III.

FORMAT FOR AARHUS CONVENTION IMPLEMENTATION REPORT

CERTIFICATION SHEET

The following report is submitted on behalf of the Czech Republic in accordance with decision I/8

Name of officer responsible for submitting the national report:	Ing. Tomáš Kažmierski
Signature:	
Date:	31. 1. 2008

IMPLEMENTATION REPORT

Please provide the following details on the origin of this report

Party	Czech Republic
National focal point	
Full name of institution:	Ministry of the Environment
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Provide brief information on the process by which this report has been prepared, including information on which types of public authorities were consulted or contributed to its preparation, on how the public was consulted and how the outcome of the public consultation was taken into account and on the material which was used as a basis for preparing the report.

Answer:
The report has been elaborated by the Ministry of the Environment, in co-operation with The Green Circle, an umbrella organisation of environmental NGOs. The source materials were obtained from relevant sectors, sector organisations of the Ministry of the Environment and regional authorities. The NGOs have taken an active part in both the preparation of the report´s source materials (inter alia, by means of roundtables) and circulation of the report drafts for comments (through the umbrella organisation Green Circle).

Report any particular circumstances that are relevant for understanding the report, e.g. whether there is a federal and/or decentralized decision-making structure, whether the provisions of the Convention have a direct effect upon its entry into force, or whether financial constraints are a significant obstacle to implementation (optional).

Answer: The coordination body for implementation of the Aarhus Convention is the Ministry of the Environment which co-operates closely with the other sectors as well as environmental NGOs to evaluate the status of the Aarhus Convention implementation. In order to fulfill the obligations of the Aarhus Convention successfully, activities of not only the central state administration bodies but also those of local and regional authorities (14), municipal and regional courts or the Supreme Administrative Court are of critical importance.
The Convention is being implemented through national laws. The system of legislation is described in the respective articles of the report.
According to interpretation of the Supreme Administrative Court, the provisions of the Aarhus Convention are not applicable directly.

ARTICLE 3 – GENERAL PROVISIONS

List legislative, regulatory and other measures that implement the general provisions in paragraphs 2, 3, 4, 7 and 8 of article 3.

Explain how these paragraphs have been implemented. In particular, describe:

a) With respect to **paragraph 2,** measures taken to ensure that officials and authorities assist and provide the required guidance;

b) With respect to **paragraph 3,** measures taken to promote education and environmental awareness;

c) With respect to **paragraph 4,** measures taken to ensure that there is appropriate recognition of and support to associations, organizations or groups promoting environmental protection;

d) With respect to **paragraph 7,** measures taken to promote the principles of the Convention internationally;

e) With respect to **paragraph 8,** measures taken to ensure that persons exercising their rights under the Convention are not penalized, persecuted or harassed.

Answer:
There are several laws in the Czech legal order that concern the provisions of Article 3. We hereby give a basic summary of these laws:

Concerning par. 2 – it is possible to refer to § 4 of the Act No. 500/2004 Coll on Administrative Procedure (public administration is service to the public, there is an obligation to behave politely and be helpful), also e.g. to § 15 of the Act No. 100/2001 Coll. on Environmental Impacts Assessment (preliminary negotiations).
Concerning par. 3 – see § 13 (environmental education) of the Act No. 123/1998 Coll. on the Right for Information on the Environment.
Concerning par. 4 – see § 23 par. 9 of the Act No. 100/2001 Coll. on Environmental Impacts Assessment or § 70 of the Act No. 114/1992 Coll. on Nature and Landscape Protection
Concerning par. 7 – basic principles of the Aarhus Convention such as public access to information, public participation in decision-making and access to legal protection, are transposed through a number of laws (see the Act on the right for information on the environment, the Act on environmental impacts assessment, the Act on Nature and Landscape Protection, the Act on Administrative Procedure, the Building Act etc.).
Concerning par. 8 – generally speaking, „freedom of speech and the right for information" are among the basic constitutional rights (see Art. 17 of the Charter of Fundamentals Rights and Freedoms). This is also related to the right of expression and to inadmissibility of censorship etc. These rights can only be limited by an Act, and only for reasons provided for in the Act (see Art. 17 par. 4 of the Charter of Fundamental Rights and Freedoms). This also concerns the right to establish associations and to assemble (see Art. 19 and 20 of the Charter of Fundamental Rights and Freedoms).

Item a) State administration officers are trained within their introductory training, usually as to the public access to environmental information (Act No. 123/1998 Coll. on the Right for Information on the Environment and Act No. 106/1999 Coll. on Free Access to Information). Requirements of the Aarhus Convention are reflected in the Czech Republic´s legal order in a number of laws, in other words, a number of laws contain provisions that fulfill the Convention´s requirements (the Act on Administrative Procedure, the Building Act, the Act on Judicial Administrative Procedure, the Act on Environmental Impact Assessment, the Act on Nature and Landscape Protection etc.). Officials are educated to get acquainted with the regulations, both in their introductory training and within their further education.

Item b) In its Resolution No. 1048/2000, the Government of the Czech Republic adopted the National Programme of Environmental Education in the Czech Republic which is complemented with action plans every three years. The Ministry of the Agriculture has worked out a follow-up document concerning environmental education in this sector. Within an on-going curricula reform, environmental education has become a cross-section topic in framework educational programmes for primary and secondary schools and the schools are therefore obliged to deal with the topic. In the Czech Republic, the document National Strategy in Education for Sustainable Development has not been adopted yet, although the Czech Republic undertook to implement it under the „UN Decade" agenda in 2005 in Vilnijus where the ministers of environment and education from the countries belonging to the UN ECE adopted the Strategy for Education for Sustainable Development.

Item c) Within a tender organised by the Ministry of the Environment to support projects submitted by NGOs, every year there is a group of programmes focusing on public involvement in decision-making in the environmental area and sustainable development on regional level, and a group of programmes focusing on environmental education.

The NGOs activities are also supported by the sectors of agriculture and education as well as by regional and municipal authorities.
Establishment and activities of civic associations are regulated by the Act on Citizens Assembly. Civic associations that work in nature and landscape protection have an opportunity to get involved in respective administrative procedures, educational programmes or circulations of bills under preparation by the Ministry of the Environment for comments.

Item d) For example, the Czech Republic applies the principles of the Aarhus Convention within OECD, where the Czech Republic was the first party to invite NGOs to preparation and final negotiations of the Environment Performance Review (EPR). It has also ratified the Espoo Convention etc. The Czech Republic suggests that the meetings of the OECD Committee for environmental policy on the ministerial level be open to all interest groups, including NGOs. There are no standard binding rules to regulate obligatory participation of NGO representatives in government delegations to international forums that have environmental impacts. So it is up to the ministry or any other state administration body to decide whether the NGOs would be invited to take part or not.
Nevertheless, the Ministry of the Environment of the Czech Republic adopted an internal regulation in December 2007 which deals with NGO participation in delegations led by the Ministry of the Environment in international meetings.

Item e) Paragraph 8 of Art. 3 of the Convention is reflected, inter alia, in Art. 3 par. 3 and Art. 4 par. 1 of the Charter of Fundamental Rights and Freedoms which is a part of the Constitution of the Czech Republic. In the Czech Republic there are no cases when people claiming their rights would be penalized or sanctioned in any other way. There could be cases when a person is not enabled to claim his or her rights but penalties or sanctions by the state administration are excluded.

Describe any **obstacles encountered** in the implementation of any of the paragraphs of article 3 listed above.

Answer:
The NGOs have experience with some obstacles to practical fulfillment of the Convention. It is possible to give an example of insufficient practical skills of public administration as to public involvement, insufficient education of judges in environmental protection, generally weak public participation in decision-making about environmental issues and mutual conflicts in the media between public administration and some environmental organisations in connection with solutions to administrative disputes in the area of environmental protection.

Another problem is related to not reflecting the Aarhus Convention in the area of administration of cultural and architectural monuments (the Aarhus Convention in Art. 2 par. 3 (c)) as the Act on the Care for Historical Monuments does not deal with providing information, public participation or access to legal protection at all.

Provide further information on the **practical application of the general provisions of the Convention**.

Give relevant web site addresses, if available:

http://www.ucastverejnosti.cz/

ARTICLE 4 – ACCESS TO INFORMATION

List legislative, regulatory and other measures that implement the provisions on access to environmental information in Article 4.

