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?

In the administrative proceedings, procedural rights, including the right to appeal, are granted to the parties to the proceedings. Those who are parties to the proceedings can then usually also bring an action in court.

The basic rule for granting the status of party to the proceedings is based on the concept of one's "rights or duties being possibly directly affected" by the decision. According to Article 27 of the Code of Administrative Procedure, the parties to the proceedings are persons whose rights or duties can be directly affected by the administrative decision. However, this general regulation shall apply only if the specific administrative procedure is not regulated by a special law, which would take precedence over the general regulation. Most administrative proceedings are further regulated in special legislation which lays down special definitions for the parties to the proceedings which take precedence over general legislation. There are a large number of special laws governing the individual decision-making processes relevant to the protection of the environment. The most important ones, next to the EIA and IPPC processes, are listed below.

a) Act no. 183/2006 Coll., Building Act.

The Building Act sets its own definitions of parties of the administrative proceedings for issuing land use permits, building permits and other permits under the act. The definitions are generally based on the principle that only the applicant, individuals and legal entities whose property rights or other rights *in rem* can be directly affected by the permit, including the applicant, in some cases the environmental NGOs, and in land use processing the affected municipalities, have a status of party of the proceedings and may exercises the rights associated with that status.

b) Act of the Czech National Council No. 114/1992 Coll., on Nature and Landscape Protection

The Act sets out the conditions under which environmental NGOs can become participants in proceedings under this Act. The NGOs are entitled to be informed of all administrative proceedings in which the interests of nature and landscape protection may be affected. Subsequently, if the NGO notifies its participation in the procedure under this act within eight days of the date of the notification, it has the status of a party to the proceedings. The act further grants the status of a party to such proceedings to affected municipalities.

c) Act No. 254/2001 Coll. on waters and amendment to some acts (the Water Protection Act)

The Act grants to environmental NGOs status of a party to the proceedings under this act (with exceptions) under similar conditions as Act on Nature and Landscape Protection. The act further grants the status of a participant to municipalities and that in proceedings in which decisions which may affect water conditions or the environment are made.

d) Special definitions of the parties to administrative proceedings related to the environment are contained in a

number of other special laws, such as the Act no. 44/1988 Coll. Mining Act, Act no. 61/1988 Coll. Act on Mining activities, Act No. 258/2000 Coll. Public Health Protection Act, or Act no.263/2016 Coll., Nuclear Act. With regard to the proceedings under the last two of these acts, the status of a party is granted only to the applicant. No other subjects are granted the status of party to the proceedings. This is the case, for example, for proceedings to grant "noise exceptions" – decisions which authorise an operator of a source of noise in excess of the maximum limits to continue with the operations for a limited period of time (with the possibility of repeated prolongation). Other examples are the permits issued according to the Act no.263/2016 Coll., Nuclear Act.

The time limit to challenge administrative decision by an administrative appeal is fifteen days, according to Article 83 of the Code of Administrative Procedure.

For challenging the decision before the administrative court, the standing is, according to Article 65 of the Code of Administrative Justice, granted to

1. persons who assert that their rights have been infringed by the decision which "creates, changes, nullifies or authoritatively determines their rights or duties" and
2. other parties to administrative proceedings for issuing the administrative decision, who assert that their rights have been infringed in these proceedings and this could render the decision illegal (standing of the environmental organisations is derived from this provision).

Until 2014, the prevailing case law provided that the environmental NGOs could only challenge the administrative decisions on grounds of violation of their procedural rights, but not on grounds of violation of substantive requirements of environmental laws. In this respect, the decision of the Constitutional Court of 30 May 2014, No. I. ÚS 59/14 and subsequent jurisprudence of the administrative courts (see section 1.1, point 4) and section 1.4, point 3) above) represented a change in the case law of the Czech courts. In this decision, the Court concluded that, although the Aarhus Convention was not self-executing in the Czech legal system, it had to be considered as an interpretative source. Therefore, where it is possible to interpret national standards in several ways, the interpretation that meets the requirements of the Aarhus Convention will prevail.

At the same time, the Constitutional Court explicitly defined the criteria for the environmental NGOs to have standing to review the land use plans in court, which include having environmental protection as the subject of the NGO activity according to its bylaws, a factual relationship of the NGO to the affected locality and the length of existence and factual activities of the NGO.

The above-mentioned decision of the Constitutional Court specifically dealt with the standing of the environmental NGOs to appeal the land use plans before the administrative courts., By the judgment of the Supreme Administrative Court of 25 June 2015, No. 1 As 13/2015-295 (see section 1.1, point 4) above) and following case law, the above principles were applied to the standing of the NGOs in environmental matters in general.

