Access to justice falling outside of the scope of EIA, IPPC/IED, access to information and ELD

1.1. Decisions, acts or omissions concerning specific activities falling within the scope of EU environmental legislation outside the scope of the EIA and IED Directives[1]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedures for adopting the decision, act or omission and its content (in particular, the conditions to be fulfilled and any time-limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

Many decisions, acts or omissions concerning specific activities that fall within the scope of EU environmental law outside the scope of the EIA and IED directives may be challenged in administrative and judicial proceedings.

The right to administrative review or access to judicial review is regulated by several sector-specific laws and by the Code of the Administrative Judicial Procedure.

Some laws grant the public (individuals or NGOs) the status of a “party to administrative proceedings”, some laws grant the public the status of a “participating person”, and other laws grant members of the public a different special status and other opportunities to participate in administrative proceedings.

The fundamental difference between these statuses is that the “party to the proceedings” has the right to file an administrative appeal against a decision which has the suspensive effect and, consequently, the right to bring the legal action against the administrative decision in court.

Only the “party to the proceedings” has the right to initiate an administrative review. The party to the proceedings, having regard to the possibility of filing an administrative appeal, has the greatest possibility of influencing the administrative decision within the administrative proceeding.

Others (e.g. participating person) do not have the right to file an appeal against the administrative decision but can only challenge a valid administrative decision in court.

Legal standing in administrative proceedings:

The legal standing (right to be a party to the proceedings) in the administrative proceedings is generally regulated by the Administrative Procedure Code.

The basic rule is that in administrative proceedings, the party to the proceedings is the person (natural or legal) whose rights or obligations of a party to the proceedings may be possibly directly affected by an administrative decision or who claims that he/she may be directly affected by the decision in his/her rights, legally protected interests or obligations, until the contrary is proved (§ 14 par. 1 of the Administrative Procedure Code).

However, some sector-specific environmental laws regulate the standing in administrative proceedings (and define the status of a party to the administrative proceedings) in a different way from the general regulation in the Administrative Procedure Code.

These laws include, for example, the Building Act, the Nature Conservation Act, Act on water, Mining Act, Atomic Act.

- Act no. 50/1976 Coll. Building Act, which regulates the issuing of permits for many projects with significant impact on the environment, includes autonomous definitions of parties to the administrative proceedings for issuing the land use and building permits. According to the Building Act, natural and legal persons whose ownership or other rights to land or buildings, as well as to neighbouring land and buildings, including flats, may be directly affected by the decision are also parties to the proceedings.
- Act no. 543/2002 Coll. on nature and landscape protection (Nature Conservation Act) regulates, inter alia, permitting interventions in protected parts of nature or in the conditions for the protection of protected species of animals and plants. In addition to the applicant for a permit, the party to the proceedings is also an association (NGO), whose subject of activity for at least one year is nature and landscape protection and which has submitted a preliminary and general application for participation in the proceedings, if it has confirmed its interest in being a party to the individual administrative proceedings initiated. Administrative decisions under the Nature Conservation Act are the most frequently challenged decisions in court by the public (e.g. decisions to grant an exemption for the killing of a protected animal).
- Act No. 364/2004 Coll. on water: According to the Act on water, the public may have the status of a party to a special proceeding concerning interventions in surface water and groundwater if it submits a written opinion on the project documentation for the proposed activity or on the expert opinion of the state water administration body.
- Act No. 541/2004 Coll. on peaceful use of nuclear energy (Atomic Act): According to the Atomic Act, a natural or legal person whose status of the party to the proceedings derives from a special law is also a party to the permit procedure - referring to the Aarhus Convention as that special law. (Members of the public can also become a party to the permit proceedings subject to the EIA procedure.)
- Act No. 44/1988 Coll. on the protection and use of mineral resources (Mining Act): The party to the proceeding on determining the mining area is a natural or legal person whose ownership and other rights to land or buildings may be directly affected by the determination of the mining area, the municipality in whose territory the mining area is located (and a natural person or legal person whose status as a party to the proceedings follows from the EIA Act - members of the public can also become a party to the permit proceedings subject to the EIA procedure).

Following an appeal against a decision of a public authority of first instance and a decision of a superior body on appeal, the public mentioned above may bring an action against the decision on permit in court.

Legal standing in court proceedings:

As mentioned above, the general concept for standing in the administrative judiciary is generally based on the impairment of right theory.

According to § 178/1 of the Code of the Administrative Judicial Procedure, the plaintiff who has standing in the administrative judiciary is a natural person or legal entity who claims that, as a party to an administrative proceeding, has been deprived of his rights or legally protected interests by a decision of a public administration body or a measure of a public administration body.

However, based on the effects of the Aarhus Convention and EU law, national law established a special standing for the “interested public”. The Code of the Administrative Judicial Procedure ensures the right of access to the court for “the interested public”. The term “interested public” may have a different meaning than the term “public concerned” mentioned above.

According to § 42 par. 1 of the Code of the Administrative Judicial Procedure, if the “interested public” has the right under a special regulation to “participate” in administrative proceedings in environmental matters, it is entitled

- to bring an action before the court against administrative decision or administrative measure,
- to bring an action before the court against illegal inactivity of the public authority,
- to bring an action before the court against a generally binding regulation (e.g. zoning plan regulating land use and building permissions).

This means that according to the Code of the Administrative Judicial Procedure the “interested public" is a person who has the “right to participate in administrative proceedings” concerning environmental matters under specific environmental laws.

The “interested public” may be a natural person, legal entity, local civic association, or environmental non-

governmental organization. In practice, there are also cases where both the municipality and the foreign legal entity (foreign environmental NGO) have become “interested public”.

In this context, it is important how the “interested public” is defined in the sector-specific laws governing administrative proceedings in the field of the environment.

In order for a member of the public to be the “interested public” within the meaning of the Code of Judicial Administrative Procedure and to have the right to bring an action before the court, he/she must satisfy the conditions laid down. In particular, the fulfilment of the condition that a member of the public has a “right to participate in administrative proceedings pursuant to a special regulation” is essential. The “right to participate in administrative proceedings” is a broader concept than a status of a “party to the administrative proceedings”. It is a difference compared to the previous legislation, where legal standing in proceedings before the administrative court was limited exclusively to a “party to the administrative proceedings”.

