the perpetrator of an activity polluting or otherwise endangering or damaging the environment contained in a final and conclusive decision in a criminal case, misdemeanour or other administrative offence. Disclosure of the information may also not be denied in

the case of information on emissions into the environment, or if the reason for the refusal should be the protection of personal or individual data or the protection of personality or trade secrets.

During the monitoring period, an amendment to the Act on Access to Information on the Environment came into force, which added the provision of Section 8a. This provision is intended to protect obligated entities from vexatious (obstructive) exercise of the right to information, which should not enjoy legal protection (in the form of abuse of this right). The grounds for withholding information in a given case may be targeted pressure on the natural person to whom the requested information relates or a situation where the submission of a request for information imposes an unreasonable burden on the obligated entity, usually in response to a previous action of the obligated entity towards the applicant or to the relationship with the natural person to whom the information relates. The law states that the scope of requested information or the number of submitted requests is not, in itself, grounds for denying access to information due to abuse of rights. A special 7-day period applies here, during which the obligated entity may deny access to information.

The amended legislation also addresses access to the file associated with a request for information. Parts of the file containing information which is the subject of the request and which has not yet been provided pursuant to the request, documents and larger bodies of information from which the such requested information cannot be easily separated, and personal data of a person who could be directly affected by the provision of the requested information are expressly excluded from inspection of the file, with the exception of personal data known to the person inspecting the file. The above regulation is identical in both information laws and essentially aims at limiting the disclosure of information for which protection has been claimed by the obligated entity. The new provision provides an explicit legal basis for refusing requests from applicants who typically use (as parties to the proceedings) access to the administrative file under Section 38 of the Code of Administrative Procedure in the context of appeal proceedings concerning the refusal of a request for information. This may circumvent the protection of undisclosed information. According to the amended legislation, the appellate authority (and the obligated entity) may therefore refuse access to this part of the file. Without this legislation, the applicant would have access to a wider range of personal data than could possibly be obtained under the information laws.

A public interest test is applied when assessing a request for access to information. In each individual case (request), the public interest served by disclosure must be weighed against the interest of non-disclosure. The requirement to perform a public interest test when deciding on the denial of information is not explicitly found in the Czech legislation, but it can be inferred from the case law (see, for example, judgments of the Supreme Administrative Court of 16 March 2010 No. 1 As 97 / 2009-119 and of 30 October 2020 No. 5 As 162 / 2018-51).

d) with respect to Article 4 paragraph 5

Pursuant to Section 4 of the Act on Access to Information on the Environment, if the request is submitted to an obligated entity that does not hold the information in question and at the same time is not obliged to have such information under special legal regulations, it shall notify the applicant without undue delay, within 15 days at the latest, from the receipt of the request that it cannot provide the requested information for this reason. If the petitioned obligated entity knows which obligated entity has the required information, it shall forward the application to it within the time limits set out in the previous sentence and inform the applicant accordingly.

e) with respect to Article 4 paragraph 6

Pursuant to Section 8 (6) of the Act on Access to Information on the Environment, the required information shall be made available, if possible, after excluding those facts which constitute a reason for denying access to the information. The applicant must always be informed of such an intervention and the reason for it when the information is made available.

f) with respect to Article 4 paragraph 7

If the competent obligated entity refuses to provide the information, it must issue a decision to that effect within the time limit for disclosure of the information (or the decision must be issued by the entity that established, set up, manages or delegates the obligated entity, if it is not entitled to issue the decision

itself). If the obligated entity fails to provide the information or issue a decision within the time limit, it shall be deemed to have decided to withhold the information, i.e. the fiction of a decision shall apply.

In the context of remedies against an administrative decision to refuse to disclose the requested information, and the fiction of such a decision, the same procedure is followed (the time limits for filing a petition differ due to the different delivery of the decision) – the applicant lodges an appeal with the superior authority. As regards decisions by fiction, NGOs have pointed out that in their experience this is not a very effective mechanism (it does not lead to sufficiently fast provision of the requested information) and suggest unifying the procedure under both information laws.

On the basis of the 2022 amendment, it applies that the superior administrative authority will order the obligated entity to provide the requested information to the applicant within a specified period of time (within 30 days or 60 days); this is the so-called information order. The provision of information by the obligated entity may also be enforceable. This procedure excludes the so-called procedural ping-pong, which required an unsuccessful applicant to repeatedly apply to a superior authority. Judicial review is similar in this respect, with the court directly ordering the obligated entity to disclose the requested information (judicial information order).

In the period under review, the possibility was added for the obligated entity, if it discloses information in the form of a copy of a document, to exclude only personal data or information that is a commercial secret (if it concerns documents obtained in other proceedings – in procedures under the Code of Administrative, Tax or Control Procedure). This makes it easier for an administrative authority that provides, for example, a copy of an administrative decision, where it only needs to remove/delete the identifying data of the parties and other interested parties. It does not then have to issue a decision to refuse disclosure of information. In this case, the applicant may insist on a decision to refuse disclosure of the information to the extent of the personal data or business secrets identified.

g) with respect to Article 4 paragraph 8

Pursuant to Section 10 (3) of the Act on Access to Information on the Environment, obligated entities are entitled to demand payment in connection with disclosing information. The charges may not exceed the costs of procuring copies, data carriers and sending information to the applicant. Obligated entities must have a publicly accessible tarrif of costs, which should also indicate the conditions under which charges are levied or under which they may be waived.

The 2022 amendment added the possibility to request reimbursement for exceptionally extensive retrieval of information; the reason for this is to be able to include in the reimbursement of the cost of providing the information the time spent by the employee to retrieve and process the information into the required format. The concept of exceptionally extensive retrieval of information is a concept used by the general Act No. 106/1999 Coll., on freedom of information, the interpretation of which, according to the legislator, does not cause problems in practice. However, it is a new element in the field of access to information about the environment, which may, in certain circumstances, lead to a lowering of the existing standard in the provision of environmental information.

As regards the payment of fees for the provision of information about the environment, the legal regulation does not provide for exemptions or relief, which may be an obstacle to the implementation of the Convention, according to which the requirement for payment must not exceed a reasonable amount. It can be deduced from the existing case-law in the field of general freedom of information that the obligated entity must sufficiently justify why the search for information in a given particular case is exceptionally extensive and inform the applicant of this before the search for information begins. The obligated entity must also indicate on what basis and how the amount of the fee will be calculated; in determining the amount of the fee, account must also be taken of the nature of the information requested and the material and personnel situation of the obligated entity.

A recent decision of the Constitutional Court, which also referred explicitly to the principles of the Convention (Constitutional Court ruling I.C.S. 3254/22 of 26 June 2024), also relates to the application of the proportionality of the reimbursement. The reimbursement in this case was requested by the obligated entity because of the statutory cost-sharing to ensure the preservation and maintenance of spatial data and the maintenance of the corresponding services based on spatial data. In the present case,

the applicant (in 2014) requested the provision of a digital relief model of the Czech Republic. The request was for the provision of spatial data under section 11c of the Act on Access to Information on the Environment. In the case, the Geodetic Office requested payment of CZK 2,998,037. The Constitutional Court assessed the setting of such a high amount as a restriction of the fundamental right to environmental information; the amount requested constitutes an economic barrier which appears objectively disproportionate in relation to the person of the complainant (a data journalist) and in the context of the public interest in environmental protection. The Constitutional Court recalled that constitutional and statutory norms concerning the right to environmental information must be interpreted in accordance with the Convention, pursuant to Article 10 and Article 10a of the Constitution of the Czech Republic. The requirement of proportionality of the payment for the provision of information also follows from EU Directive 2003/4/EC on public access to environmental information. Using the case law of the CJEU, the Constitutional Court stated that in order to assess whether the requested fee has a dissuasive effect, it is necessary to take into account both the economic situation of the applicant for information and the general interest in environmental protection. The fee cannot exceed the financial means of the person concerned and, in any event, it must not appear objectively disproportionate from the public's point of view.

VIII. Obstacles that prevent the implementation of Article 4

There are no restrictive formal requirements for exercising the right of access to environmental information. In practice, however, the problem is the **existence of two separate regimes** of access to environmental information.

The existence of two information laws is not in itself in direct contradiction with the Convention, but it does cause application problems: in the experience of NGOs, unnecessary disputes arise over which of the two laws covers the specific information requested; for information seekers, the existence of two laws means increased demands on knowledge of the laws, on the correct formulation of the request and on the correct response to any refusal by the authorities (even central public authorities find it difficult to determine the correct regime of providing information, see judgment of the Supreme Administrative Court of 20 January 2020, file No. 5 As 231 / 2018-77, or the Ministry of Foreign Affairs - judgment of the Supreme Administrative Court of 30 October 2020, No. 5 As 162 / 2018-51).

The NGOs have stated that they lack an explicit provision stating that if the obligated entity considers that the request is not covered by Act No 123/1998 Coll., it must follow Act No 106/1999 Coll. and always make a decision on the request. Some NGOs (e.g. Děti Země, Chráníme stromy z.s.; as well as the expert review opinion on the report) recommend repealing Act No. 123/1998 Coll. and to incorporate it into Act No. 106/1999 Coll. (this should eliminate the fragmentation of information laws and reduce the unreasonably long time of processing requests).

From the point of view of NGOs, the regulation of Act No. 123/1998 Coll. is not considered to be friendly to applicants. This is because, although the 30-day time limit for providing information meets the minimum requirements of the Convention, the NGOs consider it unnecessarily long in the age of the internet and the digitalisation of the state; at the same time, the time limit is longer than in the general regulation on access to information. In practice, the deadlines for providing information are often used to the full by the obliged entities (instead of providing it without undue delay). Delays in the provision of information may lead to a loss of the opportunity to participate in the proceedings or to intervene in relevant hearings in a timely manner.

In practice, long time limits in handling appeals or judicial reviews are problematic, leading to a situation where the provision of information is no longer effective after a long period of review. This issue should be changed by the amended legislation, which allows the superior authority or the court to issue directly an order to provide information, which is furthermore enforceable. One example of cases where problems have arisen in practice with the timely provision of information is the following specific case: In 2023, the NGO Děti Země requested from the Ministry of Agriculture, specifically the Water Research Institute, for a climate study from 2008. Although the study was provided, it was only after considerable time, many active attempts by the NGO and, consequently, certain financial losses on its part.

The proceedings regarding the (in)adequate remuneration requested for the provision of spatial data was also protracted. The request for the spatial data was submitted by the applicant in 2014 under the Act on the Right of access to information on the environment. The Constitutional Court found a violation of the complainant's right to environmental information only in 2024 (Constitutional Court ruling I. ÚS 3254/22 of 26 June 2024), while the (un)reasonableness of the remuneration has yet to be assessed by the administrative courts.

On a more general level, the case law is gradually giving shape the more broadly related issues. For example, the Supreme Administrative Court (judgment of 30 June 2021, No. As 355/2019-46) dealt with the necessity of maintaining a file in relation to a measure of a general nature – the acquisition of spatial planning documentation (the Metropolitan Plan of the Capital City of Prague), i.e. a conceptual document which, by the nature of the matter and in accordance with the legal regulation, also regulates issues in the field of environmental protection. The decision has an impact on the scope or existence of the file which can be consulted or documents which can be requested from it (on the basis of the general rules of administrative procedure or on the basis of the right to environmental information). The Supreme Administrative Court held that the documentation in question should, in principle, take the form of a file and should be treated as such.

IX. Further information on the practical application the provisions of Article 4

The Act on Access to Information on the Environment does not stipulate an obligation to keep records of received requests for access to environmental information or to collect statistical data in this area; the processing of the request or the information provided is not further published (as is the case under Act No. 106/1999 Coll.).

X. Website addresses relevant to the implementation of Article 4

https://frankbold.org/poradna

www.cenia.gov.cz

www.mzp.cz

XI. Legislative, regulatory and other measures that implement the provisions on access to environmental information in Article 5

a) with respect to Article 5 paragraph 1

The active disclosure of environmental information is regulated in Act No. 123/1998 Coll., on the right of access to information on the environment, and in a number of legal regulations focusing on specific agendas and procedural mechanisms; these include, for example, permitting processes linked to EIA or the single environmental opinion (which was newly introduced by Act No. 148/2023 Coll, on the Single Environmental Opinion; this is a binding opinion of the public administration concerned in the field of the environment), or publicly accessible registers of waste management facilities, etc.

Obligated entities process information related to their scope of authority and create the necessary technical and other conditions for active disclosure of information. Obligated entities must, to the extent stipulated by the Act on Access to Information on the Environment, to keep and update electronic databases containing information related to their scope of authority; the database must be accessible from devices via remote means of communication.

Active access includes, in addition to online access to information, own editorial and publishing activities.

Obligated entities actively make available e.g. environmental concepts, policies, strategies, reports on the state of the environment, summaries of data on the monitoring of activities that have or could have an impact on the state of the environment or environmental risk assessments.

Every year, the Ministry of the Environment prepares a **Report on the Environment in the Czech Republic**. The Statistical Yearbook of the Environment forms the basis for the preparation of the Report on the Environment in the Czech Republic. In connection with the Report on the Environment in the Czech Republic, the Ministry of the Environment prepares individual regional reports on the state of the environment once a year. These reports must be published in electronic form within three months of the approval of the Report on the Environment in the Czech Republic.

The amendment to the Act on on Access to Information on the Environment adopted in 2022 extended the subject of active disclosure of information to support disclosure of information through an application programming interface (API) (in addition to the existing support for the use of remote access devices); this is direct access to the content of the database at the level of individual programmes.