The parties to the administrative procedure must challenge the decision before the court within 2 months of the time when the final administrative decision was delivered (which is the decision of the superior body on the administrative appeal). In cases concerning some large infrastructure projects, the deadline is 1 month. If the person challenging the decision was not a party to the administrative procedure, the deadline starts at the day the person provably learned about the decision and its content.

As for the omissions, if the administrative authority does not comply with the time limit, it is possible to submit a request to the superior body to take measures against inaction (omission) by the subordinate authority. Afterwards, it is possible to file a lawsuit and request the court to order the administrative authority to issue a decision on the merits of the matter (see section 1.4, point 3 for more details).

As for the effectiveness of access to justice in the national courts, it was increased by the change in case law described above, according to which the environmental NGOs can challenge not only the procedural but also the substantive legality of decisions (permits) relating to the environment and protect the right of their members to a favourable environment. In this context, the Supreme Administrative Court referred to CJEU decisions *C-263/08 Djurgarden, C-240/09 VLK* and *C-115/09 Trianel.*

Also, both the Constitutional and the Supreme Administrative Court have repeatedly stated that the courts should deal with applications for suspensive effect of the lawsuits in environmental matters in such a way that the judgment is issued before the project has already been irreversibly realised, so the legal protection is not only

formal but can also have a practical meaning. (see e.g. Decision of the Constitutional Court of 6 May 2015, No. II. ÚS 3831/14 or the judgement of the Supreme Administrative Court of 28 August 2007, no. 1 As 13/2007). However, this jurisprudence is not always applied by the lower courts. CJEU case *C-416/10 Križan* was mentioned by the Supreme Administrative Court in this respect in judgment of 23 February 2018, No. 1 As 296/2017).

According to settled case law, procedural mistakes can represent a reason for annulment of a decision if the decision might be different without the procedural defect. The courts have not so far stated that it is not up to the applicant to prove a causal link between the procedural defect and the contested decision, but for the other party to provide evidence that the procedural defect would have made no difference to the outcome, as the CJEU ruled in case *C-72/12 Altrip*. However, it could be deduced from the jurisprudence that it is for the court to explain sufficiently such a conclusion.

The jurisprudence has also not dealt with other aspects of the effectiveness of access to national courts, as emanating from the CJEU case law, so far. This applies e.g. on the requirement for compensation for pecuniary damage caused non-fulfilment of EU environmental law (case *C-420/11 Leth*) or addressing unlawful harm to the environment retrospectively (case *C-399/14 Grüne Liga Sachsen*).

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?

In the administrative appeal, the applicants, including the environmental NGOs, can challenge both the substantive and procedural legality of the decisions issued in these procedures. The objections should however relate to the rights of the applicant or public interests they protect (in case of the NGOs). This is explicitly stated in the Building Act for procedures regulated by it, but applies as a general principle.

Also the courts shall review both the substantive and procedural legality of the administrative decisions. The courts are entitled, at the suggestion of the parties, to review or amend the evidence considered in the administrative procedure. The objections should again be related to the rights of the applicant – this is inferred from the standing rules (see previous point). As already stated, until 2014 the prevailing case law provided that the environmental NGOs could only claim infringement of their procedural rights before the administrative courts. However, after the decision of the Constitutional Court of 30 May 2014, No. I. ÚS 59/14, this approach is no longer applied by the administrative courts and the scope for admissible objections from the NGOs is deduced from the scope of the public interests they protect.

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

The appeal to a superior administrative body must be exhausted before the administrative decision can be further appealed before the courts. The only exception is a situation where there is no possibility of administrative appeal (see section 1.1, point 2 for more details).

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.?

Formal status of party to an administrative procedure is in general necessary for the possibility to file an administrative appeal and therefore also for standing before the court (see the previous answer). The only exception is a situation where there is no possibility of administrative appeal, because the affected person is not granted the status of party to the proceedings (as in the case of the “noise exceptions” - see section 1.1, point 2 for more details).

Active participation in the administrative procedure (making comments etc.) does not represent a formal condition for administrative appeal and standing before the court. However, not using the procedural rights actively can influence the probability of success of the court action, as the courts often refuse to deal with arguments which were, without a proper reason, not already raised at the administrative stage. The Supreme Administrative Court concludes that the petitioner, who was passive in previous procedures, may be successful in court only exceptionally, either (i) if its procedural passivity resulted from objective circumstances or (ii) to the extent that the irregularities referred to are fundamental and have an impact on the public interest (see Judgement of the Supreme Administrative Court of 30 November 2016, No. 1 As 197/2016-66).

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

Generally no; however, where the applicant has not made any claims in the previous administrative procedure or in the previous instance of judicial review, the court normally does not take these claims into account. Moreover, the court will not deal with arguments which do not relate at all to the rights of the applicant, or, in case of the NGOs, to the public interests the NGO protects.