The “right to participate in administrative proceedings” thus includes:

- the right to be “a party to the proceedings” (e.g. § 82 of Act No. 543/2002 Coll. on nature and landscape protection, § 24 of Act No. 24/2006 Coll. on environmental impact assessment, § 9 of Act No. 39/2013 Coll. on integrated pollution prevention and control),
- the right to be a “participating person”, which has a narrower scope of rights than a “party to the proceedings” and does not have a right to file an administrative appeal against the decision (Section 67 of Act No. 326/2005 Coll. on forests in conjunction with the provisions of Section 15a of the Administrative Procedure Code: the association, including non-governmental organizations, is a "participating person" in proceedings under the Act on forests, if its activities are related to the use and protection of forest property and if it announces its participation in the proceedings no later than 7 days after notification of proceedings),
- the right of “other participation” (e.g. participation in approving of land use plans (zoning plans) according to § 12 to 18 of the Building Act, participation in approving of the air protection plan according to § 10 of Act No. 137/210 Coll. on air, participation in approving of the river basin management plan according to § 13 of Act No. 354/2004 Coll. on water).

According to § 178 par. 3 of the Code of the Administrative Judicial Procedure the “interested public” is entitled to bring an administrative action before a court against a decision of a public authority or a measure of a public authority if it claims that the public interest in the field of the environment has been violated.

The level of access to national courts has increased significantly thanks to the case law of the Court of Justice of the European Union and the subsequent case law of the Supreme Court. Decisions of the Court of Justice of the European Union have had a very positive effect on the interpretation of the procedural rules concerning the status of a party to administrative and judicial proceedings (rules of standing).

The Judgment of the Court of Justice of the European Union of 8 March 2011 Lesoochranárske zoskupenie VLK v Ministerstvo životného prostredia Slovenskej republiky (Slovak brown bear case, C-240/09) is very significant, where the court ruled: “*Article 9(3) of the Convention on access to information, public participation in decision-making and access to justice in environmental matters approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 does not have direct effect in European Union law. It is, however, for the referring court to interpret, to the fullest extent possible, the procedural rules relating to the conditions to be met in order to bring administrative or judicial proceedings in accordance with the objectives of Article 9(3) of that convention and the objective of effective judicial protection of the rights conferred by European Union law, in order to enable an environmental protection organisation, such as the Lesoochranárske zoskupenie, to challenge before a court a decision taken following administrative proceedings liable to be contrary to European Union environmental law*.”

Based on the judgment of the Court of Justice of the EÚ C-240/09, judgments of the Supreme Court were issued granting environmental NGOs the status of a party to the proceedings in order to have access to the court.

Judgment of the Supreme Court No. 5 Sžp 41/2009, of 12 April 2011:

In the opinion of the Supreme Court, international legal obligations (i.e. the Aarhus Convention) *“ultimately have the effect of undermining the classical concept of standing of individuals in proceedings before administrative*

authorities by granting the status of party to proceedings to the public or in some cases to the public concerned with environmental protection." The Supreme Court then stated as follows: *"...only such an interpretation of procedural law (...) that enables an environmental organization such as the applicant to challenge a decision taken in an administrative procedure, which may be contrary to Community law in the field of the environment, in the court (...) will take the account of the objectives of Article 9(3) of the Aarhus Convention, as well as the objective of effective judicial protection of the rights conferred by Community law."*

Judgment of the Supreme Court No. 3Sžp 30/2009, of 2 June 2011:

"In the light of the judgment of the Court of Justice of the European Union C-240/09 of 08.03.2011, the panel of the appellate court [the Supreme Court], by an extensive euro-conform interpretation (...) assumed that the applicant (...) had the same scope of rights as he would have had in a position of a party to the proceedings. The party to the proceedings pursuant to § 14 par. 1 of the Administrative Procedure Code is the person who is the bearer of a legal right, legally protected interest or obligation (which results from a substantive law) and such a right, legally protected interest or obligation is a matter for the administrative authority to decide. The national authority must always strive for a euro-conform interpretation of national law (interpretation in conformity with Community law). The national court may, by means of a euro-conform interpretation, fill in the gaps in national law. However, the Court of Justice of the European Union stated that Article 9 para. 3 of the Aarhus Convention has no direct effect in European Union law, it was necessary to broaden the above definition of a party to the proceeding by a broad interpretation, and the same range of rights as a party to the proceeding is required to be granted to other persons (in particular the right to bring an action designed to ensure the protection of rights) in order to ensure effective protection of the environment."

However, in addition to these positive developments, shortcomings remain regarding the delays in court proceedings before administrative courts and the insufficient use of the power of administrative courts to grant suspensory effect to an action against an administrative decision.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

Pursuant to Art. 9 par. 3 of the Aarhus Convention and the judgments of the Court of Justice of the EU, the courts are obliged to interpret procedural rules in such a way that the public can challenge both procedural and substantive legality of decisions, acts or omissions.

This was confirmed, for example, by a judgment of the Supreme Court No. 5 Sžp 41/2009, of 12 April 2011: *"...only such an interpretation of procedural law (...) that enables an environmental organization ... to challenge a decision taken in an administrative procedure, which may be contrary to Community law in the field of the environment, in the court (...) will take account of the objectives of Article 9(3) of the Aarhus Convention, as well as the objective of effective judicial protection of the rights conferred by Community law."*

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

According to § 7 letter (a) of the Code of the Administrative Judicial Procedure the party to the proceedings must exhaust ordinary remedies against the challenged administrative decision (i.e. administrative appeal) before bringing an action before the court. However, the law explicitly states that the obligation to exhaust all ordinary remedies do not apply to the "interested public" if the interested public has not been entitled to an ordinary remedy (appeal).

In cases where the "interested public" does not have the status of a "party to the proceedings" according to a special regulation, but "another form" of participation in the proceedings (e.g. a "participating person"), it cannot fulfil the requirement to exhaust ordinary remedies (appeal). The requirement to exhaust the ordinary remedies (appeals) therefore does not apply to the "interested public" in this case.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

It is generally acknowledged that in order for members of the public to become "interested public" and have legal standing under the Code of the Administrative Judicial Procedure, they must in some way participate in the public

consultation phase of the administrative proceedings.

5) Are there some grounds/arguments precluded from the judicial review phase?