Information from the environmental field – specialist information resources of the Ministry of the Environment are rather formally brought together by the Unified Environmental Information System, which is being built on the basis of the mandate of the Ministry of the Environment by the so-called Competence Act (Act No. 2/1969 Coll.).

In the area of active disclosure of information, an important partner for the public is CENIA, the Czech Environmental Information Agency, an organization funded by contribution from the budget of the Ministry of the Environment. CENIA manages ISPOP, an Integrated Environmental Reporting System, which ensures compliance with statutory environmental reporting obligations, and at the same time acts as a source of data for cross-sectional environmental information. CENIA also manages the National Geoportal (INSPIRE), where in addition to data and services covered by the INSPIRE Directive, thematic data of several dozen entities can be found – from central public administration bodies, departmental organizations, regional authorities, municipalities, research institutions and private companies. CENIA provides a guide to other environmental systems, e.g.:

Central Register of the Environment (CRŽP),

Hazardous Waste Shipment Registration System (SEPNO),

System of Assessment of Hazardous Waste Properties (HNVO),

Integrated Pollution Register (IRZ),

EIA / SEA information system,

Waste Management Information System (ISOH).

Statistical information concerning the relevant elements of the environment is also publicly available, including agriculture (Ministry of Agriculture) or financial flows in the area of environmental protection (Ministry of Finance).

Information is collected as part of a wide range of public administration activities, e.g. through the Czech Statistical Office, organizations in the department of the Ministry of the Environment, e.g. CENIA, Czech Hydrometeorological Institute (CHMI), Czech Environmental Inspectorate (CEI), State Environmental Fund (SEF), Nature Conservation Agency of the Czech Republic (AOPK), the Czech Geological Survey (CGS), the Research Institute of Water Management (VÚV), organizations in the department of the Ministries of Agriculture, Health, Interior, Transport, Industry and Trade and other central authorities such as the State Office for Nuclear Safety, State Institute of Public Health, etc.

Regarding the access to information in the event of emergencies, the Act on Access to Information on the Environment refers to warnings to the public under special legal regulations: Act. No. 239/2000 Coll., on the integrated rescue system and on the amendment of certain acts and Act No. 240/2000 Coll., the Crisis Management Act. For early warning of citizens, the public administration uses, for example, the means of SMS, regional electronic media and other methods.

b) with respect to Article 5 paragraph 2

Environmental information is available through its active disclosure. The obligation of active disclosure arises in particular from the Act on Access to Information on the Environment.

Furthermore, active disclosure is also embedded in the EIA/SEA (EIA Act), IPPC (Act No. 76/2002 Coll., on integrated pollution prevention and control) and spatial planning (Building Act) legislation. Environmental reports and other important data (EIA / SEA, IPPC, IRZ) are published on the website of the Ministry of the Environment, at other relevant addresses and on the CENIA website, in Czech and in some cases also in English version. Many authorities also have a website in a foreign language version.

c) with respect to Article 5 paragraph 3

The obligation to disclose information on the environment results from Act No. 123/1998 Coll., on the right of access to information on the environment. The functionality and rules for the management of public administration information systems are regulated by Act No. 365/2000 Coll., on public administration information systems and on amendments to certain other acts.

The texts of environmental laws, together with other areas of legislation, are made available in an electronic database – on the publicly accessible eSbírka (Collection of Laws Online) website: https://www.e-sbirka.cz/. This is a system implemented at government level, which will be gradually introduced from 1 January 2024. Legislation in the field of environmental protection is also published on the website of the Ministry of the Environment.

The public searching for legislative resources has so far used the publicly accessible system https://www.zakonyprolidi.cz/, which was created as a non-governmental project, or other (paid) search engines.

As regards policies, strategies, plans, reports, etc., their publication is regulated by various laws and reflects the specificities of the area concerned.

Some legal regulations stipulate the obligation to publish information in a way that enables remote access (e.g. drafts of zoning documentation and spatial development policy according to the Building Act). For example, the new Waste Act (Act No. 541/2020 Coll.), effective from 1 January 2021, provides for the obligation of municipalities to inform at least once a year, in a way that allows remote access, about the municipal waste management system and the possibilities for preventing and minimising municipal waste. Municipalities are also obliged to publish quantified results of waste management, including the costs of operating the municipal system. According to the same law, there is an obligation to publish the waste management plan of the Czech Republic or the region on the public administration portal.

The Czech Republic has implemented an information system called Database of Strategies (https://www.databaze-strategie.cz/), where strategic documents concerning environmental protection can also be found.

d) with respect to Article 5 paragraph 4

According to Section 12 of the Act on Access to Information on the Environment, the Report on the Environment in the Czech Republic is prepared on an annual basis and, after approval by the government, it is published on the websites of the Ministry of the Environment and CENIA. Together with the Report on the Environment in the Czech Republic, the Statistical Environmental Yearbook of the Czech Republic is also published annually.

e) with respect to Article 5 paragraph 5

At the government level, a project for access to applicable law (both national and international) is being gradually implemented, including consolidated versions and display of changes to regulations (eSbírka and eLegislativa system). Legal texts in the environmental field are already being made accessible in the electronic database eSbírka: https://www.e-sbirka.cz/, which is being gradually filled since 1 January 2024.

The public currently uses a comprehensive publicly accessible system https://www.zakonyprolidi.cz/, which was created as a non-governmental initiative, or other (paid) legislative sources.

The Ministry of the Environment regularly informs the public and interest groups of the Czech Republic‘s priorities in the international environmental agenda and national legislation. The Ministry of the Environment also supports translations of relevant important documents into the Czech language.

There are no uniform rules for disseminating information on strategies, policies, programs and action plans. The public has access to SEA strategies, spatial planning documentation and spatial development policy. The public also has access to the Strategy Database.

f) with respect to Article 5 paragraph 6

Based on various regulations, polluters are obliged to report, for example, pollutants discharged into the environment, or report their other operating data.

Regarding the incentive of operators to directly inform the public about the impacts of their activities on the environment, the Ministry of the Environment promotes the **introduction of voluntary environmental instruments.**

Voluntary environmental instruments fall outside the binding administrative instruments of environmental law. They lead to the reduction of the negative effects of production or operation on the environment and at the same time to the strengthening of the position of the company or organization on the market, to the increase of competitiveness and reputation.

Voluntary instruments include labelling (Eco-friendly product / service, EU Ecolabel, environmental labelling), management system (EMAS, environmental management and audit system), Cleaner Manufacturing (preventive strategies for the efficient use of resources), Eco-design, environmentally friendly public procurement, etc.

New information flows and instruments are gradually being linked to the area of Corporate Social Responsibility (CSR). Further developments can be expected in this area in view of the requirements set by EU legislation in the area of non-financial reporting.

g) with respect to Article 5 paragraph 7

The publication of information and analyses for formulating major environmental policy proposals or explanatory materials on public consultations, or on the performance of public functions or the provision of public services relating to the environment at all levels of public administration is partly included in the active disclosure of environmental information. However, this information is not made available in a uniform manner, but rather on a case-by-case basis.

h) with respect to Article 5 paragraph 8

The provision of sufficient information on products and more environmentally friendly product options is linked to voluntary environmental instruments, but also to ongoing EU legislation concerning the circular economy, energy efficiency, the right to repair or the previously covered area of organic production.

Informing the public about more environmentally friendly product variants is linked, for example, to the obligation to label electrical appliances with energy labels introduced by Act No. 406/2000 Coll., on energy management in accordance with the requirements of EU law.

The public can actively search for products with the appropriate label, which represents environmentally friendly products. Furthermore, in the area of organic production [Council Regulation (EC) No. 834/2007 on organic production and labelling of organic products in conjunction with Act No. 242/2000 Coll., on organic farming], the terms *organic product*, *organic food* and *other organic product* are used, which allow the public to choose between different product variants.

Since the end of 2022, the Ministry of the Environment has been running a campaign specifically focused on environmentally friendly and quality products; the symbol of the campaign was Ekolífek. The campaign aimed to raise consumer awareness of ecolabels and to attract new holders from among producers.

Environmentally friendly production and products are also addressed in the Circular Czech Republic 2040 strategy and its action plan for the period 2022-2027. The action plan includes specific tasks aimed at sustainability (sustainable design) of products, recycling and use of secondary raw materials, reparability of goods or avoiding food waste (use of food waste). Concrete measures may gradually take

the form of specific economic incentive obligations for producers, together with the dissemination of mandatory information for consumers.

i) with respect to Article 5 paragraph 9

In the Czech Republic, the function of the publicly accessible pollution register is performed by the **Integrated Pollution Register of the Environment** (IRZ). IRZ was established as a publicly accessible information system on emissions and transfers of pollutants. Since 2008, the functioning of the IRZ has been governed by a separate law, Act No. 25/2008 Coll., on on the Integrated Environmental Pollution Register and the integrated system of compliance with reporting duty in environmental areas, and on amendments to other acts, as amended, and Government Implementing Regulation No. 145/2008 Coll., laying down the list of pollutants and threshold values and data required for reporting to the Integrated Pollution Register, as amended.

Leakages and transmissions of selected pollutants and transmissions of waste are monitored in the IRZ. IRZ does not include comprehensive information according to Article 5 (9) of the Aarhus Convention (information on inputs, releases and transfers of a specified range of substances and products, including water, energy and resource use, from a specified range of activities to environmental media and to on-site and offsite treatment and disposal sites). Some of the information provided includes reports of polluters in accordance with special regulations (e.g. in the field of air protection or waste management). Some of the information will be reported in line with the new Regulation (EU) 2024/1244 of the European Parliament and of the Council of 24 April 2024 on reporting of environmental data from industrial installations, establishing an Industrial Emissions Portal and repealing Regulation (EC) No 166/2006. In particular, water, energy and raw material consumption.

In addition to IRZ, there are a number of obligations imposed on economic operators to provide the public administration with information on the impact of their activities on the environment. A wide range of information on environmental impacts is available to the public administration. In many cases, the Integrated system for compliance with environmental reporting obligations (ISPOP) is used to fulfil the reporting obligation - e.g. for reporting data from the areas of IRZ, air protection, water protection, packaging, waste. In the period under review, the Waste Act was replaced by a new Act of 2020 (Act No. 541/2020 Coll., on Waste), but the new legislation did not target the scope of reporting obligations.

The Ministry of the Environment thus has a wide range of data at its disposal, which it uses to carry out control activities by administrative bodies and further processes it for information purposes.

XII. Obstacles that prevent the implementation of Article 5

Existing environmental information systems represent a large body of information. Searching by keywords or other features or accessibility for the wider public can be problematic.

The public raises some reservations about the SEA/EIA information system, which performs a fundamental information function for participation in EIA/SEA processes. Although this system has a technical solution that is corresponding to the time of its creation (e.g., it is not yet possible to order notifications according to selected criteria and the data in the database are not accessible as open data, as a result of which the effectiveness of the SEA/EIA process cannot be effectively evaluated), it is being continuously modified as much as possible (e.g., an English version of the user interface or the possibility of filtering transboundary assessment projects were introduced within the EIA information system). A great advantage of the system is the continuity and comprehensiveness of data relating to all EIA processes over the past more than 20 years.

XIII.Further information on the practical application the provisions of Article 5

In the period under review, the environmental Helpdesk function (EnviHELP; https://helpdesk.cenia.cz/hdPublic/helpdesk/) was phased out. EnviHELP no longer serves as a tool for asking general environmental questions. To answer queries that do not concern information systems, the

competent organisation should be contacted; or the Ministry of the Environment directly can be contacted via the e-mail address info@mzp.cz.

XIV.Website addresses relevant to the implementation of Article 5

https://www.e-sbirka.cz/

https://portal.gov.cz/kam-dal/rejstriky-seznamy-formulare/seznam-isvs

https://www.envirometr.cz/

www.mzp.cz

www.cenia.gov.cz

https://portal.cenia.cz/eiasea/view/eia100_cr

http://portal.cenia.cz/eiasea/view/SEA100_koncepce

http://www.irz.cz/

https://www.cenia.cz/odpadove-a-obehove-hospodarstvi/isoh/

https://geoportal.gov.cz/web/guest/home

https://www.ispop.cz/

https://hnvo.cz/

https://www.sepno.cz/

https://helpdesk.cenia.cz/

https://heis.vuv.cz/

https://ekoznacka.cz/

https://voda.gov.cz/portal/

http://www.geology.cz/extranet

https://www.vuv.cz/index.php/cz/

https://www.databaze-strategie.cz

XV. Legislative, regulatory and other measures that implement the provisions on public participation in decisions on specific activities in Article 6

The Czech legal system regulates public participation in decisions on specific activities. However, the regulation is included in both general and special regulations. Therefore, the general regulation of participation contained in the Administrative Procedure Code often applies, as does partial regulation contained in in individual sectoral laws, which, as a *lex specialis*, modify the general regulation, in some cases even excluding it. If the circle of participants in the proceedings is not regulated in any way, in addition to the applicant, other persons concerned also become participants in the proceedings pursuant to Section 27 (2) of the Administrative Procedure Code, if they could be directly concerned by the decision in their rights or obligations. A typical example is the procedure for issuing a permit for the operation of a waste management facility, the participants of which are not defined by the Waste Act (except for municipalities). In such a case, the concerned natural person (usually a neighbour) as well as a legal entity (e.g. an environmental association) can also become a participant. In some cases, which are specified in the law, only the applicant is a participant.

