

Public participation in the procedures under the Building Act

Abstract

This work deals with the participation of environmental NGOs in environmental decision-making with emphasis on the procedures under the Building Act. The purpose is to evaluate the level of public participation in the Czech Republic and assess whether it meets the international obligations.

The protection of the environment relies on the activity of public authorities. However, the public participation also plays an important role in this matter. The public participation is a valuable tool of a democratic society, as it may help to protect the environment. The institute of public participation takes many different forms. The rights and duties related to the public participation may vary depending on its particular form. Natural and legal persons are both able to take part in decision-making of public authorities. Nevertheless, these two subjects have different position and may set up different claims in the administrative procedures. The institute of public participation is not regulated unanimously. The regulation varies upon different acts and areas of participation.

The regulation of public participation exists at several levels – the international law, the law of the European Union, the national constitutional law and the Czech statutory law. The most important international treaty in the area of public participation is with no doubts the Aarhus Convention. The treaty provides obligations for its member states in order to establish the right to environmental information, the right to participate in decision-making and the right to access to justice. The Aarhus Convention requires an effective public participation to any decision-making procedure that could have an impact on the environment. The public participation is considered as effective when it is enabled from a sufficiently early stage; it provides environmental information and access to them; and public authorities take account of the opinion of the public. The provisions of the Aarhus Convention are not self-executing in the Czech law system.

The European law embraced several provisions of the Aarhus Convention into its directives and the EU acceded to the Aarhus Convention, so the Convention is binding for its bodies and institutions.

The Constitution of the Czech Republic guarantees the right to favourable environment. The scope of this right is however defined by statutes. Czech law recognises

several statutes that can provide the participation in the procedures under the Building Act. The most important one, the Protection of the Nature and the Landscape Act, has been amended in the sense that it no longer provides the right of broad participation in various administrative procedures.

Several statutes set a specific condition of the participation in the requirement of the harm of someone's interest. Therefore, the right to participate is closely connected to the right to favourable environment. This right has been subject to a considerable decision-making development of administrative courts and the Constitutional court of the Czech Republic. Environmental NGOs had been prevented from the access to the courts for a long period of time. However, the recent development entitled the possibility of participation based on the right to the favourable environment even to environmental NGOs. Nevertheless, the amendment of the Building Act disqualified environmental NGOs from a great number of procedures under the Building Act. According to the art. 36 and 38 of the Charter of Fundamental Rights and Freedoms, the judicial decisions concerning the access to the courts should be applicable to the access to administrative procedures as well. From this point of view, the amendment of the Building Act stands on the very edge of the constitutionality. This work has therefore reviewed the constitutionality of the amendment of the Building Act and its necessity and suitability for the Czech legal system.

Klíčová slova: Aarhus convention, public participation in environmental decision-making, environmental NGOs