Explain how each paragraph of article 4 has been implemented. Describe the transposition of the relevant definitions in article 2 and the non-discrimination requirement in article 3, paragraph 9. Also, and in particular, describe:

a) With respect to **paragraph 1,** measures taken to ensure that:
   (i) Any person may have access to information without having to state an interest;
   (ii) Copies of the actual documentation containing or comprising the requested information are supplied;
   (iii) The information is supplied in the form requested;

b) Measures taken to ensure that the time limits provided for in **paragraph 2** are respected;

c) With respect to **paragraphs 3 and 4,** measures taken to:

   (i) Provide for exemptions from requests;
   (ii) Ensure that the public interest test at the end of paragraph 4 is applied;

d) With respect to **paragraph 5,** measures taken to ensure that a state authority that does not hold the environmental information requested takes the necessary action;

e) With respect to **paragraph 6,** measures taken to ensure that the requirement to separate out and make information available is implemented;

f) With respect to **paragraph 7,** measures taken to ensure that refusals meet the time limits and the other requirements with respect to refusals;

g) With respect to **paragraph 8,** measures taken to ensure that the

requirements on charging are met.
Answer: *Implementation of Art. 4 is guaranteed primarily by the Act No. 123/1998 Coll. Access to information can only be limited in cases provided for in Acts, e.g. because of protection of confidential information (Act No. 412/2005 Coll.), personal data (see Act No. 101/2000 Coll.), intellectual property (see Act No. 527/1990 Coll.) etc.* *Item a) Access to information is regulated in the Act No. 123/1998 Coll. on the Right for Information on the Environment, as amended. Although the Act implements directly the requirements of this Article, in practice information is often asked for on the basis of the Act No. 106/1999 Coll. on Free Access to Information, and the obligated organisations do provide it on the basis of this Act, too. That is why it is important to mention this legal regulation and its application consequences as well.* *Item a (i) In these terms, the Act No. 123/1998 Coll. is fully compatible because, according to § 2 (c), any natural or legal person that asked for information is considered an applicant.* *Item a (ii) Updating of databases and information is regulated in § 10 (a) of the Act No. 123/1998 Coll. Making copies of documents is dealt with in § 10 of this Act.* *Item a (iii) § 6 of the Act No. 123/1998 Coll. (way and form of making information accessible) – an applicant can suggest in his or her application a form or way in which information should be made accessible. If the applicant does not specify the form or way according to paragraph 1, or if such a form or way cannot be used for serious reasons, such form or way of making the information accessible is chosen which corresponds to the application´s purpose and the user´s optimum utilisation. In the case of doubts, those forms and ways are used predominantly which had been used by the applicant to submit the application. If the organisation makes the information accessible (partly or fully) in a form other than required, it must justify its procedure.* *Item b) Deadlines for making information accessible are regulated in § 7 par. 1 of the Act No. 123/1998 Coll. The provisions are in full accordance with the requirements of the Convention. It is also possible to point out § 9 par. 3 of the same Act in which so-called fictive decision is regulated, in the cases when information is not provided or no decision is issued. It is possible to appeal against the fictive decision in accordance with the Act on Administration Procedure.* *Item c (i) Limitations of access to information are specified in § 8 of the Act No. 123/1998 Coll. It is impossible to refuse to provide information if it concerns emissions discharged into the environment. There is no restrictive interpretation provided for in the Act. The organisations obliged to provide information do not have to state in their refusal justification how they dealt with „the public interest test“.* *Item c (ii) „The public interest test“ is not contained in the Czech law (§ 8 par. 9 concerns emissions only), and even in the case of „softening“ of limitation of the right for information related to emissions (§ 8 par. 9), the Czech law does not cover all cases according to Art. 4 par. 4 of the Convention.* *Item d) The Czech law quotes the Convention´s text almost word for word (§ 4 of the Act*

No. 123/1998 Coll.). However, its fulfillment in practice is complicated due to lack of the public servants´ practical experience with the Convention application as well as with the Act and the process of providing information. There is also a problem with insufficient staff capacity.

Item e) The Convention´s requirement for sorting and making the information accessible is contained in the provision of § 8 par. 6 of the Act No. 123/1998 Coll.

Item f) The Convention´s requirement for the refusals to meet certain deadlines is contained in § 9 of the Act No. 123/1998 Coll. (in combination with provisions of the Act on Administrative Procedure that define requirements for the content and form of a decision). The Czech legal order constitutes, to cover failure to act within the legal deadline, fiction of a decision to refuse provision of information.

Item g) The Convention´s requirement for reasonable fees has been fulfilled. The NGOs experience shows that there are problems in the cases when an applicant requires information that he or she takes for information on the environment, and the authority or organisation provides him or her with it, but the information is provided according to the Act No. 106/1999 Coll. with the provision that it does not concern the environment. The authority is therefore entitled to require reimbursement for the costs related to looking up and providing the information – as opposed to the Act No. 123/1998 Coll. which provides for free provision of information. The applicant has the right to lodge a complaint against the amount of the fee for providing the information according to § 16 (a) of the Act No. 106/1999 Coll.

Describe any **obstacles encountered** in the implementation of any of the paragraphs of article 4.

Answer:
Two modes of providing information can be distinguished – namely general providing of information on the basis of the right for information (according to the Act No. 123/1998 Coll.) and inspecting of documents as implementation of the procedural right (according to the Act on Administrative Procedure and the Building Act). In resolving concrete practical cases, the relationship between these two modes raises questions. Nevertheless, judicial decisions practice is being formed. E.g. in practice, there is not always a clear interpretation concerning whether the information required could be made accessible on the basis of the Act on the right for information on the environment (which everybody has) or if the information could be refused on the basis of the Building Act in which only a participant in the respective procedure has the right for information (this concerns the case of denying the right to inspect the documents).

Another practical problem is related with a questionable interpretation of what is information on the environment and what is not. This concerns the cases when, within one request, somebody is asking for different pieces of information of which some concern the environment and the others do not. The obligated organisation should then apply two kinds of procedures separately (according to the Act on the right for information on the environment and according to the Act on free access to information). This also results in both different deadlines for providing the information and different remedial measures, requirements for covering the costs of providing the information as well as different judicial protection.

The NGOs experience show that difficulties with implementation of Art. 4 are caused by insufficient legal protection and possibility to gain quick and efficient remedy in the case of information refusal. Judicial review is often slow and inefficient. In administrative judiciary, the average trial time of a case is 450 days (15 months), the proportion of decisions rendered by courts of appeal is about 30 % and very often it is not a final decision but only a return of the case back to the court of lower instance to issue the final decision. If a court finally agrees with the plaintiff, it is often too late – the information is out-of-date.

Provide further information on the **practical application of the provisions on access to information**, e.g. are there any statistics available on the number of requests made, the number of refusals and their reasons?

Answer:
Statistic records are kept for proceedings in accordance with the Act No. 106/1999 Coll. on Free Access to Information. The Act No. 123/1998 Coll. does not contain a similar mechanism. Practical experience is monitored by NGOs – e.g. the Green Circle, The Environmental Legal Service, and records may also be kept by the single authorities.
Other statistics of database systems are given in the answer to the next Article.

Give relevant web site addresses, if available:

www.ucastverejnosti.cz
www.otevrete.cz

ARTICLE 5 – MAKING INFORMATION ACCESSIBLE ACTIVELY

List legislative, regulatory and other measures that implement the provisions on the collection and dissemination of environmental information in Article 5.

Explain how each paragraph of article 5 has been implemented. Describe the transposition of the relevant definitions in article 2 and the non-discrimination requirement in article 3, paragraph 9. Also, and in particular, describe:

a) With respect to **paragraph 1,** measures taken to ensure that:

(i) State authorities possess and update environmental information;

(ii) There is an adequate flow of information to state authorities;

(iii) In emergencies, appropriate information is disseminated immediately and without delay;

b) With respect to **paragraph 2,** measures taken to ensure that the way in which public authorities make environmental information available to the public is transparent and that environmental information is

effectively accessible;

c) With respect to **paragraph 3,** measures taken to ensure that environmental information progressively becomes available in electronic databases which are easily accessible to the public through public telecommunications networks;

d) With respect to **paragraph 4,** measures taken to publish and disseminate national reports on the state of the environment;

e) Measures taken to disseminate the information referred to in **paragraph 5**;

f) With respect to **paragraph 6,** measures taken to encourage operators whose activities have a significant impact on the environment to inform the public regularly of the environmental impact of their activities and products;

g) Measures taken to publish and provide information as required in **paragraph 7**;

h) With respect to **paragraph 8,** measures taken to develop mechanisms with a view to ensuring that sufficient product information is made available to the public;

i) With respect to **paragraph 9,** measures taken to establish a nationwide system of pollution inventories or registers.