Czech law fulfils the requirements of Article 6 by allowing the public concerned to participate in permitting procedures following the EIA process, which is also used to assess impacts on Natura 2000

sites, and in integrated permit procedures (IPPC). Beyond the requirements of the Convention, Czech law also involves the public concerned in certain proceedings in which the interests of nature and landscape protection may be affected, and in water law proceedings, which mainly concern water management and the protection of water resources. The persons concerned may also participate in proceedings for the adoption of preventive or remedial measures under the Act on the Prevention of Environmental Damage (Act No 167/2008 Coll.), unless the proceedings have been initiated at their request.

If an EIA is carried out (binding opinion issued), environmental associations that were established at least 3 years ago or are supported by at least 200 signatures may register as participants in these proceedings, pursuant to Section 9c(3)(b) of Act No. 100/2001 Coll., on Environmental Impact Assessment. These associations can even appeal against a decision issued in a subsequent procedure without having to participate in the first instance procedure. According to Section 9c(3)a) of the same Act, the affected territorial self-governing units may also become participants in the proceedings. The individuals concerned may participate in the subsequent proceedings according to the participation provisions in the respective laws. In addition to the participation of the concerned public in the decision-making process, the EIA Act provides for consultative participation of the general public in the EIA process and in the subsequent proceedings.

If an EIA is not carried out on the grounds that the conclusion of the screening procedure is that the project cannot have a significant impact on the environment, environmental associations can appeal against the conclusion of the screening procedure, which is issued in the form of a decision. The individuals concerned do not have this right. Underestimating the position of individuals as part of the "concerned public" is a common problem with the whole construct of ensuring public participation. However, territorial self-governing units can appeal against the conclusion of the screening procedure. Although not an "concerned public" within the meaning of the Convention, the public can influence EIA and permitting through regions, cities and municipalities. Especially in the case of smaller towns and municipalities, this option is also used in practice (sometimes in combination with local referenda).

Subsequent proceedings following the EIA process are defined by the EIA Act in Section 3g); they are a procedure for the authorisation of a project under the Building Act, for the authorisation of a mining activity, for the determination of a mining area, for the authorisation of a mining activity, for the authorisation of surface and groundwater management, for the issueance of an integrated permit, for the issueance of a permit for the operation of a stationary source, for the issueance of a permit for the operation of a waste management facility, and other proceedings in which a decision necessary for the implementation of the project is issued, if none of the above procedures is conducted. A subsequent proceeding is also a procedure for amending a decision issued in those procedures in respect of a project, or part or stage thereof, not yet authorised, where the conditions of the decision which were taken from the opinion are to be amended.

In connection with the adoption of the **new Building Act** (No 283/2021 Coll.), the list of subsequent proceedings in Section 3(g) of the **EIA Act** has been amended. The change consists maily in terminology, which, however, by broadening the concept of a construction project under the Building Act, already includes, for example, proceedings authorising the removal of a building.

The regulation of participation in the Building Act has not changed but has been extended indirectly by the amendment to the **Act on Nature and Landscape Protection** (No. 114/1992 Coll.). According to Section 70(3) of the Act, environmental associations may participate not only in proceedings under this Act but also in proceedings under other legislation if the decision is based on a single environmental opinion issued in lieu of a permit to fell trees or an exemption from prohibitions for monument trees and specially protected species of plants and animals. Even before the adoption of the new regulation, case law had reached a similar solution by interpreting the term "under this Act" in Section 70(3) of the Act on Nature and Landscape Protection in an extensive manner. However, as a result of the interpretative uncertainty, several actions were dismissed because the plaintiffs were convinced, also on the basis of the Ministry of Regional Development's methodological guidance of September 2021, that they were not entitled to participate in decision-making in proceedings under the Building Act at all, so they brought an action directly (see judgments of the Supreme Administrative Court of 23 June 2023, No. 4 As 33/2023-26, 20 September 2023, No. 2024, No. 7 As 218/2023-34, of 29 February 2024, No. 4 As 146/2022-54, of

9 October 2023, No. 3 As 241/2022-46, judgments of the Municipal Court in Prague of 30 July 2024, No. 17 A 123/2023-96, of 6 July 2024, No. 15 A 72/2022-505, judgment of the Regional Court in Ústí nad Labem of 24 June 2024, No. 16 A 17/2022-26, judgment of the Regional Court in Prague of 14 May 2024, No. 51 A 113/2020-122).

Since 1 January 2024, the conditions for participation of environmental associations in **proceedings for the issuance of an integrated permit** or its substantial amendment have also been modified. This permit is issued for large industrial plants instead of operating permits, in particular in the field of water management, air protection and waste management. The conditions for participation of environmental associations in this procedure are now identical to those laid down in the EIA Act (3 years of activity or 200 signatures), so that it is no longer relevant whether the procedure is conducted as a subsequent proceeding or not. In practice, the now stricter conditions do not cause problems, as the participation of the public concerned in these procedures is not very frequent. Because of the high level of expertise involved in setting the conditions for industrial sites, only established associations that meet the new conditions have participated in these procedures so far. The individuals concerned would become parties if they were parties to the proceedings in which the permit being replaced by the integrated permit is issued. The scope of the parties to these proceedings is usually determined in accordance with the general rules laid down in Article 27(2) of the Code of Administrative Procedure. An exception is, for example, the procedure for granting an exemption from noise limits pursuant to Section 31 of the on the Public Health Protection Act (No 258/2000 Coll.), in which only the applicant is a party. If the decision issued in this proceeding were the only act replaced by the integrated permit, the individuals concerned would not be parties to the proceedings for issuance of an integrated permit. The public concerned is not a party to the proceedings for authorisation of a non-substantial amendment to an integrated permit

The same conditions (3 years of activity or 200 signatures) for the participation of environmental associations in proceedings under this Act have been recently, as of 1 January 2024, embedded also in the **Water Act** (No. 254/2001 Coll.). At the same time, these proceedings, which may be subsequent proceedings, have been separated from the construction permitting. Permitting of a building project (waterworks) is thus carried out in a separate procedure, for which the conditions for the participation of environmental associations under the Water Act do not apply. This procedure is followed by a procedure for a water management permit.

Permitting of a significant number of projects is carried out in an accelerated manner under the **Act on Accelerating the Construction of Strategically Important Infrastructure** (Act No. 416/2009 Coll.), which is a special regulation (lex specialis) in relation to the Building Act. Initially, this law focused mainly on transport infrastructure. Now it also regulates the permitting of water, energy and mining infrastructure, energy security structures, charging stations, etc. The amendment simplifies the conditions for expropriation, excludes appeals for certain projects, or limits the possibility of removing defects in objections and appeals. Thus, the authorisation of a large number of major projects requiring EIA is carried out through a separate process, which is complemented by the general regulation of the Building Act and the Code of Administrative Procedure.

In addition to the above, there has also been a long-standing debate on ensuring public participation in proceedings under the Nuclear Act (No. 263/2016 Coll.), which identifies the applicant as the only party, while these proceedings are not listed among the subsequent proceedings under the EIA Act. In the opinion of the administrative authorities, public participation is sufficiently ensured in other processes, but an amendment to the Nuclear Act is being prepared which would partially open these proceedings to the public.

In addition to the participation of the public concerned within the meaning of the Aarhus Convention, the Czech law under which decisions are made in environmental matters also regulates the wide participation of municipalities. The municipalities concerned may become participants in the subsequent proceedings after the EIA and they are also participants of other procedures (the Building Act, the Nature and Landscape Protection Act, water law proceedings, IPPC proceedings).

a) with respect to Article 6 paragraph 1

The scope of activities listed in Annex I to the Convention overlaps primarily with the scope of activities that, according to Czech legislation, are mandatory in the process of environmental impact assessment (**EIA process**). The EIA Act regulates the range of activities that require impact assessment by distinguishing between the category of projects that always require impact assessment and those that require a screening procedure. Projects that correspond in nature to the defined categories but do not meet the limit values are not assessed, except for so-called sub-limit projects that reach at least 25% of the relevant limit value and are located in a specially protected area or a protection zone under the Nature and Landscape Protection Act. Protected areas include large (national parks, protected landscape areas) and small (national nature reserves, nature reserves, national natural monuments, natural monuments) areas.

Czech courts constantly emphasize the ban on the so-called piecemeal approach in order to avoid the exclusion of projects from the EIA process – and to avoid public participation in decision-making as a result (Supreme Administrative Court judgments of 6 August 2009, No. 9 As 88 / 2008-301 of18 September 2014, No. 2 As 119 / 2014-31, of 13 December 2018, No. 6 As 139 / 2017-73).

Projects for which a significant negative impact on the object of protection or the integrity of sites of European significance or bird sites (i.e. a site in the Natura 2000 network) cannot be ruled out are also subject to the screening procedure in the EIA process. These projects are not limited in any way by their nature or scope. Therefore, in accordance with the case law of the Court of Justice of the European Union, the Czech courts conclude that these can also be projects not listed in the Annex to the EIA Directive (2011/92/EU). These are, for example, the marking of hiking trails (Supreme Administrative Court judgment of 18 December 2015, No. 2 As 49 / 2013-109) or the use of biocidal products (Supreme Administrative Court judgment of 13 August 2014, No. 3 As 75 / 2013-112), which corresponds to the special definition of the projects enshrined in Section 3 a) point 2 of the EIA Act. According to the Czech courts, an assessment in the Natura 2000 network is also required for projects that are located outside the affected sites if a significant negative impact of these projects on these sites cannot be excluded. The assessment of the effects of project on a Natura 2000 site is carried out in the same way as the EIA, but with a narrower, more consistent focus on the site in question. The public concerned may dispute the specific conclusions of the assessment in subsequent proceedings.

The participation of the public concerned and the affected territorial self-governing units in decision-making in relation to the projects that were assessed in the EIA process (but not terminated in the screening procedure) is ensured through the so-called subsequent proceedings.

The definition of facilities that require an integrated permit (**IPPC**) in the annex to the Integrated Prevention Act also corresponds to the scope of activities listed in Annex I to the Convention. The issuance of an integrated permit is required for the operation of all installations that meet the limit values, and according to case law it is necessary to consider the nature of the operation, the potential of the installation and the sum of production of individual parts of the operation. An integrated permit can also be issued voluntarily, but this option is practically not used in practice. An integrated permit is issued in administrative proceedings as a separate decision.

In the time since the original report, there have been no major changes to the list of activities assessed, the limits for the screening procedure in the EIA Act or the list of activities requiring an integrated permit.

b) with respect to Article 6 paragraph 2

Subsequnet proceedings (i.e. proceedings following an EIA) are considered by law to be proceedings with a large number of participants (these otherwise mean, according to the Administrative Procedure Code, proceedings with more than 30 participants). Participants in the proceedings with a large number of participants may be notified of the commencement of the proceedings by a public ordinance. Therefore, as a rule, the notice of initiation of proceedings, which falls within the scope of Article 6 of the Convention, is published on the official notice board of the administrative body. The situation is similar for the phase of the EIA process, about which information is also published on the website (publicly available portal https://portal.cenia.cz/eiasea/view/eia100_cr), based on the rules set for the EIA process.

The administrative body responsible for conducting **subsequent proceedings** shall also publish, together with the notice of initiation of proceedings,

a) the application together with a notice that it is a project subject to EIA, or a project subject to transboundary EIA, together with information where the relevant documentation for subsequent proceedings can be examined;

b) information on the subject and nature of the decision to be issued in the subsequent proceedings;

c) information on where the documents obtained during the assessment that are published can be consulted;

d) information on the conditions of public participation in the proceedings pursuant to Section 9c (1) of the EIA Act and pursuant to special legal regulations, which means in particular (i) information on the place and time of a public oral hearing, if applicable, (ii) the deadline for public comments on the project and possible consequences of missing the deadline, (iii) information on whether and, if so, within what time period, the public may inspect the grounds for the decision, (iv) on the bodies concerned and (v) on the options of the public concerned to participate in the subsequent proceedings pursuant to Section 9c (3) and (4) of the EIA Act. The information is deemed to have been published by posting it on the official notice board of the administrative body conducting the subsequent proceedings. The information must be posted for 30 days.

If the **integrated permit procedure** is not conducted as a subsequent proceeding (the project does not require an EIA), the above requirements do not apply. For the purposes of the IPPC, a national public administration information system is maintained, which, among other things, serves to ensure obligations related to the publication of information and public access to information. However, information on administrative proceedings is published on the basis of the requirements of the Integrated Prevention Act. The administrative authority must, within 7 days from the date of finding the application complete, ensure the publication of a brief summary of the information (in particular the applicant, facility, technologies used, state of the territory and compliance with preventive measures) and when and where the application can be examined, and extracts, transcripts or copies obtained from it. The publication is made by means of the integrated prevention information system, on its official notice board and on the official notice board of the municipality on whose territory the facility is or is to be located. The administrative body and the municipality post this information on their official notice boards for a period of 30 days. Within that period, any person may send their comments concerning the application to the authority.

With regard to the disclosure of information on proceedings instituted outside the scope of the Convention, environmental associations may request information on all intended interventions and initiated administrative proceedings in which the interests of nature and landscape protection may be affected. The request for information is valid for one year and must be materially and locally specified (Section 70 (2) of the Nature and Landscape Protection Act).

Problems have arisen in recent years with the interpretation and application of this provision, which have led to the courts clarifying the content of the provision in case law. The Regional Court in Plzeň found unlawful the procedure of the administrative authority which refused to send the applicant information directly on the basis of a request made under that provision and instead referred him only to the electronic official notice board (judgment of the Regional Court in Plzeň of 30 July 2021, No. 77 A 12/2021-46). See also the subsequent judgment of the Supreme Administrative Court of 30 November 2022, No. 1 As 269/2021-47, in which the interventions included in the subject regulation of Section 70(2) of the Act on Nature and Landscape Protection (in particular, plans for which the nature and landscape protection authority issues a binding opinion, receives a notification or issues a measure of a general nature) were approached, and the method of information was also addressed – the competent authority should deliver the required information to the associations.