As mentioned above, the examination and verification of scientific accuracy in court proceedings within administrative judiciary is limited. According to the Code of the Administrative Judicial Procedure, the courts do not review decisions of public authorities, the issuance of which depends solely on an assessment of the state of health of persons or the technical state of affairs. In the case of a decision issued by a public authority on the basis of an administrative discretion permitted by law, the administrative court will only examine whether such a decision has deviated from the limits and aspects established by law. The administrative Court does not assess the effectiveness, economy and appropriateness of a decision of a public authority (with the exception of the review of administrative sanctions).

This means that the use of arguments relating to the assessment of a person's state of health or technical condition, efficiency, economy and proportionality of a decision of a public authority is limited in court proceedings within the administrative judiciary.

But the court can review expert and technical findings to the extent that there is no conflict between these findings and the conclusions and reasoning of the administrative authorities.

6) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

According to the Administrative Procedure Code, all parties have the same procedural rights and obligations in the proceedings. According to the Code of the Administrative Judicial Procedure, the parties have equal status in proceedings before the administrative court.

7) How is the notion of “timely” implemented by the national legislation?

According to the Administrative Procedure Code, the administrative authorities are obliged to deal with each case responsibly, to handle it in a timely manner and without undue delay, and to use the most appropriate means that lead to the correct handling of the case.

The Administrative Procedure Code sets deadlines for issuing an administrative decision (see above).

The administrative court may grant suspensive effect to the action so that the execution of the challenged decision does not render the judicial review of the decision useless.

If the administrative court has granted the administrative action a suspensive effect (pursuant to § 185 letter a)), is obliged to decide on the administrative action it within six months from the date on which the resolution on granting suspensory effect was issued (§ 187 par. 1 of the Code of the Administrative Judicial Procedure).

8) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

The general rules concerning the possibility for a court to grant the suspensive effect to an action against an administrative decision apply here.

The court may, on the application of the plaintiff, grant the suspensive effect to the action – i.e. to order suspension of validity of the challenged administrative decision (§ 185 of the Code of the Administrative Judicial Procedure). The court cannot order suspension of validity of the challenged administrative decision on its own motion.

The court may grant the suspensive effect to the action under the following conditions:

1. if there is a threat of serious harm, considerable economic loss or financial loss, serious environmental damage or other serious irreparable consequence due to immediate execution or other legal consequences of the challenged decision of the public authority or measure of the public authority, and granting the suspensive effect is not in conflict with the public interest,
2. if the challenged decision of the public authority or measure of the public authority is based on the legally binding act of the European Union, about the validity of which there are serious doubts, and there would

otherwise be a threat of serious and irreparable harm to the plaintiff, and granting the suspensive effect is not in conflict with the interest of the European Union.

The court must decide on the plaintiff's application to grant suspensive effect within 30 days of receiving the defendant's statement on this application.

If the administrative court does not uphold the plaintiff's application to grant the suspensive effect, it must dismiss it by a resolution.

A cassation complaint is not admissible against the court resolution concerning the suspensive effect of the action.

9) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive, and do these include express statutory reference to a requirement that costs should not be prohibitive?

The court fees for individual kinds of actions within the administrative judiciary are based on a flat rate regardless of the value of the case (see the Act No. 71/1992 Coll. On court fees).

The court fee for filing an administrative action against a measure of a public administration body is EUR 70.

The court fee for filing an administrative action against a general binding regulation of a municipality is EUR 50.

Foundations and charities, humanitarian organizations, environmental organizations and associations active in consumer protection, as well as municipalities and regions in proceedings in the public and social interest, are exempt from the court fee.

The administrative court must, on application, grant an exemption from the court fee if the circumstances of the party to the proceedings so require.

The court fee will be refunded if the court proceedings have been discontinued, if the administrative action, cassation complaint or action for renewal of the court proceedings has been dismissed or withdrawn before the case is heard.

In proceedings within the administrative judiciary, the administrative court will award the plaintiff the right to full or partial reimbursement of the costs if the plaintiff has been successful in whole or in part. But the administrative court may also decide not to reimburse all or part of the costs if there are “grounds for special consideration”. The administrative court will grant the defendant the right to reimbursement of the costs of the administrative court proceedings against the plaintiff according to the proportion of his success only if it can be “reasonably demanded”. However, the Code of the Administrative Judicial Procedure explicitly stipulates that the reimbursement of legal representation costs may be granted to a public authority only “exceptionally” (as they should have their own employees – lawyers, who can represent them in the dispute).

1.2. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with national implementing legislation for the Strategic Environmental Assessment (SEA) Directive 2001/42/EC[2]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedures for adopting the decision, act or omission (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

There is no provision in Slovak legislation that explicitly gives individuals or NGOs the access to justice with regard to “concepts, plans or programmes” covered by the SEA Directive or related to the environment.

However, the Code of Administrative Judicial Procedure expressly allows the “interested public” to bring an action against a “measure taken by a public administration body” and against a “general binding regulation”.

In order to be challenged in court, “concepts, plans or programmes” must either be a measure of a public

administration body or be adopted in the form of a “general binding regulation of a municipality”.

A person whose rights have been violated or an “interested public” may challenge in court not only a decision but also a measure of a public administration body.

According to § 178 par. 1 of the Code of the Administrative Judicial Procedure, the plaintiff who has a standing in the administrative judiciary is a natural person or legal entity who claims that, as a party to an administrative proceeding, he has been deprived of his rights or legally protected interests by a decision of a public administration body or a measure of a public administration body.

According to § 178 par. 3 and § 359 par. 2 of the Code of the Administrative Judicial Procedure, the “interested public” is entitled to bring an administrative action before a court against a decision of a public authority, a measure of a public administration body or general binding regulation of a municipality, if it claims that the public interest in the field of the environment has been violated.

According to § 42 par. 1 of the Code of the Administrative Judicial Procedure, if the “interested public” has the right under a special regulation to “participate” in administrative proceedings in environmental matters, it is entitled

- to bring an action before the court against administrative decision or administrative measure,
- to bring an action before the court against illegal inactivity of the public authority,
- to bring an action before the court against a general binding regulation of a municipality (e.g. zoning plan regulating land use and building permissions are enacted by general binding regulation of a municipality).

This means that according to the Code of the Administrative Judicial Procedure, the “interested public" is a person who has the “right to participate in administrative proceedings” concerning environmental matters under specific environmental laws.

The “interested public” may be a natural person, legal entity, local civic association, or environmental non-governmental organization. In practice, there are also cases where both the municipality and the foreign legal entity (foreign environmental NGO) have become “interested public”.