Answer:
The provision concerning collection and dissemination of environmental information in accordance with Article 5 is implemented through the Act No. 123/1998 Coll. Specifically, this concerns the provisions § 10 (a) (making information accessible actively) and § 12 (report on the state of the environment).

Item a (i) Report on the state of the environment in the Czech Republic and respective reports on the state of the environment in the single regions are published annually. Once a year, Statistical Yearbook on the Environment is issued. Source data are updated continuously. Structure of the reports is modified every year and sets of indicators are complemented. Newly, summaries of the largest polluters from the Integrated Pollution Register are also published. The Protocol on Pollutant Release and Transfer Registers has not been ratified in the Czech Republic yet. Nevertheless, the Integrated Pollution register, which fulfils its requirements, works on the basis of the respective Act. The ratification process will be finished following the adoption of the Act on the integrated register of environmental pollution and integrated system of reporting duties in the environmental area and on an amendment to some acts (the Government approved the bill on 22 August 2007). There are also different databases and

information systems operated by other organisations – Ministry of the Environment, CENIA, GEOFOND, Nature and Landscape Conservancy Agency of the Czech Republic, Czech Hydrometeorological Institute etc.
In 2007, the Ministry of the Health Care worked out strategic noise maps of the Czech Republic in accordance with the Directive No. 2002/49. Information on the results of strategic noise mapping is provided in both the Ministry´s information office and on the Ministry´s information server.
Information on the environment is also provided by local authorities and municipalities in a form of yearbooks or web presentations. The internet is used increasingly, e.g. to answer questions asked by citizens most frequently.

Item a (ii) Information supply is ensured by the Czech Statistical Office, agencies established by the Ministry of the Environment (e.g. Czech Hydrometeorological Institute, Czech Environmental Inspectorate, National Environmental Fund), agencies founded by ministries of agriculture, health care, interior, transport, industry and trade as well as other central authorities such as the State Office for Nuclear Safety, National Health Institute etc.

Item a (iii)
Dissemination of information on the environment in urgent cases is regulated in the Act No. 239/2000 Coll. on the Integrated Rescue System and Amendments to Some Acts, as amended (information system for preventive and rescue measures in the area of mobile sources of danger - http://cep.mdcr.cz/dok2/DokPub/dok.asp) and the Act No. 240/2000 Coll. on Crisis Management and Amendments to Some Acts (the Crisis Act), as amended by the Act No. 320/2002 Coll. In order to warn citizens in time, municipalities use e.g. SMS messages, broadcasting of regional electronic media and other ways (e.g. the public administration web site: http://portal.gov.cz).

Item b) All relevant information is published via the Internet, including e.g. information systems in the area of
- environmental impact assessment EIA/SEA (http://www.env.cz/AIS/web.nsf/pages/systemy_EIA)
- integrated prevention and pollution control IPPC (http://www.env.cz/ippc, www.ippc.cz)
- integrated pollution register (http://www.irz.cz) and others.

A web site focusing on information on the environment has been opened (http://portal.cenia.cz).

To help users get orientated, the document „The guide to public library and information services of organisations within the Ministry of the Environment and co-operating organisations" was worked out and published (www.env.cz/__c125670400839a8e.nsf/0/288b210498e8344fc12571250059328d).

Providing of information on organic agriculture and bio-products is ensured mainly through the website of the Ministry of the Agriculture www.mze.cz. Every year, a national report on organic agriculture in the Czech Republic is issued, and it is also available in English at www.organic-europe.net.

Item c) Based on amended legislative rules of the Government, bills under preparation

are published on the public administration website since November 2007. As far as sector or regional plans, policies and other relevant documents are concerned, the publishing practice differs among the various institutions and there is no binding regulation in this area. That is why the public gets acquainted with many strategic documents only within strategic environmental assessment (SEA) process. Some laws (e.g. the Building Act, the Act on Environmental Impact Assessment, the Public Healht Act) provide for a duty to publish information in a way that enables remote access – this concerns e.g. proposals in area planning.

Item d) Every year, Reports on the state of the environment in the Czech Republic are discussed by the Government and the Parliament and published. Respective reports are also published on the level of regions and large towns.

Item e) Generally binding pieces of legislation and ratified international treaties are published in the Collection of Laws/Collection of International Treaties. Environmental laws and political documents are also published on the website of the Ministry of the Environment. Above that, since 2007, laws that are being prepared are published on the Internet already when circulation of the bill for comments from different sectors is launched, and the public is challenged to send their comments. Then the laws are published in the Official Journal of the Ministry of the Environment, and information on political and conceptual documents is also available in the Ministry´s Newsletter. The Ministry of the Environment also has a system to distribute information materials and other publications through its regional distribution centres.

Item f) The Integrated Pollution Register has been put into operation and the polluters have a legal obligation to notify of pollutants they discharge into the environment (Act No. 76/2002 Coll. on Integrated Prevention and Pollution Control). Companies and firms whose products were granted the certificate „Environment-Friendly Product" and which have introduced an environmental management or audit system can use comparative advantages and they usually inform the wide public about these activities through available information sources. The Government support to environmental labelling or environmental management and auditing is based predominantly on green public orders from the state administration agencies. The Act No. 137/2006 Coll. on Public Orders enables to apply environmetnal criteria for those orders in which a requirement for an environmental management/audit system or environmental characteristics of products can be raised. This procedure is recommended to all state administration bodies in the Government Resolution No. 720/2000 which concerns support to sale and usage of environment-friendly products.

Item g) Information and facts that are important for formulating environmental policy are provided to the public especially through Statistical Yearbook on the Environment and the Report on the State of the Environment in the Czech Republic (at present, the Ministry of the Environment gradually abandons distribution of printed versions and the materials are available in electronic form on the website of the Ministry of the Environment and CENIA and distribution on CD-ROMs is increasingly preferred).
Systematic publishing of materials concerning public negotiations, debates and hearings about issues covered by the Aarhus Convention has not been established yet. Information on these negotiations and debates are published ad hoc, e.g. through the website www.ucastverejnosti.cz which is supported by the Ministry of the Environment.

Item h) Provision of information on environment-friendly products is ensured by the website www.ekoznacka.cz, or through www.eco-label.com in the case of European eco-label. The public is informed about these products, inter alia, at the key public events related to the environmental area (fairs, granting of the prizes by the Minister of environment etc.). Dissemination of the information is also carried out within educational programmes at environmental education centres that are subsidized by the Ministry of the Environment, through a specialised programme of CENIA for primary schools etc. (See also item (f) above).

Item i) The Integrated Pollution Register has been established in the Czech Republic on the basis of national legislation and ratification of The Protocol on Pollutant Release and Transfer Registers is under preparation (See item (f) above).

Describe any **obstacles encountered** in the implementation of any of the paragraphs of article 5.

Answer:
A unified environmental information system with a necessary overlap with other sectors (such as agriculture or health care) is not interconnected sufficiently.

Environmental information can be made accessible not only through publicly available lists and registers but also via environmental information centres, environmental advisory offices or other contact points for the public. Unfortunately, there is lack of such places, the existing centres are not located evenly within the Czech Republic and the Ministry of the Environment itself does not have a public information centre of good quality.

There are also problems e.g. with publishing Czech translations of the EU environmental legislation. The materials are published very late and so far the complete EC legislation has not been translated yet.

Provide further information on the **practical application of the provisions on the collection and dissemination of environmental information in article 5,** e.g. are there any statistics available on the information published?

Answer:
A CENIA twining project has been finished which was supposed to contribute to a quality information flow among those who collect, process and use information on the environment. CENIA (Czech Environmental Information Agency) was reorganised. Nevertheless, integration of all existing environmental information systems into a single one has not been successful yet, neither was putting into operation of a unified functioning environmental information system.

Environmental education in regions was strengthened. Support from the ESF (Operational Programme in Human Resources Development) and the Norwegian financial mechanism (EEA financial mechanism – a block grant for NGOs) were used to extend the network of environmental education centres and the network of environmental advisory offices. However, an adequate substitute for the years 2007 – 2013 has not been found yet.

