

RECENT DEVELOPMENTS 2015/2016

Ilona Jancarova

Czech Republic

Legislation:

- Act No. 224/2015 on Prevention of Significant Accidents – completely new Act brought just minor changes to comply with Directive 2012/18/EU
- Act No. 416/2009 Coll., on speeding up of traffic, water and energetic infrastructure was amended by the Act No. 49/2016 Coll. This amendment is focused on the problem of purchase of private land by the state and methods of its evaluation.
- Act No. 123/1998 on Environmental Information - Amendment No. 83/2015 Coll.: changes in relation to infrastructure for spatial information and metadata
- Act No. 185/2001 Coll. on wastes was amended by the Act 229/2015 Coll. The most important changes aimed at compliance with EU Directive:
 - changes in the scope of the Act
 - changes in some definitions
 - changes in delisting petition regarding to hazardous waste
 - changes related to waste hierarchy, to reporting and recording of the shipments of hazardous wastes, collection systems, recycling of ships etc.
 - waste management plans (at national, regional and local levels)
- Act No. 100/2001 Coll. on the environmental impact assessment was amended by the Act No. 223/2015 Coll. The most important changes:
 - Decision on finding of no significant impact (e.g. no EIA procedure is required to decide on the project) is subject to administrative and judicial reviews
 - binding character of the environmental impact statement
 - duty to present a coherence stamp to prove the proposed project is identical with the project assessed from the environmental impact point of view
 - public concerned is distinguished from the general public
 - right of public concerned to participate in consequent decision making procedures
 - access to the court (judicial review of the development consent/permit).

- Act No. 201/2012 Coll., on the air protection was amended by Act No. 382/2015 Coll.:
 - changes regarding to biofuels

Jurisprudence:

30.9.2015, č.j. 6As 73/2015-40 Supreme Administrative Court

2.10.2015, č.j. 2As 84/2015-56 Supreme Administrative Court

Both cases dealt with exemptions from the protection of 39 critically endangered species which were granted by the Regional Nature Protection Authority to enable to carry out 2 projects of new navigation measures. The Environmental Impact Statement (EIS supported variant I of the project; other variants were not assessed) was elaborated in 2000. Regional Authority decided based on the EIS and it did not take into account other information that emerged based on comments of the public.

The Court held that there is no doubt that decision-making authorities are bound by precedent decisions of administrative authorities. These authorities however, are entitled to change their decisions only if factual conditions were changed.

Environmental Impact Statement does not impede investigation of other possible variants of the project in question. The Nature protection Authority is to prove that there is no “other satisfactory solution”.

25.8.2015 č.j. As 295/2014-41 Supreme Administrative Court

This case was focused on IPPC permit and its relation to development permit. The Court held that the Act on Intergrated Prevention and Pollution Control (IPPC Act) sets clearly that building permit must not be granted without valid IPPC permit (IPPC permit must be issued previously). § 46.2 of the Act enables to grant IPPC permit at first and then to decide on the development permit; on the other hand, IPPC Act did not establish the duty to issue development permit prior to IPPC permit.

13.10.2015 IV ÚS 3572/14

The finding of the Constitutional Court dealt with the standing of NGOs in judicial review of land use plans. (Land use plans are adopted in the form of so called “measure of the general character”).

In its previous finding of 6. 1. 1998 sp. zn. I. ÚS 282/97 the Constitutional Court held that rights related to environment belong only to natural (physical) persons. This opinion was changed recently (30. 5. 2014, sp. zn. I. ÚS 59/14 Constitutional Court). The Constitutional Court held that „in democratic state, environment is the asset which is to be protected and the public including NGOs (legal persons) should participate in its protection. It is not only legitimate, but also legal claim of NGOs to protect the rights and common interests of citizens“. This direction was followed in respect to judicial review of land use plans. In its finding of October 2015, the Constitutional Court ruled that the former opinion of the Constitutional Court has been redrafted. The citizens associated in NGOs (which were established with the aim to protect the nature) may enforce their right to the favorable environment through such NGO. These NGOs have a standing in judicial proceedings dealing with the review of measures of the general character (legal form of land use plans).