In this context, it is important how the “interested public” is defined in the sector-specific laws governing administrative proceedings in the field of the environment.

In order for a member of the public to be the “interested public” within the meaning of the Code of Judicial Administrative Procedure and to have the right to bring an action before the court, he/she must satisfy the conditions laid down. In particular, the fulfilment of the condition that a member of the public has a “right to participate in administrative proceedings pursuant to a special regulation” is essential. The “right to participate in administrative proceedings” is a broader concept than a status of a “party to the administrative proceedings”.

As regards “concepts, plans or programmes”, the “right to participate in administrative proceedings” includes, for example, the participation of members of public (i.e. the participation is open to anyone) in

- approving land use plans (zoning plans) according to § 12 to 18 of the Building Act (the plan is enacted by the general binding regulation of a municipality),
- approving the air protection plan according to § 10 of Act No. 137/210 Coll. on air,
- approving the river basin management plan according to § 13 of Act No. 354/2004 Coll. on water).

Thus, if a member of the public (individual or NGO) has participated, for example, in the preparation of a land use plan (zoning plan), air protection plan or river basin management plan, it becomes the “interested public” and has the right to bring an action against these acts in court.

The effectivity of access to justice before national courts has increased significantly thanks to the case law of the Court of Justice of the European Union and the subsequent case law of the Supreme Court. Specifically, decisions of the Court of Justice of the European Union have had a very positive effect on the interpretation of the rules of standing in the administrative and court proceedings. First of all, the effectivity of the access to justice to national courts was significantly increased by the Judgment of the Court of Justice of the EU Lesoochranárske zoskupenie VLK v Ministerstvo životného prostredia Slovenskej republiky (Slovak brown bear case, C-240/09) which declared the indirect effect of Art. 9 par. 3 of the Aarhus Convention and the obligation of national courts interpret national procedural law in accordance with the objective of Art. 9 par. 3 of the Aarhus Convention.

Based on a lawsuit by several non-governmental organizations and residents of the city of Bratislava and their arguments referring to the Art. 9 par. 3 of the Aarhus Convention and the case law of the Court of Justice of the European Union, the Regional Court in Bratislava recognized their standing before the administrative court and annulled the measure *"Integrated air quality improvement programme for pollutants PM10, NO2, Benzopyrene and ozone in the field of air quality management"*.

There are no other similar cases known at present, but there is a chance that courts could also rule in this way in other cases concerning "concepts, plans or programmes" which are adopted in the form of a "measure of a public administration body" or in the form of a "general binding regulation of a municipality".

However, in addition to these positive developments, shortcomings remain regarding the delays in court proceedings before administrative courts and the insufficient use of the power of administrative courts to grant suspensory effect to an action against the administrative decision or measure of a public administration body.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

Pursuant to Art. 9 par. 3 of the Aarhus Convention and the judgments of the Court of Justice of the EU, the courts are obliged to interpret procedural rules in such a way that the public can challenge both procedural and substantive legality of decisions, acts or omissions.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

According to the Code of the Administrative Judicial Procedure, the plaintiff must exhaust ordinary remedies against the challenged administrative decision or measure (i.e. administrative appeal) before bringing an action in the court.

As there is no administrative review procedure and no administrative appeal can be filed against the approval of the plan, programme or general binding regulation of a municipality, there is no requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

According to the Code of Administrative Judicial Procedure, a person who has the "right to participate in administrative proceedings" ("interested public") may file an action in court. It follows from the principle of subsidiarity of the administrative judiciary that a person ("interested public") must exercise this right and participate in the administrative proceedings (make comments, participate at the hearing) to have standing before the court.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

As mentioned above, the court may, on the application of the plaintiff, grant the suspensive effect to the action (§ 185 of the Code of the Administrative Judicial Procedure). The court may grant the suspensive effect to the action if there is a threat of serious harm, considerable economic loss or financial loss, serious environmental damage or other serious irreparable consequence due to immediate execution or other legal consequences of the challenged decision of the public authority or measure of the public authority, and granting the suspensive effect is not in conflict with the public interest.

The administrative court may, at the request of the plaintiff, temporarily suspend a generally binding regulation of the municipality or one of its provisions if their application may jeopardize fundamental rights and freedoms, if there is a risk of significant economic damage or serious damage to the environment or any other serious irreparable consequence (§ 362 par. 1 of the Code of Administrative Judicial Procedure).

Thus, it is theoretically possible to grant the suspensive effect to the action against a plan or programme subject to SEA, but it may be difficult for the applicant to show that there is a risk of serious harm, considerable economic loss or financial loss, serious environmental damage or other serious irreparable consequence – for the absence of immediate direct effect of plan or programme.

6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

The court fees for individual kinds of actions within the administrative judiciary are based on a flat rate regardless of the value of the case (see the Act No. 71/1992 Coll. On court fees).

The court fee for filing an administrative action against a measure of a public administration body is EUR 70.

The court fee for filing an administrative action against a general binding regulation of a municipality is EUR 50.

Foundations and charities, humanitarian organizations, environmental organizations and associations active in consumer protection, as well as municipalities and regions in proceedings in the public and social interest, are exempt from the court fee.

The administrative court must, on application, grant an exemption from the court fee if the circumstances of the party to the proceedings so require.

The court fee will be refunded if the court proceedings have been discontinued, if the administrative action, cassation complaint or action for renewal of the court proceedings has been dismissed or withdrawn before the case is heard.

In proceedings within the administrative judiciary, the administrative court will award the plaintiff the right to full or partial reimbursement of the costs if the plaintiff has been successful in whole or in part. But the administrative court may also decide not to reimburse all or part of the costs if there are “grounds for special consideration”. The administrative court will grant the defendant the right to reimbursement of the costs of the administrative court proceedings against the plaintiff according to the proportion of his success only if it can be “reasonably demanded”. However, the Code of the Administrative Judicial Procedure explicitly stipulates that the reimbursement of legal representation costs may be granted to a public authority only “exceptionally” (as they should have their own employees – lawyers, who can represent them in the dispute).

1.3. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with the public participation requirements of Article 7 of the Aarhus Convention in respect of plans and programmes not submitted to the procedures set out in the Strategic Environmental Assessment (SEA) Directive 2001/42/EC[3]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedures for adopting the decision, act or omission (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

There is no provision in Slovak legislation that explicitly gives individuals or NGOs the access to justice with regard to “concepts, plans or programmes” related to the environment.