The NGO experience shows that, concerning the requirement for active dissemination of

comprehensible information by the state administration bodies, there is a problem with insufficient user-friendly manner and publishing of non-technical summaries that are a part of EIA and SEA documentation.

Everyday practice is complicated by unclear publishing of information in electronic official boards (this concerns chartered towns especially), but the legal requirement for publishing the information in the electronic board is respected.

So far, official journals and newsletters issued by municipalities have not been utilised enough to publish information on the environment, projects under preparation, EIA processes and public debates and negotiations.

The Office of the Government publishes the Government meetings agendas and the Government Resolutions on its website. The documents negotiated by the Government are not published but the public can ask for them on the basis of the Act No. 106/1999 Coll. on Free Access to Information.

Give relevant web site addresses, if available:

http://www.env.cz/AIS/web.nsf/pages/poskytovani,
www.cenia.cz
www.ippc.cz, http://www.env.cz/ippc
www.irz.cz
http://cep.mdcr.cz/dok2/DokPub/dok.asp

ARTICLE 6 – PUBLIC PARTICIPATION IN DECISION-MAKING ABOUT SPECIFIC ACTIVITIES

List legislative, regulatory and other measures that implement the provisions on public participation in decisions on specific activities in Article 6.

Explain how each paragraph of article 6 has been implemented. Describe the transposition of the relevant definitions in article 2 and the non-discrimination requirement in article 3, paragraph 9. Also, and in particular, describe:

a) With respect to **paragraph 1,** measures taken to ensure that:

(i) The provisions of article 6 are applied with respect to decisions on whether to permit proposed activities listed in annex I to the Convention;

(ii) The provisions of article 6 are applied to decisions on proposed activities not listed in annex I which may have a significant effect on the environment;

b) Measures taken to ensure that the public concerned is

informed at the outset of an environmental decision-making procedure in an adequate, timely and effective manner, of the matters referred to in **paragraph 2**;

c) Measures taken to ensure that the time frame of the public participation procedures respect the requirements of **paragraph 3**;

d) With respect to **paragraph 4,** measures taken to ensure that there is, in due time, public participation taking place;

e) With respect to **paragraph 5,** measures taken to encourage prospective applicants to identify the public concerned, to enter into discussions, and to provide information regarding the objectives of their application before applying for a permit;

f) With respect to **paragraph 6,** measures taken to ensure that:

(i) The competent state authorities give the public concerned all information relevant to the decision-making referred to in article 6 that is available at the time of the public participation procedure;

(ii) In particular, the competent authorities give to the public concerned the information listed in this paragraph;

g) With respect to **paragraph 7,** measures taken to ensure that procedures for public participation allow the public to submit comments, information, analyses or opinions that it considers relevant to the proposed activity;

h) With respect to **paragraph 8,** measures taken to ensure that in a decision due account is taken of the outcome of the public participation;

i) With respect to **paragraph 9,** measures taken to ensure that the public is promptly informed of a decision in accordance with the appropriate procedures;

j) With respect to **paragraph 10,** measures taken to ensure

that when a public authority reconsiders or updates the operating conditions for an activity referred to in paragraph 1, the provisions of paragraphs 2 to 9 are applied making the necessary changes, and where appropriate;

k) With respect to **paragraph 11,** measures taken to apply the provisions of article 6 to decisions on whether to permit the deliberate release of genetically modified organisms into the environment.

Answer:

Item a) Article 6 covers public involvement in decision-making about specific activities that may potentially have significant environmental impacts, e.g. deciding about proposed location of buildings, construction and operation of large plants or approving different products to enter the market. The basic type of decision-making is the administrative procedure that is conducted on the basis of the Act on Administrative Procedure (Act No. 500/2004 Coll.). The environmental impact assessment (EIA) process is a process that is not concluded with a binding and enforceable decision. On the basis of Annex 1 to the Act on Environmental Impact Assessment, activities/projects of category I must be assessed while activities and projects of category II are only subject to so-called investigation procedure to determine whether the respective activity or project will be assessed further or not. The point of the EIA process is to obtain an objective and expert´s view which forms the basis for further permission procedures. Within the environmental impact assessment process, the public has the right to get acquainted with the respective project (the documents are published) and there is also a possibility for the public to give opinions during a public negotiation. Within the investigation procedure, the public has an opportunity to make comments. Specific types of decision-making processes involve locating and permission of different building projects, granting of integrated permissions for certain industrial activities, deciding on the basis of the Water, Nuclear and Mining Acts.

The Czech law differentiates between „consultative" and „full" participation in decision-making about concrete activities, with the possibility to appeal against the decision and to contest the decision by means of an action in court. The latter possibility is in full accordance with the requirements for effective participation as provided for in Art. 6 par. 2.

<u>The consultative participation</u> applies to any natural or legal person without any other limitations. It consists in a possibility for the public to submit written (or oral, if there is a public negotiation) comments. The consultative participation applies:

- in planning procedures or in procedures to issue a regulation plan (Act No. 183/2006 Coll., the Building Act)

- in EIA processes (Act No. 100/2001 Coll.)

- during discussions about safety programmes and emergency plans according to the Act No. 59/2006 Coll. on Prevention of Serious Accidents Caused by Selected Hazardous Chemicals or Chemical Preparations,

- in procedures concerning permits for different forms of dealing with GMO according to the new Act No. 78/2004 Coll. on Dealing with Genetically Modified Organisms and Genetic Products,

- in accordance with § 90 par. 2 of the Act No. 114/1992 Coll. on Nature and Landscape Protection, as amended, the provisions of § 70 of this Act (i.e. participation of the citizens, which corresponds with the Convention´s objectives) do not apply to territories that serve for national defence. However, consultative participation of the public is possible, i.e. submitting comments within the EIA and SEA processes.

The full participation concerns non-governmental organisations (and not the public concerned generally) and it is possible:
- in procedures to which § 70 of the Act No. 114/1992 Coll. on Nature and Landscape Protection applies (a civic association or its organisational unit the main mission of which is (according its statute) nature and landscape protection). This concerns planning procedures as well. However, in the building procedure, there are no specific terms for NGO participation provided for in the respective Act (on the basis of § 70 of the Act No. 114/1992 Coll.).
- on the basis of § 23 par. 9 of the Act No. 100/2001 Coll. on Environmental Impact Assessment, as amended („locally relevant unit of a civic association or publically beneficial organisation whose activities focus on protection of public interests protected according to special legal regulations"),
- in a procedure to grant an integrated permision in accordance with the Act No. 76/2002 Coll. on integrated prevention („civic associations, publically beneficial organisations, employees associations or economic chambers whose main activities involve promotion and protection of interests related to a certain profession or public interests according to special laws")
- in administrative procedures conducted in accordance with the Act No. 254/2001 Coll. on Water (a civic association the mission of which (in accordance with its statute) is protection of the environment).

Full participation of other subjects (individuals, municipalities, „unorganised public") is generally regulated by provisions of § 27 of the Act on Administrative Procedure. This means that the participant is everybody who has submitted an application or, in the case the procedure has been launched by virtue of office, those to whom the decision is to create, change or cancel a right or obligation, or to declare that they have or do not have the right or obligation, or those who claim all this until the opposite is proved. The Act also provides that the persons concerned whose rights or obligations could be affected directly by the decision are also participants in the procedure. The participant is also everybody who is given this position by a special law (§ 27 par. 3 of the Act on Administrative Procedure). This provision is important particularly for NGOs – they become participants in a procedure especially on the basis of special laws, e.g. in accordance with § 70 of the Act No. 114/1992 (for others see above). In procedures according to the Building Act (planning and building procedures often fulfil the definition of „environmental decision-making"), the terms of participation are determined according to this Act exclusively and the Act on Administrative Procedure do not apply in this case.
In procedures to delimit a mining area and to grant a permission for mining activities, the group of participants includes (in simple terms) the investor, owners of the affected properties, the municipality and those who are stipulated as such in special laws – in general, § 70 of the Act No. 114/1992 Coll. on Nature and Landscape Protection, or § 23 (9) of the Act No. 100/2001 Coll. on Environmental Impact Assessment, as amended.

In other procedures – e.g. a procedure to install a nuclear device including radioactive

waste deposits. According to the Nuclear Act or the Public Health Protection Act (there is an exception for operators of plants with above-limit noise), only the applicant (i.e. investor or operator of the plant) is the participant in the procedure.

Item b) In the Czech legal order, the public concerned is not defined. For the most of environmental decision-making, the public is informed through official boards. The NGOs would be glad if the public (NGOs) was addressed directly to get involved actively in procedures.

