Access to justice in environmental matters

Česko

To find out more about access to justice in environmental matters in Czech Republic, please take a look at:

1. Access to justice at Member State level
2. Access to justice falling outside of the scope of EIA (Environmental Impact Assessment), IPPC/IED (Integrated Pollution Prevention and Control (IPPC) Industrial Emissions Directive), access to information and ELD (Environmental Liability Directive)
3. Other relevant rules on appeals, remedies and access to justice in environmental matters

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Access to justice at Member State level

1.1. Legal order – sources of environmental law

1) General introduction to the system of protection of environment and procedural rights of persons (natural, legal, NGOs) in the specific national order

Czech law belongs to the continental (civil law) legal system, which is based on codified laws adopted by the Parliament. The court decisions are not considered to be a formal source of law. However, case-law of the highest courts (namely the Constitutional Court, Supreme Court and Supreme Administrative Court) is often used for interpretation purposes and is respected by lower courts.

Sources of Czech codified law are divided into three levels according to their legal force, namely constitutional laws, ordinary laws and by-laws. The norm of lower legal force must not contradict the norm of higher legal force.

At the constitutional level, fundamental rights and freedoms are enshrined in the Charter of Fundamental Rights and Freedoms (referred to here simply as the “Charter”). As described in more detail below, the Charter grants, among other fundamental rights, the right to a favourable environment, the right to information about the environment, and the right of access to the courts to protect one's rights.

Article 41 of the Charter provides a list of fundamental rights enshrined in the Charter which may be claimed only within the scope of the laws implementing these provisions. This list includes the right to a favourable environment and the right to information about the environment. Whereas the right to information about the environment is implemented by one comprehensive Act (Act No. 123/1998 Coll., on the Right to Access to Environmental Information), the right to favourable environment is implemented by multiple legal acts.

The right to a favourable environment can be asserted and protected in a number of decision-making processes. The general regulation of administrative proceedings is contained in Act No. 500/2004 Coll. Code of Administrative Procedure (the “Code of Administrative Procedure”). However, most administrative proceedings and other decision-making processes are further regulated in specific laws.

The protection of rights which may be asserted in administrative proceedings and other decision-making processes is provided primarily by administrative courts. The legal regulation of proceedings before administrative courts is regulated by Act No. 150/2002 Coll., Code of Administrative Justice (the “Code of Administrative Justice”).

Access to administrative courts is, in principle, based on the doctrine of impairment of subjective rights of the applicant. The right to a favourable environment is considered as “naturally” belonging only to individuals (natural persons). However, according to the recent jurisprudence of the Constitutional and Supreme Administrative court (see section 1.1, point 4), NGOs are entitled to protect the substantive rights of their members, i.e. to act on behalf of their members and bring actions against decisions or other acts or omissions which may have affected the right of their members to a favourable environment.

The Code of Administrative Justice includes special legal regulation of the court procedure for cases when the impairment of one's rights was allegedly caused by an administrative decision, a measure of a general nature, an omission (inaction) by the administrative body or other unlawful interference with one's rights. It also grants special standing to protect the public interest to designated authorities – the Supreme Public Prosecutor and the Public Defender of Rights.

The public bodies responsible for the protection of the environment are in particular the Ministry of the Environment, which has general responsibility for promoting the environmental laws and serves as general supervisory and monitoring body in this area, and other ministries, namely the Ministry of Agriculture and the Ministry of Health, which are entrusted with competence in individual areas of environmental protection. There are also some special administrative authorities subordinate to the ministries with specific competence for the protection of the environment, for example, the Czech Environmental Inspectorate, The Nature and Landscape Protection Agency or Regional Health Stations. For more details see section 1.3. 1) below.

2) Constitution – main (content of + including references) provisions on environment and access to justice in the national constitution (if applicable) including procedural rights

Article 7 of the Czech Constitution states that the state shall concern itself with the prudent use of its natural resources and the protection of its natural wealth. The Constitutional Court referred to this rather general provision e.g. in its Decision of 15 March 2016, Pl. ÚS 30/15, in which it stated that legal protection of specific sectors of the environment is a pivotal measure in realising the above-mentioned general constitutional principle.

As mentioned above, the Charter enshrines a right to live in a favourable environment and right to timely and complete information about the environment in Article 35. Further, it prescribes in the same Article that in exercising his or her rights, no one may endanger or cause damage to the environment, natural resources, biodiversity and cultural monuments “beyond the limits set by law”. The Charter also grants the related right to protection of health in Article 31. However, the exercise of the right to a favourable environment depends on the laws implementing these provisions as according to Article 41 of the Charter, and this right can be claimed only within the scope of such laws.

The Constitution and Charter guarantee protection of rights, including the right to a favourable environment, in both judicial and other proceedings, including administrative proceedings.

According to Article 90 of the Constitution, the courts are called upon above all to provide protection of rights in the legally prescribed manner.

According to Article 36 of the Charter, anybody may assert in the set procedure his or her right in an independent and unbiased court of justice and in specified cases with another organ. Anyone who claims that his or her rights have been violated by a decision of a public administration organ may apply to a court of law for a review of the legality of the decision, unless the law provides otherwise. However, review of decisions affecting the fundamental rights and freedoms listed in the Charter may not be excluded from the jurisdiction of the courts.

3) Acts, Codes, Decrees, etc. - main provisions on environment and access to justice, national codes, acts

Environmental legislation consists of a large number of legal norms. They include laws stipulating legal protection of individual components of the environment, laws regulating activities with a potentially negative impact on the environment, special instruments of environmental protection, etc.

The general regulation of most decision-making processes, including administrative proceedings, is contained in the Code of Administrative Procedure. This also contains the basic regulation of the right to public participation in administrative proceedings. This is further developed by a number of special laws that take precedence over general regulation (see section 1.4, point 3).

Access to justice in administrative matters is regulated by the Code of Administrative Justice. Specific provisions of environmental laws, mostly regulating the rights of environmental NGOs, are also relevant in this respect.

A list of the most important laws is given below

Act No. 500/2004 Coll., the Code of Administrative Procedure (Zákon č. 500/2004 Sb., Správní řád).

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Article 27 defines the parties to administrative procedure.

Act No. 150/2002 Coll., the Code of Administrative Justice (Zákon č. 150/2002 Sb., Soudní řád správní).

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Article 65 et seq. regulate standing to appeal against administrative decisions;

Article 66 et seq. regulate action for protection of the public interest;

Article 79 et seq. regulate standing to complain about inaction by the administrative body;

Article 82 et seq. regulate standing to complain about other unlawful interference with rights;

Article 101a et seq. regulate standing to complain about measures of a general nature.

Act No. 183/2006 Coll. on town and country planning and the Building Code (Building Act) (Zákon č. 183/2006 Sb., o územním plánování a stavebním řádu (stavební zákon)).

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Article 85 et seq. define the parties in the planning permission proceedings.

Article 109 et seq. define the parties in the construction proceedings.

Act No. 100/2001 Coll. on the Environmental Impact Assessment and amending some related laws (the EIA Act) (Zákon č. 100/2001 Sb., o posuzování vlivů na životní prostředí a o změně některých souvisejících zákonů (zákon o posuzování vlivů na životní prostředí)

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Article 3 letter i) defines the public concerned.

Article 7 provides the public concerned with the right to appeal against the decision issued in the screening and scoping procedure determining that a project or change to a project shall not be assessed under this Act, and to bring an action against such a decision and to challenge the substantive and/or procedural legality of the decision;

Article 9c determines under which conditions the public concerned and the public in general may participate in subsequent proceedings.

Articles 9d regulates the right of the public concerned to access to the courts.

Act No. 76/2002 Coll., on Integrated Prevention and Pollution Control, on Integrated Pollution Register and on amendments to certain acts (Act on Integrated Prevention) (Zákon č. 76/2002 Sb., o integrované prevenci a o omezování znečištění, o integrovaném registru znečišťování a o změně některých zákonů (zákon o integrované prevenci)

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Article 7 defines the parties in integrated authorisation proceedings.

Act of the Czech National Council No. 114/1992 Coll., on Nature and Landscape Protection (Zákon České národní rady č. 114/1992 Sb., o ochraně přírody a krajiny)

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Article 70 provides for the right of participation by environmental NGOs in administrative proceedings conducted under this Act which could affect nature and landscape protection.

Act No. 254/2001 Coll. on waters and amendment to some acts (the Water Protection Act) (Zákon č. 254/2001 Sb., o vodách a o změně některých zákonů (vodní zákon)).

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Article 115 provides for the right of participation by environmental NGOs in proceedings under this Act with the exception of specified procedures.

4) Examples of national case-law, role of the Supreme Court in environmental cases

The Supreme Administrative Court, according to Article 12 of the Code of Administrative Justice, shall guarantee the unity and legality of decision-making in administrative matters by ruling on cassation complaints. It shall further follow and assess the final decisions of administrative courts and, for the sake of

uniform judicial decision-making in administrative matters, adopt positions on judicial decision-making in matters of specific kinds, including environmental cases. The Supreme Court fulfils a similar role in civil and criminal cases.
The Constitutional Court has a unique competence to protect constitutional order and fundamental rights. It is namely entitled, upon motions on specific subjects, to review the compliance of laws with the Constitution and to decide about individual constitutional complaints from persons claiming that their constitutional rights were infringed by decisions or other actions by public authorities. Its decisions are generally binding according to Article 89, paragraph 2 of the Constitution.
The following examples of case law from the Constitutional Court and the Supreme Administrative Court are fundamental for access to justice in environmental matters:
Decision of the Constitutional Court of 30 May 2014, no. I. ÚS 59/14
The Constitutional Court stated that natural persons wo are members of a civic association whose objective is, according to its charter, the protection of nature and landscape, can exercise their right to a favourable environment, listed in Article 35 of the Charter of Rights and Freedoms, via this civic association. Therefore the Court granted the environmental NGO the right to bring an action against the land use plan as a measure of a general nature on behalf of its members, and also laid down the conditions for standing (subject of activity, local relationship, duration). Further, it stated that where it is possible to interpret national standards in several ways, the interpretation that meets the requirements of the Aarhus Convention shall prevail.
Judgement of the Supreme Administrative Court of 25 June 2015, No. 1 As 13/2015-295
The court confirmed that it is possible that substantive rights of associations can be violated. However, it also stated that it is not possible to generalise the presumption that the rights of the association may be affected by all projects. It is always necessary to assess each case individually.
Judgement of the Supreme Administrative Court of 16 May 2015 No. 2 Aos 2/2013-120
According to the court, the main criterion for adjudication of the standing of an association is the presence of a sufficiently strong relationship between the claimant and the affected area.
Judgement of the Supreme Administrative Court, No. 3 As 126/2016-38
The court ruled that it is not possible a priori to exclude an ad hoc established association from judicial protection in environmental cases.
Judgement of the Supreme Administrative Court of 2 May 2019, No. 7 As 308/2018 - 31
The court confirmed that, where the applicant is explicitly excluded by law from the scope of the parties to the administrative proceedings and therefore cannot file an administrative appeal, his or her standing to appeal the final decision in court is not influenced by that fact. Therefore the applicant may bring an action even though he/she was not party to the proceedings, provided that his or her rights might have been affected by the decision.
Judgement of the Supreme Administrative Court of 27 March 2010, No. 2 As 12/2006-111
The court stated that neither natural nor legal persons can derive their rights directly from the Aarhus Convention, as the Aarhus Convention is not “self-executing”.
Judgement of the Supreme Administrative Court of 28 August 2007, No. 1 As 13/2007-63
According to the court, it is in compliance with Article 9 of the Aarhus Convention if the EIA statement is subject to judicial review only together with the final decision (development consent). However, in such cases, lawsuits filed by NGOs should normally be granted suspensive effect.
Decision of the Constitutional Court of 30 July 2019, No. III. ÚS 2041/19
The court confirmed that proceedings concerning the removal of an illegal building are initiated solely ex officio. Therefore, nobody has a right to initiate such proceedings of his or her motion nor a right for judicial protection against the failure of an authority to start such proceedings.