In general, according to the submissions collected for this report, issues were encountered in practice in relation to the obligation to inform about the "nature of possible decisions". Often, the information published does not explain to potential participants in the procedure in a sufficiently comprehensible way what the procedure is for and what its place is in the overall process of permitting a project.

In other cases, where it is not a permit procedure following the EIA (where the information is publicly available), it is possible to request access to information on administrative proceedings on the basis of

the Act on Access to Information on the Environment, or with proof of legal interest or other serious reason to invoke the institute of inspection of the file according to Section 38 of the Administrative Procedure Code.

c) with respect to Article 6 paragraph 3

In the **EIA process**, any person has the right to send their written statement on the published notice of the project to the competent authority (within 30 days from the date of publication of the notice of the project) and statement on the documentation (within 30 days from the date of publication of the information on the documentation). If the administrative body receives a reasoned dissenting opinion from the public on the documentation, it must order a public hearing. The ordered public hearing would take place no later than 30 days after the deadline for comments on the documentation and the notice of its holding must be published in advance.

In the **subsequent proceedings**, the public (any person) has the opportunity to submit comments within a period which may not be less than 30 days from the publication of the information together with the notice of initiation of the proceedings. Environmental associations become participants in the subsequent proceedings if they register within 30 days from the date of publication of information on the subsequent proceeding. The same applies to the affected territorial self-governing units. Persons concerned who are participants by law (typically neighbours - owners) do not have to register and therefore there is no time limit for their participation. Other persons concerned, within the meaning of the Aarhus Convention, have only consultative participation in the subsequent proceedings.

There have been several significant changes since the original report. First of all, the **new Building Act** introduces unified permitting of plans, so that the decision on the location and permitting of construction are combined into one procedure. Furthermore, under the new Building Act, if the building authority orders an oral hearing, it must notify the parties to the proceedings and the authorities concerned of the date of the hearing at least 15 days in advance. If an oral hearing is not ordered, the building authority will set a deadline, which may not be shorter than 15 days, in the notification on the commencement of the proceedings, by which the parties to the proceedings may file objections. In the case of a project in an area where no zoning plan has been issued, the building authority will always order a public hearing. In the case of EIA projects in an area where a zoning plan has been issued, the building authority may order a public hearing. The public hearing must be announced to the public by public notice and may be scheduled no earlier than 30 days after the date of service of the public notice, during which time the building authority shall allow anyone to inspect the decision documents (Section 188 and Section 189). At the same time, the objections of the parties to the proceedings must be lodged at the latest at the oral hearing or, where appropriate, at the public hearing and, if no hearing has been ordered, within the time limit laid down in the notice initiating the proceedings. The building authority will only take into account and deal with objections lodged at a later date if they relate to newly supplemented grounds for the decision to which it was not possible to object earlier. Objections on matters that have been decided when the planning documentation was issued shall not be taken into account (Section 190(1) of the new Building Act). The new Building Act also expressly provides that parties may only object to the extent that their rights or interests which give rise to participation may be directly affected (Section 190(2) and (3)). This is also significant in terms of ensuring effective judicial protection, as the use of objections that have not already been raised in the proceedings before the construction authority is limited, with the exception of projects requiring an EIA (and similarly, planning documentation requiring an SEA).

In the procedure for issuing an **integrated permit**, any person may send their opinion on the application within 30 days of the publication of the information (Section 8 (2) of Act No. 76/2002 Coll.). The participants in the proceedings may send their comments within 30 days of receiving the application (Section 9, Paragraph 3 of Act No. 76/2002 Coll.). The administrative authority will order an oral hearing whenever a participant so requests. A participant in the proceedings may request an oral hearing within the time limit for submission of a statement or, in the case of a request for an expert opinion, within the time limit for submission to the administrative body (30 days from the date on which the expert received the request).

In general, for all administrative proceedings, the parties may propose evidence and make other proposals while the proceedings are still in progress, until a decision is issued; the administrative body

may, by resolution, state how long the participants have to make their proposals. Participants also have the right to express their views in the proceedings. If they so request, the administrative body shall provide them with information on the proceedings, unless otherwise provided by law. The administrative body must set a reasonable time limit for the participant to perform the act, unless required by law and if necessary. Special laws then regulate special deadlines for the submission of a statement (see above 30 days in the proceedings following the EIA or 30 days from the publication or receipt of the application in the IPPC department).

An **appeal against the decision** in the subsequent proceedings as well as against the decision to issue an integrated permit may be filed within a general period of 15 days from the date of notification of the decision. The notice of the decision must state whether and within what period the appeal may be lodged, from which date this period is calculated, which administrative body decides on the appeal and to which administrative body the appeal is lodged.

d) with respect to Article 6 paragraph 4

The EIA process is carried out at an early stage of project preparation, when all **options are still open**. In the screening procedure and in other phases of the process, the competent authority takes into account the public's opinion and may, for example, return the file for revision or supplementation by the developer. The issued EIA binding opinion must also be based on the statements. If the EIA is not carried out because, according to the conclusion of the screening procedure, the project cannot have a significant impact on the environment, the environmental associations and affected territorial self-governing units may appeal against the conclusion of the screening procedure, which is issued in the form of a decision.

The EIA Act refers to subsequent proceedings as all proceedings in which permits are issued that are essential for the implementation of the project. The public concerned may thus raise objections and, where appropriate, oppose the decision at all stages of permitting of the project. Full participation in the subsequent proceedings, including the right to appeal, is granted to environmental associations and to territorial self-governing units, or to persons concerned, who have become participants in the permitting procedure with regard to the affected property or other right in rem.

If no EIA is carried out and the project is evaluated only in the screening procedure, then the general rules for these proceedings (not the rules for subsequent proceedings) apply to participation in proceedings where activities are decided under the Annex to the Aarhus Convention.

The administrative body, in making decisions in the subsequent proceedings, also uses the documents of the EIA process (documentation, notifications, public comments, or the results of the public oral hearing, if held) as a resource for its decision.

Similarly, an integrated permit also includes the settlement of comments contained in the submitted statements on the application.

e) with respect to Article 6 paragraph 5

Czech law does not know of any mandatory instruments of active action (and possibly mediation) in the direction of resolving conditions in situ before the commencement of mandatory environmental procedures. In particular, the institutes of prior information and preliminary hearing (before submitting the application) serve to stimulate the applicant and discussion with the public concerned, which enable the applicant to become acquainted with the conditions of the project and which allow the administrative body to draw the applicant’s attention to the public's concerns. Discussions between investors and the public concerned are more prominent than in the past in the context of renewable energy developments. Mediation efforts are often linked to the holding of local referendums. After submitting the application, a public hearing serves as a means of formalized discussion.

The request for preliminary information is a general institute vested in the Administrative Procedure Code. Special regulations supplement it, for example, so that before the procedure for issuing an **integrated permit** is initiated, the administrative body provides information on the prescribed requirements of the application and on the definition of facilities in the application (Section 3a of Act No. 76/2002 Coll.). Pursuant to Section 9b (2) of the EIA Act, the administrative body responsible for conducting **subsequent proceedings** in cooperation with the authorities concerned shall provide, at the

request of the applicant, preliminary information on data and documents required which the applicant must submit with his application for a decision.

Pursuant to Section 15 of the EIA Act (preliminary discussion), the administrative body, if the developer so requests before submitting the notification, discusses the intended project with the developer, including possible variants of the project, and recommends a preliminary discussion with other relevant administrative authorities, and possibly with other relevant entities.

According to the **new Building Act**, the building authority will provide preliminary information on the conditions for the use of the territory and changes to its use, on the necessity of the project's authorisation and its approval, on the aspects according to which it will assess the application for a decision and on the authorities concerned in relation to the project. Similarly, the authorities concerned will provide preliminary information on the need for a statement or a binding opinion and on the criteria on which the application will be assessed by the authority concerned.

Under the **Act on Single Environmental Opinion**, the competent authority and the administrative authorities competent under other legislation are obliged, if requested by the applicant before the application is submitted, to discuss the project under consideration with the applicant and to provide information on the merits of the application and other relevant circumstances so that a single environmental opinion can be issued without undue delay after the application is submitted.

f) with respect to Article 6 paragraph 6

As a participant in the proceedings, the public concerned has access to all resources for the decision. If the public concerned is not a participant in the proceedings, it has access to information published by the administrative body (see above) and may also examine the file pursuant to Section 38 of the Administrative Procedure Code, if the public concerned can prove a legal interest or other serious reason and this will not impinge on the right of any other participant, other persons concerned or a public interest. Other information available to the administrative body may be made available upon request in accordance with the procedure under the Act on Access to Information on the Environment.

g) with respect to Article 6 paragraph 7

Comments, objections and statements of the public concerned are generally submitted in writing. If a public hearing within the EIA process is ordered, the administrative body takes a record of it according to the EIA Act, containing in particular data on participation and conclusions from the hearing, and also makes an audio recording from it. Subsequently, the administrative body is obliged to send the minutes of the public hearing to the developer, the administrative bodies concerned and the territorial self-governing units concerned and to publish them on the internet (in the EIA information system). If a public oral hearing is held in accordance with the Building Act, a protocol is drawn up from it, in which the public may state their comments and objections.

h-i) with respect to Article 6 paragraphs 8 and 9

As already noted, public opinion is essential already at the stage of the EIA process and may be a reason to return the file for revision or supplementation. It is also one of the resources for the binding EIA opinion. If the EIA binding opinion ignores the public opinion or does not sufficiently address the concerns, this constitutes a defect of the binding opinion - which may also be a defect of the decision issued in the subsequent proceedings. At the same time, Czech courts have ruled that the statements of the individuals concerned may relate to all aspects of assessing the effects of plans on the environment, including, for example, risks to public health (NSS judgment of 20 January 2017, No. 7 As 188 / 2016-75).

The administrative authority responsible for issuing a decision in a subsequent proceeding or in an integrated permit procedure which is not conducted as a subsequent proceeding must already, in accordance with the general requirements laid down in the Administrative Procedure Code for the decision of the administrative body, state how it has dealt with the proposals and objections of the **participants** and their comments made on the basis for the decision. If they do not do so, the decision is illegal due to unreviewability.

With regard to the comments of the public, which is **not a participant in the proceedings**, § 9c paragraph 2 of the EIA Act stipulates that the administrative body shall state the settlement of the comments of the public in the justification of its decision. In addition, according to § 9b par. 5 of the EIA Act, the administrative body deciding in the subsequent proceedings also relies on the documents of the EIA process (including public opinion).

If the procedure for issuing an integrated permit is not conducted as a subsequent proceeding, the public applies comments pursuant to Section 8 (2) of the Integrated Prevention Act and these comments must be settled in the decision.

The decision issued in the **subsequent proceedings** is usually delivered on the official notice board, because according to the EIA Act, it is an administrative procedure with a high number of participants (Section 144 of the Administrative Procedure Code). It is delivered in person only to the main participants according to § 27 (1) of the Administrative Procedure Code (i.e. especially to the applicant). The decision is not published on the internet, such as documents obtained during EIA and information about them. The justification of the decision must state the reasons and aspects on which the decision is based. Access to decisions suspended from the official notice board is possible on request in accordance with the procedure under the Act on the Right to Environmental Information.

The decision on issuing an integrated permit or rejecting an application for an integrated permit shall be published by the administrative authority via the integrated prevention information system within 5 days from the date of entry into force. The adiministrative authority shall also publish on its official notice board for 30 days information on when and where the decision can be examined. All changes to issued integrated permits (https://ippc.mzp.cz/) are also published in the information system. In practice, there is a problem with the administrative authorities delivering decisions to NGOs via a data mailbox, although according to the legislation these participants should also receive the decision via a public notice. This practice leads to disputes as to when the time limit for lodging an appeal starts to run.

j) with respect to Article 6 paragraph 10

A review or an update of the operating conditions by the administrative body requires a change in the operating decision. The decision to change the decision is made in administrative proceedings, for which the same rules generally apply as for ordinary proceedings, unless the law provides otherwise. If the scope of the change reaches the limit set by the EIA Act, it is necessary to perform a new EIA (or at least the screening procedure), which in principle does not differ from the standard EIA process, including requirements for public participation and public information.

With regard to the change of an integrated permit, the legislation distinguishes between substantial and minor changes; however, it does not define them precisely. The provision of Section 2 (i) of Act No. 76/2002 Coll. stipulates under which conditions the change is always substantial, but the list is not exhaustive. In other cases, the administrative authorities are left room for discretion. After announcing the planned change in the operation of the facility, the authority will evaluate this change and determine whether, in its administrative discretion, the change is substantial or minor. In the case of a procedure for a substantial change, the procedure is similar to that in the procedure for issuing an integrated permit. The scope of participants in the procedure for a minor change is limited. It does not include environmental associations, but it still includes persons who would be participants in the proceedings under special regulations governing proceedings for integration (e.g. when permitting waste facilities that fall under IPPC capacity). These may be persons concerned, especially neighbours - owners.

The vast majority of amendments to issued integrated permits are made under the minor amendment regime. This gives rise to disputes as to whether the change is not substantial (see, for example, the judgment of the Regional Court in Ústí nad Labem of 1 November 2023, No 141 A 13/2023-56). The Supreme Administrative Court has even referred a preliminary question to the CJEU as to whether a mere extension of operations, namely landfilling at a landfill, where neither the maximum approved dimensions of the landfill nor its total capacity are changed, constitutes a substantial change. The Court replied that it is not a substantial change (CJEU judgment of 2 June 2022, C-43/21, *FCC Czech Republic*).

