Abstract

The aim of this work on Access to Justice in Environmental Matters is to describe possibilities of access of natural and legal persons to the judicial protection of the environment in the Czech Republic. Judicial protection is an important element of ensuring the right to favourable environment. To ensure effective environmental protection and the rights of individuals to the favourable environment, it is necessary to ensure the widest possible access of natural and legal persons to public authorities and courts claiming the illegality of decisions, acts and omissions of public authorities or third parties. Broad judicial protection of the right to favourable environment is necessary and indispensable part of democratic system and a prerequisite for the functioning of basic human rights in practice.

This work must first address the question of substantive legal right to favourable environment -its content and range of entities to which this fundamental constitutional right belongs. Right to favourable environment means the right to an environment which is polluted below given limit. Thus, on environmental polluted and stressed as a consequences of human activities, including the introduction of physical, chemical or biological agents emissions and agents in extent to which the legal regulations on protection of the environment and human health allow. The courts generally do not provide protection to anyone who seeks fulfilment or not overrun of environmental indicators that are more stringent than the limit values imposed by public law.

The right to favourable environment is tightly linked with the right to claim such a right by ways the law accepts. Without an option to claim an alleged violation of rights before public authorities and judicial authorities, of course, the law could not be pursued. Possibility to exercise and enforce the constitutional right to a favourable environment confirmed the Constitutional Court judgement No. 96/1997 Collection of the Constitutional Court finds, Volume 8, dated July 10 1997 and following case law of this and other courts. The right to favourable environment and opportunity to claim such a right belong to any natural person. However, the problem remains with unresolved question whether the right to favourable environment belongs also to legal persons (in practice it will be especially on local and national civil society organizations to protect the environment). Yet the prevailing view expressed in the resolution of the Constitutional Court No. 2 / 1998 Collection of the Constitutional Court, followed by other judicial institutions, is that not. The application of this theoretically legal construction on which this opinion is based, has so far serious negative consequences for public participation in environmental matters and greatly distorts processes, in particular the administrative proceedings and judicial reviews of decisions issued by public authorities. Community groups have been and are de facto forced to wage wars, entrenched in the field of procedural rights, without having to address the merits of the case -environmental degradation and its various aspects. The Supreme Administrative Court, which has repeatedly criticized this situation, tries to correct this twisted state of administrative justice in the environmental field with support of Article 2, paragraph 5 and Article 9 of the Aarhus Convention and in many of its recent decisions said that the civic association, for which the environmental protection

interests is the major object of activity, are bearers of the right to favourable environment in accordance with Article 35, paragraph 1 of the Charter of Fundamental Rights and Freedoms. These judgments, which into the theoretically legal dispute over possession of the constitutional right to favourable environment, bring an conformity with the Aarhus Convention, are only the first swallow. But the majority of other courts such interpretation ignore. It will therefore probably take some time, when the court case law settles this interpretation and the persons seeking the protection of the environment will not be forced to battle fiercely unwanted procedural battles over purity of processes of public authorities, without having to deal with the real essence of the dispute.

A shift in the question of bodies, having the right to a favourable environment, in yet rigid Czech legal environment brought about the Aarhus Convention. This international convention is a key document for decision making in matters of environmental protection and public access to justice in these matters. The Aarhus Convention has three pillars, and brings a huge qualitative leap in the level of procedural protection of the environment and the possibility to claim the right to a favourable environment in the Czech Republic and in other states that are party to the Convention.