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

Article 7 paragraph 1 of the Code of Administrative Procedure in this regard provides that the persons concerned (including environmental organisations) shall enjoy equal treatment in the exercise of their procedural rights. The administrative authority shall act impartially towards the persons concerned and shall require all persons concerned to fulfil their procedural obligations equally. The authorities are obliged to provide them with the same opportunities to exercise their rights and to provide them with information on their procedural rights and obligations to the extent necessary not to suffer harm in the proceedings.

According to Article 36 of the Code of Administrative Justice, the participants have an equal position in the proceedings. The court is obliged to provide them with the same opportunities to exercise their rights and to provide them with instructions on their procedural rights and obligations to the extent necessary so that they do not suffer harm in the proceedings. In the decision of the Supreme Administrative Court of 6 December 2007, No. 2 Afs 91/2007-90, the Court found that if the court decides on the merits of the case without hearing, it is necessary that the parties have the opportunity to meet all the documents on which the court will base its decision.

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

According to Article 6 of the Code of Administrative Procedure, the administrative authorities have to proceed without undue delay. If the administrative authority does not act within the statutory period (usually up to 30, 60 or 90 days, in various procedures), or within a reasonable period, if the statutory period is not specified, the party to the administrative proceedings can ask for a measure against inactivity and subsequently file a lawsuit to the administrative court.

As described in section 1.7.2, points 5) and 6) submission of a lawsuit against a decision of an administrative authority generally does not have suspensive effect. The court may grant a suspensive effect to the lawsuit if executing the decision would cause the applicant “incomparably more serious” harm than that which could be caused to other persons by granting the injunctive relief and issuing injunctive relief would not be contrary to an important public interest. The Constitutional Court stated that the court has to deal with the application for suspensive effect of the administrative action before the authorised project against which the complainant was defending has already been irreversibly realised (see decision of the Constitutional Court of 6 May 2015, No. II. ÚS 3831/14).

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 administrative body can, at the request of a party or *ex officio* before the end of the appeal, proceedings, order injunctive relief if the conditions of the parties need to be adjusted provisionally or if there is a fear that enforcement of the final decision will not be possible (Article 61 Code of Administrative Procedure). There are no specific sectoral rules in this respect.

The administrative courts issue injunctive relief on the basis of Article 38 of the Code of Administrative Justice in cases where there is a need for an interim arrangement of the relationship between the parties. There must be a threat of a “serious harm”, but it is not necessary that it is the claimant personally who is under this threat. The court may order the parties to the dispute, or even third parties, to make something, abstain from something or endure something. There are no specific sectoral rules in this respect except in the EIA Act.

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 administrative lawsuits are based on a flat rate regardless of the value of the

case, see regulation in Act No. 549/1991 Coll. A fee for a lawsuit to review an administrative decision is CZK 3,000 (approx. EUR 125), the same fee applies to the cassation complaint. The fee for a lawsuit against a land use plan is CZK 5,000 (approx. EUR 200)., See section 1.7.3 for more details.

The general rule that the losing party pays applies; however, the case law of the administrative courts upholds the general principle that the costs of legal representation are not eligible costs for the administrative authority, as they employ their own lawyers who can represent them at the dispute. This can be seen as a general safeguard against the prohibitive costs in administrative judiciary. There is however no express statutory reference in this respect. There is not an express statutory reference to a requirement that costs should not be prohibitive.

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]

In accordance with Directive 2001/42/EC, the Czech EIA Act states that the concepts subject to the SEA are:

- concepts that set the framework for future authorisation of projects subject to EIA in the fields of agriculture, forestry, hunting, fisheries, surface or groundwater management, energy, industry, transport, waste management, telecommunications, tourism, territorial planning, regional development and the environment;
- concepts with a significant impact on NATURA 2000 areas;
- concepts of local importance, if the affected territory consists of the territorial district of one or a few municipalities, if so provided in the screening procedure

The specific examples of such concepts are Land Use Plans, Air Quality Improvement Programmes, Waste Management Plans, National River Basin Management Plans, Flood Risk Management Plans, Strategies for Regional Development, Regional Energy Concepts etc.

There is no special institution in Czech law that would explicitly provide the public concerned (individuals and NGOs) with access to justice with regard to concepts, plans or programmes subject to the SEA, or, more generally, relating to the environment. However, a number of plans and programmes are issued in the form of “measures of a general nature” according to Article 171 of the Code of Administrative Procedure. A measure of a general nature is a hybrid administrative act that is neither a legal norm nor an individual decision. It regulates a specific subject and relates to an indefinite number of addressees. There is a specific regulation of judicial review of this kind of administrative acts (see below).

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?

As for the administrative review, the legality of measures of a general nature, subject to the SEA (see above) can be assessed in the extraordinary review proceedings, which may be initiated *ex officio* by the superior administrative authority. Anyone (including any individual or environmental NGO) may request that such proceedings should be started. However, there is no legal entitlement to initiate the review proceedings if the superior administrative authority does not find grounds for their initiation. The review proceedings may be initiated within 1 year of the entry into force of the measure of a general nature.