5) Can the parties to the administrative procedure directly rely on international environmental agreements, or can only the national and EU transposing legislation be referred to?

According to Article 10 of the Czech Constitution, international agreements approved by the Parliament and binding on the Czech Republic shall constitute a part of the Czech legal order and shall be applied prior to national laws. The national agreement thereby gains the effect of national law.
The jurisprudence of the Czech courts concluded that, for direct application of the international agreements, the agreement must be “self-executing”. These requirements are usually met by agreements whose parties did not exclude direct application of the agreement, where the rules are “unconditional”, “sufficiently specific” and “grant specific rights” to private persons (judgment of the Supreme Court of 12 February 2007, No. 11 Tcu 7/2007).
In most of their decisions, the Czech courts came to the conclusion that the provisions of the Aarhus Convention are not “directly applicable”, as they are not “sufficiently specific” (following decisions of the Constitutional Court of 19 November 2008, No. Pl. ÚS 14/07, of 30. June 2008, No. IV. ÚS 154/08, of 17 March 2009, No. IV. ÚS 2239/07, of 30 May 2014, No. I. ÚS 59/14). On the other hand, in most of their decisions, the courts emphasised that the Aarhus Convention is an important interpretation source and national laws must be interpreted consistently with the international obligations arising out of the Convention.

1.2. Jurisdiction of the courts

1) Number of levels in the court system

The structure of civil and criminal courts consists of 4 levels in the Czech Republic. It contains
the district courts,
the regional courts (including the Municipal Court of Prague),
the high courts and
the Supreme Court.
The structure of administrative courts consists of 2 levels in the Czech Republic. It contains
the regional courts (including the Municipal Court of Prague) and
the Supreme Administrative Court.
The Constitutional Court has a specific position and powers in the protection of Constitutional and fundamental rights (see next point).

2) Rules of competence and jurisdiction – how is it determined if there is jurisdiction of the court, cases of conflict between different national tribunals (in different Member States)?

The civil courts protect private rights and decide on civil matters in the procedure regulated by the Civil Procedure Code. The criminal courts decide on the guilt and punishment for criminal offences defined by the Criminal Code, in the procedure regulated by the Criminal Procedure Code. The prosecutor has an exclusive right to start the procedure in the criminal court. Civil jurisdiction rests with the district, regional and upper courts and by the Supreme Court.
The administrative courts protect individual public rights in the procedure regulated by the Code of Administrative Justice. They review the decisions of the administrative authorities, including decisions on administrative offences (torts). Administrative jurisdiction rests with specialised senates of the regional courts and the Supreme Administrative Court.
The Supreme Administrative Court conducts proceedings on competence actions (Article 97 et seq. of the Code of Administrative Justice). A competence dispute arises either between a state administration authority and a self-government body or between self-government bodies (for example between a

municipal authority and a regional authority), over who should make a decision on a particular matter. In practice, negative conflicts of competence are more common (both parties to the dispute consider that the matter does not fall within their jurisdiction), but there are also cases of the opposite (for example a party discovers that both the state administration body and self-government decided on its (identical) case). The Supreme Administrative Court is also entrusted with disputes between central state administration bodies (for example a dispute over who should issue a decision between two ministries). Since these "inter-ministerial disputes" regularly involve the assessment of very complicated and legally demanding issues with a very broad practical impact, the legislature has also ordered the Supreme Administrative Court to resolve such disputes in jurisdiction proceedings.
The Special Chamber (court), established under Act No. 131/2002 Coll., on decision making on certain conflicts of jurisdiction, decides on positive and negative conflicts of jurisdiction to which the court is a party (or both parties). The subject of the decision is disputes about the power to issue decisions which arise between courts on the one hand and administrative authorities on the other, and disputes between civil and administrative courts. The essence of the decision of the Special Chamber is to determine which of the parties to the dispute is competent to give a ruling on a particular matter.
The Constitutional Court is responsible for the protection of constitutionality, including protection of fundamental rights and freedoms granted by the Constitution and the Charter. The Constitutional Court has jurisdiction to annul laws if they conflict with the constitutional order. It also decides on constitutional complaints against final decisions of public authorities in all branches of law which are alleged to infringe fundamental rights and basic freedoms.

3) Specialities as regards court rules in the environmental sector (special environmental tribunals), laymen contributing, expert judges

At the judicial level, there are no organs specialising in environmental protection. The ordinary civil and criminal courts deal with disputes and crimes related to the environment. The decisions of the administrative authorities, including those which relate to the environment, are reviewed in the first instance by the departments of the regional courts, specialising in administrative matters. The judgments of administrative courts can be reviewed, on the basis of a cassation complaint, by the Supreme Administrative Court, which is a specialised judicial authority in administrative matters.
From the legal (legislative) point of view, there are no specificities of judicial procedures in environmental matters, except for the participatory and standing rights of the environmental organisations, which are described in detail in section 1.4. From the factual point of view, a significant proportion of lawsuits filed by these organisations represent a specificity of the administrative judicial procedures in environmental matters. It is usually difficult to bear the burden of proof in civil judicial procedures, in which the plaintiff is asking the court to protect his or her rights infringed by interventions affecting the environment, as it is difficult to prove interference with the right to a favourable environment. It is similar for criminal offences related to damaging the environment.
No laymen participate in the decision-making by administrative or civil courts in environmental matters. Theoretically, lay judges would decide on environmental crimes in cases where the regional court had jurisdiction as a first instance court. However, proceedings on environmental crimes are usually decided at first instance by regional courts and therefore laymen judges are not involved.
There are also no "expert judges" in the Czech legal system, except for their general specialisation on criminal, civil and administrative law. In practice, some judges, especially members of the Supreme Administrative Court, are known for their specific knowledge of environmental law.

4) Level of control of judges in case of administrative appeals, concept of own motion, what are its limits? Rules on court action on its own motion

Upon an administrative appeal (administrative lawsuit) and within the scope of the arguments for such an appeal, the courts can and must review both the substantive and procedural legality of the development consents and other administrative decisions. They are entitled, at the suggestion of the parties, to review or amend the evidence considered in the administrative procedure. Together with the final decision which is the subject of the lawsuit, they shall also review the substantive and procedural legality of the acts which the final decision is based on and which are not subject to independent review (for example, the EIA statement – see section 1.4, point 2) for more details).
There are no judicial procedures concerning environmental matters which the courts could start of their own motion. The courts can act solely on the basis of the lawsuit or other appropriate motion, never on their own initiative. The civil judicial procedure can be initiated by the court of its own motion on the occasions and in the cases expressly defined by law. The courts can start *motu proprio* procedures concerning e.g. care for children, detention of a person in a medical facility, the legal capacity of a person, declaration of a person to be dead, inheritance, existence or non-existence of marriage, etc.

1.3. Organisation of justice at administrative and judicial level

1) System of the administrative procedure (ministries and/or specific state authorities)

The system of administrative procedure in the Czech Republic is generally regulated by the Code of Administrative Procedure and specific acts in various areas of public administration, including environmental protection and its specific branches. As a general principle, the administrative procedure has two levels. The municipal authorities act most often as first instance administrative organs and the regional authorities as the appeal bodies. In some types of procedure, regional authorities act as the first instance and the relevant ministries as the appeal bodies. There are also some special administrative authorities with specific competence. In the area of environmental protection, the most important special administrative authorities are the Czech Environmental Inspectorate, the Nature and Landscape Protection Agency and Regional Health Stations.
The general responsibility for environmental laws and policies lies with the Ministry of the Environment, which also has a general supervisory and monitoring role in this area. However, other ministries also have competence in the field of environmental protection (Ministry of Regional Development in spatial planning, Ministry of Agriculture in water protection, Ministry of Health in protection against noise).
As for the rules regulating the possibility of public participation in environmental matters: in the individual administrative procedures
either the general definition of the party according to the Code of Administrative Procedure (based on the principle of "affected legal interests") applies, or there is a specific definition of parties (e.g. the affected landowners in procedures according to the Building Code) which takes precedence over the general provisions.
There are a number of special provisions regulating specific administrative procedures including special regulation of parties to the process. In the area of environmental protection those are the EIA Act, the IPPC Act, the Nature Protection Act, the Water Protection Act and others (see section 1.1, point 3), and section 1.4, point 3), for more details).
In some kinds of procedure, namely concerning plans and programmes (adopted in the form of so-called measures of a general nature), anyone can usually participate in the procedure with the right to present their comments, while the persons specifically affected in their rights (usually affected property owners) can raise objections. An administrative appeal is not available in such cases. However, the affected persons, including the NGOs, can challenge the measures of a general nature in court. (see section 1.4 for more details).

2) How can one appeal an administrative environmental decision before court? When can one expect the final ruling?

As a general principle of Czech administrative law, it is possible to file an appeal against administrative decisions to a superior administrative body. The appeal to a superior administrative body must be exhausted before the administrative decision can be further appealed before the court. Where there is no possibility of administrative appeal, it is possible to bring an action directly to the court.
Similarly, the administrative remedies have to be exhausted before taking a case to an administrative court also in case of omissions (illegal inaction) by the administrative authorities or in case of other "illegal interventions" by the administrative authorities.

Pursuant to Article 65 paragraph 1 of the Code of Administrative Justice (see section 1.1, point 3), anyone who claims that their rights have been infringed directly by a decision of an administrative authority or due to the violation of their rights in the preceding proceedings can bring an action against such a decision. Moreover, according to paragraph 2 of the same article, the action can be also brought by a person who had the status of a party to the proceedings before the administrative authority who is not entitled to do so under paragraph 1, if that party claims that his or her rights have been prejudiced by the actions of the administrative authority in a manner that could have resulted in an illegal decision.
The final ruling of the administrative court is usually issued 1–2 years after the action was filed, except for cases where the law prescribes that the ruling must be issued within a specific time limit (e.g. review of measures of a general nature, including land use plans, or permits for highways, where the courts must decide within 3 months of receiving the lawsuit). The ruling of the first instance (regional) court can be further reviewed on the basis of a cassation complaint by the Supreme Administrative Court. The procedure before the Supreme Administrative Court usually lasts for 6–9 months.
The measures of a general nature (including land use plans, river basin management plans and other plans and programmes related to the environment) *can be appealed directly before the administrative courts on the basis of Article 101a* of the Code of Administrative Justice by any person claiming that his or her rights were infringed by the measure of a general nature.
The administrative courts generally only have the power to cancel the administrative decisions (power of cassation). There are however exceptions to this rule. When reviewing decisions imposing administrative penalties (fines), the courts may, next to cancelling the decision, also moderate the penalty. If the court is cancelling a decision on refusal to provide information, it can also order the administrative authority to disclose the information. This rule, however, does not apply to environmental information.

3) Existence of special environmental courts, main role, competence

There are No special environmental courts (see also section 1.2, point 3) above). The regional courts (administrative departments) are the forum to challenge all administrative decisions, including development consents and other decisions related to the environment (with the possibility to file a cassation complaint against their decision to the Supreme Administrative Court).