A more general problem may be posed in practice by decisions issued for a long period of time or decisions and binding opinions whose validity is repeatedly extended without the activity being carried

out, which does not allow for changes in the territory or in the requirements of the legislation to be taken into account. However, in the case of an EIA and a single environmental opinion, such changes are taken into account when extending the validity – if there are significant changes in the territory or in knowledge and assessment methods (including significant changes in legislation), the validity of the binding opinion cannot be extended.

k) with respect to Article 6 paragraph 11

The Czech legislation **does not explicitly allow the public to become a participant in the procedure for permitting the release of GMOs into the environment**. Act No. 78/2004 Coll., on the handling of genetically modified organisms and genetic products, provides exclusively for consultative public participation, unlike the older regulation (Act No. 153/2000 Coll.), which allowed the full participation of environmental associations in decision-making. The scope of participants in the proceedings pursuant to Act No. 78/2004 Coll. it is not regulated, so the general regulation in the Administrative Procedure Code applies, according to which other persons whose rights are concerned can become participants in addition to the applicant.

Consultative participation in decision-making pursuant to Act No. 78/2004 Coll. consists of participating in a public hearing and making a statement. Following the submission of an application for release of GMOs into the environment or proceedings for registration in the List for the placing on the market of GMOs, the Ministry of the Environment will publish information on the official notice board, on the internet and in at least one other appropriate manner in the municipality and region in whose territory the release takes place, or where such action is, given all circumstances, expected. The public (any person) may send their written statement to the Ministry within 30 days from the date of publication of the application. If the Ministry thus receives a dissenting statement with the release of the GMO into the environment, it will call a public hearing of the submitted application before deciding on the application. It will publish a notice of the public hearing at least five days in advance in the same manner as above. The decision on the submitted application always includes a summary settlement of statements.

XVI. Obstacles that prevent the implementation of Article 6

According to the conclusions of the latest report, the implementation of Article 6 at that time was hampered mainly by the fragmentation of the permitting procedures. The recodification of the building law has reduced this fragmentation of the permitting process by merging the decision-making in the planning and building procedures into the decision on the project permit. This has to some extent solved the problems of ineffective protection against the implementation of building projects related to the cancellation of chained decisions (in particular, the zoning decision after the building permit). In addition, the new Act on the Single Environmental Opinion (No 148/2023 Coll.) has merged a number of supporting environmental acts into a single binding opinion, including several permits that were previously subject to separate proceedings (e.g. the decision on the withdrawal of land from designated forest). A single environmental opinion is issued for building projects (i.e. projects permitted under the Building Act) and other projects that require EIA (i.e. permitted in subsequent proceedings). If the project requiring a single environmental opinion or a part of the project is located in a specially protected area or a Natura 2000 site, a joint decision is issued under the Nature and Landscape Protection Act (No 114/1992 Coll.) instead of a single environmental opinion.

The fact that the environmental impact assessment (EIA) of most projects ends at the screening stage (i.e. because the competent authority will conclude, in accordance with the terms of the EIA Act, that these projects cannot have significant impacts on the environment) is crucial for the participation of the public concerned in the decision-making process. Environmental associations may appeal and possibly even file a lawsuit against the conclusion of the screening procedure according to which the project is not subject to EIA.

The courts have held that if the public concerned argues in a procedure which is not conducted as a subsequent proceeding that an EIA or at least a screening procedure should have been carried out, the administrative authority must deal with this issue already in relation to the question of participation. If such an objection could only be raised by the public concerned in an appeal or in an action if it is not a

party to the proceedings, it would not be a timely protection of its rights and the public interests concerned (judgment of the Supreme Administrative Court of 26 February 2024, No. 8 As 277/2021-66). Such conclusions – however logical – are not apparent from the law, so they increase the demands on the expertise of the public concerned.

In practice, it also exceptionally happens that administrative authorities refer to the conclusion of the screening procedure that the project will not have a significant impact on the environment, or to the fact that the authorities concerned did not request an impact assessment, and imply that the project does not require, for example, an exemption from the protection of endangered species, or that the owners of real estate in the vicinity of the project are not parties to the permit procedure because they cannot be affected by the construction or operation of the project. However, the courts oppose the procedure where the scope of parties is defined on the basis of the impact assessment, which is related to the need to define the scope of parties in doubt more broadly – and in the proceedings themselves to deal with the relevance of the individual objections raised and to examine whether the rights may actually be affected (see, for example, the judgment of the Regional Court in Ostrava of 31 August 2021, No. 22 A 77/2020-28).

The **fragmented regulation of the conditions of public participation** in individual proceedings also poses problems. It is difficult for administrative authorities not only to define the scope of participants, but also to assess on the basis of which regulation and under what conditions individual members of the public concerned may participate in the proceedings and what objections they may raise. This is evidenced by the practice where courts annul administrative decisions in the field of environmental protection mostly due to procedural errors (due to the unreviewability of the decision and the non-settlement of the objections of the parties to the proceedings).

The **different determination of the conditions of participation for ecological associations and the persons concerned** is also problematic. While environmental associations may, for example, appeal against the conclusion of the inquiry procedure that the project will not be assessed in the EIA process, individuals do not have such a right. While environmental associations may appeal against a decision given in a subsequent procedure without participating in the proceedings at first instance, individuals again do not have such a right.

In addition, from among the persons concerned, only the owners concerned are considered to be participants in the proceedings (however, they are full participants, including the right to appeal against the decision) and not, for example, tenants. The **exclusion of some of the persons concerned** from the decision-making process is therefore problematic. This is typically an example of the legal regulation of the participants in the proceedings for the permit of the project under the Building Act, as well as the procedure for defining participants in cases where the scope of participants is not defined by law and it is necessary to follow the general regulation in the Administrative Procedure Code.

The political reluctance to address the current confusing situation, or even **efforts to limit public participation**, which are particularly evident in relation to traditional regulation that goes beyond the scope of the Convention, can also be seen as an obstacle to the implementation of Article 6. These efforts can also be seen as a form of price paid for the success of a strong civil society, which helped to establish environmental protection in the 1990s. However, the courts are increasingly confirming the view that public participation in environmental protection constitutes the implementation of legal guarantees in public administration. As they infer to the role of ecological associations, *"the meaning and purpose of their participation in building proceedings is not to block, delay and prolong the implementation of a building project through procedural obstructions, but to defend the (public) interests of nature and landscape protection in competition with other public interests and private interests"* (judgment of the Supreme Administrative Court of 4 May 2011, No. 7 As 2 / 2011-52).

XVII. Further information on the practical application the provisions of Article 6

Particularly when permitting strategically important projects, in some cases the possibility for the public to effectively participate in the procedure is hindered by fragmented permitting (the project is assessed as a whole, but the permitting procedure always concerns only a small part).

The lack of willingness on the part of some administrative authorities to use extraordinary remedies, in particular the reopening of proceedings, although the legal conditions for such a procedure are met, also appears problematic (see, for example, the judgment of the Regional Court in Ústí nad Labem of 18 May 2021, No. 15 A 47/2019-72). This prevents public participation in the renewed proceedings - and, as a result, effective environmental protection.

In some proceedings, the administrative authority argues that the decision cannot in any way affect the rights of the public concerned, and on that basis narrows the scope of parties or admissible objections. This applies, for example, to the decision on the determination of the mining area (see, for example, the judgment of the Regional Court in Pilsen of 27 August 2021, No 59 A 8/2021-134). The public concerned (e.g. owners of neighbouring land) is thus incorrectly directed with their objections to the procedure for the authorisation of mining activities.

XVIII. Website addresses relevant to the implementation of Article 6

http://www.mzp.cz/cz/posuzovani_vlivu_zivotni_prostredi

http://portal.cenia.cz/eiasea/view/eia100_cr

XIX. Practical and other measures for public participation concerning plans and programs relating to the environment according to Article 7

The public is involved in the preparation of various policy documents, primarily in a consultative form. Qualified forms of participation are less common.

If the plan is subject to an environmental impact assessment (SEA) process, the general public can participate by expressing their views during this process. The first phase is the screening and scoping procedure, within which anyone can submit a statement on the notification of the plan and, if applicable, on the content and scope of the SEA evaluation. If the aim of the screening and scoping procedure is to determine whether the plan will be subject to the SEA process, the conclusion of the procedure stipulates that the draft plan is subject to an environmental and public health impact assessment, and the public subsequently has the opportunity to express their views on the draft plan and the SEA evaluation (or an assessment of the impacts on Natura 2000 sites, if prepared), which similarly applies to plans that are always subject to the SEA process. At this stage, written statements can be sent or comments can be made at a public hearing of the draft plan (if held). The competent authority may waive a public hearing in justified cases, in a situation where, among other things, no public comments will be received within the framework of the screening and scoping procedure. However, the possibility of submitting written comments from the public always remains. The SEA opinion will be issued by the competent authority based on the draft plan, the comments submitted on it and the public hearing (if held). It becomes the basis for the approved plan. When approving the plan, the submitting party is obliged to take into account the requirements and conditions resulting from the opinion on the draft plan (SEA opinion), which means that he may deviate from them, but this deviation must be justified.

Individual policies are issued in various legal forms, most often in the form of **measures of a general nature**, the issuance of which is governed by general regulations in the Administrative Procedure Code. The Administrative Procedure Code regulates the publication of a draft measure of a general nature during the administrative process, as well as the manner and form of public comments on this draft. Land-use planning documentation is also issued in the form of a measure of a general nature, while the procedural aspects of public consultation in the process of its preparation are regulated by the Building Act (this is a special legal regulation in relation to the Administrative Procedure Code) – the draft is published and the public has the opportunity to submit comments and participate in the public consultation.

Policy documents often serve as a **basis for other policy tools, especially spatial planning documentation**. For example, the plan of the ecological stability system is the basis for the territorial

development plan, the land-use development principles or the land-use plans – and only their approval creates regional or supraregional territorial systems of ecological stability (bio-corridors, bio-centres, interaction elements). The public can comment on the form of the ecological stability system plan or similar policies that address various aspects of spatial development during the discussion and adoption of spatial planning documentation.

For the approval of **land-use planning documentation and its changes**, the specific regulation on public participation in the Building Act applies. **Unlike the previously reported situation**, the current regulation provides for a new "territorial development plan" as the highest level of land-use planning documentation (at the level of the whole Czech Republic) to be adopted also in the form of a measure of general nature. For the rest, the hierarchy of land-use documentation remains unchanged; land-use development principles are adopted at the regional level, and land-use plans or regulatory plans are adopted at the municipal level.

Under the new regulation, the most detailed level of spatial planning documentation, i.e. the regulatory plan, is not subject to EIA, although it falls within the scope of plans under the Convention and also plans within the meaning of Directive 2001/42/EC (SEA Directive), as it can also regulate projects subject to EIA. According to the Explanatory Memorandum to the new Building Act, the regulatory plan "*is not conceptual in nature*" and cannot have a significant effect on the environment within the meaning of Article 2(a) of the Directive "*which has not already been assessed at another stage of the land-use planning documentation*".

XX. Opportunities for public participation in the preparation of policies relating to the environment according to Article 7

From the point of view of public participation in the preparation of policies related to the environment, it is important whether a specific policy is a policy subject to the SEA process, which allows for public participation through comments. The way in which the public is involved in the preparation of the policy itself, which may or may not be preceded by a SEA, differs mainly depending on the form in which the policy is approved.

In the **SEA process**, anyone can comment on the plan already at the stage of the screening and scoping procedure, within 20 days of the publication of the notification of the plan on the official board of the affected region, or the last affected region. The SEA process usually includes a public discussion of the plan proposal and an assessment of the plan's impact on the environment and public health. It is organized by the submitting party, who must comply with the deadlines set by law. The submitting party is obliged to publish information about the place and time of the public hearing of the plan proposal. Minutes are taken from the public hearing itself and published on the Internet. Anyone can still submit written comments within 5 days of the public hearing. The competent authority may waive the public hearing in justified cases, in which context public participation in the screening and scoping procedure is important, i.e. it may decide to do so, among other things, if no public comments are received during the screening and scoping procedure. If the competent authority waives the public hearing, everyone may send their written comments on the draft plan to the competent authority within 20 days from the date of its publication. When assessing the environmental impact of the land-use planning documentation, special provisions in the Building Act shall be followed.

If the policy is issued **in the form of a measure of a general nature according to the general regulation in the Administrative Procedure Code**, then according to Section 172 (4) and (5) of the Administrative Procedure Code, any person can **comment** on the draft measure of a general nature whose rights, obligations and interests may be directly concerned. The administrative authority is obliged to deal with the comments as a basis for measures of a general nature and to address them in its justification. **Objections** may be raised by property owners whose rights, obligations or interests related to the exercise of the right of ownership may be directly affected by the measure of general nature or, if the administrative authority so determines, other persons whose legitimate interests may be directly affected by the measure of general nature. The administrative authority that issues the measure of a general nature decides on the objections. If the settlement of the objection would lead to a solution which

directly affects the legitimate interests of a person in a way other than the draft measure of a general nature, and if the change is clearly not in that person's favour, the administrative authority will find out the person's opinion. The decision on the objections, which states the reasons on which it is based, will appear as part of the statement of reasons for the measure of general nature. An appeal cannot be lodged against the decision, but it can be challenged in an administrative court. Modification or revocation of a final decision on objections may be grounds for modification of a measure of a general nature.