The legality of measures of a general nature can be further reviewed by the courts on the basis of a lawsuit to annul a measure of a general nature or parts thereof under Article 101a of Act No. 150/2002 Coll., the Code of Administrative Justice. The application may be filed by a person who claims that his or her rights were infringed by the measure of a general nature issued by the administrative authority.

According to the decision of the Constitutional Court of 30 May 2014, No. I. ÚS 59/14, the environmental NGOs may challenge measures of a general nature, including those subject to SEA, under following conditions:

1. the NGO must claim that the illegality of a measure of a general nature affects its legal sphere,

2. the NGO must have environmental protection as the subject of its activity according to its bylaws,
3. the NGO must have a factual relationship to the locality regulated by the land use plan (registered office, residence of members, etc.),
4. the establishment, i.e. longstanding activity of the association; however, an ad hoc association is not excluded either

The application may be filed within 1 year of the effective date of the measure of a general nature.

If the act is adopted in the form of a legal regulation, the only direct possibility of judicial review is by the Constitutional Court, and only specific subjects are entitled to initiate this review (e.g. a group of members of the Parliament, the Ministry, the Public Defender of Rights, etc.). Anyone may ask any of the entities with standing under Article 64 (2) of the Constitutional Court Act to ask for annulment of a statutory instrument too. However, there is no legal entitlement to file a petition for the annulment of statutory instrument.

For the public (both individuals and NGOs), it is only possible to file a petition for the annulment of a legal regulation under section 64 (2) subparagraph d), i.e. only together with a constitutional complaint if the application of legal regulation resulted in the fact which is the subject of the constitutional complaint. The NGOs (like anyone else) cannot file a constitutional complaint to the Constitutional Court directly, but only after they have exhausted all other remedies and claim that their constitutionally guaranteed rights have been infringed.

If the Constitutional Court finds that the legal regulation violates the Constitution, it will annul it. Pursuant to Article 89 (2) of the Constitution, enforceable decisions of the Constitutional Court are binding on all bodies and persons.

The general courts may refuse to apply a sub-legal regulation if it is against the law. Courts cannot annul this regulation, but only choose not to apply it in a specific case.

If plans or programmes are not issued in the form of a measure of a general nature, such acts can be annulled by the same administrative authority which issued them. If such plan or programme represents a basis for a subsequent decision, it can be reviewed by a court as part of the judicial review of this subsequent act.

As for the effectiveness of access to justice in the national courts, it was increased, in accordance with the relevant CJEU case law (namely *C-240/09 Lesoochranárske zoskupenie*) by the change in case law described above, according to which the environmental NGOs can challenge, under conditions settled by the Constitutional Court in decision no. I. ÚS 59/14 of 30 May 2014 (see section 1.1, point 4) above), both the substantive and the procedural legality of measures of a general nature relating to the environment and protect the right of their members to a favourable environment. In the subsequent case law of the Supreme Administrative Court (namely the judgment of 25 June 2015, No. 1 As 13/2015-295; see section 1.1, point 4) above), this was applied as a general principle in the field of environmental law, with a reference to the CJEU judgment in *C-115/09 Trianel*.

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?

In the administrative review proceedings, the superior authority deals only with the legality of measures of a general nature.

Before the court, affected persons, including NGOs, can challenge both the substantive and procedural legality of the measures of a general nature. The legality of the SEA proceedings and its outcome (the SEA statement) can be reviewed together with the concept, plan or programme issued in the form of the measure of a general nature.

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

As stated in general summary of concepts which are subject to the SEA, the majority of the concepts are adopted in the form of measures of a general nature. For this form there is no possibility of administrative remedy like an appeal against an administrative decision. However, review proceedings can be initiated (see above at point 1).

Exhaustion of administrative review is, therefore, not a requirement for starting a judicial review procedure in such cases.

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.?

Active participation in the consultation phase of the procedure (making comments, participating at the hearing) does not represent a formal condition for standing before the court. However, not using the procedural rights actively can influence the probability of success of the court action, as the courts often refuse to deal with arguments which were, without a proper reason, not already raised at the administrative stage. This in particular applies to the argument of (un)proportionality of the measure of a general nature.

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?

There is no specific injunctive relief for the SEA cases, but the general regulations apply. The administrative courts may issue a preliminary injunction on the basis of Article 38 of the Code of Administrative Justice where there is a need for an interim arrangement of the relationship between the parties. There must be a threat of "serious harm", but it is not necessary for it to be the claimant personally who is under this threat. The court may order to the parties to the dispute, or even a third party, to do something, abstain from something or endure something. As the courts should deliver the final judgment in 90 days in cases concerning measures of a general nature, injunctive relief is not in practice issued in these cases.