4) Appeal against environmental administrative decisions delivered by competent authorities and appeal against Court orders and decisions (levels)

As described under point 2) of this section, it is possible to file an appeal against administrative decisions, including environmental ones, to a superior administrative body. There is no administrative appeal against “measures of a general nature” (plans and programmes).
The final (usually second instance) decision of an administrative authority can be challenged before the administrative court by a person who claims that their rights have been infringed directly by a decision of an administrative authority or due to violation of their rights in the preceding proceedings. A person who claims that his or her rights have been infringed by a measure of a general nature may bring an action directly to the administrative court.
The administrative courts shall review both the substantive and procedural legality of administrative decisions subject to an administrative lawsuit. Infringement of the procedural provisions for the administrative procedure is a reason for cancelling the contested decision, if it is likely that it could cause the substantive illegality of the decision in question. The decision of the court shall be based on the facts as they were at the time when the administrative decision was issued. The courts usually decide on the basis of the materials gathered in the administrative procedure. They are, however, entitled, if the parties to the court procedure suggest this, to review the correctness of such materials, and repeat or amend the evidence considered in the administrative procedure. The court shall review ex officio whether the administrative authorities might have misused or exceeded the scope of their discretionary powers.
The decisions of administrative courts can be reviewed, on the basis of a cassation complaint, by the Supreme Administrative Court. The cassation complaint is an extraordinary remedy, as it does not postpone the legal force of the first instance decision. However, due to the frequency of using this remedy and taking into account that the Supreme Administrative Court can change the contested decision, the cassation complaint has in practice the character of an ordinary remedy (appeal), as it is the only way to review the first instance decision in the administrative judiciary.

5) Extraordinary ways of appeal. Rules in the environmental area. Rules for introducing preliminary references

At the level of the administrative review, the legality of both the individual decisions (development consents) and the measures of a general nature (plans and programmes) can be reviewed in the extraordinary *ex officio* review procedure under Article 94 (individual decisions) and Article 174 (measures of a general nature) of the Code of Administrative Procedure. The procedure is carried out by an authority superior to the administrative body which issued the final decision subject to review. Anyone can indicate to the superior authority 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 any grounds for their initiation.
Any person can ask the Supreme Public Prosecutor or the Public Defender of Rights to file a public interest lawsuit against an individual administrative decision. It is however left to the discretion of these institutions whether to do so.
Cases where a person is entitled to bring an action against an administrative decision, even though he or she was not entitled to be a party to the administrative proceedings, can also be considered as extraordinary. This could be a case for a person who is affected by the decision approving the operation of a source of noise exceeding the legal limits (“noise exception”). Such a person can bring an action before the administrative court without having to exhaust the administrative appeal process. The same situation exists with respect to permits issued under the Nuclear Act.
Czech courts have the possibility and, in the procedure before the Supreme Court, the Supreme Administrative Court and the Constitutional Court, the obligation to ask the Court of Justice of the European Union under Article 267 of the Treaty on the Functioning of the European Union to rule on the interpretation or validity of European law when it is decisive for their decision (introduce a preliminary reference). The article states that if such a question arises in proceedings before a court of a Member State whose decision cannot be challenged under national law, that court must refer the matter to the Court of Justice of the European Union. The only exceptions are situations where the interpretation of European Union law does not create problems in its context (*acte clair*) or where the uncertainty of interpretation has already been overcome by the case-law of the Court (*acte éclairé*). The parties in the case can ask the courts to introduce the preliminary reference, but they cannot enforce this request. Only where the Supreme Court or the Supreme Administrative Court do not introduce the preliminary reference, even though the conditions of Article 267 TFEU are met, they can challenge this in the constitutional complaint. According to the Czech procedural laws (e.g. Article 48 paragraph 1 point b) of the Code of Administrative Justice), introducing a preliminary reference constitutes a reason for suspension of a court proceedings.

6) Are there out of court solutions in the environmental area as regards solving conflicts (mediation, etc.)?

Mediation or other out of court solutions is not used in the environmental matters.
Mediation is regulated by Act. No. 202/2012 Coll., on Mediation, which lays down rules for mediators. Every mediator has to undergo professional training, pass an exam and then be registered in the list of mediators run by Ministry of Justice. The Ministry of Justice supervises mediators; however mediators who are in the bar (attorneys) are supervised by the Czech Bar Association. Information about mediation can be found on the website of the Czech Bar Association.
Mediation is mostly used in civil cases, especially in family disputes. Nobody can force the other party to take a part in mediation, but in some cases, the mediation can be initiated by the court – the court can inform the parties about mediation, call upon the parties to try mediation or even order a first meeting with the mediator. Then the parties must voluntarily decide to try mediation or not. While they have agreed on mediation, the parties make a contract. The mediator is entitled to a fee and appropriate expenses paid by the parties, usually in equal shares. Ideally, the mediation should result in the conclusion of a

mediation agreement which can be later approved by the court or by notarial deed, so the parties obtain the enforceable title. However, mediation is practically never used in environmental matters.
There are some special procedures within the administrative and judicial proceedings. Apart from participation in administrative procedures and challenging the decisions at administrative courts, there are several other remedies which may be used by both the parties to administrative procedures and general public, namely
submissions to competent authorities to initiate *ex officio* review procedures, including submissions to take measures against inaction (omission) by subordinated authorities,
extraordinary administrative remedies (i.e. administrative review of decisions in force, new procedure (retrial)),
submissions to the Public Defender of Rights, criminal notification to police or public prosecution, and submissions to the Supreme Public Prosecutor and ombudsperson to file a public interest lawsuit.
However, there is no legal duty for the competent authorities to initiate proceedings on the basis of the above submissions. It is up to them to decide whether to start the procedure or not while the applicant has only the right to be informed about the follow-up to his submission.

7) How can other actors help (ombudsperson (if applicable), public prosecutor), accessible link to the sites?

There is the Public Defender of Rights in the Czech Republic who deals with all cases where administrative bodies act or fail to act in breach of the law, principles of the democratic rule of law or principles of good administration. This also covers environmental cases.
The Public Defender of Rights may initiate its inquiry *ex officio*. Anybody may approach the Public Defender of Rights with a submission (specific conditions are set forth as to when the Public Defender of Rights may decide not to deal with the submission, e.g. the violation is older than 1 year). However, even if the ombudsperson concludes that the administrative authority has broken the law, he/she may only advise the authority to take corrective measures, not order it to do so. If this is not respected, the Public Defender of Rights may contact a superior authority or government and inform the general public.
The Public Defender of Rights can conduct independent inquiries but cannot substitute for the activities of state administration bodies and may not cancel or change their decisions. However, if an error is found, it may require the authorities or institutions to remedy the situation.
The Public Defender of Rights cannot interfere with the decision-making activities of the courts.
Both the Public Defender of Rights and the Supreme Public Prosecutor are entitled to file a “lawsuit in the public interest” against any administrative decision according to Article 66 of the Code of Administrative Justice (see section 1.1, point 3), if they “find” (the Supreme Public Prosecutor) or “prove” (the ombudsman) that an important public interest is at stake. The Supreme Public Prosecutor does not have any other specific competence in the field of administrative decisions, including environmental decisions.

1.4. How can one bring a case to court?

1) Who can challenge an environmental administrative decision (relevance of the concept of concerned public and NGOs)?

The prevailing concept for standing in the administrative courts is based on the “impairment of rights” theory. As already described above in section 1.3, point 2), the general standing provision for the administrative courts, Article 65 of the Code of Administrative Procedure, states that standing to appeal against administrative decisions is granted to
persons who assert that their rights have been infringed by the decision which “creates, changes, nullifies or authoritatively determines their rights or duties” and
other parties to administrative proceedings issuing the administrative decision, who assert that their rights have been infringed in these proceedings and that this could cause illegality of the decision (standing of the environmental organisations is derived from this provision).
Under the previous case law, environmental NGOs could only claim infringement of their procedural rights before the administrative courts, but not the substantive legality of the administrative decisions. This approach was further supported by the Constitutional Court, which repeatedly ruled that legal entities, including environmental NGOs, cannot claim a right for a favourable environment, as this can “self-evidently” belong only to individuals. The courts therefore dealt with the material objections of NGOs only in exceptional cases.
In this respect, the decision of the Constitutional Court of 30 May 2014, No. I. ÚS 59/14 (see section 1.1, point 4) above) represented a change in the case law of the Czech courts. The Constitutional Court stated that NGOs are entitled to protect the substantive rights of their members, i.e. to act on behalf of their members and bring action against decisions or other acts or omissions which may have affected the right of their members to a favourable environment. The court based this conclusion on the consideration that it is not possible for natural persons, as holders of the right to a favourable environment, to lose the opportunity to claim this right, on the sole ground that they associate in an NGO. The court also relied on the provisions of the Aarhus Convention. It concluded that, although the Aarhus Convention is 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.
On this basis, the Constitutional Court concluded that it was necessary to grant environmental NGOs access to the courts and to allow them to propose the annulment of the land use plan. At the same time, the Constitutional Court explicitly defined the criteria for the standing of environmental NGOs to ask for the review of the land use plans in the court:
the NGO must claim that the illegality of a measure of a general nature affects its legal sphere,
the NGO must have environmental protection as the subject of its activity according to its bylaws,
the NGO must have a factual relationship to the locality regulated by the land use plan (registered office, residence of members, etc.).
establishment of the NGO, i.e. the time in which it has been in operation; however, the establishment of an ad hoc association is not excluded either.
This decision of the Constitutional Court specifically dealt with the standing of the environmental NGOs to appeal against land use plans before 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. Moreover, the amendment to the EIA Act of 2015 stated explicitly, for administrative procedures subsequent to an EIA, that the environmental NGOs can challenge 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.

2) Are there different rules applicable in sectoral legislation (nature conservation, water management, waste, EIA, IPPC/IED, etc.)?

The sectoral legislation includes special regulation of administrative proceedings themselves, including the possibility of participation, but not of access to justice. The conditions of access to the court are, with regard to all decisions, regulated by the general regulation contained in the Code of Administrative Justice. The only Act containing a special provision on judicial review is the EIA Act.
If the competent authority concludes that a project subject to the screening (an “Annex II” project, in the sense of the EIA Directive) shall not be subject to EIA, it shall issue a decision to this effect. The environmental NGOs, subject to the requirement for either 3 years of legal existence or 200 people supporting the action, can file an administrative appeal against such a decision and subsequently bring an action before the administrative court.
The final “EIA statement” cannot be reviewed by courts independently (directly). As the Supreme Administrative Court ruled in its judgement of 28 August 2007, no. 1 As 13/2007-63 (see section 1.1, point 4) above), it shall be subject to judicial review only together with (or within the scope of) the permit for

which the EIA statement serves e.g. the land use permit. In the administrative procedures in which such permits are issued, NGOs meeting the same requirements as described above for appeal against the screening decision can apply for the status of a party and consequently file an administrative appeal against the final decision (permit) and then an appeal to the court.
The environmental NGOs (without having to meet any specific conditions, except having the protection of the environment or other public interests as a main goal in their by-laws) can also apply for the status of a party to the proceedings according to the IPPC Act, the Nature Protection Act or the Water Protection Act (see section 1.1, point 3) above). Final decisions issued according to these acts can be challenged by the environmental NGOs if they participate in the administrative procedure with the status of a party.

3) Standing rules applicable for NGOs and individuals (in administrative procedure and at judicial level, for organisations with legal personality, ad hoc groups of representatives of the public, standing for foreign NGOs, etc.)

In the administrative procedures, 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 proceeding 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 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 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 status of party of the proceedings and may exercise the rights associated with that status.

b) Act No. 100/2001 Coll. on the Environmental Impact Assessment

In the EIA process, anyone can make comments at specified stages. The result of the EIA process is the issuance of a binding EIA opinion as a necessary document for the subsequent administrative procedures in which the project is approved. The EIA Act lays down conditions under which designated subjects may become parties to the subsequent development consent proceedings. The status of party to the subsequent proceedings is granted only to environmental NGOs or NGOs concerned with public health which were established at least three years before the date of publication of the announcement of the subsequent proceedings or whose participation is supported by at least 200 persons.

c) Act No. 76/2002 Coll., on Integrated Prevention and Pollution Control

The Act grants the status of party to proceedings concerning integrated operation permits for installations falling under the scope of this act, which implements Directive 2010/75/EU on industrial emissions, to the operator and owner of the regulated facility, the affected region and municipality and environmental NGOs that register within 8 days of the date of publication of the notice. Employers' organisations and chambers of commerce can get the status of party under similar conditions as environmental NGOs.

d) Act 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 party to such proceedings to affected municipalities.

e) Act No. 254/2001 Coll. , the Water Protection Act

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

f) Special definitions of the parties to administrative proceedings related to the environment are contained in a number of other special laws, such as 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 party is granted only to the applicant. This is the case, for example, for proceedings to grant "noise exceptions" – decisions which authorise an operator of a source of noise which exceeds the maximum limits to continue with the operations for a limited period of time (with the possibility of repeated prolongation).