However, in some cases, the process of preparation of policy documents **limits** public participation. For example, national river basin management plans and flood risk management plans pursuant to Act No. 254/2001 Coll., on waters and on amendments to certain acts (Water Act) are issued in the form of measures of a general nature, however, the Water Act in Section 115a (3) excludes the possibility of objections from the public concerned. Consequently, the public concern can only submit comments. Objections may be raised by the public concerned when the protection zones of a water source and a waterworks are considered for declaration. Participation in the approval of regional forest development plans or forest management plans and forest management guidelines is similarly limited.

The **new Building Act** has changed the regulation of public participation in the process of land-use planning documentation, so that objections (concerned owners) are no longer submitted to the decision makers and comments (other persons), but only comments (everyone). The consolidation of the procedural form of the consultation on the draft land-use plan can be seen as a simplification, which limits the scope for potential disputes over whether a given submission has been correctly identified and correctly evaluated procedurally. Instead of preparing and approving a decision on objections, a common evaluation of comments is now being processed.

The legislation provides for the possibility of seeking judicial annulment of all or part of a land-use plan or other land-use planning documentation as a measure of a general nature.

Public participation in the preparation of plans and programmes not subject to SEA but falling within the scope of the Convention continues to be problematic in some cases. Public participation is often not required by law. Support in these cases is now provided by methodological guidance tools, such as the Methodology for the Preparation of Public Strategies (or its templates "Cooperation and Communication Plan") and the Strategic Work Portal.

XXI. Obstacles that prevent the implementation of Article 7

More effective public participation under Article 7 of the Convention is hindered, in particular, by the low awareness of the general public about the existence and relevance of various policies. In the case of the public, which has sufficient professional awareness and human resources, the disincentive is the low reflection of public comments in the final version of the document.

The diversity of policies is problematic. Unless the legislation mandates their exact title and content, policy documents are prepared under different names and with different levels of detail. The effective participation of the public is to some extent hindered by the division of policies into several levels. This is typical for spatial planning documentation. Substantial aspects of the location of projects of supra-local significance with a high impact on the environment are usually regulated by spatial planning documentation adopted at the regional or state level. However, with a few exceptions, spatial development principles are given less attention by the public than the zoning plans of municipalities. Moreover, it is not always clear which projects meet the condition of supra-local significance. Frequent and unsystematic updates of spatial planning documentation at various levels are also a problem as it makes it difficult for the public to monitor.

In practice, there have also been attempts to make the process less accessible, for example by not allowing access to the administrative file relating to such a process. The Supreme Administrative Court identified such a practice in its judgment of 30 June 2021, No. 3 As 355/2019-46, on the preparation of the spatial planning documentation for the Capital City of Prague (Metropolitan Plan).

XXII. Further information on the practical application the provisions of Article 7

Compared to the previous reported situation, the possibility of public participation at the local level is systemically weakened by the breakdown of support for Místní Agenda 21 (MA21, *Local Agenda*). In 2024, none of the processes established as a result of voluntary audits are being implemented; the personnel capacity of CENIA, which covers the MA21 agenda, has been cut, the system of communication with municipalities has been abandoned and the methodological guidance available to municipalities from the Ministry of the Environment has been suspended.

XXIII. Website addresses relevant to the implementation of Article 7

https://mmr.gov.cz/cs/microsites/portal-strategicke-prace-v-ceske-republice/nastroje-a-metodicka-podpora/vystupy-projektu/metodika

https://mmr.gov.cz/cs/microsites/portal-strategicke-prace-v-ceske-republice/nastroje-a-metodicka-podpora/zapojovani-verejnosti.

http://portal.cenia.cz/eiasea/view/SEA100_koncepce

https://www.participace21.cz

XXIV. Means of support of effective public participation during the preparation of executive regulations and rules that may have a significant effect on the environment according to Article 8

The adoption of legislation at the government level is **governed by the Legislative Rules of the Government**. The government, as the supreme body of executive power, manages the activities of ministries and other central state administration bodies and is responsible for the quality of draft laws, draft legal measures of the Senate and government regulations approved by it. Ministers and heads of other central state administration bodies are responsible to the government for the quality and timely preparation of executive regulations approved by them.

With regard to the application of the Aarhus Convention, it can be stated that the **same procedure is applied to regulations that may have a significant impact on the environment as that which applies to other proposals**. There are therefore no specific rules for public participation.

Draft legal regulations issued by the executive (white papers, draft laws, draft government regulations and draft decrees) must be published on the government portal - in the public library of the legislative process - according to the Legislative Rules of the Government.

Proposals are circulated for consultations to the so-called **mandatory consultation instances**. They include organizations inside and also outside public administration.

In addition to the mandatory consultation instances, draft regulations are also sent to **optional consultation instances** at the discretion of the authority that drafted the proposal. Legislative Rules of the Government in this matter explicitly allow proposals to be sent to other interest groups, such as professional associations, business or consumer interest groups, scientific and professional institutions, and also environmental organizations. The Ministry of the Environment uses this option for practically all draft legal regulations.

As an umbrella organisation, Zelený kruh has been included in the eKLEP for the period 2023-2024 as one of the "other consultation bodies" and is therefore able to monitor the preparation of legislation and submit comments.

On the basis of making the proposal available in the public library of the legislative process, the public can communicate its comments on draft government legislation in electronic or paper form to the submitter, i.e. the author of the proposal. Comments must be worded clearly and concretely and must be duly substantiated. Comments can be marked as recommendatory or material, but if the public marks

their comment as material, the submitter does not have to address these comments as he is obliged to do so in relation to mandatory consultative instances in the sense of the Legislative Rules of the Government.

The Ministry of the Environment also publishes its draft legislation at various stages of the legislative process on its website. Each proposal contains information on when the consultation procedure for this proposal ends, as well as the electronic address of officer(s) to whom comments can be sent. The comments are then used to modify the text of the proposal, which occurs after the deadline for sending comments. The Ministry of the Environment also lists the regulations for which the consultation procedure has ended and for which the text is being amended on the basis of the comments received. Another group consists of draft regulations that have been sent to the government (draft laws and government regulations) or working committees of the Legislative Council of the Government (draft decrees) for discussion. Government bills that were approved by the government and subsequently sent to the Chamber of Deputies are also published here. Each government bill contains its number in the Parliament (Chamber of Deputies and later Senate), which makes it possible to find the regulation on the website of the Chamber of Deputies (Senate) and thus monitor its discussion in parliament, including the adoption of any amendments.

In the event that bills are submitted as **private member's bills**, their discussion is governed by the Rules of Procedure of the Chamber of Deputies. Consequently, the bills are not collectively discussed at the government level and public comments are not incorporated.

Generally binding legal regulations issued by regions and municipalities are discussed at public council meetings which, however, guarantees only passive participation. The legislation does not regulate the obligation of competent authorities to take public comments into account.

XXV. Obstacles that prevent the implementation of Article 8

The obligation to consult draft legislation with the public is not stipulated by law, however, the Legislative Rules of the Government list a relatively broad range of entities to which proposals are sent on a mandatory basis, and at the same time, they explicitly allow proposals to be sent to other interest groups. In addition, the Ministry of the Environment publishes draft legislation on its website and allows comments from the public at the stage of legislative preparation.

The legislation does not contain specific binding mechanisms to ensure the effective participation of the public in the official preparation of legally binding regulations that may have a significant impact on the environment. This obstacle is overcome by practical cooperation with the public; however, a situation may arise where information on draft legislation does not always automatically reach all the associations that normally apply the legislation in question and may have relevant experience and comments; this also applies to generally binding legislation issued by regions and municipalities.

The possibility of public participation in the drafting of legislation is significantly limited by the legislative **practice of making significant changes to the original bill only when it is being debated in the Chamber of Deputies**. Legislative proposals prepared in this way do not undergo comprehensive legislative preparation or legislative-technical evaluation. An example is the approval of the amendment to the Act on Accelerating the Construction of Strategically Important Infrastructure (No. 465/2023 Coll.) The draft amendment was prepared by the government as a technical transposition of an EU directive, where the aim of the draft law was originally only to implement the TEN-T Directive and adapt the Czech legal system to directly applicable EU regulations. In the Chamber of Deputies, a number of substantial amendments were adopted to the submitted draft law, which as a result fundamentally changed and expanded the draft law and also affected areas completely unrelated to the legislation in question (in particular, a change in the powers of the Czech Environmental Inspectorate). The final form of the amendment was several times larger in scope and much broader than the original proposal, but it did not pass the RIA or the inter-ministerial consultation procedure. The non-transparency of the preparation of the amendments to the Act on Accelerating the Construction of Strategically Important Infrastructure and the problematic nature of serious additions were publicly pointed out to the Members of Parliament by experts from the Network for the Protection of Democracy and by municipalities involved in the Association of Local Governments. Zelený kruh, an umbrella association of environmental NGOs, opposed

the controversial amendments. The Senate also reacted to the extensive and unchecked adoption of amendments to the government's proposal in Resolution 37 of the 19th session held on 29 November 2023, where it: I. "*Expresses its displeasure at the elementary amendments to the Government Bill by the deputies, which have resulted in the proposal of extensive and serious changes not only to the Linear Infrastructure Act, but also to a number of other laws, many of which have no factual connection with the Government Bill and the reasons that led to their adoption can only be conjectured; and II. Requests the Chamber of Deputies of the Parliament of the Czech Republic to ensure that its legislative activities respect the constitutional limits and principles of good lawmaking*." The practice of "rider amendments" attached to legislative drafts and the extensive amendments to government proposals in the Chamber of Deputies is one of the great weaknesses of the legislative process and an obstacle to effective public participation due to its abundant use.

XXVI. Further information on the practical application the provisions of Article 8

The legislative process is regulated both at the governmental level (Legislative Rules of the Government) and at the parliamentary level (Rules of Procedure of the Chamber of Deputies and the Senate; Act No. 90/1995 Coll., on the Rules of Procedure of the Chamber of Deputies, Act No. 107/1999 Coll., on the Rules of Procedure of the Senate), as well as at the level of self-government [municipalities and regions; Act No. 128/2000 Coll., on municipalities (local government), Act No. 129/2000 Coll., on regions (regional government)].

XXVII. Website addresses relevant to the implementation of Article 8

https://odok.cz/portal/veklep/materialy

https://www.vlada.cz/cz/ppov/lrv/dokumenty/legislativni-pravidla-vlady-91209/

XXVIII. Legislative, regulatory and other measures that implement the main provisions on access to justice in Article 9

Access to justice in environmental matters means, in particular, the possibility of challenging administrative acts or omissions of administrative authorities before an independent and impartial body established by law, which, in the Czech Republic, means courts. Legal proceedings relating to the protection of the environment are not particularly different from other proceedings. The Czech Republic also does not have special environmental courts or specialized court chambers focused on this agenda. The area of access to justice in environmental matters is part of the general regulation of administrative justice regulated by Act No. 150/2002 Coll., the Code of Administrative Justice. Partial aspects of judicial proceedings are also regulated by other regulations, in particular the Building Act (No. 283/2021 Coll.), the EIA Act (No. 100/2001 Coll.) and the Act on Accelerating the Construction of Strategically Important Infrastructure (No. 416/2009 Coll.).

In general, in all these types of proceedings, specialized sections of regional courts, locally competent according to the seat of the administrative body deciding in the first instance, decide in single-instance proceedings (i.e. without the possibility of filing a proper appeal).

The Regional Court in Ostrava is competent to decide on actions concerning the authorisation of a reserved construction project (e.g. a motorway or a railway line).

It is possible to lodge an extraordinary appeal against the substantive decision of the regional court in the form of a cassation complaint to the Supreme Administrative Court. Judicial review is based on the **principle of cassation**, so that the courts can only annul an unlawful act, with a few exceptions.

An exception is provided by Section 309(2) of the new Building Act, according to which the court may modify the contested decision if the action is well-founded and it is entirely clear, without further evidence, how the building authority would have to decide if the decision were annulled and returned to

the building authority for further proceedings. At the same time, such a procedure must be proposed by the plaintiff or a person who is the party to the proceedings.

From the point of view of environmental protection against threats or damage, four types of proceedings according to the Code of Administrative Justice are relevant: (1) proceedings on an action against a decision of an administrative body (Sections 65–78 of the Code of Administrative Justice), (2) protection against inactivity of an administrative body (Sections 79–81 of the Code of Administrative Justice), (3) proceedings on protection against unlawful interference, instruction or coercion of an administrative body (Sections 82–87 of the Code of Administrative Justice), proceedings on revocation of a measure of a general nature or part thereof (Sections 101a - 101d of the Code of Administrative Justice).

In all the above cases, standing to bring a legal action (locus standi) is based on an interest in rights. In addition, an action against an administrative decision may be brought by persons who were participants in the proceedings for the contested decision.

According to already established case law, a person concerned who was not a party to administrative proceedings can bring an action against a decision of an administrative body (see, for example, the judgment of the Supreme Administrative Court of 31 January 2019, file No. 2 As 250 / 2018-68). This ensures, in particular, that the public concerned has access to justice under the regime of Article 9 paragraph 3 of the Convention. However, the condition for bringing an action against a decision of an administrative body is the **exhaustion of remedies**, which means that environmental associations, which do not have to take part in subsequent proceedings at first instance and can only lodge an appeal against a first-instance decision, must do so in order to meet the conditions of standing.