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 administrative lawsuits are based on a flat rate regardless of the value of the case; see regulation in Act No. 549/1991 Coll. Fee for a lawsuit against a measure of a general nature is CZK 5,000 (approx. EUR 200) see section 1.7.3 for more details.

The general rule that the losing party pays applies; the costs of proceedings dealing with an application for annulment of plans or programmes are usually between CZK 10,000 and 20,000 (approx. EUR 410–830). However, the case law of the administrative courts upholds the general principle that the costs of legal representation are not eligible costs for the administrative authority, as they employ their own lawyers who can represent them in the dispute. This can be seen as a general safeguard against prohibitive costs in administrative proceedings. This case law also admits some exceptions.

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]

There are multiple plans and programmes that are not submitted to SEA , i.e.:

1. Regulatory orders pursuant to Act No. 201/2012 Coll., Air Protection Act. Also the Air Protection Act, issued in the form of a municipal regulation (normative instrument).
2. The River Basin Management Plans and Flood Risk Management Plans according to the Water Protection Act, issued in the form of measures of a general nature.
3. The Forest Management Plans according to Act No. 289/1995 Coll, the Forest Act, which are binding on the forest owners and by their nature, are rather individual administrative decisions regulating the obligations of specific forest owners, although they do not formally have this form.
4. The Land Use Plans of the municipalities, if the regional authority decides that the draft plan should not be submitted to SEA.

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?

As with the administrative review, the legality of the acts subject to Article 7 of the Aarhus Convention which are issued in the form of measures of a general nature can be assessed in the review proceedings, which may be initiated *ex officio* by a superior administrative authority. Anyone (including any individual or environmental NGO) may indicate that such proceedings should be started. However, there is no legal entitlement for private subjects to initiate the review proceedings, if the superior administrative authority does not find grounds for their initiation. The review proceedings may be initiated within 1 year of the effective date of the measure of a general nature.

The legality of measures of a general nature can be further reviewed by the courts on the basis of a lawsuit to annul a measure of a general nature or parts thereof under section 101a of Act No. 150/2002 Coll., the Code of Administrative Justice. The application may be filed by any person who claims that his or her rights were infringed by the measure of a general nature issued by the administrative authority.

According to the decision of the Constitutional Court no. I. ÚS 59/14 of 30 May 2014, environmental NGOs may challenge measures of a general nature under following conditions:

1. the NGO must claim that the illegality of a measure of a general nature affects its legal sphere,
2. the NGO must have environmental protection as the subject of its activity according to its bylaws,
3. the NGO must have a factual relationship to the locality regulated by the land use plan (registered office, residence of members, etc.),
4. the establishment, i.e. longstanding activity of the association; however, an ad hoc association is not excluded either

The application may be filed within 1 year of the effective date of the measure of a general nature.

If the act is adopted in the form of a legal regulation (normative instrument), the only possibility of direct judicial review is before the Constitutional Court, and only specific subjects (the Ombudsman, the Ministry of the Interior, a group of at least 25 Deputies or a group of at least 10 Senators) are entitled to initiate this review. For the public (both individuals and NGOs), it is only possible to suggest annulment of a legal regulation together with a constitutional complaint against a specific decision in the case where the regulation was applied. The NGOs (like anyone else) cannot go to Constitutional Court directly, but only after they have exhausted all other remedies and claim that the courts or other bodies which dealt with their case interpreted the law in conflict with the Constitution.

If the Constitutional Court finds that a legal regulation violates the Constitution, it will annul it. Pursuant to Article 89 (2) of the Constitution, enforceable decisions of the Constitutional Court are binding on all bodies and persons.

The general courts may refuse to apply a regulation if it is contrary to law. The court cannot annul this regulation, but only choose not to apply it in a specific case.

If the plans or programmes are not issued in the form of a measure of a general nature, such acts can be annulled by the same administrative authority which issued them. If such plan or programme represents a basis for a subsequent decision, it can be reviewed by the court as part of the judicial review of this subsequent act.

As for the effectiveness of access to justice in the national courts, it was increased by the change in case law described above, according to which the environmental NGOs can challenge, under conditions settled by the Constitutional Court in its decision of 30 May 2014, No. I. ÚS 59/14 (see section 1.1, point 4) above), both the substantive and procedural legality of measures of a general nature relating to the environment and protect the right of their members to a favourable environment.

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?

In administrative review proceedings, the superior authority deals only with the legality of measures of a general nature.

Before the court, affected persons, including the NGOs, can challenge both the substantive and procedural legality

of the measures of a general nature. This applies also to the review of plans issued in a form of a legal regulation before the Constitutional Court.

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

For plans and programmes issued in form of measures of a general nature, there is no possibility of administrative remedy, like an appeal against an administrative decision. However, review proceedings can be initiated (see above at point 1).