There is no special provision concerning the participation of foreign NGOs in environmental administrative procedures. They may be granted the status of party to the proceedings under the same rules as the Czech ones.

Some acts, on the other hand, provide for a special obligation to cooperate with municipalities (Act on Nature and Landscape Protection).

The standing rules at the judicial level are described above in section 1.3, point 2) and point 1). Individuals have standing to appeal against administrative decisions if they can assert that their rights, including the right to a favourable environment, have been infringed by the decision which "creates, changes, nullifies or authoritatively determines their rights or duties" or that their rights have been infringed in the proceedings and this could render the decision illegal. According to the recent jurisprudence of the Constitutional and Supreme Administrative Courts in 2014 (decision of the Constitutional Court of 30 May 2014, No. I. ÚS 59/14, and the judgment of the Supreme Administrative Court of 25 June 2015, No. 1 As 13/2015-295), environmental NGOs are entitled to bring an action against an administrative decision which may infringe the right to a favourable environment. Their standing, however, is not based on the recognition of NGOs' right to a favourable environment, but on their right to protect the substantive rights of their members and act on behalf of them. The case-law subsequently defined further conditions for standing. The conditions include

requirement that the objections brought by the NGO should relate to the subject of the NGO's activity;

period of operation of the NGO;

close local relationship of the NGO to the subject of administrative proceedings.

Any assessment of the fulfilment of the individual requirements always depends on the individual assessment by the court in a specific case, as to whether the interests defended by the NGO may be affected.

Fulfilment of the condition that the case relates to the subject of activity of the NGO is usually evaluated on the basis of the goals and activities specified in the statutes (bylaws) of the NGO. The courts usually base their conclusions on the rebuttable presumption that an NGO carries out all the activities listed in its statutes. For example, in the judgement of 29 January 2018, no. 64 A 4/2017-205, the Regional Court in Brno acknowledged the legal standing of an NGO, whose goal according to its statutes was the protection of nature and the environment, to bring an action against a land use plan defining a road corridor in a certain area. In the judgement of 28 March 2018, no. 2 As 149/2017-164, the Supreme Administrative Court acknowledged legal standing of an NGO to bring an action against a decision on imposing measures to compensate for the impacts of road construction on a Site of Community Importance,

although the project was 60 km away from the seat of the NGO. The reason was again that the subject of activity of the NGO, according to its status, was the protection of nature, landscape and environment in specially protected areas. Courts are thus usually satisfied with the activities set out in the statutes and it is up to the respondent to prove that the NGO is not in fact engaged in these activities.
The period of operation of the NGO and its degree of establishment in the area may be inferred by the courts from the facts known to them from other proceedings. This is especially the case for NGOs that participate in these proceedings repeatedly and are known for their environmental activities (for example the judgement of the Supreme Administrative Court of 24 May 2016, no. 4 As 217/2015-197). However, the establishment of ad hoc association is not excluded either.
The local relationship of the NGO is assessed with respect to the whole subject of the proceedings, i.e. not necessarily with regard to individual objections brought in the proceedings by the NGO (judgement of the Supreme Administrative Court of 28 February 2020, no. 6 As 104/2019-70). A local relationship usually exists if the NGO is active in the area where the permitted activity is to take place. Wider standing may be granted if the effects of the project extend beyond the boundaries of the area or if the NGO carries out its activities on the territory of the whole republic for a long time. For example, in the judgement of 28 February 2020, no. 6 As 104/2019-70 the Supreme Administrative Court upheld the locus standi of an environmental NGO which has, for a long time and in serious manner, developed activities in connection with nature and landscape protection throughout the Czech Republic, against a building permit for new thermal power plant units located in an area other than that of the NGO's registered office.
The general conditions discussed above arising from the Code of Administrative Justice and related case law are supplemented by a special regulations contained in the EIA Act with regard to the proceedings subsequent to the EIA process. Article 9d paragraph 1 of the EIA Act (see section 1.1, point 3) above) states explicitly that the environmental NGOs can challenge both the substantive and procedural legality of the decisions issued in these procedures under the same criteria which they have to fulfil to become parties to these proceedings (i.e. they must exist as a legal entity at least three years before the date of publication of the announcement of the subsequent proceedings or must be supported by at least 200 persons).
In processes concerning the adoption of various plans and programmes related to the environment, the legislation usually also provides every person with the right to submit comments. When the plan or programme is issued in the form of a measure of a general nature, it can be appealed before the administrative courts on the basis of Article 101a of the Code of Administrative Justice by any person claiming that his or her rights were infringed by the measure of a general nature issued by the administrative authority. According to the case-law of the administrative courts, an appeal against the land-use plan, as the most typical measure of a general nature, can be submitted by an owner of a property located in the territory regulated by the respective plan whose property is directly affected by the proposed plan, as well as by the owner of a neighbouring property that could be affected by a certain activity, the effects of which will also have a significant impact on his land (e.g. by emissions, noise, etc.) or which will lead to a significant decrease in the value of his property. On the other hand, a tenant does not have standing. For standing of environmental NGOs, the above-described principles, established by the decision of the Constitutional Court of 30 May 2014, No. I. ÚS 59/14, apply.
As described above in the section 1.1., the Code of Administrative Justice also contains special legal regulation of the court procedure for cases where the interference with rights was caused by omission (inaction) by the administrative body or other unlawful interference (for example consent from an administrative authority to the placement of a project, which does not require a development consent in the form of an administrative decision). In both cases, the standing is based on direct interference with subjective rights of a person who is affected by the inaction or other unlawful interference.
The Code of Administrative Justice stipulates that a person who has exhausted the administrative measures for protection against illegal omission (inaction) by an administrative authority which infringes his or her rights can ask the court to order the administrative authority "to issue a decision on the merits of the matter". There is, however, a significant "gap" in this respect. According to the case law of the Czech courts, no person has standing to sue the administrative authority in the situation where it refuses to initiate the procedure *ex officio*, even though it has a legal duty to do so (for example, when there is a project built or operated without the necessary permits). The courts repeatedly dismissed lawsuits from affected neighbours in such cases (see e.g. Decision of the Constitutional Court of 30 July 2019, no. III. ÚS 2041/19 in section 1.1, point 4) above). The issue is actually under review by the extended senate of the Supreme Administrative Court in case 6 As 108/2019. It is possible that the extended senate could change the existing jurisprudence.
There is also no specific regulation concerning the standing of the environmental organisations to sue administrative authorities in case of illegal omissions or other unlawful interferences.

4) What are the rules for translation and interpretation if foreign parties are involved?

According to Article 36 of the Code of Administrative Justice the parties have 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 for them not to suffer harm in the proceedings. A similar principle applies in administrative procedures where administrative authorities are obliged to act impartially and treat the parties equally. These clauses also relate to language and country of origin and may be considered as general anti-discrimination clauses.
In court procedures, all parties are entitled to be heard in their mother tongue. Anyone who does not speak Czech may ask for an interpreter (translator); this right is guaranteed directly by the Charter of Fundamental Rights and Freedoms.
It is the state which bears the cost of translation in court procedures, contrary to administrative procedures where the party who does not speak the language has to bear the cost of translation itself. The exception is EIA/SEA procedures for projects or plans with transboundary aspects where notification and documentation must also be submitted in the official language of the State concerned (see Article 13 and 14a of the EIA Act).

1.5. Evidence and experts in the procedures

Overview on specific rules in administrative environmental matters, control of judge, calling for an expert in the procedure

1) Evaluation of evidence – are there any limits in obtaining or evaluating evidence, can the court request evidence on its own motion?

In the administrative procedure, the administrative body is responsible for collecting all necessary evidence needed for sufficient clarification of the relevant facts (Article 50 of the Code of Administrative Procedure). However, in the administrative review procedure, the parties can propose new evidence only if they could not do so earlier in the process (Article 82 of the Code of Administrative Procedure).
In the judicial review procedure, the court can decide which of the proposed evidence to consider and act on. According to law (Article 52 of the Code of Administrative Procedure), the court does not have to act on unnecessary and/or irrelevant proposals. In this case, in the decision on the merits, the court has to explain why the evidence was not considered. If not, this can result in so called "overlooked evidence" which means that the decision is unreviewable and also unconstitutional (Decision of the Constitutional Court of 16 February 1995, No. III. ÚS 61/94).
Evidence is evaluated by the court in line with the principle of independent assessment of all evidence. The court is not bound by any regulation as to what evidence should be given priority or assigned greater plausibility etc.; it is up to the court to carefully evaluate all the evidence. In its decision on the merits, the court has to thoroughly explain what evidence the decision is based on, what evidence was taken into account, which items were given priority, and why. If not, the decision is likely to be cancelled by the superior court.
The court can of its own motion request new evidence that was not introduced by any of the parties, particularly if the need for the evidence comes from the content of the administrative file. Any other evidence can be adduced if the court considers it necessary, if it would lead to relevant findings, and provided the equality among the parties is not infringed.

2) Can one introduce new evidence?

In civil cases one can introduce new evidence after the procedure has started, but only up to a specific moment (the end of the preparatory procedure, if it was performed, or the end of first hearing). In administrative judicial procedure, there is no limited period of time for introducing new evidence, up to the end of the court proceedings. However, in the case of action against administrative decisions, all the claims must be formulated in a two month period that is reserved for bringing an action.

3) How can one get expert opinions in the procedures? Publicly available lists and registries of experts.

In the procedure, the parties and also the court can ask for expert opinions. The expert can be appointed by the court or hired by the party. The rules for experts and their performance are prescribed in Act. No. 36/1967 Coll., on experts and interpreters and executive regulation No. 37/1967 Coll. From 1 January 2021, the new Act. No. 254/2019 Coll., on experts, expert offices and expert institutions will come into force. According to this new act, anyone who meets the established criteria (now including at least a master's level education) is entitled to be registered as an expert. The new act also introduces a possibility for experts to act together as an agency of experts and an obligation for experts to have liability insurance.

Anyone can find the experts in the list provided by the Ministry of Justice on its website. There is a facility to choose the expert according to his/her specialisation and place of residence. The database is accessible free of charge.

3.1) Is the expert opinion binding on judges, is there a level of discretion?

The expert opinion is not formally binding on the judge, but it is considered as one of the pieces of evidence, so the principle of independent assessment of evidence applies. The principle of free evaluation of evidence, however, applies exclusively to the evaluation of the veracity or credibility of the evidence. This includes, for example, expert reports. On the other hand, the principle does not apply to the evaluation of the weight of any piece of evidence in terms of its relevance to clarifying the facts of the case. Weight evaluation is a matter of legal assessment rather than a free evaluation of evidence in terms of veracity. Similarly, free evaluation is not applicable to the evaluation of the legality of the manner in which evidence was obtained.

The court should assess whether there are enough grounds for the conclusions of the expert opinion and whether all of the questions were answered, and also assess the expert opinion in relation to other pieces of evidence presented in the case. The expert should state how he came to his findings and conclusions (judgment of the Supreme Court of 21 October 2009, no. 21 Cdo 1810/2009). If there is any doubt about the quality of the expert opinion, the court can ask another expert to review the preceding expert opinion. The judge must decide on the credibility of the expert's opinion and on its value as proof. If necessary, the judge can ask for a counter-examination. If there are two conflicting expert opinions, the judge will ask for a review opinion from a third expert. Disagreement of the party with the conclusions of the expert opinion cannot be the only reason for reviewing the expert opinion.