The law does not regulate a special standing of the public concerned for environmental protection. An exception is Section 9d (1) of the EIA Act, according to which environmental associations that have legally existed 3 years or are supported by at least 200 persons may bring an action for annulment of a decision issued in subsequent proceedings and challenge the substantive or procedural legality of this decision; in so doing, they are deemed to have rights which may be curtailed by the decision taken in subsequent proceedings. This regulation is based on the concept of the concern of environmental associations, which has long been held by Czech courts and according to which only their procedural rights could be affected. However, in its judgment of 30 May 2014, file No. I. ÚS 59/14, the Constitutional Court concluded that environmental associations enjoy also material rights, and they can object to these rights being affected. Their standing to bring an action for the annulment of the zoning plan (i.e. in the regime of Article 9 paragraph 3 of the Convention) was made conditional by the Constitutional Court mainly on the evidenced focus of the association, its history and its relationship to the location concerned. Subsequent case law has adopted the same approach – and in the case of an action brought by an environmental association, it usually assesses its relationship to the site in question.

The **new Building Act** provides for a shortened time limit for bringing administrative actions against decisions of the building authority (1 month). Under the new Building Act, the plaintiff may extend the action to cover statements not yet challenged or to include additional points of action only within 2 months of being notified of the decision. **The Act on Accelerating the Construction of Strategically Important Infrastructure** (No. 416/2009 Coll.) also shortened the time limits for filing lawsuits and cassation complaints, and introduced restrictions on the possibility of filing a motion for granting suspensive effect (it can only be filed directly with the lawsuit), as well as restrictions on the possibility of correcting defects in submissions, including submissions to administrative courts (i.e. according to this regulation, it is necessary to file a defect-free cassation complaint within the 14-day time limit, even if only with part or the basis of the cassation argumentation, which can then be expanded – this was confirmed by the Supreme Administrative Court's ruling of 26 June 2024, No. 8 As 96/2024-96, and also by the Constitutional Court's ruling of 16 October 2024, file No. IV. ÚS 2416/24). These measures make it more difficult to access the administrative courts, in particular the Supreme Administrative Court (it is necessary to prepare a perfect cassation complaint within 14 days and, where appropriate, to arrange legal representation – in proceedings before the Supreme Administrative Court, a party must be represented by a lawyer, unlike in the case of a previous administrative action.

a) regarding Article 9 paragraph 1

If the disclosure of information is refused under the Act on the Right of Access to Information on the Environment, this refusal takes the form of a decision which can be appealed. The applicant may file an action against a negative decision on appeal within the general time limit (2 months). Judicial review takes place in the same way as for other decisions in accordance with Section 65 et seq. of the Code of Administrative Justice.

In contrast to the previous report, the court may order the information to be provided: if there are no grounds for refusing to disclose the information, the court will annul the decision on the appeal and the decision of the obligated entity to refuse disclosure of the information and order the obligated entity to provide the requested information within a period which may not exceed 30 or 60 days from the date of delivery of the judgment to the obligated entity.

b) regarding Article 9 paragraph 2

According to the EIA Act, associations that meet the conditions stipulated by law (environmental associations that have existed for at least 3 years or that provide a signature document with at least 200 signatures) have access to justice in relation to decisions issued in subsequent proceedings. These associations may bring an action for annulment of a decision issued in a subsequent proceeding and challenge the substantive or procedural legality of that decision, and it is considered that these associations have rights to which they may be curtailed by a decision issued in a subsequent procedure.

Furthermore, in the case where, according to the EIA Act, a notification of a project is submitted, but within the subsequent screening procedure, it is decided that this plan will not be assessed in the EIA process, an association may file an appeal against the conclusion of the screening procedure and against the decision on appeal also an action before the administrative court. This action may also be brought by other persons concerned if their rights are concerned, even though they do not have the right to appeal against the decision.

The conditions of standing of persons concerned to bring an action against a decision issued in subsequent proceedings are assessed according to the general regulation in the Code of Administrative Justice. The same rule applies to the conditions of standing to bring an action against a decision given in **proceeding which is not subsequent proceeding** but falls within the scope of Article 9 paragraph 2 of the Convention (decision to issue an integrated permit not preceded by an EIA), both for environmental associations and persons concerned.

In assessing the conditions for the plaintiff's standing under Article 9(2), the courts do not require an allegation or proof of direct infringement of plaintiff's rights. In the case of actions against decisions made in a subsequent procedure after the EIA process, or actions against the conclusion of a screening procedure, they proceed on the basis that the associations are subject to a legal presumption that they have rights which may be infringed (as expressed in section 7(9) and section 9d(1) of the EIA Act).

Unlike the EIA Act, the Integrated Prevention Act (No 76/2002 Coll.) does not contain the same presumption that would apply in the case of an action against an integrated permit. However, even in this case, the courts do not assess if plaintiff's rights are concerned, which also applies to the review of substantial amendments to an integrated permit (see judgment of the Regional Court in Ústí nad Labem of 7 August 2024, No. 16 A 82/2021-341).

c) regarding Article 9 paragraph 3

The scope of Article 9 paragraph 3 of the Convention includes, in particular, proceedings for an action against a decision of an administrative body outside the regime of Article 9 paragraph 2 of the Convention (i.e. mostly decisions other than those issued in subsequent proceedings) and proceedings for annulment of a measure of a general nature or part thereof, which typically concern proposals for the cancellation of a zoning plan or other spatial planning documentation.

Any person who could be curtailed on their rights has standing to bring an action. In the case of an action against a decision, these will typically be persons (legal and natural) who were participants in the administrative proceedings in which the contested decision was issued, but this participation is not a condition (see, for example, the judgment of the Supreme Administrative Court of 18 April 2014, No. 4 As 157 / 2013-33).

The courts therefore consider, in the case of applications for annulment of measures of a general nature, as well as actions brought by non-participants, against the decision of the administrative authority, the factual curtailment of rights. In general, they require a relatively close relationship of a natural person to possible damage to the environment already when assessing the conditions of active procedural legitimacy to bring an action. The Supreme Administrative Court, for example, in its judgment of 13 October 2010 No. 6 Ao 5 / 2010-43 stated (to the possible concern of the petitioner, natural persons living at a distance of about 30 km from the planned boating activities, which may affect the population of freshwater pearl mussels) that *"it is aware of the considerable variety of possible forms of interference with the right to the environment; typically it could be, for example, air, water or soil pollution, which would have an indisputable (adverse) impact on the environment even in the area outside the source of this pollution. However, the environmental impact in the present case is very specific; the occurrence of freshwater pearl mussels in the upper reaches of the Vltava does not directly affect the quality of life of the petitioner ad b) and it is difficult to imagine the actual impact of the reduction of the freshwater pearl mussel population in the section of the river on the petitioner's life."* The cited conclusions must be taken with some reserve due to the recapitulated shift in the case law of the Constitutional Court and the Supreme Administrative Court, according to which to meet the conditions of standing even conceivable and indirect impairment of the plaintiff's rights (see especially the resolution of the Extended Senate of the Supreme Administrative Court, No. 2 As 187 / 2017-264).

In the case of environmental associations, the courts derive the fulfilment of individual conditions of standing in particular from the claims of the association itself or from the statutes. At the same time, they import a rebuttable presumption that the association focuses on the entire area defined in its statutes, which may not always correspond to the name of the association. The courts also infer the association's history and relationship to the site from facts known to them *ex officio*, i.e. that a particular association participates in court and administrative proceedings in matters of environmental protection or that it submitted comments in proceedings on the issuance of the contested zoning plan. The relationship to the site can also be given by the activities of the members of the association themselves. A wider standing may be based on the significance of the challenged project at issue or the importance of the interests involved. For example, an association of a national purview may be affected in its substantive sphere by a decision concerning a project, if the operation of the project undoubtedly exceeds the borders of the region concerned, or it has an impact on the whole territory of the country or at least on a large territory. Similarly, an association established outside the territory concerned may defend the interests of the protection of a nationally or even transnationally unique site (see, for example, the judgments of the Supreme Administrative Court of 16 January 2016, No. 3 As 13/2015-200, and of 30 September 2015, No. 6 As 73/2015-40).

Although there remains some uncertainty as to the assessment of the conditions of standing to bring action of the public concerned in some specific cases, **since the previous report,** there has been a refinement of these conditions through judicial case law. This is happening in several respects.

First of all, the courts have been clarifying which interests fall within the scope of environmental protection and which no longer do. It is also true that associations established for the purpose of protecting nature and the landscape may argue against a broader interference with their rights, which is not limited by the substantive scope of the Act on the Protection of Nature and the Landscape (No 114/1992 Coll.), but corresponds to the concept of the right to a healthy environment (see the judgment of the Supreme Administrative Court of 27 April 2023, No 1 As 21/2023-84).

For example, the courts have accepted that associations and individuals concerned by the right to a healthy environment can oppose inadequate climate policy of the state (judgment of the Supreme Administrative Court of 20 February 2023, No. 9 As 116/2022-166). Similarly, according to the Supreme Administrative Court, the object of interest of associations undoubtedly includes individual environmental components that are the subject of EIA (e.g. protection of surface water according to the Supreme Administrative Court judgments of 23 August 2024, No. 2 As 120/2024-84, and of 12 August 2024, No. 6 As 125/2024-76). The Supreme Administrative Court also did not rule out the possibility that the association might be affected by a breach of veterinary regulations in the keeping of livestock (specifically, by the decision in the procedure for the liquidation of a chicken farm), which is indicative of

a broad concept of the environment, which includes the welfare of livestock (Supreme Administrative Court judgment of 19 January 2024, No. 5 As 94/2023-26).

On the other hand, the Supreme Administrative Court concluded that the protection of cultural monuments is not included among the components of the environment (judgment of 23 March 2023, No. 6 As 319/2021-111), although it is also the subject of an EIA. According to the courts, associations cannot raise objections concerning the well-being of housing (judgment of the Municipal Court in Prague of 27 June 2024, No. 5 A 72/2020-154). Such an interpretation appears to be highly restrictive, even in the light of the more recent case-law of the European Court of Human Rights on Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (in particular the judgment in Klimaseniorinnen Schweiz Verein and Others v. Switzerland, No. 53600/20).

Furthermore, the courts have specified the **conditions of standing**, i.e. the relationship to the site. With exceptions, they follow the approach explained in the previous report. They confirm, for example, that even informal activities (e.g. educational or leisure activities) in or near the territory concerned are sufficient to concern an association, and that an association's seat located in another municipality or area is not an obstacle to judicial protection (see, for example, the judgment of the Supreme Administrative Court of 18 July 2024, No. 6 As 150/2023-81).

However, there are also cases to the contrary, where the courts of first instance dismiss the action for lack of prejudice to the association, which proceeds in accordance with previous case law (see the resolution of the Regional Court in Ostrava – Olomouc Branch of 1 November 2022, No. 63 A 3/2022-40, which was annulled by the Supreme Administrative Court in its judgment of 4 May 2023, No. 7 As 309/2022-34). Actions brought by **associations with a national scope of activity** are assessed more strictly than in the previous monitoring period. For example, the Regional Court in Plzeň held that the decision on a species exemption due to the implementation of a motorway section affecting only part of the Central Bohemian Region did not constitute such an exceptional case where issues of supra-local importance affecting also the legal sphere of an association with its registered office in Brno and with general competence in the field of environmental protection would be addressed (judgment of 10 October 2023, No. A 65/2022-107). Similarly, the same court ruled that the same association was not affected by the species exception due to the construction of a bypass of the municipality, while all the protected species concerned are commonly and abundantly found in the landscape. The Supreme Administrative Court upheld the conclusions, stating that this was not an exceptional case dealing with issues of supra-local significance, such as a nationwide significant decline of a species (judgment of 13 September 2024, No. 7 As 99/2024-71). These conclusions, although apparently not contrary to the requirements of the Convention, appear to be inconsistent in relation to the judicial review of similar local or regional projects, which has been fully admitted (see, for example, judgments of the Supreme Administrative Court of 21 December 2023, No. 8 As 233/2021-57, or of 2 November 2023, No. 9 As 99/2023-32).

When assessing the active procedural standing of **individuals**, a plausible allegation of possible prejudice to rights is generally sufficient. However, when the courts examine active standing (prejudice caused by an established act of unlawfulness), the situation is usually more complex. This is due to the fact that individuals – natural persons – point to all sorts of defects in the contested acts, while being at a certain distance from the contested intention, so that they may or may not be affected in their rights. Therefore, the courts, together with the conditions for procedural standing, gradually specify the content of the right to property and the right to a healthy environment (see, for example, the judgment of the Supreme Administrative Court of 23 December 2022, No. 2 As 86/2020-134). Possible noise or odour nuisance is generally assessed by the courts in favour of a broader concept of nuisance; nuisance, for example, by visual emissions (which can be established either to be or not be present) is already a very difficult technical question, especially when there are a large number of claimants (see, for example, the judgment of the Regional Court in Brno of 2 February 2023, No. 62 A 105/2021-253), and its assessment may be difficult for the competent court.

In general, case law confirms that individuals may also allege, through the infringement of their rights, breaches of legal provisions primarily intended to protect public interests (see, for example, judgment of the Supreme Administrative Court of 9 May 2024, No. 6 As 366/2023-46).

Environmental protection is also invoked by entities other than environmental associations and individuals – natural persons. For example, the Supreme Administrative Court has held that a commercial corporation (joint-stock company) cannot claim protection of an endangered species of animal if its activities related to nature protection are not in any way evident from the records and documents in the Commercial Register, nor are they alleged. Thus, prejudice is not generally excluded, but in this case the action is completely outside the scope of the applicant's purpose and standard business (judgment of the Supreme Administrative Court of 23 August 2024, No. 5 As 245/2023-53).