Item c) Deadlines determined for participation in administrative procedures are acceptable, information is published on official boards, only the eight-day deadline (i.e. within 8 days from putting the announcement up) for civic associations to apply for involvement in a procedure can be considered problematic.

Item d) Public participation in decision-making in the initial phases is ensured by the EIA process. Because of the fact that this process is separated from the actual decision-making, the NGOs have some doubts about their effective participation.

Item e) So far, no measures to encourage possible participants to identify the public concerned, to get involved in the discussion and to provide information concerning the objectives of thier application before they apply for a permit have been adopted.

Item f) On the basis of the Building Act and the Act on Administrative Procedure, competent authorities provide to the public concerned all information related to decision-making mentioned in Article 6 and available at the time the procedure with public participation is conducted. In practice there could be a problem with interpretation of § 168 par. 2 of the Building Act.

Item g) Especially public negotiations (EIA) and public oral negotiations (planning procedure) can be considered as measures that are to ensure that procedures with public participation will enable the public to make comments, to submit information, analyses or views that the public finds relevant for the activity proposed.

Items h - i) The Act on Administrative Procedure, the Building Act and also the Public Health Act provide that, during decision-making, the public participation output is obligatorily taken into account, and the public is informed about the decisions through the official board. Only the applicants receive a written decision.

Item j) If an authority reconsiders or updates operational conditions for an activity mentioned in paragraph 1, provisions of the paragraphs 2 – 9 are applied and, if necessary, respective changes are made. In the Czech legal order, this provision concerns especially a change of an issued decision, in a procedure in which participants in the original procedure may participate.

Item k) The Act No. 78/2004 Coll. *on Dealing with Genetically Modified Organisms and Genetic Products, enables the public to take part in decision-making about permits concerning GMO discharge into the environment. On 6 December 2007, the Czech Republic signed the document on the acceptance of the amendment to Aarhus Convention.*

Describe any **obstacles encountered** in the implementation of any of the paragraphs of article 6.

Answer:

The NGOs practical experience shows that there are some obstacles to implementation of Article 6. The fact that the public concerned is not defined in the Czech legislation can be considered a certain drawback, which results in the group of participants being smaller than the Aarhus Convention provides for (see the participants in a planning procedure). That is why especially NGOs take part in the procedure (on the basis of component laws – see below). However, in the case of judicial proceedings, substantive rights for favourable environment are usually withdrawn from the NGOs according to Art. 9 par. 2 of the Aarhus Convention. A possible review of the decision is therefore conducted in procedural terms particularly.

There are also drawbacks related to providing timely information to the public by the authorities, to defining the public concerned by the authorities and to direct addressing the public. Only eight-day deadline (i.e. within 8 days from putting the announcement up) for civic associations to apply for involvement in a procedure can be considered problematic. The public concerned takes a great interest in the results of decision-making, so it can be supposed to take part in consultations or subsequent permission procedures. The fact that the public concerned is not addressed directly results in a generally smaller participation of the public in practice. The public administration bodies do not sufficiently use their periodicals to inform about projects under preparation and about possibilities for citizens to express their views at public negotiations. The NGOs think that to publish the information on the website (electronic official board) only is not sufficient at present. So far, the public is not sufficiently acquainted with the fact that information is delivered only by publishing it on the official board.

Since the beginning of 2006, public administration bodies began applying the new Act on Administrative Procedure. Within a new, more detailed regulation of the administrative procedure, the Act also regulates some proceedings in more detail. In terms of rights embodied in the Aarhus Convention, namely the public´s right to take part in decision-making and the right for judicial protection, the institute of binding positions can be considered important. Before 2006, binding positions were issued without a possibility to change or revise them later. A binding position is issued by an administration body in a certain preliminary case and it serves for a different body as grounds for the final decision in the case when the legislator decided to use this institute instead of making a chain of several administrative decisions. The proceeding related to issuing of the binding position is not announced to the public concerned. Binding positions cannot be contested separately by means of remedial measures before the subsequent administrative procedure is launched. In the subsequent procedure, if sufficient legal possibilities are maintained, the binding positions that are the grounds for the decision in this procedure can be reviewed. Already before the decision is issued, a change or cancellation of the binding position can be initiated. The basic form of review by a superior administrative body, i.e. an appeal, is thus enabled, but only against the decision that was made on the basis of the binding position. Within the appeal, the binding position can be contested and its change or cancellation can be required. The binding position can therefore be contested or cancelled but in practice, this happens only in later phases of decision-making. In practice, the NGOs are facing a problem with authorities that do not inform them and the public concerned about issuing

binding positions although they have a duty to do so according to § 70 of the Act No. 114/1992 Coll. Binding positions concerning the environment are issued especially in processes that precede a location or building permit, while the use of this procedural form in the given procedures was introduced e.g. by the Building Act or the Act on Nature and Landscape Protection.

In terms of implementation of the Aarhus Convention, a uniform regulation of public participation in procedures that have impact on the environment is missing which, in practice, enables different interpretations concerning which Act should be used to conduct a procedure and, therefore, public participation can be made impossible in practice. For instance, the Forest Act or the Air Protection Act do not deal with public participation at all.
The Act on Administrative Procedure regulates participation in administrative procedures generally. In environmental decision-making, a special legal regulation is often used. This special regulation often regulates participation in a comprehensive way so it is not possible to apply provisions of the Act on Administrative Procedure. In this way, the group of participants is becoming smaller.

Changes in regulation of public participation effective during the years 2005/6:
Act No. 500/2004 Coll. – Act on Administrative Procedure
The new Act on Administrative Procedure is effective since 1 January 2006. The positive feature of it is that there are such basic principles defined in the introductory provisions which correspond to the Aarhus Convention. The Act on Administrative Procedure also represents a modern and comprehensive legal procedure regulation of execution of public administration which, as opposed to the previous regulation, increases the level of protecting the rights of the persons concerned. The change related to possible review of a binding position has already been dealt with. A provision concerning delivery in a procedure with a large number of participants could be potentially risky as it provides that in procedures with a large number of participants, delivery is carried out in a form of a public notice and the document does not have to be delivered directly to the procedure participants. This measure reduces paperwork in the procedure but it puts higher demands on the participants.

Act No. 183/2006 Coll. – The Building Act
With efficiency since 1 January 2007, there is a substantial change in the legal regulation as far as building placement and permission are concerned. The new legislation is beneficial because it provides for oral public negotiation within the planning procedure.

Amendment of § 70 of the Act No. 114/1992 Coll. on Nature and Landscape Protection
There is a precondition for NGOs to be able to become participants in administrative procedures in cases that concern nature and landscape protection, and it is that the NGOs must notify the authorities about it in writing and within a certain deadline. However, the time period begins on the day when the administrative body announced the commencement of the respective procedure. Amendment to this provision describes the way of announcing it more concretely, namely as follows: „the day of providing the information on commencement of a procedure is the day in which its written copy was delivered or the first day of its publishing on the official board of the administrative body and, at the same time, in a way that enables remote access.“ This means that civic associations will have to actively follow the information on the official board or the administrative body´s website themselves because the body does not have to send them the written copy of the information from 1 January 2007.