3.2) Rules for experts being called upon by the court

The court usually calls upon the experts at the suggestion of the parties, however it can also call on the expert of its own motion. The parties should always be given an opportunity to express their view on the choice of the expert and the questions that he/she was asked to answer. If there is any reason for exclusion of the expert (mainly bias, see Article 11 of Act. No. 36/1967 Coll., on Experts and Interpreters), the expert opinion cannot be used as evidence (see judgment of the Supreme Court of 17 July 2014, no. 21 Cdo 2616/2013).

3.3) Rules for experts called upon by the parties

The expert opinion introduced by the parties should have the same importance and plausibility as the expert opinion requested by the court, provided that the expert opinion meets all requirements prescribed by law and includes a declaration by the expert that he or she is aware of the results of intentionally false expert opinion. Any party can choose an expert from the official lists of experts, ask him to give his expert opinion, pay for his services and present this expert opinion before the court as evidence.

3.4) What are the procedural fees to be paid and when in relation to expert opinions and expert witnessing?

The expert is entitled to a fee for giving the expert opinion. If the expert was appointed by the court, the rules for the fee are given by law (Regulation No. 37 /1967 Coll., the regulation of Ministry of Justice applying the Act on Experts and Interpreters). Where the expert was called upon by a party, the fee conforms to the contract between the expert and the party. If the parties to a contract do not agree otherwise, the fee also covers appropriate expenses.

The expert called upon by the court must account for the fee and the appropriate expenses together with the expert opinion, based on the hourly fee (see section 1.7.3, point 1) for more details). The court than sets the exact amount of the fee no later than in two months from provision of the expert opinion. If the expert opinion is of poor quality or late, the court can reduce the fee by up to half or, in case of seriously poor-quality, refuse to award the fee.

1.6. Legal professions and possible actors, participants to the procedures

1) Role of lawyers, compulsory or not, how to contact, publicly accessible internet link to registry or website of the bar, perhaps of specialised lawyers in the environmental field

Unlike in criminal cases, a party to court proceedings in civil cases has to be represented by an attorney only in review proceedings before the Supreme Court (Article 241 of the Code of Civil Procedure), and in administrative court cases only in the cassation procedure before the Supreme Administrative Court (Article 105 of the Code of Administrative Justice). In both cases, the requirement for representation applies only to the claimant. However, if the claimant has a legal education, the obligation will not apply. The same applies in the case of a legal entity represented by a member or employee with a legal education.

The register of attorneys is run by Czech Bar Association on its website. Anyone can search for a lawyer by his/her name, legal specialisation (environmental law is under no. 49), place of residence, language, registration number etc. When choosing an attorney, all the data needed is displayed, including phone number, e-mail address, contact at law firm etc.

1.1 Existence or not of pro bono assistance

The pro bono lawyer can be appointed by the court or by the Czech Bar Association or arranged by some NGOs. There is no complex system of pro bono services, although drafts of an Act on Pro Bono Assistance have been discussed repeatedly in recent years.

1.2 If pro bono assistance does exist, what are the main elements of the procedure to receive it (perhaps links to forms, court or agency in charge, address, telephone, email, ways to contact, etc.)?

The court will appoint the attorney pro-bono in a civil or administrative case if the party files an application, the lawyer is necessary to protect the interests of the party, and the court considers it appropriate given the lack of financial resources of the party. The attorney's fee and appropriate expenses for representation are then paid by the state.

The Czech Bar Association provides pro bono legal services for those who do not fulfil the conditions for appointment of representative by and are not capable of obtaining the service at their own expense. The services are provided in the form of indicative legal consultation of legal counsel including representation. The application forms for pro bono legal service provided by the Czech Bar Association are available here.

Pro bono service is also arranged by some NGOs. The Pro Bono Alliance mediates the pro bono service among the NGOs (and their clients) and lawyers. Information about the service are available at http://www.probonoaliance.cz/en/ and http://potrebujipravnika.cz

1.3 Who should be addressed by the applicant for pro bono assistance?

As follows from the previous answer, the applicant can address the courts, the Czech Bar Association or some NGOs for pro bono assistance.

2) Expert registries or publicly available websites of bars or registries that include the contact details of experts

List of experts provided by Ministry of Justice.

3) List of NGOs who are active in the field, links to sites where these NGOs are accessible

Hnutí DUHA
Rekonstrukce státu
Děti Země
Arnika
Beleco
CALLA, sdružení pro záchranu prostředí
Český svaz ochránců přírody
Frank Bold Society
Greanpeace Česká republika
Česká společnost ornitologická
Česká společnost pro ochranu netopýrů
Česká společnost entomologická
Hnutí Brontosaurus
Přátelé přírody
Čistý les, z.s.

4) List of international NGOs, who are active in the Member State

Forest Stewardship Council
Greenpeace Czech Republic
Friends of the Earth (Hnutí DUHA)
International Young Naturefriends
BirdLife (Česká společnost ornitologická)
Eurosolar Czech Republic
WWF

1.7. Guarantees for effective procedures

1.7.1. Procedural time limits

1) Time limit to challenge an administrative environmental decision (not judicial) by an administrative body (either superior or same level).

The Code of Administrative Procedure, in Article 83, provides a general fifteen-day time limit to challenge administrative decision by an administrative appeal, which can be filed by a party to the administrative procedure.

The superior administrative body can also initiate a review procedure *ex officio*. This proceeding can be initiated by anyone, but without a legal right to start the proceedings. The *ex officio* review proceeding can be started within a time limit of one year from the day when the decision came into force.

2) Time limit to deliver decision by an administrative organ

Generally, the administrative authorities are obliged to deliver the decision within a period of 30 days, with the option to extend it up to 60 days (Article 71 of the Code of Administrative Procedure).

If the administrative authority does not comply with this 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).

3) Is it possible to challenge the first level administrative decision directly before court?

As a general principle of Czech administrative law, a party to the proceeding can file an administrative appeal against administrative decisions to a superior administrative body. The appeal to a superior administrative body must be exhausted before the administrative decision can be further appealed before the court. Non-exhaustion of proper remedies is a ground for dismissing the action before the court. However, if there is no possibility of administrative appeal, because of an explicit regulation by law (see section 1.1, point 2 for more details), it is possible to bring an action directly to the court.

4) Is there a deadline set for the national court to deliver its judgment?

Generally, there are no specific deadlines for the courts to issue their judgments. Proceedings in the civil and administrative courts (on one level) may last from a few months to several years. However, the Charter of Fundamental Rights, in Article 38 paragraph 2, provides everyone with the right to have his case dealt with without undue delay.

According to Article 56 of the Code of Administrative Justice, the court hears and decides cases in the order in which they occur; this does not apply if there are serious grounds for prior hearing and decision-making on the case. The Code of Administrative Justice further defines types of proceedings to be decided as a matter of priority. These include, actions for failure to act and actions against unlawful interference.

A specific deadline to deliver the final court decision is set forth only in cases of the so-called “measures of a general nature” such as land use plans or special acts on some aspects of development of traffic infrastructure projects where the Code of Administrative Justice (Article 101d paragraph 2) prescribes a deadline of 90 days. The same time limit for the court decision is set in Article 7 paragraph 10 of the EIA Act and also applies to decisions on administrative lawsuits concerning some large infrastructure projects (Act No. 416/2009 Coll. Article 2, paragraph 2). Interim decisions on a suspensive effect of the lawsuit or injunctive relief must be delivered within a period of 30 days in administrative cases and 7 days in civil cases.

5) Time limits applicable during the procedure (for parties, submitting evidence, other possible deadlines, etc.)

The parties to the administrative procedure must challenge the decision before the courts 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. The lawsuit against “measures of a general nature” such as land use plans must be filed within 1 year from the time they became effective.

In civil cases, one can introduce new evidence only until a specific moment (the end of the preparatory procedure, if there was one, or the end of the first hearing), in administrative judicial procedure there is no limited period of time for introducing new evidence, up to the end of the court proceedings. However, in the case of action against administrative decisions, all claims must be formulated in the two month period that is reserved for bringing an action.

Another deadline is set for “persons concerned” by a lawsuit (usually the parties to the original administrative procedure), who must indicate, within the time limit set by the court, whether they wish to participate in the court proceedings. For the time limit applicable during the procedure, it should be noted that the court must notify the parties at least ten days before the hearing that it is to be held (a shorter time limit may be set by court if the court has to decide within a period of days).

1.7.2. Interim and precautionary measures, enforcement of judgments

1) When does the appeal challenging an administrative decision have suspensive effect?
An appeal to a superior administrative body has a suspensive effect. Only in rare cases, and generally not in environmental matters, will the appeal not have a suspensive effect and may be preliminarily executed. The administrative body is able to void the suspensive effect in cases referred to in Article 85 paragraph 2 Code of Administrative Procedure, which means if it is necessary for protection of the public interest or if there is a threat of serious harm to the rights of some of the parties.
2) Is there a possibility for an injunctive relief during the administrative appeal by the authority or the superior authority?
The administrative body can order injunctive relief at the request of a party or *ex officio*, before the end of the appeal proceedings, 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).
3) Is there a possibility to introduce a request for such a measure during the procedure and under what conditions? Possible deadline to submit this request?
As stated in the previous point, it is possible for the party to request injunctive relief also during the appeal procedure. There is no deadline for such a request, up to the end of the procedure.
4) Is there immediate execution of an administrative decision irrespective of the appeal introduced? Under what conditions?
The administrative decision of the first stage administrative body cannot be executed if an administrative appeal is launched, pending the decision of the superior authority, unless the suspensive effect of the administrative appeal is made void (see point 1 above). If an appeal is brought to court, the administrative decision can be executed unless the court grants a suspensive effect to the lawsuit or issues a preliminary injunction (see the next point).
5) Is the administrative decision suspended once challenged before court at the judicial phase?
The submission of a lawsuit against a decision of an administrative authority generally does not have a suspensive effect. Once the decision is approved by the superior administrative body, it may be executed regardless the lawsuit filed against it. Only if the court grants a suspensive effect to the lawsuit or issues a preliminary injunction will execution of the decision be impossible.
The court may, in accordance with Article 73 paragraph 2 of the Code of Administrative Justice, at the request of the claimant, grant a suspensive effect to the lawsuit under the following conditions
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 at the same time,
issuing injunctive relief would not be contrary to an important public interest.
Specific conditions for granting a suspensive effect apply in case of lawsuits against final decisions (development consent) for a projects which are subject to EIA according to Article 9d paragraph 2 EIA Act (see section 1.8.1 for more details).
6) Is there a possibility for the national tribunals to provide injunctive relief (conditional upon a financial deposit)? Is there separate appeal against this order on the injunctive relief or the financial deposit?
Apart from granting a suspensive effect to the lawsuit, the administrative courts may further issue a preliminary injunction on the grounds 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 does not have to be the claimant personally who is under this threat. The court may order the parties to the dispute, or even a third person, to perform, abstain from something or endure something.
Nevertheless, it is very rare for the administrative courts to issue preliminary injunctions (granting suspensive effect is more usual). In civil cases this happens much more often. In civil court procedures, the court may, at the request of a party, impose injunctive relief if it is necessary to provisionally amend the conditions of the parties, or if there is a risk that enforcement of the (subsequent) court decision could be threatened (Article 74 of the Code of Administrative Justice). The court may apply injunctive relief to forbid the handling of things, laws or particular transactions.
In administrative cases, there is no separate time-limit in which the request for a suspensive effect or preliminary injunction has to be filed. In civil cases, it is possible to ask for the preliminary injunction first and file the lawsuit some time afterwards.
There is no possibility for the court to order deferral in administrative cases; this is possible only in civil proceedings.
In administrative matters, it is not possible to appeal (to file a cassation complaint) to the Supreme Administrative Court against the interim decisions, including decisions on suspensive effect or preliminary injunction. The court may reconsider its decision on suspensive effect or preliminary injunction at any time and it is hence possible to file a request for such reconsideration. In civil cases¸ it is always possible to appeal the decision on the preliminary injunction to the superior court; however, the appeal does not have a suspensive effect.
1.7.3. Costs - Legal aid - Pro bono assistance, other financial assistance mechanisms
1) How can one calculate what costs will be involved when one intends to initiate a procedure - administrative costs, judicial costs, costs for filing a case, experts’ fees, lawyers’ fees, cost of appeal, etc.
Generally, no fees are charged for participation in administrative procedures in environmental matters; only the judicial stage is charged. There are costs connected directly with the applicant’s actions towards the courts, namely:
a fee to start the judicial procedure
a fee for an appeal or cassation complaint,
a fee for a request for suspensive effect or injunctive relief.
All these fees must be paid by the applicant/appellant. Further, there are costs for persons other than the court such as experts (cost of expert opinions), interpreters, witnesses etc. and the costs of the parties to the procedure themselves.
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). Fee for a lawsuit against a land use plan is 5000 CZK (approx. EUR 200). Fee for a cassation complaint is CZK 5,000 (approx. EUR 200).
If a remedy is requested in the civil court action (such as claims for damages connected to environmental pollution or devastation), the system for calculating the fees is generally based on the value of the case. This principle applies when the claim is pecuniary; there are specific rules for calculating fees in disputes involving non-pecuniary claims. The fee for an appeal in civil cases is the same as for the lawsuit in the same case.
Costs of expert opinions (noise or pollution studies, etc.) may vary; the cost can normally be from EUR 100 to 4,500. However, the vast majority of administrative cases are decided on the basis of the administrative files, and possibly other official documents. On the other hand, in the civil cases it is necessary to bring enough evidence to support the lawsuit, so expert opinions are often necessary. For example, in cases in which the plaintiff asks the court to order the owners of the road to take measures to reduce the noise caused by traffic in excess of the noise limits, the costs of the expertise (assessment) may vary between EUR 1,900 and 4,200. Theoretically, in some other cases such as cases dealing with chemical pollution of the land, the costs for the expertise may be much higher.
The fees of attorneys may also vary widely. Typically, there is the hourly fee which is agreed with the client and may range from EUR 50 to 200. However, there are also other possibilities of determining fees such as a fee for the full representation, or a fee based on the tariff for attorneys.

