

**ACCESS TO A NATIONAL COURT BY CITIZENS
IN THE CZECH REPUBLIC**

(based on the outline by L. Krämer)

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A. Present state of the law

(1) In the Czech Republic the traditional damage is covered by the Civil Code (Act 40/1964 as later amended). Particularly the section 420a of the Code concerns environmental damage. According to this provision everybody is liable for a damage that he/she caused to another person by an operational activity. Pursuant to the Civil Code the damage is caused by the operational activity if it is caused:

- a) by the activity of an operational character or by a thing used during the activity;
- b) by physical, chemical or biological impacts of an operation on environment;
- c) by carrying our work by which the damage is caused on a real estate of another person or using the real estate is made substantially more difficult or impossible. It is a strict liability.

It is a strict liability. The Czech law gives a citizen right to go to court. But neither the Civil Code nor the Civil Judicial Procedure Act make the burden of proof easier for the victim.

(2) In case of a "non traditional damage" the citizen cannot take an action against pollution/impairment of the environment. He can only inform a competent authority about the damaged caused. The authority can but does not need to take further steps.

(3) The same is true in case of illegal situation (unauthorised landfills etc.).

If a citizen was a participant in permitting procedure resulting in a permit which he/she considers as illegal he/she can use a regular remedial action according to the rules of "administrative procedure code".

(4) Environmental organisations have the same possibilities as citizens.

(5) The current Czech does not provide a citizen or an environmental organisation right against a passive administration.

B. Future under Aarhus Convention

(6) There should be a right of action for environmental organisation if public authorities are passive and do not take appropriate steps against illegal acts. According to the draft of the Administrative Judicial Order (the Act on the reform of the administrative judiciary system) the administrative courts will deal with actions against non-activity of public authorities. The draft admits an "active legitimisation" of environmental organisations (of any person) to take an action in public interest if a special act provides so. This right will have to be laid down by the environmental legislation, by the Act on Environment, e.g.

(7) There should be a right for an NGO to claim environmental damages. According to the Czech law rules the cost of the procedure are paid by the person who lost the case. The idea of covering the cost of NGO from the penalty payment is viable in case that the NGO action wins.

(8) Pursuant to the Czech law (Civil Judicial Order) the winner gets back his/her expenses (fully or partly if he/she wins only partly). The costs are covered by the loser. The same mechanism is suggested for the administrative judicial procedure in the draft of the Administrative Judicial Order.

(9) In the Czech legal system it is necessary to improve the court system concerning the administrative courts. Current system is not fully in compliance with the third pillar of the Aarhus Convention. The main problems of the system of administrative courts are as follows:

- ❑ it does not allow citizens and NGOs who are not "directly concerned" to take an action against the contested administrative decision/permit; only participants in the administrative procedure (from which the contested decision resulted) had the right to take an action against it;
- ❑ it does not make possible an action against passivity of public authorities;
- ❑ until recently (before the Constitutional Court deleted the relevant part of the Civil Judicial Order concerning the administrative courts procedure) administrative courts were allowed to review the contested decision only from a purely legal (formal) point of view (formal legality). They did not have the right to review its substantial legality, to produce and evaluate evidence and to change the contested decision.

C. EC level

(10) – (13) I think there is a need to establish certain EC rules which would represent a framework for national legislation. It concerns mainly the right for standing of environmental organisations. It seems as necessary to provide the right of action against EC institutions in environmental matters to make the EC environmental law implementation more efficient. It would be helpful to give this right to certain international environmental NGOs. They should have an access to the ECJ.

New rules should not concern only the enforcement of EC environmental law. National legislation is highly influenced by the EC law and a division of both legal systems would not make sense.