Provide further information **on the practical application of the provisions on** public participation in decisions on specific activities in article 6, e.g. are

there any statistics or other information available on public participation in decisions on specific activities or on decisions not to apply the provisions of this article to proposed activities serving national defence purposes.
Give relevant web site addresses, if available:
EIA/SEA information system (http://www.env.cz/AIS/web.nsf/pages/systemy_EIA) *Green Circle Association website – http://www.ucastverejnosti.cz* *IPPC website: www.ippc.cz* *Public administration website: www.portal.gov.cz* *Ministry of the Environment website: www.env.cz*

ARTICLE 7

List the appropriate practical and/or other provisions made for the public to participate during the preparation of plans and programmes relating to the environment. Describe the transposition of the relevant definitions in Article 2 and the non-discrimination requirement in Article 3, paragraph 9.
Answer: *In the Czech Republic, the public does not always take part in the process of elaborating strategic plans directly but it has an opportunity to get involved in the environmental impact assessment process related to these plans. In the Czech law, the requirement of the Aarhus Convention is provided for in the Act No. 100/2001 Coll. on Environmental Impact Assessment, as amended. The Act defines the territorial self-government units concerned and administrative bodies concerned that get involved in the respective phases of the environmental impact assessment process. The Czech Republic was also one of the first countries to have ratified the SEA Protocol.* *The requirement for public participation in preparation of area plans (on regional and local levels) is met in the Building Act. The new Building Act became effective on 1 January 2007 and it strengthens procedural rights of the public in area planning. Along with the fact that the public (i.e. everybody) has the right to submit comments to the single documents prepared in different phases of area planning, there is also so-called representative of the public and he or she can raise so-called objection, which means that the area plan issued must contain an administrative decision about the objection and it is possible to appeal against the administrative decision and, in the case of discontent, to file an action at the administrative court.* *The public is also involved in creation of action plans to reduce noise levels in the environment that are being elaborated by the Ministry of the Transport and regional authorities. The public takes part in making comments to a draft action plan before it is approved and adopted.*
Explain what opportunities there are for public participation in the preparation of policies relating to the environment.
Answer: *The public has access to preparation of policies within the environmental impact assessment process, according to the Act No. 100/2001 Coll., as amended. The EIA Act requires that an announcement of a concept be published and that it contains information on the concept to be assessed and on the environmental impacts expected. In the final phases of the environmental impact assessment process, it is obliged, according to the Act, to publish the draft concept and the documentation of the*

respective environmental impact assessments in the SEA Information System at http://eia.cenia.cz/sea/koncepce/prehled.php. The Act also provides that a public negotiation must be organised. The legal regulation does not prevent the parties presenting the concept and assessing it in terms of environmental impacts to take a proactive approach. However, obligatory involvement of the public is directed rather to the final phases of the concept preparation and environmental impact assessment.

Describe any **obstacles encountered** in the implementation of article 7.

Answer:
In terms of the SEA process and citizens participation, the Act No. 100/2001 Coll. is in compliance with the Aarhus Convention and public participation is possible in each step of the SEA process. Nevertheless, it is possible to state that the public is not involved at the commencement of the process to elaborate the area planning documentation according to the Building Act. From the citizens´participation point of view, there are not, at present, any drawbacks in the Act. However, NGOs warn about the fact that non-existence of a definition of „the public concerned", according to Art. 2 of the Aarhus Convention, complicates the possibility to address it directly during preparation or assessment of conceptual documents (policies, area plans etc.).

Provide further information on **the practical application of the provisions on public participation in decisions on specific activities in article 7.**

Answer:
Assessment of concepts is characterised by the public´s small interest in raising comments, the public negotiations are often very general and the concepts assessed are extensive.

Positive examples from the practice

- *Introduction of a central information system for environmental impact assessment and its active fulfillment;*
- *Publishing of a methodology for the SEA process, with recommendations for citizens´ participation in the SEA process;*
- *Publishing of announcements – active participations of citizens and NGOs in the process of comments*
- *Publishing of working versions of a concept and SEA working outputs during the concept preparation process (SEA of the Operational Programme Prague – Competitiveness, SEA of the National Tourism Policy concept, SEA of the Czech Republic´s National Development Plan for the years 2007 – 2013 and others.)*
- *Use of the media (Internet, press, radio etc.) to involve the public in the SEA process – e.g. SEA of the Czech Republic´s National Development Plan for the year 2007 – 2013, of the Operational Programme Business and Innovation, Transport, Prague – Competitiveness and others);*
- *Organising public meetings in the early phases of the SEA process – beyond the Act (e.g. SEA of the Czech Republic´s Transport Policy, SEA of the Czech Republic´s National Tourism Policy concept for the years 2007 – 2013, SEA of the Czech Republic´s Regional Development Strategy), suitable time and place of public negotiations, very good settlement of comments raised by citizens and publishing of the settlement – in a form of settlement table*
- *Co-operation of those who present a concept and conduct SEA with working groups involving the professional public (e.g. SEA of the Sustainable Development Strategy for the Region of Ústí nad Labem – not regulated by the respective Act – so it is*

beyond the Act).
- *Strengthening of procedural rights (i.e. public participation) in area planning through the institute of a representative of the public has not been used in practice yet*
- *Approved National Energy Concept of the Czech Republic, including information on the finished EIA process is available on the website of the Ministry of Industry and Trade (http://www.mpo.cz/dokument5903.html).*

In terms of the practice, future improvement of the following areas can be considered:
- *Times and places of public negotiations to be convenient for the public concerned*
- *The form and extent of informing about a public negotiation and possible participation in the negotiation*
- *To remove formality of the process to settle comments from the public, to determine responsibility for settlement of the comments*
- *To encourage public interest in participation in environmental planning processes;*
- *To make documentation clearly arranged, to improve non-technical summaries of assessment conclusions*
- *Increased awareness of the SEA process among both the professional and general public*
- *The public administration´s better knowledge of techniques to involve the public.*

The above examples of positive practice and challenges for improvement were obtained on the basis of finished or on-going SEA processes.

Give relevant web site addresses, if available:

EIA/SEA (http://www.env.cz/AIS/web.nsf/pages/systemy_EIA)

ARTICLE 8

Describe what efforts are made to promote effective public participation during the preparation by public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment. **To the extent appropriate, describe the transposition of the relevant definitions in Article 2 and the nondiscrimination requirement in Article 3, paragraph 9.**

Answer:

Commenting on laws, regulations and decrees is provided for in the Legislative Rules of the Government. The Rules determine „mandatory commenting places" (central bodies of state administration and other institutions), other commenting places (the public) and deadlines for settlement of the comments. The Rules also determine basic rules for the settlement. Publishing of laws in accordance with Art. 5 par. 3 and Art. 8 is ensured through Art. 2 par. 5 of the Rules. A bill is published on the public administration website that is accessible to the public. All commenting places, including the public, have a basic deadline determined for commenting of 15 working days (and/or 20 working ways in the case of Act draft). The party submitting a bill can extend the deadline. Art. 7 par. 3 (f) of the Rules regulates the way of settlement of the public´s comments. Comments of substantial nature that have not been satisfied must be mentioned in the submission report accompanying the bill, including reasons why the comments were not accepted. The parties submitting the bill are not obliged to discuss

the comments with the public but they can do so voluntarily (Art. 5 par. 8 of the Rules).

Along with the above-mentioned publishing procedure, the Ministry of the Environment created a special section on its website called „Legislation under Preparation" in July 2007. In this section, there are all bills for which the Ministry is responsible, including accompanying documents and information on the respective phases of the discussion procedure.
On the basis of its internal guidelines (no. 3/2001), the Ministry of the Environment also keeps a list of optional commenting places which include some expert environmental organisations, too. These commenting places receive Act drafts or decree drafts within circulations of the drafts for comments, and in the case of their substantial comments, they are invited to oral negotiation.

Describe any **obstacles encountered** in the implementation of Article 8.

Answer:
New Legislative Rules of the Government were approved in July 2007. Therefore there is not enough experience with their application and it is necessary to monitor possible formal approach of the public administration to comments from the public. The Rules provide that only substantial comments from the public have to be settled. Nevertheless, the Rules do not say who is to decide whether a comment is substantial, but it is possible to suppose that such a decision is up to those who submit the draft. It is necessary to see that the public is informed why their comments were not taken into account.

Executive orders also include exceptions from the Act No. 114/1992 Coll. on Nature and Landscape Protection and exceptions from protective terms in national parks, protected landscape areas, natural monuments etc. However, the exceptions are approved by the Government which is not an administrative body. Texts of exceptions that the Government is going to negotiate are not published, the public cannot express its views, to take part in the Government´s meeting and there is not remedial measure against the Government´s decision. The exceptions granted are not published in a well-arranged way that would enable remote access.

Provide further information on the practical application of the provisions on public participation in the field covered by Article 8**.**

Answer:

- *Establishment of a government database of non-governmental organisations for possible consultations during preparation of laws, programmes or policies (DATAKO) can be considered positive.*
- *Another positive thing is related to the fact that the Ministry of the Environment included NGO representatives into optional commenting points with a possibility to discuss comments that had been identified as substantial. With respect to the requirements of the Aarhus Convention it would be good to extend this approach onto other sectors as well.*

Give relevant web site addresses, if available:

http://kormoran.vlada.cz/; www.vlada.cz
http://portal.gov.cz
http://www.env.cz/AIS/web.nsf/pages/pripravovana_legislativa

ARTICLE 9

List legislative, regulatory and other measures that implement the provisions on access to justice in Article 9.