2) Cost of injunctive relief/interim measure, is a deposit necessary?
The fee for a request for injunctive relief in the administrative cases is CZK 1,000 (around EUR 40). No deposit to cover any compensation is required.
In contrast, in the civil matters anyone requesting a court to order injunctive relief is obliged to pay a deposit of CZK 10,000 (approx. EUR 360) to cover any compensation for damage or other loss which could be caused by the injunctive relief; a fee of CZK 1,000 (approx. EUR 40) is obligatory as well.
3) Is there legal aid available for natural persons?
Concerning other possibilities of financial assistance, it is possible for a party to a judicial dispute to ask the court to appoint him or her a legal representative and at the same time to exempt that party from the duty to pay the legal costs (fully or partially). The conditions are the same as for a waiver of the court fees, i.e. the financial situation of the applicant.
Further, it is also possible to ask the Czech Bar Association to appoint an attorney to provide free legal aid – the pro bono lawyer (normally only for one or a few actions, not for full representation).
This system of the Czech Bar may theoretically be used already at the stage of administrative procedures. It follows that it is not possible for a party to choose his/her own attorney and then ask the court for a waiver of the costs of legal representation. Officially, waiver of these costs is always related to the appointment of a representative by the court (or by the Bar Association).
Only attorneys can provide legal aid as a paid service, and only an attorney can be appointed as a representative of a party who is asking for free legal aid. On the other hand, it is possible for a party to be represented before a court or administrative organ by someone other than an attorney. In practice, the NGOs often provide basic free legal aid (as counselling centres) in their fields of specialisation, and sometimes also represent parties in court. Legal aid is used relatively frequently in environmental cases and the frequency seems to be growing constantly.
4) Is there legal aid available for associations, legal persons, NGOs with legal personality and without legal personality? If yes, how to request legal aid? Is there pro bono assistance?
Free legal aid is available for legal persons under the same conditions as for natural persons. The Supreme Administrative Court ruled, with respect to the environmental NGOs who regularly apply to courts to challenge administrative decisions in environmental matters, that it is up to them to organise their activity in a way they have sufficient resources for it, and therefore, they cannot be provided with free legal aid repeatedly (decision of the Supreme Administrative Court of 9 February 2017, no. 1 As 326/2016-22, or decision of the Supreme Administrative Court of 27 May 2010, no. 1 As 70/2008 - 74).
5) Are there other financial mechanisms available to provide financial assistance?
There is a possibility to obtain a financial grant for legal services from non-governmental organisations, see e.g. Foundation Via.
6) Does the 'loser party pays' principle apply? How is it applied by courts, are there exceptions?
The loser pays principle applies as a general rule in the Czech court system. The losing party is therefore customarily obliged to pay the costs of the successful party as well as the cost of expert opinions and other costs of the procedure.
However, the case-law of the administrative courts states that the costs of the legal representation (attorney's fees) are not eligible costs for the administrative authorities which act as defendants in the administrative courts (the administrative body issues a decision and subsequently defends it before the court), as they employ their own lawyers who can represent them in the dispute. This case law also admits some exceptions.
Under special circumstances (depending on the consideration of the court) the court may also decide in civil jurisdiction that each party has to bear its own costs as well.
7) Can the court provide an exemption from procedural costs, duties, filing fees, taxation of costs, etc.? Any other national characteristics linked to this topic?
As stated above, both civil and administrative courts can mitigate the costs of the proceedings by granting a waiver of the court fees when the applicant proves the need for the waiver. This possibility is applicable at all instances in the proceedings, including the appeals. The administrative courts shall grant a partial waiver of the fees if the applicant proves he/she does not have the funds to pay the fee in full. A full waiver of the fee can be granted only under special circumstances. Waiver of these costs is related to the appointment of the representative by the court (or by the Bar Association).
The civil judges can grant a full or partial waiver of the court fees if the applicant proves a lack of funds and the action itself is not arbitrary, or almost certainly without any chance of being successful.
Case-law in environmental cases further specifies these rules in a way that an NGO cannot be awarded waivers repeatedly; if the NGO wants to protect the environment in court, it must raise essential resources for that and "not transfer them onto the state".
1.7.4. Access to information on access to justice - provisions related to Directive 2003/4/EC
1) Where are the national rules on environmental access to justice available? Internet link to be provided. Are there other forms of structured dissemination?
With regard to the possibilities for public participation in environmental decision-making and subsequent access to justice, the most important are general provisions of the Code of Administrative Procedure and the Code of Administrative Justice and specific provisions of environmental laws, mostly regulating the rights of environmental NGOs (see section 1.1 point 3 for more details).
The Collection of Laws is available here and all laws, regulations etc. are free available on private websites as well https://www.zakonyprolidi.cz/.
The Ministry of the Environment provides information on the application of the Aarhus Convention, including rules on access to justice on environmental matters, in this publication. A summary document about the possibilities of public participation and access to justice in environmental and related matters can be found also here.
2) During different environmental procedures how is this information provided? From whom should the applicant request information?
There are general provisions in the Code of Administrative Procedure dealing with service of documents, the obligation on administrative bodies to provide information about proceedings to the parties and to notify the parties and the persons concerned about the taking of evidence and the right of access to the files. In proceedings with a large number of parties, the initiation of proceedings is usually announced by public notice.
One can also request information from administrative bodies according to the laws on access to information. There are two different regimes: general Act No. 106/1999 Coll., Freedom of Information Act and specific Act No. 123/1998 Coll., on the Right to Access to Environmental Information. They are not applicable simultaneously; the specific act should be always applied to requests for environmental information.
The request for environmental information can be made orally, in writing or in any technically available form. The request must not be anonymous, and it has to be clear from the request what information is being requested. There are no other specific formal requirements for the request. If the request is incomprehensible or too general, the authority shall ask for more detail. The information shall be provided within 30 days of receipt or provision of additional details. This deadline can be extended, for serious reasons, up to 60 days maximum.
According to the "general" Freedom of Information Act, the courts can order the authority to disclose the information required. Such provision is, however, not contained in the Act on the Right to Access to Environmental Information, which applies exclusively with respect to requests for environmental information.
3) What are the sectoral rules (EIA, IPPC/IED, regarding plans and programmes, etc.)?
The information about the EIA procedures, and all documents relevant for the assessment stage (until the EIA statement is issued), are available online, on the website of the competent authority and also (with an archive) here.
In the case of IPPC, the information is available in the integrated prevention information system.

According to the Building Act, the draft land use plans must be made available to the public, where possible via the internet. This applies also to other plans and programmes subject to SEA (Air Quality Improvement Programmes, Waste Management Plans, National River Basin Management Plans, Strategies of Regional Development, Regional Energy Conceptions etc.), which are available here.

4) Is it obligatory to provide access to justice information in the administrative decision and in the judgment?

In the first instance administrative decision, there must be information on the right to launch an administrative appeal and the deadline for it. However, for the final decision of the superior administrative authority, the law does not require it to contain any information about the possibility of judicial review. The judgement must contain the information about the right to appeal, including the timeframe for it.

Both administrative decisions and judgements must include legal reasoning explaining why the decision was made. According to the jurisprudence, the decision is not reviewable if it does not contain sufficient legal conclusions resulting from the relevant facts or its reasons are not unambiguous in relation to the verdict. This is also the case for a decision where the reasoning does not make properly show the factual and legal reasons which led the administrative authority to issue a decision.

5) Is translation, interpretation provided to foreign participants? What are the rules applicable?

The general rule of administrative procedure is that all documents and hearings are in the Czech language. Documents in languages other than Czech have to be submitted in the original and parties have to submit officially certified translation as well.

Anyone who declares that he or she does not speak the language of the hearing has the right to an interpreter (see Article 16 paragraph 3 Code of Administrative Procedure and Article 37 paragraph 4 of the Charter of Fundamental Rights).

In court procedures, the rules are the same. The right to an interpreter is provided in Article 36 paragraph 1 and 2 Code of Administrative Justice.

1.8. Special procedural rules

1.8.1. Environmental Impact Assessment (EIA) - provisions related to Directive 2003/35/EC

Country-specific EIA rules related to access to justice

The EIA procedure is not an integral part of development consent (subsequent approval) procedures in the Czech legal system, but a separate process which has following main characteristics:

the EIA procedure is fully open to the public,

the EIA report (documentation) is accessible and everyone is entitled to make comments on it within the given time limits,

the process is finalised by issuing an “EIA statement” which must be adopted before further decisions (permits) are issued,

the EIA statement is binding in the subsequent proceedings,

the EIA statement cannot be reviewed separately, it can only be reviewed in the review proceedings for the subsequent decision.

1) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)

If the competent authority concludes that a project subject to screening (“Annex II” project, in the sense of the EIA Directive) shall not be subject to EIA, it shall issue a decision to this effect. Only environmental NGOs meeting the requirement for either 3 years of legal existence or 200 people supporting their action can file an administrative appeal against such a decision. The NGO can also subsequently file a lawsuit with the administrative court. The EIA Act grants the right to file a lawsuit against this type of decision explicitly and only to the NGOs. However, the general rules on access to justice contained in the Code of Administrative Procedure also apply. Therefore, anyone claiming an infringement of rights should have the right to bring an action (taking into account the case law on the infringement on rights, see above).

2) Rules on standing relating to scoping (conditions, timeframe, public concerned).

The scoping decision, as well as the final “EIA statement” cannot be reviewed by the courts independently (directly). As the Supreme Administrative Court has ruled in its judgement of 28 August 2007, No. 1 As 13/2007-63 (see section 1.1, point 4) above), they shall be subject to judicial review only together with (or within the scope of) the permit for which the EIA statement serves as the basis. In the administrative procedures in which such permits are issued, NGOs meeting the same requirements as described above for appeal against the screening decision can apply for status of party and consequently file an administrative appeal against the final decision (permit) and then an appeal to the court.