However, the Code of Administrative Judicial Procedure expressly allows the “interested public” to bring an action against a “measure taken by a public administration body” and against a “general binding regulation” of a municipality.

In order to be challenged in court, “concepts, plans or programmes” must either be a measure of a public authority or be adopted in the form of a general binding regulation of a municipality.

A person whose rights have been violated or an “interested public” may challenge in court not only a decision but also a measure of a public administration body.

According to § 178 par. 1 of the Code of the Administrative Judicial Procedure, the plaintiff who has standing in the

administrative judiciary is a natural person or legal entity who claims that, as a party to an administrative proceeding, he has been deprived of his rights or legally protected interests by a decision of a public administration body or a measure of a public administration body.

According to § 178 par. 3 and § 359 par. 2 of the Code of the Administrative Judicial Procedure, the “interested public” is entitled to bring an administrative action before a court against a decision of a public authority, a measure of a public administration body or general binding regulation of a municipality,if it claims that the public interest in the field of the environment has been violated.

According to § 42 par. 1 of the Code of the Administrative Judicial Procedure, if the “interested public” has the right under a special regulation to “participate” in administrative proceedings in environmental matters, it is entitled

- to bring an action before the court against administrative decision or administrative measure,
- to bring an action before the court against illegal inactivity of the public authority,
- to bring an action before the court against a general binding regulation of a municipality (e.g. zoning plan regulating land use and building permissions are enacted by general binding regulation of a municipality).

This means that according to the Code of the Administrative Judicial Procedure, the “interested public" is a person who has the “right to participate in administrative proceedings” concerning environmental matters under specific environmental laws.

The “interested public” may be a natural person, legal entity, local civic association, or environmental non-governmental organization. In practice, there are also cases where both the municipality and the foreign legal entity (foreign environmental NGO) have become “interested public”.

In this context, it is important how the “interested public” is defined in the sector-specific laws governing administrative proceedings in the field of the environment.

In order for a member of the public to be the “interested public” within the meaning of the Code of Judicial Administrative Procedure and to have the right to bring an action before the court, he/she must satisfy the conditions laid down. In particular, the fulfilment of the condition that a member of the public has a “right to participate in administrative proceedings pursuant to a special regulation” is essential. The “right to participate in administrative proceedings” is a broader concept than a status of a “party to the administrative proceedings”.

As regards “concepts, plans or programmes”, the “right to participate in administrative proceedings” includes, for example, the participation of members of public in

- approving of land use plans (zoning plans) according to § 12 to 18 of the Building Act (the plan is enacted by the general binding regulation of a municipality),
- approving of the river basin management plan according to § 13 of Act No. 354/2004 Coll. on water).

Thus, if a member of the public (individual or NGO) has participated, for example, in the preparation of a land use plan (zoning plan), it becomes the “interested public” and has the right to bring an action against these acts in court.

The effectivity of access to justice before national courts has increased significantly thanks to the case law of the Court of Justice of the European Union and the subsequent case law of the Supreme Court. Specifically, decisions of the Court of Justice of the European Union have had a very positive effect on the interpretation of the rules of standing in the administrative and court proceedings. First of all, the effectivity of the access to justice to national courts was significantly increased by the Judgment of the Court of Justice of the EU Lesoochranárske zoskupenie VLK v Ministerstvo životného prostredia Slovenskej republiky (Slovak brown bear case, C-240/09) which declared the indirect effect of Art. 9 par. 3 of the Aarhus Convention and the obligation of national courts interpret national procedural law in accordance with the objective of Art. 9 par. 3 of the Aarhus Convention.

Based on a lawsuit by several non-governmental organizations and residents of the city of Bratislava and their arguments referring to the Art. 9 par. 3 of the Aarhus Convention and the case law of the Court of Justice of the European Union, the Regional Court in Bratislava recognized their standing before the administrative court and annulled the measure *“Integrated air quality improvement programme for pollutants PM10, NO2, Benzopyrene and ozone in the field of air quality management”*.

There are no other similar cases known at present, but there is a chance that courts could also rule in this way in other cases concerning "concepts, plans or programmes" which are adopted in the form of a "measure of a public administration body" or in the form of a "general binding regulation of a municipality".

However, in addition to these positive developments, shortcomings remain regarding the delays in court proceedings before administrative courts and the insufficient use of the power of administrative courts to grant suspensory effect to an action against the administrative decision or measure of a public administration body.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

Pursuant to Art. 9 par. 3 of the Aarhus Convention and the judgments of the Court of Justice of the EU, the courts are obliged to interpret procedural rules in such a way that the public can challenge both procedural and substantive legality of decisions, acts or omissions.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

According to the Code of the Administrative Judicial Procedure the plaintiff must exhaust ordinary remedies against the challenged administrative decision or measure (i.e. administrative appeal) before bringing an action in the court.

As there is no administrative review procedure and no administrative appeal can be filed against the approval of the plan, programme or general binding regulation of a municipality, there is no requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

According to the Code of Administrative Judicial Procedure, a person who has the “right to participate in administrative proceedings” (“interested public”) may file an action in court. It follows from the principle of subsidiarity of the administrative judiciary that a person (“interested public”) must exercise this right and participate in the administrative proceedings (make comments, participate at the hearing) to have standing before the court.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

As mentioned above, the court may, on the application of the plaintiff, grant the suspensive effect to the action (§ 185 of the Code of the Administrative Judicial Procedure). The court may grant the suspensive effect to the action if there is a threat of serious harm, considerable economic loss or financial loss, serious environmental damage or other serious irreparable consequence due to immediate execution or other legal consequences of the challenged decision of the public authority or measure of the public authority, and granting the suspensive effect is not in conflict with the public interest.

The administrative court may, at the request of the plaintiff, temporarily suspend a generally binding regulation of the municipality or one of its provisions if their application may jeopardize fundamental rights and freedoms, if there is a risk of significant economic damage or serious damage to the environment or any other serious irreparable consequence (§ 362 par. 1 of the Code of Administrative Judicial Procedure).

Thus, it is theoretically possible to grant the suspensive effect to the action against a plan or programme, but it may be difficult for the applicant to show that there is a risk of serious harm, considerable economic loss or financial loss, serious environmental damage or other serious irreparable consequence - for the absence of immediate direct effect of plan or programme.