Explain how each paragraph of Article 9 has been implemented. Describe the transposition of the relevant definitions in Article 2 and the non-discrimination requirement in Article 3, paragraph 9. Also, and in particular, describe:

a) With respect to **paragraph 1,** measures taken to ensure that:

(i) Any person who considers that his or her request for information under article 4 has not been dealt with in accordance with the provisions of that article has access to a review procedure before a court or another independent and impartial body established by law;

(ii) Where there is provision for such a review by a court, such a person also has access to an expeditious procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court;

(iii) Final decisions under this paragraph are binding on the state authority holding the information, and that reasons are stated in writing, at least where access to information is refused;

b) Measures taken to ensure that within the framework of national legislation, members of the public concerned meeting the criteria set out in **paragraph 2** have access to a review procedure before a court and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6;

c) With respect to **paragraph 3,** measures taken to ensure that where they meet the criteria, if any, laid down in national law, members of the public have access to administrative or judicial procedures to contest acts and omissions by private persons and state authorities

which contravene provisions of national laws relating to the environment;

d) With respect to **paragraph 4,** measures taken to ensure that:

(i) The procedures referred to in paragraphs 1, 2 and 3 provide adequate and effective remedies;

(ii) Such procedures otherwise meet the requirements of this paragraph;

a) With respect to **paragraph 5**, measures taken to ensure that information is provided to the public on access to administrative and judicial review.

Answer:

Access to legal protection in environmental cases means especially a possibility to contest administrative acts or neglects of administrative bodies at an independent and impartial body constituted by law. In the Czech Republic, these bodies are only courts (their independence is guaranteed by the Constitution of the Czech Republic), because no special bodies (e.g. special tribunals for the environmental area only) are established by the law. The area of access to legal protection in environmental cases is therefore a part of general regulation of administrative justice that is regulated by the Act No. 150/2002 Coll., the Act on Judicial Administrative Procedure. According to the Act on Judicial Administrative Procedure, a judicial review presumes either prejudice to rights or infringement of procedural rights in the previous procedure. Because civic associations are not adjudicated the right for favourable environment (see below – the restrictive interpretation of legal standing), they can get to a judicial review only through infringement of procedural rights in the previous procedure. Therefore, a precondition for judicial protection of NGOs is participation in (or at least the right to be a participant) the previous administrative procedure or the administrative body´s failure to act. For natural persons, entitlement to sue is always examined in each specific case and, similarly to NGOs, it is adjudicated if the plaintiff´s right (including the right for a favourable environment) was affected or his or her procedural rights were violated.

Item a) Access to justice in the right for information is ensured in terms of a legal framework, anybody has the right to have recourse to a court of law. In practice, there are drawbacks related to long terms, there is no possibility to initiate an accelerated procedure, decisions of courts concern legitimacy of the refusal to provide information, courts do not order to provide the information (Act No. 123/1998 Coll.).

Item b) Because of the fact that in the Czech legislation a definition of the public concerned is not laid down, predominantly NGOs take part in permission procedures (on the basis of component laws). In the case of a judicial procedure according to Art. 9 par. 2 of the Aarhus Convention, substantive rights for favourable environment are usually withheld from the NGOs and possible review of the decision is therefore conducted in procedural terms particularly.

Special legal standing in order to protect public interests is given by law to the Attorney

General (§ 66 par. 2) and also to the person to whom a special law, or an international treaty which is a part of the legal order, explicitly commits this authorisation. In terms of implementation of Art. 9 par. 2, another important type of judicial procedure is the procedure to cancel a measure of general nature or its part (compare with § 101 (a) to 101 (d) of the Act on Judicial Administrative Procedure) because area plans of towns and regions are issued in this form. A proposal to cancel a measure of general nature can be submitted by anybody who claims that his or her rights were violated by the measure of general nature. The court must decide about the proposal within 30 days upon delivery of a flawless proposal to the court.

Item c) This requirement of the Aarhus Convention is not fulfilled. According to the Act on Judicial Administrative Procedure, the precondition for legal standing is the direct prejudice to rights in the case of an administrative decision or neglect, which means that it is necessary to prove a direct interference with the right for favourable environment. The Act on civil procedure regulates filing private-legal actions, which do not interfere the public law area (environmental law). There is a quasi exception consisting in possible filing of so-called neighbour´s action which is an action to ensure that a neighbour does not commit a nuisance or interfere the plaintiff´s proprietary rights beyond an adequate level. Even this possible dispute would be in the private-legal area and if the action is successful, the court can only decide that the neighbour must avoid the respective activity. Nevertheless, the publlic has the right to defend against inaction of administrative bodies and to initiate commencement of a procedure by virtue of office (see the Act on Administrative Procedure).

Item d) An action for unlawfulness of a decision according to § 65 of the Act on Judicial Administrative Procedure does not have a suspensory effect by law, but the court can adjudicate this effect according to the provision of § 73 of the Act on Judicial Administrative Procedure. This provision mentions three preconditions for the suspensory effect of an action to be adjudicated (execution of the judgement would be related to an irretrievable harm for the plaintiff, adjudication of the suspensory effect will not affect acquired rights of third persons in an inadequate way and it is not in conflict with a public interest). Especially the irretrievable harm that poses a threat to the plaintiff directly, as grounds for adjudication of the suspensory effect, is very difficult to prove. This is true especially in the cases when there is damage that poses a threat to the plaintiff and it is possible to reimburse it in financial means but the irretrievable harm poses a threatto the environment, or an NGO is the plaintiff. In spite of the fact that the Supreme Administrative Court, in its decision file No. 8 As 26/2005, adjudicated that an assumption of possible harm is sufficient for commencement of a judicial procedure, in practice nobody usually follows this decision so far.

Item e) Both the judicial and administrative bodies have the obligation to instruct but the administrative body does not provide information on the possibility of judicial protection.

Describe any **obstacles encountered** in the implementation of any of the paragraphs of article 9.

Answer:
Problematic areas of the legal regulation in the Czech Republic in terms of implementation of the Aarhus Convention, as identified by NGOs:
• An overly restrictive interpretation of legal standing provisions by bodies conducting judicial review

• It is difficult to contest factual mistakes in administrative decisions
• Courts are not willing to adjudicate suspensory effects of actions. The Supreme Administrative Court begins to push on regional courts to adjudicate suspensory effects. In the summer 2007, the Supreme Administrative Court decided for the first time that suspensory effects should be adjudicated but in practice nobody usually follows this decision so far.
• Judicial reviews do not lead to an effective remedy of mistakes.

restrictive interpretation of legal standing:
On the basis of a definition in § 65 of the Act on Judicial Administrative Procedure, courts usually claim that the decision that is the subject of the action must interfere with the plaintiff´s subjective rights for the action to be considered as filed successfully. In the case of civic associations, such interference is often impossible to prove because NGOs can successfully prove only interference with their procedural rights although the Constitutional Court has decided that the right for favourable environment, laid down in Art. 35 par. 1 of the Charter of Fundamental Rights and Freedoms, is a right that is guaranteed by the Constitution for everybody.
On the other hand, Art. 9 (3) requires that both individuals and NGOs have a possibility to contest decisions and omissions of the public administration and private persons if they violate laws to protect the environment, i.e. to be able to file an action in the public interest. This article can be interpreted as direct and immediately applicable entitlement, and because the Aarhus Convention is a part of the Czech legal order, it would be possible to file an action on the basis of § 66 par. 3 of the Act on Judicial Administrative Procedure (a special legal standing to file an action to protect public interest). However, in its recent judgements, the Supreme Administrative Court accepted the principle according to which, in the case of a contradiction to an Act, international treaties take precedence and laws should be interpreted in accordance with the treaties but at the same time it refused a direct applicability of Art. 9 par. 3 of the Aarhus Convention in the Czech legal order because the Art. 9 par. 3 is not self-executing according to the Court (and also there is no law that would transpose Art. 9 par. 3 into the Czech legal order). For these reasons the Court stated that not all the preconditions were fulfilled for individuals and NGOs to be able to seek the rights resulting from Art. 9 par. 3 of the Aarhus Convention before court directly (see the Resolution of the Supreme Administrative Court file no. 3 Ao 2/2007).