3) At what stage(s) can the public challenge the administrative decisions on environmental projects? Deadline to challenge decisions?

As follows from the above, screening decisions can be challenged by administrative appeal by an NGO meeting the above requirements, within 15 days after delivery (i.e. 30 days after it is published by public notice). The decision of the superior administrative authority can be further appealed in court, within 2 months after delivery.

4) Can one challenge the final authorisation? Under what conditions, if one is an individual, an NGO, a foreign NGO?

Pursuant to Article 65 of the Code of Administrative Justice (see section 1.1, point 3), anyone who claims that their rights have been infringed directly by a final decision of an administrative authority or due to violation of their rights in the preceding proceedings can bring an action against such a decision. Although it does not follow directly from the provision in question, the right to bring action is usually granted to persons with the status of party to the proceedings. An environmental NGO meeting the requirement for either 3 years of legal existence or 200 people supporting its action can file an administrative appeal against the final authorisation of a project subject to EIA and subsequently an appeal to the administrative court.

There is no special provision concerning the possibility for the foreign NGOs to participate in the environmental administrative procedures. Foreign NGOs should be able take part in these administrative procedures under the same requirements as the Czech ones.

5) Scope of judicial review – control on substantive/procedural legality. Can the court act on its own motion?

The courts shall review both the substantive and procedural legality of the development consents. The rules of evidence are the same as in the administrative courts in general. The courts are entitled, at the suggestion of the parties, to review or amend the evidence considered in the administrative procedure. Together with the final development consent, the substantive and procedural legality of the EIA statement and/or EIA screening and scoping decision shall also be reviewed.

The EIA Act states explicitly, for the administrative procedures subsequent to EIA, that the environmental NGOs can challenge 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 decision.

The court shall, at the suggestion of the plaintiff, also verify materials and technical findings on which the EIA statement and subsequently the development consent is based, at least to the extent that there is not a clear conflict between these findings and the conclusions and reasoning of the administrative authorities.

There are no judicial procedures concerning environmental matters which the courts could start of their own motion. The courts can act solely on the basis of the lawsuit or other appropriate motion, never on their own initiative (see section 1.2 point 4 for more details). They only can grant suspensive effect or issue injunctive relief in EIA cases of their own motion. As for the scope of the review, the courts shall, of their own motion, consider whether the decision is not null and void, if it is not clearly incomprehensible or if there is not a clear absence of reasoning. The court also shall, without any explicit plea from the party in this respect, interpret national law as far as possible in accordance with EU law.

6) At what stage are decisions, acts or omissions challengeable?

The public can challenge the final administrative decisions (development consent), e.g. the land use permit, building permit, mining permit etc. (the list of the proceedings subsequent to the EIA is provided in Article 3, letter g) of the EIA Act)., for which the EIA statement serves as the basis. The standard deadlines, i.e. 15 days for administrative appeal and 2 months for appeal to the court, apply, except for some of the infrastructures projects, where the deadline for filing a lawsuit is 1 month.

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

As a general principle of Czech administrative law, it is possible to file an appeal against administrative decisions to a superior administrative body. 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 appeal because of an explicit regulation by law.

As stated above, the screening decision according to which a project shall not be subject to EIA can be subject to administrative and subsequently also judicial review by an environmental NGO meeting the requirement for either 3 years of legal existence or 200 people supporting its action. Other outcomes of the EIA process can be challenged only together with the final administrative decisions (development consents).

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

8) 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., not meaning the requirement determined under point 12?

Active participation in the consultation phase of the procedure (making comments, participating in the hearing on the EIA procedure itself) 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 same applies to not raising objections in subsequent administrative proceedings.

9) 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 NGOs) 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 a hearing, it is necessary that the parties have the opportunity to meet all the documents on which the court will base its decision.

10) 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 the 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 has stated repeatedly that the lawsuits filed by the public concerned in environmental matters should normally be granted suspensive effect, so that the legal protection is not only formal but can also have a practical meaning (see e.g. judgement of 28 August 2007, nNo. 1 As 13/2007-63).

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

Article 9d paragraph 2 of the EIA Act provides that in cases of actions taken against decisions made in subsequent procedures, the court shall decide of its own motion whether to grant suspensive effect of the action, and the same applies for the injunctive relief. The court should grant suspensive effect to the action or order injunctive relief if there is a risk of serious damage to the environment. General regulation on issuing injunctive relief upon request also applies (see section 1.7.2 point 5 for more details).

1.8.2. Integrated Pollution Prevention and Control (IPPC)/Industrial Emissions Directive (IED) - provisions related to Directive 2003/35/EC

1) Country-specific IPPC/IED rules related to access to justice

The environmental NGOs (without having to meet any specific conditions, except having the protection of the environment or other public interests as a main goal in their by-laws) can apply for the status of party to the proceedings according to the IPPC Act within 8 days of publication of the information about the request for the IPPC decision by public notice. The employers' organisations and chambers of commerce can get the status of party under similar conditions to environmental NGOs.

The status of party is also granted to municipalities and regions on whose territory the facility is to be located.

Final decisions issued according to these acts can be challenged by the parties to the proceedings, including environmental NGOs if they participated in the administrative procedure with status of party.

2) Standing rules, at what stages can one challenge decisions (if one is an NGO, a foreign NGO, a citizen)? Is the final decision challengeable?

Parties to the IPPC procedure can appeal the IPPC decisions (integrated permits) to the superior administrative authority (the Ministry of the Environment).

Final IPPC decisions (integrated permits), issued according to the IPPC Act, can be reviewed by courts under the general conditions for judicial review of the administrative acts. Standing to appeal against the integrated permits is therefore granted to

persons who assert that their rights have been directly infringed by the IPPC decision and

other parties to administrative proceedings for issuing the IPPC decision, who assert that their rights have been infringed in these proceedings and this could render the decision illegal (standing to appeal for the environmental organisations is derived from this provision).

The environmental organisations have standing to appeal the IPPC decision if they meet the conditions under b), i.e. if they applied for and were subsequently granted the status of party to the IPPC administrative proceedings (ending with issuance of the IPPC permit). To get the status of party to such proceedings, the organisation has to notify the competent administrative body that it wants to participate in the proceedings within 8 days of publication of the information about the request for the IPPC decision by public notice. A specific way for an NGO to become party to the IPPC process and get standing is to meet the criteria in the EIA Act (see section 1.8.1 point 4 for more details).

The legal basis for NGO participation in the IPPC process, as described in this section, also applies to foreign NGOs (see also section 1.4, point 3) for more details).

3) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)

If the project is subject to EIA, the screening procedure under the EIA Act is carried out separately, outside the scope of the IED/IPPC procedure (see section 1.8.1, point 1) for more details).

The IPPC Act regulates the procedures enabling change to the integrated permit already issued. The operator is obliged to notify the administrative authority of any planned change in the use, mode of operation or extent of the facility which could have consequences for the environment. At the same time, the administrative authority shall review at least every 8 years whether there has been a change in the circumstances that could have led to a change in the binding conditions on the integrated permit. The administrative authority shall first assess whether the change is substantial or minor, then it is possible to initiate an integrated permit change procedure or a minor change procedure.

4) Rules on standing relating to scoping (conditions, timeframe, public concerned)?

There is no “scoping stage” in the IPPC procedure. If the project is subject to EIA, the scoping procedure under the EIA Act is carried out separately, outside the scope of the IED/IPPC procedure (see section 1.8.1, point 2) for more details).

5) At what stage(s) can the public challenge the administrative decisions on environmental projects? Is there a deadline to challenge decisions?

The public can challenge the final administrative decision (integrated permit) within the standard deadlines, i.e. 15 days for administrative appeal and 2 months for appeal to the court.

Where the grounds for appeal relate to the decision on the application for the use of BAT under the responsibility of the Ministry of Industry and Trade or the Ministry of Agriculture, the Ministry of the Environment shall send an appeal and a copy application for an integrated permit including this decision to the Ministry of Industry and Trade or the Ministry of Agriculture to assess whether there has been a mistake in applying the relevant BAT and BREF conclusions to the setting of binding conditions for operation. These central administrative authorities shall send their statement within 15 days from the date of receipt of the appeal or appeal against the issued decision. These statements are the basis for the decision of the Minister of the Environment on appeal or dismissal.

6) Can the public challenge the final authorisation?

If an environmental organisation meets the criteria for being a party to the IPPC administrative proceedings (see section 1.8.2 point 2), it can file an administrative appeal against the IPPC decision (integrated permit) and consequently have standing to appeal the final decision on the administrative appeal. The same applies to municipalities and regions on whose territory the facility is to be located. Individuals who assert that their rights have been directly infringed by the IPPC decision are entitled to challenge the final authorisation despite they did not have the status of party to the administrative proceedings.

7) Scope of judicial review – control on substantive/procedural legality. Can the court act on its own motion? Is it possible to challenge decisions, acts or omissions?

The regional courts are the forum to challenge the IPPC decisions (with the possibility to file a cassation complaint against their decision to the Supreme Administrative Court). Hearings do not take place if the courts refuse the lawsuit as inadmissible, or if they cancel the development consents for procedural mistakes or for being insufficiently justified (unverifiable). Moreover, the court usually asks the parties if they agree to decide the case without a hearing, and in many (probably most), the parties agree to this.

The courts shall review both the substantive and procedural legality of the IPPC decisions. The rules of evidence are the same as in the administrative judiciary in general. The courts are entitled, upon the suggestion of parties, to review or amend the evidence considered in the IPPC administrative procedure. The court shall, at the suggestion of the plaintiff, also verify material and technical findings on which the IPPC decision is based, at least to the extent that there is not a clear conflict between these findings and the conclusions and reasoning of the IPPC decision.

There are no judicial procedures concerning environmental matters which the courts could start of their own motion. The courts can act solely on the basis of the lawsuit or other appropriate motion, never on their own initiative (see section 1.2 point 4 for more details).

Failure by the administrative authority to issue a decision can also be challenged under the general conditions (see section 1.4 point 3 for more details).

8) At what stage are these challengeable?

The final administrative decision (integrated permit) is challengeable.

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

As a general principle of Czech administrative law, it is possible to file an appeal against administrative decisions to a superior administrative body. 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 appeal because of an explicit regulation in law.

As stated above, final IPPC decisions (integrated permits) issued according to the IPPC Act can be reviewed by the courts under the general conditions for judicial review of the administrative acts.

10) 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., not meaning the requirement determined under point 12?

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. The only exceptions are situations where there is no possibility of administrative appeal, because the person affected by the decision was not granted the status of party to the proceedings and therefore could not launch an administrative appeal.

From the formal point of view, it is not necessary to participate actively in the public consultation phase of the IPPC procedure in order to have standing to appeal the IPPC decision before the courts. If an individual or an environmental organisation meets the criteria for being a party to the IPPC administrative proceedings, it can file an administrative appeal against the IPPC decision and consequently have standing to appeal the final decision, even if it was not active in the IPPC administrative procedure.

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.

11) 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 for them 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 for

them not to 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 a hearing (written procedure), it is necessary that the parties have the opportunity to see all the documents on which the court will base its decision.

12) 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 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 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 from 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, nNo. 1 As 13/2007-63).

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

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

Article 9d paragraph 2 of the EIA Act provides that, in actions against decisions made in subsequent procedures, the court shall decide of its own motion whether to grant suspensive effect to the action, and the same applies to injunctive relief. The court should grant suspensive effect to the action or order injunctive relief if there is a risk of serious damage to the environment. This applies also with respect to the IPPC permit if the project is also subject to EIA. General regulation on issuing injunctive relief upon request applies (see section 1.7.2 point 5 for more details).

14) Is information on access to justice provided to the public in a structured and accessible manner?

The IPPC Act provides that data from the integrated prevention information system should be published on the website of the Ministry of the Environment. There is however no structured information about access to justice in this area.