6) What are the cost rules to bring a chalenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

The court fees for individual kinds of actions within the administrative judiciary are based on a flat rate regardless

of the value of the case (see the Act No. 71/1992 Coll. On court fees).

The court fee for filing an administrative action against a measure of a public administration body is EUR 70.

The court fee for filing an administrative action against a general binding regulation of a municipality is EUR 50.

Foundations and charities, humanitarian organizations, environmental organizations and associations active in consumer protection, as well as municipalities and regions in proceedings in the public and social interest, are exempt from the court fee.

The administrative court must, on application, grant an exemption from the court fee if the circumstances of the party to the proceedings so require.

The court fee will be refunded if the court proceedings have been discontinued, if the administrative action, cassation complaint or action for renewal of the court proceedings has been dismissed or withdrawn before the case is heard.

In proceedings within the administrative judiciary, the administrative court will award the plaintiff the right to full or partial reimbursement of the costs if the plaintiff has been successful in whole or in part. But the administrative court may also decide not to reimburse all or part of the costs if there are “grounds for special consideration”. The administrative court will grant the defendant the right to reimbursement of the costs of the administrative court proceedings against the plaintiff according to the proportion of his success only if it can be “reasonably demanded”. However, the Code of the Administrative Judicial Procedure explicitly stipulates that the reimbursement of legal representation costs may be granted to a public authority only “exceptionally” (as they should have their own employees – lawyers, who can represent them in the dispute).

1.4. Decisions, acts or omissions also concerning plans and programmes required to be prepared under EU environmental legislation[4]

The plans covered by this section include:

1. Air Quality Improvement Programmes (required by Directive No. 2008/50/EC on Ambient Air Quality and Cleaner Air for Europe)
2. Waste Management Plans (required by Directive No. 2008/98/EC on Waste).
3. Water Management Plans (required by Directive 2000/60/EC on Framework for Community Action in the Field of Water Policy) including The River Basin Management Plans and River Sub-basin Management Plans.
4. The Areas within the system of Natura 2000 (required by Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora).

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the content of the plan (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

There is no provision in Slovak legislation that explicitly gives individuals or NGOs the access to justice with regard to “concepts, plans or programmes” related to the environment.

However, the Code of Administrative Judicial Procedure expressly allows the “interested public” to bring an action against a “measure taken by a public administration body” and against a “general binding regulation” of a municipality.

In order to be challenged in court, “concepts, plans or programmes” must either be a measure of a public authority or be adopted in the form of a general binding regulation of a municipality.

A person whose rights have been violated or an “interested public” may challenge in court not only a decision but also a measure of a public administration body.

According to the § 178 par. 1 of the Code of the Administrative Judicial Procedure, the plaintiff who has standing in the administrative judiciary is a natural person or legal entity who claims that, as a party to an administrative

proceeding, he has been deprived of his rights or legally protected interests by a decision of a public administration body or a measure of a public administration body.

According to § 178 par. 3 and § 359 par. 2 of the Code of the Administrative Judicial Procedure, the “interested public” is entitled to bring an administrative action before a court against a decision of a public authority, a measure of a public administration body or general binding regulation of a municipality, if it claims that the public interest in the field of the environment has been violated.

According to § 42 par. 1 of the Code of the Administrative Judicial Procedure, if the “interested public” has the right under a special regulation to “participate” in administrative proceedings in environmental matters, it is entitled

- to bring an action before the court against administrative decision or administrative measure,
- to bring an action before the court against illegal inactivity of the public authority,
- to bring an action before the court against a general binding regulation of a municipality.

This means that according to the Code of the Administrative Judicial Procedure, the “interested public” is a person who has the “right to participate in administrative proceedings” concerning environmental matters under specific environmental laws.

The “interested public” may be a natural person, legal entity, local civic association, or environmental non-governmental organization. In practice, there are also cases where both the municipality and the foreign legal entity (foreign environmental NGO) have become “interested public”.

In this context, it is important how the “interested public” is defined in the sector-specific laws governing administrative proceedings in the field of the environment.

In order for a member of the public to be the “interested public” within the meaning of the Code of Judicial Administrative Procedure and to have the right to bring an action before the court, he/she must satisfy the conditions laid down. In particular, the fulfilment of the condition that a member of the public has a “right to participate in administrative proceedings pursuant to a special regulation” is essential. The “right to participate in administrative proceedings” is a broader concept than a status of a “party to the administrative proceedings”.

As regards “concepts, plans or programmes”, the “right to participate in administrative proceedings” includes, for example, the participation of members of the public in the approval of the air protection plan according to § 10 of Act No. 137/210 Coll. on air,

Thus, if a member of the public (individual or NGO) has participated, for example, in the preparation of an air protection plan, they become the “interested public” and have the right to bring an action against this plan in court.

Based on a lawsuit by several non-governmental organizations and residents of the city of Bratislava, the Regional Court in Bratislava annulled the measure of the Bratislava District Office *“Integrated air quality improvement programme for pollutants PM10, NO2, Benzopyrene and ozone in the field of air quality management in the territory of the Capital of the Slovak Republic, Bratislava”*, by judgment 5S/31/2017 of 13 November 2018.

The Regional Court annulled the Integrated Programme on the grounds that

- the procedural conditions were not observed when publishing the draft Integrated Programme,
- the notice of public hearing on the draft Integrated Programme was not published on the defendant's website,
- the Integrated Programme was published on the website without information on the reasons for adopting the programme and information on public participation in its preparation,
- non-compliance with the requirements laid down in the Act No 137/2010 Coll. on Climate and Article 13 of the Directive 2008/50/ES,
- the measures taken and included in the Integrated Programme were not measurable, controllable and time-bound (so that the period in which the amount of pollution is exceeded is shortened as much as possible).

The Regional court annulled the Integrated Programme because it did not meet legal requirements, in particular it did not contain the required particulars and the District Office had not complied with the procedural conditions for approval of the programme and prevented public participation in its creation.

The Regional Court referred to the judgment of the Court of Justice of the EU C-237/07 *Janecek*, in which the Court of Justice ruled on the obligation to draw up action plan to improve air quality.

The Regional Court also referred to the judgment of the Court of Justice of the EU C-404/13 *ClientEarth*, in which the Court of Justice stated that the national courts were required to examine the content of the programmes to improve air quality and assess whether the measures contained will lead to the achievement of the limits in the shortest possible time.