Exhaustion of administrative review is, therefore, not a requirement for starting a judicial review procedure in such cases.

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.?

Active participation in the consultation phase of the procedure (making comments, participating at the hearing) does not represent a formal condition for standing before the court. However, not using the procedural rights actively can influence the probability of success of the court action, as the courts often refuse to deal with arguments which were, without a proper reason, not already raised at the administrative stage. This namely applies to the argument of (un)proportionality of the measure of a general nature.

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?

There is no specific injunctive relief for this kind of cases, but the general regulations apply. The administrative courts may issue a preliminary injunction on the basis of Article 38 of the Code of Administrative Justice where there is a need for an interim arrangement of the relationship between the parties. There must be a threat of "serious harm", but it is not necessary for it to be the claimant personally who is under this threat. The court may order to the parties to the dispute, or even to a third party, to do something, abstain from something or endure something. As the courts should deliver the final judgment in 90 days in cases concerning measures of a general nature, injunctive relief is not in practice issued in these cases.

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 administrative lawsuits are based on a flat rate regardless of the value of the case, see regulation in Act No. 549/1991 Coll. Fee for a lawsuit against a measure of a general nature is CZK 5000 (approx. EUR 200) see section 1.7.3 for more details.

The general rule that the losing party pays applies; the costs of proceedings dealing with an application for annulment of plans or programmes are usually between CZK 10,000 and 20,000 CZK (approx. EUR 410–830). However, the case law of the administrative courts upholds the general principle, that the costs of legal representation are not eligible costs for the administrative authority, as they employ their own lawyers who can represent them in the dispute. This case law also admits some exceptions.

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 2008/50/EC on Ambient Air Quality and Cleaner Air for Europe),
2. Waste Management Plans (required by Directive 2008/98/EC on Waste), including the Waste Management Plan of the Czech Republic, the Regional Management Plans and the Municipal Waste Management Plans,
3. Water Management Plans (required by Directive 2000/60/EC, Framework for Community Action in the Field of Water Policy), including the National River Basin Management Plans, International River Basin Management Plans and River Sub-basin Management Plans,

4. Areas within the Natura 2000 system (required by Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora) are designated in the form of a government regulation according to Act no. 114/1992 Coll., on Nature and Landscape Protection.

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?

Laws which regulate plans and programmes that are specifically required by EU legislation do not provide for specific rules for an administrative or judicial review.

For the administrative review, the legality of measures of a general nature can be assessed in the review proceedings, which may be initiated *ex officio* by a superior administrative authority. Anyone (including any individual or environmental NGO) may indicate that such proceedings should be started. However, there is no legal entitlement for private subjects to initiate the review proceedings if the superior administrative authority does not find grounds for their initiation. The review proceedings may be initiated within 1 year of the effective date of the measure of a general nature.

The legality of measures of a general nature can be further reviewed by the courts on the basis of a lawsuit to annul a measure of a general nature or parts thereof under Article 101a of Act No. 150/2002 Coll., the Code of Administrative Justice. The application may be filed by any person who claims that his or her rights were infringed by the measure of a general nature issued by the administrative authority. The application may be filed within 1 year of the effective date of the measure of a general nature.

If the act is adopted in the form of a legal regulation (normative instrument), the only possibility of its direct judicial review is before Constitutional Court and only specific subjects (the Ombudsman, the Ministry of the Interior, a group of at least 25 Deputies or a group of at least 10 Senators) are entitled to initiate this review. For the public (both individuals and NGOs), it is only possible to suggest annulment of a legal regulation together with a constitutional complaint against a specific decision in the case where the regulation was applied. The NGOs (like anyone else) cannot go to Constitutional Court directly, but only after they have exhausted all other remedies and claim that the courts or other bodies which dealt with their case interpreted the law in conflict with the Constitution.

If the Constitutional Court finds that legal regulation violates the Constitution, it will annul it. Pursuant to Article 89 (2) of the Constitution, enforceable decisions of the Constitutional Court are binding on all bodies and persons.

The general courts may refuse to apply a regulation if it is contrary to law. Court cannot annul this regulation, but only choose not to apply it in a specific case.

If plans or programmes are not issued in the form of a measure of a general nature, such acts can be annulled by the same administrative authority which issued them. If such plan or programme represents a basis for a subsequent decision, it can be reviewed by a court as part of the judicial review of this subsequent act.

As for the effectiveness of access to justice in the national courts, it was increased by the change in case law described above, according to which the environmental NGOs can challenge, under conditions settled by the Constitutional Court in decision of 30 May 2014, No. I. ÚS 59/14 (see section 1.1, point 4) above), both the substantive and the procedural legality of measures of a general nature relating to the environment and protect the right of their members to a favourable environment. In relation to judicial review of the Air Quality Improvement Programmes, the Supreme Administrative Court, in its judgment of 20 December 2017, No. 6 As 288/2016-146, with reference to CJEU cases *C-237/07 Janecek* and *C-404/13 ClientEarth,* confirmed that the national court has the authority to review the content of the plan and its fulfilment of the requirements of EU law. Subsequently it can instruct the administrative authority on how an already adopted plan should be revised and amended.