Key Article 9 AC requires member states to ensure an independent review of decisions, acts or omissions of public authorities in the field of right to information and participation in decision-making in matters of environmental protection, and this review and its outcome must be timely, honest, fair and not requiring high costs of the complainant from the public concerned. The review must relate to the substantive law and procedural law. Particularly, requirements on timeliness and substantive legal review of the legality is in the Czech legal environment a considerable problem, which can be seen as an improper implementation of the requirements of Article 9 of the Aarhus Convention. Ensuring the timeliness of the decisions is complicated mainly for administrative courts, particularly due to the unfortunate solution of territorial jurisdiction to review the matter at stake. Cumulating of cases before the Municipal Court in Prague in conjunction with the only exceptionally recognized suspense effect of actions filed, causes in many cases utter inefficiency of the judicial procedures, which irritates complainants and judges. Judgement is rendered after a few years, when investment or other purposes, the permit application was challenged, is usually already underway or even in operation. The problem with the substantive legal review stems from the above theoretically legal construction that legal persons (including NGOs, by the Aarhus Convention ex lege confirmed as concerned) can not claim a right to favourable environment and substantive illegality of the order issued a public authority, but only procedural rights they hold in the proceedings.

This work mainly focus on an approach of natural and legal persons to judicial protection provided by various courts in their defending the interests of the environment. Firstly the possibility of access to national courts -administrative, civil, criminal and constitutional is analysed. Most attention is logically devoted to the administrative courts, as most frequent type of court to which persons seeking the environmental protection turn to. Besides the description of different types of actions the work describes the practical problems with the effectiveness of judicial protection, particularly in light of the above-mentioned Aarhus Convention. Civil and criminal justice system plays in the field of environmental protection although marginal but in some cases irreplaceable role. Access to natural and legal persons to the Constitutional Court is already quite limited and it is a rather exceptional way of protecting the environment. Admissibility of a submission to the Constitutional Court is bound

to alleged hit of the fundamental human rights and freedoms. Important for the wider environmental protection is that with the constitutional complaint may also be submitted a proposal to repeal a law or part thereof.

Access to the Court of Justice of the European Union (SDEU) by citizens or legal persons of a Member State is significantly limited and rather exceptional. Unlike national courts, citizens and legal persons have not a possibility to turn to the SDEU protection against another person or against the state. Direct access to the Court of Justice of the European Union to protect the right to favourable environment or the right to health, against the decision, act or omission of the national authority or against the conduct of another person is not admissible. Direct access to the Court of Justice of the European Union is allowed only against the decision of the EC institutions (called the action for annulment). The indirect way is through other bodies, national courts in the induction of the preliminary ruling and the European Commission in the complaint.

Protection of the environment may also be claimed before the European Court of Human Rights. The Convention does not have self-contained right to favourable environment, but its existing case law has developed also towards the protection of this right. Thanks Court case law the Article 8 of the European Convention on Human Rights and Fundamental Freedoms (right to respect for private and family life) covers also protection against noise, air pollution, protection against environmental risks of certain human activities (e.g. nuclear testing, operation of hazardous installations) and protection against the consequences of major investment projects (e.g. construction or operation of nuclear power stations).

This work also compares the implementation of the third pillar of the Aarhus Convention in the Czech Republic with another European country, namely with Estonia. Short presentation by the Estonian implementation of the AC and its comparison with the Czech way of implementation clearly shows many similar provisions, but also many differences that are reflected in the ability of access of natural and legal persons to justice in environmental matters. Estonian way of implementation of the third pillar of the Aarhus Convention was for this work from a range of other possible candidates to compare selected deliberately, because it is one of the most advanced way of implementation of access to judicial protection of the environment throughout the European region. The Estonian way of implementation of requirements of the Aarhus Convention seems to be exemplary for the other signatories of this important international convention. Recent legislation and evolving practice of the court covers environmental protection in the Czech Republic quite well, from increased use of administrative justice through the first swallows in the civil justice system and specifically but still the rarely used criminal justice system. In cases where even these judicial instances fail, then comes an extraordinary tool with in the constitutional justice and the Strasbourg Court of Human Rights. Assistance may also be seek by the Court of Justice of the European Union, albeit indirectly, through the European Commission and national courts. However, in the field of access to judicial protection of the environment under these instruments in the Czech Republic is still many things to improve in order to ensure (in the words of the Aarhus Convention), effective, honest, fair and timely redress of substantive and procedural illegalities, claimed by the public concerned in the field of environmental protection.