The case law of the Court of Justice of the EU has thus made it possible to successfully challenge such plans in court and has made a significant contribution to the effectiveness of judicial protection in this case.

However, in addition to these positive developments, shortcomings remain regarding the delays in court proceedings before administrative courts and the insufficient use of the power of administrative courts to grant suspensory effect to an action against the administrative decision or measure of a public administration body.

2) Does the form in which the plan or programme is adopted make a difference in terms of legal standing (see also Section 2.5 below)?

If a plan or programme is adopted by decision or measure, it may be reviewed in accordance with the above mentioned provisions of the Code of the Administrative Judicial Procedure.

If a plan or programme is adopted in the form of a legal regulation (legislation), it can be challenged only in the Constitutional Court. Only certain entities are entitled to file a motion to initiate proceedings before the Constitutional Court (at least one-fifth of the members of parliament - i.e. at least 30 members of parliament, the President of the Slovak Republic, the Government of the Slovak Republic, the court, the General Prosecutor, the Public Defender of Rights).

3) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

Pursuant to Art. 9 par. 3 of the Aarhus Convention and the judgments of the Court of Justice of the EU, the courts are obliged to interpret procedural rules in such a way that the public can challenge both procedural and substantive legality of decisions, acts or omissions.

4) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

According to the Code of the Administrative Judicial Procedure, the plaintiff must exhaust ordinary remedies against the challenged administrative decision or measure (i.e. administrative appeal) before bringing an action in the court.

As there is no administrative review procedure and no administrative appeal can be filed against the approval of the plan, programme or general binding regulation of a municipality, there is no requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures.

5) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

According to the Code of Administrative Judicial Procedure, a person who has the “right to participate in administrative proceedings” (“interested public”) may file an action in court. It follows from the principle of subsidiarity of the administrative judiciary that a person (“interested public”) must exercise this right and participate in the administrative proceedings (make comments, participate at the hearing) to have standing before the court.

However, the “interested public” may also bring an action if the public authority prevents the public from participating in drawing up the plan or programme (see above the judgment of Regional Court in Bratislava 5S/31/2017 of 13 November 2018).

6) Are there some grounds/arguments precluded from the judicial review phase?

As mentioned above, the examination and verification of scientific accuracy in court proceedings within administrative judiciary is limited. According to the Code of the Administrative Judicial Procedure, the courts do not review decisions or measures of public authorities, the issuance of which depends solely on an assessment of the state of health of persons or the technical state of affairs. In the case of a decision or a measure issued or taken by a public authority on the basis of an administrative discretion permitted by law, the administrative court will only examine whether such a decision or measure has deviated from the limits and aspects established by law. The administrative Court does not assess the effectiveness, economy and appropriateness of a decision or a measure of a public authority (with the exception of the review of administrative sanctions).

This means that the use of arguments relating to the assessment of a person's state of health or technical condition, efficiency, economy and proportionality of a decision or a measure of a public authority is limited in court proceedings within the administrative judiciary.

7) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

According to the Administrative Procedure Code, all parties have the same procedural rights and obligations in the proceedings. According to the Code of the Administrative Judicial Procedure, the parties have equal status in proceedings before the administrative court.

8) How is the notion of “timely” implemented by the national legislation?

According to the Administrative Procedure Code, the administrative authorities are obliged to deal with each case responsibly, to handle it in a timely manner and without undue delay, and to use the most appropriate means that lead to the correct handling of the case.

The Administrative Procedure Code sets deadlines for issuing an administrative decision (see above).

The administrative court may grant suspensive effect to the action so that the execution of the challenged decision does not render the judicial review of the decision useless.

If the administrative court has granted the administrative action a suspensive effect (pursuant to § 185 letter a)), it is obliged to decide on the administrative action within six months from the date on which the resolution on granting suspensory effect was issued (§ 187 par. 1 of the Code of the Administrative Judicial Procedure).

9) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

As mentioned above, the court may, on the application of the plaintiff, grant the suspensive effect to the action (§ 185 of the Code of the Administrative Judicial Procedure). The court may grant the suspensive effect to the action if there is a threat of serious harm, considerable economic loss or financial loss, serious environmental damage or other serious irreparable consequence threatens due to immediate execution or other legal consequences of the challenged decision of the public authority or measure of the public authority, and granting the suspensive effect is not in conflict with the public interest.

The administrative court may, at the request of the plaintiff, temporarily suspend a generally binding regulation of the municipality or one of its provisions if their application may jeopardize fundamental rights and freedoms, if there is a risk of significant economic damage or serious damage to the environment or any other serious irreparable consequence (§ 362 par. 1 of the Code of Administrative Judicial Procedure).

Thus, it is theoretically possible to grant the suspensive effect to the action against a plan or programme, but it may be difficult for the applicant to show that there is a risk of serious harm, considerable economic loss or financial loss, serious environmental damage or other serious irreparable consequence.

10) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

The court fees for individual kinds of actions within the administrative judiciary are based on a flat rate regardless

of the value of the case (see the Act No. 71/1992 Coll. On court fees).

The court fee for filing an administrative action against a measure of a public administration body is EUR 70.

The court fee for filing an administrative action against a general binding regulation of a municipality is EUR 50.

Foundations and charities, humanitarian organizations, environmental organizations and associations active in consumer protection, as well as municipalities and regions in proceedings in the public and social interest, are exempt from the court fee.

The administrative court must, on application, grant an exemption from the court fee if the circumstances of the party to the proceedings so require.

The court fee will be refunded if the court proceedings have been discontinued, if the administrative action, cassation complaint or action for renewal of the court proceedings has been dismissed or withdrawn before the case is heard.

In proceedings within the administrative judiciary, the administrative court will award the plaintiff the right to full or partial reimbursement of the costs if the plaintiff has been successful in whole or in part. But the administrative court may also decide not to reimburse all or part of the costs if there are “grounds for special consideration”. The administrative court will grant the defendant the right to reimbursement of the costs of the administrative court proceedings against the plaintiff according to the proportion of his success only if it can be “reasonably demanded”. However, the Code of the Administrative Judicial Procedure explicitly stipulates that the reimbursement of legal representation costs may be granted to a public authority only “exceptionally” (as they should have their own employees – lawyers, who can represent them in the dispute).