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)?

Special environmental legislation (the Building Act, the Air Act, the Water Protection Act, the Forest Act, etc.) does

not contain any special provisions on the judicial review of plans contained therein. In some cases, however, it expressly states that a certain plan or programme is issued in the form of a measure of a general nature, or it can be inferred from a substantive point of view that it is a measure of a general nature. In this case, the plan is administratively and judicially reviewable under the general provisions relating to measures of a general nature.

If the plan or programme is adopted in the form of a legal regulation than there is only special judicial review by Constitutional Court and only explicitly designated persons are entitled to initiate this review (see section 2.5).

If plans or programmes are issued neither as a legal regulation nor as a measure of a general nature, such acts can be annulled by the same administrative authority which issued them. If such plan or programme represents a basis for a subsequent decision, it can be reviewed by the court as part of the judicial review of this subsequent act.

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?

The environmental NGOs can challenge, in the administrative review as well as in the judicial review, both the substantive and procedural legality of the decisions issued in these procedures and they should be deemed to have rights capable of being impaired by the decisions.

In the administrative review proceedings, the superior authority deals only with the legality of measures of a general nature. Before the court, affected persons, including the NGOs, can challenge both the substantive and procedural legality of the measures of a general nature.

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

For the form of measure of a general nature (which is typical for plans and programmes) there is no possibility of administrative remedy such as an appeal. The appeal can be lodged only against an administrative decision. However, the review proceedings for the measure of a general nature can be initiated (see above at point 1).

If a plan or a programme is adopted in the form of an administrative decision, the appeal to a superior administrative body must be exhausted before the administrative decision can be further appealed before the court. The only exception is a situation where there is no possibility of administrative remedy because of an explicit regulation by law.

The administrative remedies have to be exhausted before taking a case to the administrative court also in the case of omissions (illegal inaction) by the administrative authorities.

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.?

Active participation in the consultation phase of the procedure (making comments, participating at the hearing) does not represent a condition for administrative appeal and standing before the court. However, not using the procedural rights actively can influence the probability of success of the court action, as the courts often refuse to deal with arguments which were, without a proper reason, not already raised at the administrative stage.

The Supreme Administrative Court concludes that the petitioner, who was passive in previous procedures, may be successful in court only exceptionally, either (i) if its procedural passivity resulted from objective circumstances or (ii) to the extent that the irregularities referred to are fundamental and have an impact on the public interest (see Judgement of the Supreme Administrative Court of 30 November 2016, No. 1 As 197/2016-66).

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

Generally no; however, if the plaintiff has not made any claims in the previous administrative procedure or in the previous instance of judicial review, the court will not take these claims into account.

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

Article 7 paragraph 1 of the Code of Administrative Procedure in this regard provides that the persons concerned (including environmental organisations) shall enjoy equal treatment in the exercise of their procedural rights. The

administrative authority shall act impartially towards the persons concerned and shall require all persons concerned to fulfil their procedural obligations equally. The authorities are obliged to provide them with the same opportunities to exercise their rights and to provide them with information on their procedural rights and obligations to the extent necessary not to suffer harm in the proceedings.

According to Article 36 of the Code of Administrative Justice the participants have an equal position in the proceedings. The court is obliged to provide them with the same opportunities to exercise their rights and to provide them with instructions on their procedural rights and obligations to the extent necessary so that they do not suffer harm in the proceedings. In the decision of the Supreme Administrative Court of 6 December 2007, No. 2 Afs 91/2007-90, the Court found that if the court decides on the merits of the case without hearing, it is necessary that the parties have the opportunity to meet all the documents on which the court will base its decision.

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

According to Article 6 of the Code of Administrative Procedure, the administrative authorities have to proceed without undue delay. If the administrative authority does not act within the statutory period (usually up to 30, 60 or 90 days, in various procedures), or within a reasonable period if the statutory period is not specified, the party to the administrative proceedings can ask for a measure against inactivity and subsequently file a lawsuit to the administrative court.

As described in section 1.7.2, points 5) and 6) submission of a lawsuit against a decision of an administrative authority generally does not have a suspensive effect. The court may grant a suspensive effect to the lawsuit if executing the decision would cause the applicant "incomparably more serious" harm than that which could be caused to other persons by granting the injunctive relief and issuing injunctive relief would not be contrary to an important public interest. The Constitutional Court stated that the court has to deal with the application for suspensive effect of the administrative action before an authorised project against which the complainant was appealing has already been irreversibly realised (see Decision of the Constitutional Court of 6 May 2015, No. II. ÚS 3831/14). The Supreme Administrative Court stated repeatedly that the lawsuits of the public concerned in environmental matters should normally be granted suspensive effect, so the legal protection is not only formal but can also have a practical meaning (see e.g. judgement of 28 August 2007, No. 1 As 13/2007-63).