1.8.3. Environmental liability[1]

Country-specific legal rules relating to the application of the Environmental Liability Directive 2004/35/EC, Articles 12 and 13

1) Which requirements need to be fulfilled for natural or legal persons (including environmental NGOs) to have the decision taken on environmental remediation by the competent authority reviewed by a court or another independent and impartial body in accordance with Article 13(1) ELD?

General conditions for standing in environmental matters (see section 1.4. points 1 and 3) apply. Parties to proceedings concerning environmental liability matters may file the lawsuit to the administrative courts once the administrative decision is final. That means that ordinary administrative remedy, which is an appeal to the Ministry of the Environment, has to be exhausted first.

Environmental NGOs may become parties to the proceedings according to the Environmental Liability Act (no. 167/2008 Coll.) by initiating the procedure, i.e. by filing the request for preventive or remedial measures, or if they notify the competent authority in writing of their participation within 8 days of the date of notification of the initiation of the proceedings. Other natural or legal persons may file a request for preventive or remedial measures, but they cannot become parties to the proceedings.

2) In what deadline does one need to introduce appeals?

The administrative appeal can be introduced within 15 days for administrative appeal and appeal to the court within 2 months from the day the decision was delivered to the appellant.

3) Are there requirements for observations accompanying the request for action pursuant to Article 12(2) ELD and if yes, which ones?

The procedure for imposing preventive or remedial measures relating to environmental damage may be initiated *ex officio* by the Czech Environmental Inspectorate or upon request. This request may be filed by persons affected or likely to be affected by environmental damage (such as landowners) or by environmental organisations or other non-commercial legal persons whose main activity according to their statutes is protection of the environment.

The request for action must be accompanied by information demonstrating that there has been environmental damage or this is imminent. There are no more detailed requirements.

4) Are there specific requirements regarding 'plausibility' for showing that environmental damage occurred, and if yes, which ones?

There are no specific requirements regarding plausibility for showing that environmental damage occurred. There is only a requirement that the request for action must be accompanied by information demonstrating that there has been environmental damage or that the environmental damage is imminent (as above). But the law does not specify the way of submitting information.

5) Is a certain manner required and/or time limits set, and if yes, which ones, as regards the notification of the decision by the competent authority to the entitled natural or legal persons (including the entitled environmental NGOs)?

There is no time limit set directly for notification of the decision by the competent authority to the entitled natural or legal persons (including the entitled environmental NGOs). The general deadlines for issuing the decision in Article 71 of the Code of Administrative Procedure (30 days, with the option to extend up to 60 days) apply. However, the authority must take into account the urgency of the matter. Where needed, it shall ask the operator to take preventive or remedial measures before the decision is issued.

6) Does the MS apply an extension of the entitlement to request action by competent authority from damage to the environment in cases of imminent threat of such damage?

No extension of the entitlement to request action by competent authority is applied in cases of imminent threat.

7) Which are the competent authorities designated by the MS?

There are two principal competent authorities in the field of environmental liability: the Czech Environmental Inspectorate and the Ministry of the Environment. The Ministry of the Environment exercises the competencies of the central administrative body in the whole segment of environmental protection, including environmental damage. The Inspectorate accepts the submissions and requests for action. It is empowered to impose preventive or remedial measures relating to environmental damage and penalties.

8) Does the MS require that the administrative review procedure be exhausted prior to recourse to judicial proceedings?

The administrative review procedure - appeal to a superior administrative body - must be exhausted prior to recourse to judicial proceedings in the area of environmental liability.

Similarly, the administrative remedy – a request to the superior body to take measures against inaction (omission) - has to be exhausted before taking a case to an administrative court in case of failure by the Inspectorate to start the proceedings on the request to impose preventive or remedial measures.

1.8.4. Cross-border rules of procedures in environmental cases

1) Rules on involving other countries? At which stage of the procedure is there a possibility to challenge environmental decisions?

Special provisions in relation to the affected states are included in the Czech EIA Act. They grant any "affected state" whose territory may be affected by significant environmental impacts of a project the right to initiate a transboundary assessment procedure. Besides, it is obligatory for the administrative authorities to inform the affected states of the relevant IPPC procedures and enable them to submit their statements and consult on the project with them when required to do so.

Theoretically, it should be also possible for the affected states to participate in the subsequent administrative procedures such as the procedures on the land use permit and the building permit.

The final administrative decisions (development consent), e.g. the land use permit, building permit, mining permit, IPPC etc. for projects subject to EIA or IPPC procedure, can be challenged. As a general principle of Czech administrative law, the appeal to a superior administrative body must be exhausted before the administrative decision can be further appealed before the courts.

2) Notion of public concerned?

There is no specific notion of the public concerned in a transboundary context.

The general definition of public concerned applies, i.e. to grant the association the status of "public concerned", the environmental NGOs must meet the requirement for either 3 years of legal existence or 200 people supporting the action.

The concept of "affected state" applies with respect to transboundary EIA and IPPC procedures.

3) Do NGOs of the affected country have standing? When and to what court should they submit their appeals? What procedural assistance are they eligible for (legal aid, request for injunctive relief, interim measures, pro bono)?

There is no special provision concerning the possibility for the foreign NGOs or other members of the public concerned to participate in the environmental administrative procedures. The foreign NGOs need to meet the same requirements as the Czech ones to participate in the administrative procedures. In line with the interpretation of the EIA and IPPC Acts in conformity with EU law, they should have the same rights as the Czech NGOs. They have a right to an interpreter in the proceedings, but they are obliged to pay for his or her services.

4) Do individuals of the affected country have standing? What procedural assistance are they eligible for (legal aid, request for injunctive relief, interim measures, pro bono)?

There are no special rules for this. Individuals of the affected country need to meet the same requirements as the Czech ones to participate in administrative procedures. Only those persons, including foreigners, who prove that they fulfil one of the conditions stated by law can become parties to the administrative procedures in question. Individuals must therefore prove that their rights may be infringed by the decision. They have a right to an interpreter in the proceedings, but they are obliged to pay for his or her services.

5) At what stage is the information provided to the public concerned (including the above parties)?

General provisions of the Code of Administrative Procedure dealing with service of documents, obligations on the administrative body to provide information about the proceedings to the parties and to notify the parties and the person concerned about the taking of evidence, the right to access to the files etc. apply (see section 1.7.4). Most of the information about the procedural rights is provided when the procedure is announced. In proceedings with a large number of parties, the initiation of proceedings is usually announced by public notice.

The information about EIA procedures and all documents relevant to the assessment stage (until the EIA statement is issued) are available online on the website of the competent authority and also (with archive) here. The notification and documentation must be submitted in the official language of the State concerned (see Article 13 and 14a of the EIA Act).

In the case of IPPC, the information is available in the integrated prevention information system.

According to the Building Act, the draft land use plans must be made available to the public, where possible via the internet. This applies also to other plans and programmes subject to SEA.

The documents are available only in Czech, with the exception regarding EIA procedures described above.

6) What are the timeframes for public involvement including access to justice?

The general rules described in section 1.7. apply.

In regard to the EIA/SEA processes, in the case of a project carried out in the Czech Republic, a notification, including a translation, shall be sent within 7 working days of its receipt to the affected state with a request for comments. The public, the public concerned, the authorities concerned, the municipalities concerned and the state concerned may comment on the notification to the competent authority within 30 days of the date of publication of the notification and this period may be extended by up to 30 days if the state concerned requests it.

If the concept implemented in the territory of the Czech Republic may have an impact on the territory of another state, the Ministry of the Environment shall send, within 10 days of its receipt, information on the draft concept, including a translation to the affected state.

If the concept may affect the territory of a country other than the Czech Republic, the Ministry of the Environment shall publish within 20 days of its receipt information on the draft concept and send it to the authorities, affected regions and affected municipalities and inform them of the possibility of commenting on the concept. Anyone may send written comments within 30 days of the date of publication of the draft concept. The Ministry of the Environment shall send to the state of origin, within 40 days of the date of publication, information on the draft concept, together with its observations and information that it may take part in the consultation.

7) How is information on access to justice provided to the parties?

In the administrative decision of the first instance administrative authority, there must be information about the right to launch an administrative appeal and the deadline for it. However, for the final decision of the superior administrative authority, the law does not require this to contain information about the possibility of judicial review. The judgement must contain the information about the right to appeal. This applies to any party to the proceedings, including the public concerned in another country.

8) Is translation, interpretation provided to foreign participants? What are the rules applicable?

It is stated in the procedural laws that all parties to the judicial procedures must have equal rights and be treated equally and the courts are obliged to guarantee that. A similar principle applies in administrative procedures where administrative authorities are obliged to act impartially and treat the parties equally. These clauses relate also to language and country of origin and may be considered as general anti-discrimination clauses.

In the court procedures, all parties are entitled to be heard in their mother tongue. Anyone who does not speak Czech may ask for an interpreter (translator); this right is guaranteed directly by the Charter of Fundamental Rights and Freedoms.

It is the state which bears the cost of translation in the court procedures, contrary to the administrative procedures where the party who does not speak the language has to bear the cost of the translation.

9) Any other relevant rules?

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[1] See also case C-529/15.

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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 persons who assert that their rights have been infringed by the decision which "creates, changes, nullifies or authoritatively determines their rights or duties" and

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:

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

the NGO must have environmental protection as the subject of its activity according to its bylaws,

the NGO must have a factual relationship to the locality regulated by the land use plan (registered office, residence of members, etc.),

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.:

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).

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.

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.

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:

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

the NGO must have environmental protection as the subject of its activity according to its bylaws,

the NGO must have a factual relationship to the locality regulated by the land use plan (registered office, residence of members, etc.),

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:
Air Quality Improvement Programmes (required by Directive 2008/50/EC on Ambient Air Quality and Cleaner Air for Europe),
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,
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,
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.

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[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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Other relevant rules on appeals, remedies and access to justice in environmental matters

Liability of public administration for failing to act in compliance with legal requirements, including failing to provide effective access to justice, is regulated by the Act No. 234/2014 Coll., on Civil Service, and by the Act no. 40/2009 Coll., Criminal Code. Disciplinary measures according to Act on Civil Service include a written reprimand, deduction of 15% of salary for up to 3 months, removal from the position of senior servant or dismissal from the civil service. Punishment according to the Criminal Code for the abuse of competence of public official include imprisonment, dismissal from the civil service or fine.

In cases of silence of administration, one can also use rules to force the administrative body to act. Rules on silence of administration state that the administrative authorities have to proceed without undue delay. If the administrative authority does not act within the statutory period, or within a reasonable period if the statutory period is not specified, the provisions on protection against inactivity shall apply.

According to Article 80 of the Code of Administrative Procedure, if the administrative authority does not take a decision on the matter within the legal time limit, the superior administrative authority shall take official measures against inaction as soon as it becomes aware of it. After exhausting this administrative remedy, the affected person can, according to Article 79 of the Code of Administrative Justice, file an action with an administrative court.

In case of damage caused by either an illegal decision of the public authority or other unlawful maladministration, the victim can ask for redress before the civil court according to Act No. 82/1998 Coll., on Liability for Damage Caused by the Exercise of Public Authority by a Decision or Incorrect Administrative Procedure. Maladministration includes the silence of administration. An individual may claim damages as well as reasonable satisfaction for non-material harm. The possibility to claim damages according to Act No. 82/1998 Coll. covers claims for failing to provide effective access to justice as well.

When the administrative body does not comply with a judgment which orders it to act in some way, it is a specific case of maladministration. In this case, the above-mentioned measures concerning disciplinary or criminal liability, as well as civil liability for damages, can be applied.

In general, if any person or public authority does respect the court decision, there is a possibility of enforcement of the court decision either by the court itself or by a judicial executor. In cases of non-pecuniary duties, the execution can take a form of either direct enforcement (vacation of a building, clearing of a land, other kind of physical works, depriving of possession of an object etc.) or by imposing enforcement fines.

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