It is difficult to contest factual mistakes in administrative decisions:
As we have mentioned above, a precondition for judicial protection (filing an administrative action for unlawfulness of a decision or a body´s failure to act) is interference into the plaintiff´s subjective rights or procedural rights (for conditions applied to NGOs see the answer to Art. 6). The NGO participation in administrative procedures is regulated in various ways. For instance, the Act on Nature and Landscape Protection (Act No. 114/1992 Coll.) enables NGO participation in administrative procedures because these organisations represent the citizens but in a judicial review, protection of the right for favourable environment is not adjudicated to the NGOs. For this reason, actions filed by NGOs can be effective only in those cases when unlawfulness of the decision concerned consisted in breach of procedural rules. Some courts refuse to perform review in factual terms in spite of the fact that they are obliged by statute to perform a full review. The participation of the civic associations in procedures is regulated in due respect to securing of the protection of the environment, primarily of the preventive protection as the most effective method. Persons belonging to the public

concerned whose rights are not dealt with directly in the procedures (e. g. they are not owners of adjacent plots) but have a legitimate interest in the decision take part in the procedure through an NGO (see § 70 of the Act on Nature and Landscape Protection) and therefore they cannot file an administrative action separately.
By the way, the possibility for civic associations to require a factual review also results from a principle, guaranteed by the Constitution, that all participants in a procedure have equal rights before court.

Unwillingness of courts to adjudicate the suspensory effect of an administrative action
An action for unlawfulness of a decision according to § 65 of the Act on Judicial Administrative Procedure does not have a suspensory effect by law, but the court can adjudicate this effect according to the provision of § 73 of the Act on Judicial Administrative Procedure. This provision mentions three preconditions for the suspensory effect of an action to be adjudicated (execution of the judgement would be related to an irretrievable harm for the plaintiff, adjudication of the suspensory effect will not affect acquired rights of third persons in an inadequate way and it is not in conflict with a public interest). Especially the irretrievable harm that threatens to the plaintiff directly, as grounds for adjudication of the suspensory effect, is very difficult to prove. This is true especially in the cases when there is damage that threatens to the plaintiff and it is possible to reimburse it through financial means but the irretrievable harm threatens to the environment or an NGO is the plaintiff. As the Supreme Administrative Court, in its decision file no. 8 As 26/2005, adjudicated that an assumption of possible harm is sufficient for commencement of a judicial procedure, the best solution would be if the suspensory effect of an action is laid down as the primary rule for the action and in this way, the meaning of the Aarhus Convention would be fulfilled. Of course, the chairing judge would have a possibility to exclude the suspensory effect under certain circumstances.

The judicial review does not lead to effective remedy:
According to Art. 9 par. 4, a review of a decision should ensure adequate and effective remedy. This requirement is not fulfilled in practice in the Czech Republic. Even if the plaintiff´s proposal is successful, the review has no effect on the state of the respective case. Inadequately long duration of judicial procedures, and particularly the fact that the suspensory effect of an action is not adjudicated, lead to a situation when a successful result of a suit has no point for the plaintiff because e.g. the problematic construction is already standing for a long time and state administration bodies are not brave enough to put this judgement in practice. However, the progressive decision of the Supreme Administrative Court of 28th June 2007 (file no. 5 As 53/2006) says that not adjudicating a suspensory effect to an action (that is filed by the public concerned) must not lead to a situation when the project against which the action is filed would already be implemented at the time of decision-making. This judgement referes directly to the requirements of Art. 9 par. 4 of the Convention. However, it is not possible to see a change in judicial practice because of a short time that elapsed since this judgement of the Supreme Administrative Court.

The right for access to judicial protection remains regulated only generally in the Act No. 150/2002 Coll., the Act on Judicial Administrative Procedure. According to this Act, those have the right to file an action who claim that the authority´s decision which „creates, changes, cancels or determines obligatorily their rights or duties" infringes their rights, and also participants in an administrative procedure who claim that the

administrative body´s steps infringed their rights in such a way that it could have resulted in an unlawful decision. The interpretation says that the first definition should apply to applicants (e.g. investors) and other parties whose rights are the „direct" subject of the decisions, while the second definition should refer to the other participants including civic associations (see above – restrictive interpretation of legal standing). Theoretically, there is still no change happening about the concept according to which civic associations can take a successful legal action only if in the administrative procedure in which they had taken part (or in which they were supposed to take part according to the law but did not take part in the end because of a mistake made by the administrative body) their procedural rights were violated, namely in such a way that it could have led, in the court´s opinion, to an unlawful decision. Practice at different courts is not uniform. There are cases when courts continue refusing actions filed by associations and do not deal with them factually, and on the other hand there are also judgements that have dealt with the subject matter on the basis of an association´s action and have interpreted the conditions for entitlement to sue in accordance with provisions of the Aarhus Convention.

Length of a judicial procedure also has a significant influence on effectiveness of a decision concerning the right for information. Even if a court decides that not providing the information was unlawful, the decision usually comes at a time when the requiring party is not interested in the information anymore. Above that, the court cannot directly order the body that was asked for the information to provide the information (on the basis of Act No. 123/1998 Coll. which implements Art. 4 and 5 of the Convention). An amendment to the Act No. 106/1999 Coll. does order this to a court, but in combination with other procedural changes it has not resulted in more effectiveness in the decision-making practice so far.

Provide further information on the practical application of the provisions on access to justice pursuant to article 9, **e.g. are there any statistics available on environmental justice and are there any assistance mechanisms to remove or reduce financial and other barriers to access to justice?**

Answer:

The main problem of legal protection in the environmental area (as well as legal protection in general) consists in slow work of courts (see Table No. 1 in Annex), length of hearings and a high proportion of decisions that are made by the Court of Appeal (second tier).

Another feature covered by statistics is the number of crimes in the area of environmental protection. Unfortunately, the trend is growing (see Tables No. 2 and 3 in Annex). An important indicator is the structure of decision of the Czech Environmental Inspectorate (see Table No. 4 in Annex).

Give relevant web site addresses, if available:

www.env.cz
www.cizp.cz
http://www.nssoud.cz/anonymous.php

Annexes:

Table 1: Decision-making about actions against decisions by an administrative body in the environmental area

year	Number of actions filed	Average length of procedure (days)

2005	63	450
2006	123	468
2007 – first half	96	444

Source: Ministry of Justice of the Czech Republic (grounds for the report)

Table 2: Statistics of criminal offences in the area of environmental protection

				Of which	**Total**
			Identified	**examination**	**examination**
	Technical-statistic crime	**Name**		**finished**	**in process**
2003	**850**	Endangerment of and harming environment - fraudulently	35	33	3
	851	Endangerment of and harming environment - negligently	16	14	4
2004	**850**	Endangerment of and harming environment - fraudulently	32	27	6
	851	Endangerment of and harming environment - negligently	27	21	6
2005	**850**	Endangerment of and harming environment - fraudulently	24	15	10
	851	Endangerment of and harming environment - negligently	15	12	4
2006	**850**	Endangerment of and harming environment - fraudulently	39	31	11
	851	Endangerment of and harming environment - negligently	21	16	5

Source: Ministry of Interior of the Czech Republic (http://www.mvcr.cz)

Table 3: Statistics of criminal offences in the area of environmental protection

Body of crime	2002	2003	2004	2005	2006	2007 – first half
§181a	24	12	1	4	1	1
§181b	16	7	4	0	3	2
§181c	6	13	14	20	3	0
§181d	0	0	0	0	0	1
§181e	0	1	1	3	0	3

Source: http://portal.juctice.cz/ms (Ministry of Justice: source materials for the report)

Table 4: Activities of the Czech Environmental Inspectorate in 1993 and 1996–2006

Kind of activity	1993	1996	1998	1999	2001	2002	2003	2004	2005	2006
Number of inspections, revisions and controls	10 427	14 505	15 182	16 125	19 454	17 774	18 359	18 032	17 254	16 649
Decision-making in administrative procedure (lawful-*final*)	7 808	10 940	9 192	7 380	9 375	7 971	3 186	9 661	8 495	12 445

Kind of activity	1993	1996	1998	1999	2001	2002	2003	2004	2005	2006
Statements for other state administration bodies	6 586	7 336	7 443	8 259	9 592	10 264	10 845	12 308	11868	11 329
Participation in solutions to accidents (E-record keeping,U-participation)[1]	320	171	175	112	104	E 246 + 133 floods U 247	E ??? U 159	E 306 U 120	E 264 U 105	E 205 U 105
Dealing with complaints, announcements and initiatives	421	628	737	712	764	864	1 253	1 654	1 419	1 927

Source: Czech Environmental Inspectorate (annual reports) http://www.cizp.cz