A more accommodating approach to the assessment of the substantive rights of environmental associations is also reflected in the fact that the courts have accepted an action against a decision brought by an **association that was founded only after the contested administrative decision** became legally effective (judgment of the Supreme Administrative Court of 21 March 2024, No. 9 As 279/2023-45), as well as an action for annulment of a measure of a general nature brought by an association founded after the measure of a general nature became effective (judgment of the Supreme Administrative Court of 26 April 2017, No. 3 As 126/2016-38).

The standing of associations in substantive law has also been admitted in proceedings for protection against **unlawful interference** by an administrative authority (Judgments of the Supreme Administrative Court of 20 February 2023, No. 9 As 116/2022-166, of 19 January 2024, No. 5 As 94/2023-26, of 26 June 2024, No. 6 As 166/2023-56). Associations can thus seek remedy against factual inaction by administrative authorities, or against acts which do not take the form of a decision or a measure of a general nature. According to more recent case law, associations may also sue **public law contracts** (judgment of the Supreme Administrative Court of 19 February 2024, No. 2 As 8/2023 33).

On the other hand, the courts examine more closely whether associations serve their declared purpose and do not act as a cover for private disputes without any link to the public interest. Such conduct is described by the courts as an abuse of rights (see the judgment of the Regional Court in Pilsen of 18 June 2024, No. 57 A 45/2023-233).

For the sake of completeness, it may be added that problems arise in practice when dealing with situations where a specific entity carries out an activity that requires a permit under national law without an official permit – typically, so-called illegal constructions. Until 2021, administrative authorities and administrative courts refused to allow any entity to go to court in this matter. This approach began to change when the Supreme Administrative Court, in its judgment of 26 March 2021, No. 6 As 108/2019-39, stated that by the inaction of the construction authority, which does not initiate proceedings for the removal of a building in contravention of the Building Act, the construction authority interferes with the subjective rights of persons directly affected by the building, in particular the right of ownership. This situation can be defended against by an action for interference. The decision concerns the standing of the persons whose subjective rights are affected.

d) regarding Article 9 paragraph 4

As regards the requirement of effective judicial review, the court may, by way of **injunctive relief**, order the parties to do something, to refrain from doing something or to bear something, if there is a risk of serious harm, and that it is therefore necessary to adjust the parties' situation on a temporary basis. The court may also impose an obligation on a third party, by way of injunctive relief, if the third party can be reasonably asked to meet the obligation.

A court may, if petitioned, grant a stay of an action and if the enforcement or other legal consequences of the decision would be disproportionately more detrimental to the plaintiff or petitioner than that which the granting of the stay could be to other persons, if this is not be contrary to an important public interest. Granting a stay of an action suspends the effects of the contested decision until the court has reviewed it.

In assessing whether the conditions for granting of a stay are met, administrative courts generally give priority to the public interest in environmental protection. However, it depends on the permitting phase of the project or activity that has been decided. The courts assume that if the decision on the merits would be made at a time when, for example, the contested building permit had already been implemented, judicial protection would lose its meaning (see, for example, the judgment of the Supreme Administrative Court of 14 June 2007, No. 1 As 39 / 2006-55).

If the action challenges a decision issued in subsequent proceedings under the EIA Act, the special provision of Section 9d (2) of the EIA Act will apply, according to which the court decides on the action to grant a stay or an injunctive relief according to the Code of Administrative Justice. A court will grant a stay of an action or order an injunctive relief if there is a risk that the implementation of the project would cause serious damage to the environment. In practice, however, this is not always the case, which may increase the risk of environmental damage.

As regards the **requirement of timeliness**, actions in the field of environmental protection are not, by law, among the preferential ones heard, however, the court may decide on them preferentially for serious reasons. The requirement to expedite the case arises from special laws. Under the new Building Act, as a general rule, if the court grants suspensive effect to an action, it will hear and determine the action as a matter of priority (§ 308). The requirement of priority does not apply to cassation appeal proceedings. Pursuant to Section 9 (2) of the EIA Act on actions against decisions issued in **subsequent proceedings**, the court will decide within 90 days after the action has reached the court. And according to Section 2 (2) of the Act on Acceleration of Construction (Act No. 416/2009 Coll.), the deadlines for filing actions with courts to review or replace administrative decisions issued in proceedings under this Act are halved. The court will then decide **within 90 days**. This time limit also applies to cassation appeal proceedings.

Compliance with the requirement of **reasonable costs of court proceedings** is ensured by the amount of court fees, which is generally low (with reservations below): the court fee for an action in administrative justice is CZK 3,000, in the case of a cassation complaint CZK 5,000. In addition, a participant who demonstrates that he does not have sufficient resources may be partially exempted from court fees at his own request. At the same time, if necessary in order to defend his rights, an attorney may be appointed.

Decisions of regional administrative courts and the Supreme Administrative Court are **publicly available** (www.nssoud.cz), as is the case law of the Constitutional Court (https://nalus.usoud.cz/).

e) regarding Article 9 paragraph 5

The provision of information to the public on access to judicial review is not codified in a uniform manner. The public can learn about the nature of individual court proceedings and the conditions of judicial protection, for example, from the websites of the Supreme Administrative Court and the Constitutional Court. However, the conclusions of court decisions interpreting these conditions are not provided on the court's website or on other state-operated websites.

Legal decisions and measures of a general nature issued by public administration bodies do not contain instructions on the possibility of judicial defence. The legal aid system for persons who, for financial reasons, cannot afford the services of attorneys, focuses more on general civil law advice. The complexity of environmental processes usually requires standard legal services for a fee. These are highly specialised legal services that are not provided by most lawyers.

Environmental actions are subject to court fees. Complainants may apply for a fee waiver, but this is not typically granted by the courts to environmental associations. Although the level of court fees in the Czech Republic is not such as to prevent access to justice, the overall cost of environmental litigation increases if it is necessary to invoke judicial protection repeatedly. In addition, an amendment to the Code of Civil Procedure and a related amendment to the Court Fees Act (No. 549/1991 Coll.) is in the process of being drafted, which is expected to significantly increase the court fees for action and appeal proceedings.

XXIX. Obstacles that prevent the implementation of Article 9

The implementation of Article 9 of the Convention is hindered by unclear conditions for standing to bring an action in the case law, as well as by the unclear continuity of decisions in matters of environmental protection and access to justice. While the courts infer the possibility that an action may also be brought by a person who was not a participant but whose rights the decision infringed, procedural rules do not correspond to this (e.g. the need to contest a decision given at first instance if no one appeals against it, the absence of clearly defined time limits for bringing an action in such a case, etc.). In addition, the burden of resolving objections is shifted to the courts in this way.

The regulation governing court proceedings is unsystematically fragmented into several legal instruments, which makes it difficult to navigate the conditions and requirements of a particular procedure, not only for the applicants, but also for the administrative authorities and the courts. Partial aspects of court proceedings are already regulated in a rather comprehensive manner by the new Building Act, the EIA Act (No. 100/2001 Coll.) and the Act on Accelerating the Construction of Strategically Important Infrastructure (No. 416/2009 Coll.).

Moreover, efforts to speed up the decision-making process under the special rules have not been significantly successful: the short time limits for decisions of administrative courts are routinely exceeded in practice, although the time it takes to arrive to a decision by regional courts and the Supreme Administrative Court has generally been shortened. The shortened time limits for bringing actions before administrative courts (including the Supreme Administrative Court), combined with other restrictions on the removal of defects in submissions, can lead to difficulties in accessing judicial protection.

Access to justice is not sufficiently served if a final administrative decision already entitles the applicant to start the activity in question (e.g. authorisation of the project, including felling of trees), but it takes time for the court to rule on at least temporary protection. Thus, the applicants are not able to obtain the suspensive effect of the action before the project or part of it which has an environmental impact can be implemented on the basis of the final decision of the administrative authority. Although some actions may have suspensive effect, it is not the rule. Especially in the case of major transport infrastructure projects, courts often reject applications for suspensive effect on the basis of the overriding public interest in the project or the fact that the applicant has failed to prove that irreversible damage to the environment is imminent.

XXX. Further information on the practical application the provisions of Article 9

According to the current interpretation of the conditions of standing to bring an action, access to justice has also been widened to include other persons, such as natural persons – non-owners, who claim in particular the violation of the right to a favourable environment. The argument of violation of a right to environment is still used more as ancillary to the interference with property rights.

XXXI. Website addresses relevant to the implementation of Article 9

www.nssoud.cz

www.usoud.cz

www.frankbold.org

www.zelenykruh.cz

XXXII. General comments on the objectives of the Convention

The objectives of the Convention intersect with a wide range of environmental processes. In the conditions of the Czech Republic, their fulfilment is also aimed at fulfilling the right to a favourable environment.

At the same time, however, a certain trend can be observed in which the Czech Republic holds the requirements of the Convention as a minimum standard that it meets, but has no ambition to further exceed this standard and open up public participation.

XXXIII. Legislative, regulatory and other measures that implement the provisions on genetically modified organisms according to Article 6 bis and Annex I bis

In the Czech Republic, the field of GMOs is governed by Act No. 78/2004 Coll., on the handling of genetically modified organisms and genetic products, as amended, and directly applicable EU regulations (Regulation No. 1829/2003 on genetically modified food and feed, and Regulation 1830/2003 concerning the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms).

GMOs and genetic products may be handled only on the basis of an authorization granted on the basis of Act No. 78/2004 Coll. The procedure for granting a permit for contained use, permit for release into the environment and for entry in the list for placing on the market is governed by Section 5 of the Act, which together with Section 10 sets out the manner and deadlines for publishing information at various stages of the decision-making.

The Czech legislation **does not explicitly allow the public to become a participant in the procedure** for permitting the release of GMOs into the environment. Only consultative public participation is allowed. The scope of participants in the proceedings pursuant to Act No. 78//2004 Coll. is not regulated, so the general regulation in the Administrative Procedure Code applies, according to which other persons whose rights are affected may become participants, in addition to the applicant.

Consultative participation in decision-making pursuant to Act No. 78//2004 Coll. consists in participating in a public hearing and making a statement. The public (any person) can send their written statement to the Ministry of the Environment within 30 days from the date of publication of the application. If the Ministry thus receives a dissenting statement on the release of the GMO into the environment, it will order a public hearing of the submitted application before deciding on the application. It will publish information on the public hearing at least five days in advance in the same manner as above. The decision on the submitted application always includes a summary settlement of statements.

The Ministry of the Environment maintains a register of permitted GMOs and a register of persons authorized to handle GMOs pursuant to Act No. 78/2004 Coll. and publishes these registers on its website (Section 22 of the Act).

The Ministry of the Environment also publishes a list of GMO cultivation sites on its website (Section 23 (2) of Act No. 78/2004 Coll.).

After 2020, Act No. 78/2004 Coll. has undergone changes (amendments to Act No. 261/2021 Coll. and 132/2022 Coll.), which mainly concern the protection of confidentiality of certain data. Access to data that can be designated as confidential by law is limited. It is only accessible to selected persons, including, in particular administrative authorities.

XXXIV. Obstacles that prevent the implementation of Article 6 bis and Annex I bis

The current legislation allows only for consultative participation of the public (apart from the general regulation of the Administrative Procedure Code).

XXXV. Further information on the practical application the provisions of Article 6 bis and Annex I bis

XXXVI. Website addresses relevant to the implementation of Article 6 bis

https://www.mzp.cz/cz/geneticky_modifikovane_organismy

XXXVII. Follow-up on procedure in the case of violation of the Convention

At the Meeting of the Parties in Geneva (18–20 October 2021), Decision VII/8e regarding the compliance of the Czech Republic with its obligations under the Aarhus Convention was adopted. The conclusions contained in this decision arise from four cases addressed by the Aarhus Convention Compliance Committee: ACCC/C/2010/50, ACCC/C/2012/70, ACCC/C/2012/71, and ACCC/C/2016/143.

In response to case ACCC/C/2012/70, partial non-legislative measures were adopted to raise awareness of the Aarhus Convention's requirements regarding public participation in the preparation of strategies (plans, programs) concerning the environment. Information about these requirements has been added, for example, to the Strategic Work Portal (https://mmr.gov.cz/cs/microsites/portal-strategicke-prace-v-ceske-republice/nastroje-a-metodicka-podpora/zapojovani-verejnosti). Additionally, the website of the Ministry of the Environment has introduced a new section dedicated to draft strategic documents aimed at strengthening communication with the public (https://www.mzp.cz/cz/pripravovane_strategicke_dokumenty).

In response to case ACCC/C/2012/71, a new amendment to Section 9f of the EIA Act was adopted, improving the notification of foreign authorities concerned and the affected public during transboundary subsequent proceedings. Previously, foreign affected public entities were often only involved at the EIA stage and were not informed when subsequent proceedings commenced. This practice was criticized by Czech courts, which addressed the issue through the direct effect of EU law (see the ruling of the Supreme Administrative Court dated 23 June 2021, No. 10 As 36/2021-77). Under the new provision, if the subject of the subsequent proceeding is a project subject to transboundary environmental assessment, the administrative authority responsible for the subsequent proceeding must, in cooperation with the Ministry of the Environment, notify the concerned state within 15 days of the proceeding's commencement about the opportunity for its public, concerned public, and concerned regional and local self-governing authorities to comment or participate in the proceeding.

In response to case ACCC/C/2016/143, partial amendments to Act No. 263/2016 Coll., the Nuclear Act, have been enacted. These amendments aim to ensure public participation in proceedings under the Nuclear Act in cases where decisions affect the environment and public participation is not otherwise guaranteed (e.g., in proceedings under the Building Act). Additionally, the amendments seek to improve the methods of informing the public about relevant proceedings and processes.