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?

The administrative body can, at the request of a party or *ex officio* before the end of the appeal, proceedings, order injunctive relief if the conditions of the parties need to be adjusted provisionally or if there is a fear that enforcement of a final decision will not be possible (Article 61 Code of Administrative Procedure).

The administrative courts may further issue a preliminary injunction on the basis of Article 38 of the Code of Administrative Justice where there is a need for an interim arrangement of the relationship between the parties. There must be a threat of a "serious harm", but it is not necessary for it to be the claimant personally who is under this threat. The court may order to the parties to the dispute, or even third parties, to do something, abstain from something or endure something.

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 administrative lawsuits are based on a flat rate regardless of the value of the case; see regulation in Act No. 549/1991 Coll. A fee for a lawsuit to review an administrative decision is CZK 3,000 (approx. EUR 125), the same fee applies for a cassation complaint. Fee for a lawsuit against a measure of a general nature is CZK 5,000 (approx. EUR 200) see section 1.7.3 for more details.

The general rule that the losing party pays applies; however, the case law of the administrative courts upholds the general principle that the costs of legal representation are not eligible costs for the administrative authority, as they employ their own lawyers who can represent them in the dispute. This case law also admits some exceptions.

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

Examples of this form of acts are the Waste Management Plan of the Czech Republic (issued in the form of a government regulation) according to Act No. 185/2001 Coll. on Waste, Regulatory Order according to Act No. 201/2012 Coll., Air Protection Act, or designation of Areas within the Natura 2000 system declared according to Act No. 114/1992 Coll., on Nature and Landscape Protection.

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 the form of a legal regulation (normative instrument), the only possibility for direct judicial review is before the Constitutional Court and only specific subjects (the Ombudsman, the Ministry of the Interior, a group of at least 25 Deputies or a group of at least 10 Senators) are entitled to initiate this review.

For the public (both individuals and NGOs), it is only possible to suggest annulment of a legal regulation together with a constitutional complaint against a specific decision in the case where the regulation was applied. The NGOs (like anyone else) cannot go to Constitutional Court directly, but only after they have exhausted all other remedies and claim that the courts or other bodies which dealt with their case interpreted the law in conflict with the Constitution.

If the Constitutional Court finds that a legal regulation has been issued in violation of the Constitution or the law, it will annul it. Pursuant to Article 89 (2) of the Constitution, enforceable decisions of the Constitutional Court are binding on all bodies and persons.

Pursuant to Article 95 (1) of the Constitution the general courts may refuse to apply a sub-legal regulation if it is against the law. The court cannot annul this regulation, but only choose not to apply it in a specific case.

The public can participate in the legislative process at the preparatory stage, in a form of consultative participation. However, this is not regulated by law and is not possible in all cases.

The requirements for the effectiveness of access to the national courts in environmental matters, as formulated in CJEU case law, have not been directly applied by the Constitutional Court in reviewing the normative acts.

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?

There is no kind of “administrative review” of legal regulations in the Czech legal system. However, the Ministry of the Interior supervises the normative instruments of municipalities and regions. The Ministry of the Interior may call on the municipality to remedy or file a complaint to the Constitutional Court

If the Constitutional Court reviews the legal regulation, this review covers both the substantive and the procedural legality of the 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?

There is usually no possibility to participate in the process of issuing legal regulations and no kind of administrative review. Concerning judicial review of the normative acts before the Constitutional Court, it is necessary for members of the public to exhaust all other remedies in the case where the act was applied and claim that the courts or other bodies which dealt with their case interpreted the law in conflict with the Constitution, or that the act itself is contrary to the Constitution.

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 a judicial review of legal regulations (normative acts) before the Constitutional Court are not obliged 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?

With regard to the review of the legal regulations (normative acts) before the Constitutional Court, injunctive relief is not available. However, in some cases the Constitutional Court may annul the statutory instrument with retroactive effect.

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?

Access to the Constitutional Court is free of charge; it is, however, obligatory to be represented by a lawyer (attorney) and it is necessary to exhaust all other remedies and claims before constitutional compliance. Therefore, the costs of the preceding procedures are relevant (see section 1.7.3 point 1) in this respect).

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 of the courts to introduce a preliminary reference (see section 1.3 point 5) applies in every case where EU law is interpreted and it also applies to interpretation of the validity of acts adopted by the EU institutions and bodies. Any party to the dispute can ask the court to make such a reference, but it is for the court alone to decide whether to do so. There is no specific procedure in national law to challenge directly an act adopted by an EU institution or body before the national courts.

[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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