1.5. Executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts[5]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedure for adopting or the content of the decision, act or omission of the national regulatory act (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

If the act is adopted in form of legal regulation (normative instrument), the only possibility of its direct judicial review is a review before the Constitutional Court.

According to the Article 125 par. 1 of the Constitution the Constitutional Court decides, for example, on the compatibility of

- laws with the Constitution and international treaties,
- government ordinances, generally binding legal regulations issued by ministries and other central bodies of the state administration with the Constitution and with laws, and
- generally binding legal regulations issued by local state administration bodies with the Constitution and with laws.

Only specific parties (e.g. at least one-fifth of Members of Parliament, the President of the Slovak Republic, the Government, the court, the general prosecutor, the public defender of rights) are entitled to initiate this review.

If the district court, the regional court or the Supreme Court is of the opinion that generally binding legal regulation or a particular provision related to the subject-matter of the proceeding contravenes the Constitution, constitutional laws, international treaties or laws, it will interrupt the court proceeding and submit a motion to the Constitutional Court. The finding of the Constitutional Court is binding for all courts. (Article 144 par. 2 of the Constitution).

For the public (both individuals and NGOs), it is not possible to suggest annulment of a legal regulation together

with a constitutional complaint against a specific decision in cases where the regulation was applied.

However, in the proceedings before the district court, the regional court or the Supreme Court, the public (individuals or NGOs) may propose that the court interrupt the proceedings and submit a motion to the Constitutional Court on the grounds that a legal regulation contravenes the Constitution, international treaty or law.

However, as mentioned above, if the act is adopted in form of the “general binding regulation of a municipality”, the “interested public” is entitled to bring an action before the court against a “general binding regulation of a municipality” (§ 42 par. 1 of the Code of the Administrative Judicial Procedure).

The Constitutional Court has explicitly stated that it is reviewing the compliance of national laws with the Aarhus Convention. The Aarhus Convention is explicitly recognized as an international convention which takes precedence over national laws and as a binding human rights law concerning access to justice in environmental matters.

As mentioned above, the amendment to the Act concerning the acceleration of the construction of motorways (Act No. 669/2007 Coll.) adopted in 2017 excluded the power of the administrative court to grant the suspensive effect of administrative actions against a zoning decision for construction of motorways and building permits for the construction of motorways. The Constitutional Court by decision of PL. ÚS 18 / 2017-152 of 4 November 2020 decided that this law is in conflict with Art. 9 par. 4 of the Aarhus Convention, which enshrines the right of the public for an administrative court to order an "injunctive relief" following an administrative action against a project authorization decision.

The requirements of the effectiveness of access to national courts in environmental matters formulated in the case law of the CJEU were not directly applied by the Constitutional Court in review of normative acts. As mentioned above, the Constitutional Court referred directly to the Aarhus Convention and reviewed the compliance of the national legislative act with the Aarhus Convention.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

The Constitutional Court reviews both substantive and procedural legality of the legal regulation. The Constitutional Court examines whether the regulation was adopted within the limits of the competence of the respective authority and in a manner prescribed by law.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

Specific entities authorized to initiate a review of legislation before the Constitutional Court (at least one-fifth of the Members of Parliament, the President of the Slovak Republic, government, the court, General Prosecutor, Public Defender of Rights) do not have to exhaust other remedies before submitting a motion to the Constitutional Court.

The public does not have the right to directly challenge the legislation in the Constitutional Court.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

The entities which are entitled to initiate the judicial review of legal regulations (normative act) before the Constitutional Court do not have to participate in consultation procedures.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

If the Constitutional Court accepts a petition, it may suspend the effectiveness of the challenged legal regulations or some of their provisions, if their further application could jeopardize the basic rights and freedoms, if there is a threat of a substantial economic damage or other serious irreparable consequence.

6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible

consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

Proceedings before the Constitutional are generally not subject to court fees.

However, in legally and factually similar cases previously decided by the Constitutional Court in which the complainant, who had submitted the constitutional complaint, was not successful, the Constitutional Court orders the complainant to pay court fee of EUR 30 for the eleventh and each subsequent complaint filed by the same complainant in the same year.

There is the requirement of mandatory (compulsory) representation by an attorney in proceedings before the Constitutional Court. The complaint must be supported by a power of attorney and this power of attorney must expressly state that it was issued for the purpose of representation before the Constitutional Court.

The requirement of mandatory representation by an attorney in proceedings before the Constitutional Court does not apply if reference to the Constitutional Court was made on the basis of a specific dispute by the lower court, where it was claimed that applicable law is unconstitutional, as this is not an individual constitutional complaint but the review of the legislation, where the complainant is not the party to the proceedings.

7) Is it possible to bring a legal challenge before a national court concerning any related EU regulatory act with a view to a validity reference under Article 267 TFEU, and if so how[6]?

The obligation for courts to make a reference for a preliminary ruling of the Court of Justice of the EU applies in all cases where EU law is interpreted, and also applies to the interpretation of the validity of acts adopted by the EU institutions and bodies.

Any party to the dispute may request the court to make a reference for a preliminary ruling, but it is only up to the court to decide whether to do so.

Under national law, there is no specific procedure for directly challenging an act adopted by an EU institution or body before a national court.

[1] This category of case reflects recent case-law of the CJEU such as *Protect C-664/15, the Slovak brown bear case C-240/09, see as described under the Commission Notice C/2017/2616 on access to justice in environmental matters*

[2] The SEA Directive relates to plans and programmes. These are also covered by Article 7 and Article 9(3) of the Aarhus Convention.

[3] See findings under ACCC/C/2010/54 for an example of a plan not submitted to SEA but subject to the public participation requirements of Article 7 of the Aarhus Convention.

[4] These fall within the scope of both Article 7 and Article 9(3) of the Aarhus Convention. See also relevant case-law of the Court of Justice of the European Union such as Case C-237/97, Janecek and cases such as Boxus and Solvay C-128/09-C-131/09 and C-182/10, as referred to under the Commission Notice C/2017/2616 on access to justice in environmental matters.

[5] Such acts come within the scope of Article 8 and Article 9(3) of the Aarhus Convention. An example of such an act concerns the decision of the national administration that featured in Case C-281/16, *Vereniging Hoekschewaards Landschap*, ECLI:EU:C:2017:774.

[6] For an example of such a preliminary reference see Case C-281/16, *Vereniging Hoekschewaards Landschap*, ECLI:EU:C:2017:774.

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