Supplement to the argumentation contained in the Plan of action for decision VII/8e (Czechia) with a selection from case-law of Czech courts

Introduction

By decision VII/8e adopted by the Meeting of the Parties to the Aarhus Convention on 18–20 October 2021, the Czech Republic was requested to draw up and submit a plan of action proposing specific measures to implement several recommendations of the Aarhus Convention Compliance Committee concerning the four open cases before this Committee. The Ministry of the Environment prepared the plan of action with consideration of the comments received during public consultation and after consulting other relevant state administration bodies. It was sent to the Convention Secretariat on 24 October 2022.

In the part of the plan of action referring to the recommendation **para. 6 (b) of decision VII/8e**, it is stated that this recommendation does not require further measures, as it has already been fulfilled. According to Czech law and its interpretation by the Czech courts, the public concerned has the possibility to go to court and request a review of the legality of the decision taken. This possibility is given both in cases where the public concerned is a party to the procedure before an administrative body (participation in the administrative procedure establishes the right to appeal and to file an action), and in cases where the public concerned is not a party to the administrative procedure. In the latter case, the condition for the standing to file an action is the fact that the adopted decision affects the "legal sphere" of the plaintiff, i.e. that the plaintiff is public concerned. The same applies also in relation to the Committee's recommendation referred to in **para. 2 (a) (i) of decision VII/8e**, which concerns access to justice in cases of granting of noise exemptions.

As a basis for this statement, we would like to submit to the Committee a wider selection of case law of the Czech courts, which refers to the right to file an action in cases where the plaintiff is not a party to the procedure before an administrative authority, and also to the interpretation of Czech law in accordance with the Aarhus Convention.

Participation in the administrative procedure and the subsidiarity of judicial review

In order to understand the case-law below, it is first necessary to explain under what circumstances an action can be filed in the administrative court in cases where the plaintiff was a party to the administrative procedure. These are common situations governed by the general law (Code of administrative procedure, Code of administrative justice). As stated in the plan of action, in a number of cases dealt with in para. 6 (b) of decision VII/8e, the public concerned would be a party to the administrative procedure, which means that the standard means of access to justice described in this section would apply.

The determination of parties to an administrative procedure is generally regulated in § 27 of Act No. 500/2004 Coll., Code of Administrative Procedure. According to § 27(2) of the Code of Administrative Procedure, parties to the procedure shall be also "*other persons concerned if their rights or obligations may be directly affected by the decision*". In addition, the public can also become a party to the administrative procedure on the basis of special laws, which include

Act No. 100/2001 Coll., on the Environmental Impact Assessment (this law establishes the participation of NGOs in the so-called subsequent proceedings).

A party to an administrative procedure has the right to file an appeal against the first-instance decision of the administrative authority (cf. § 81 of the Code of administrative procedure). This constitutes an administrative review of the decision; appeal procedure is conducted by the appellate administrative authority. If the party to the proceedings is not satisfied with the outcome of the appeal procedure, it has the right to file a lawsuit in the administrative court. According to Act No. 150/2002 Coll., the Code of Administrative Justice, a lawsuit against the decision of an administrative authority can be filed by two groups of persons:

- pursuant to § 65(1) of the Code of administrative justice, a person who claims that his/her rights have been curtailed directly or as a result of a violation of his/her rights in the previous proceeding by an act of an administrative authority that establishes, changes, cancels or bindingly determines his/her rights or obligations (i.e. by a decision of an administrative authority) and
- pursuant to § 65(2) of the Code of administrative justice, also a party to a procedure before an administrative authority who is not entitled to file a lawsuit pursuant to paragraph 1, if he/she claims that he/she was curtailed on his/her rights due to the procedure of the administrative authority in such a way that it could have resulted in an illegal decision.

The principle of subsidiarity of judicial review applies in this context, according to which an action is inadmissible if the plaintiff has not yet exhausted the proper remedies in the procedure before the administrative authority, i.e. if he/she has not filed an appeal (this is stated in § 68(a) of the Code of Administrative Justice). This is based on the fact that everyone should actively and consistently take care of their rights already in the procedure before the administrative authority and only then, when their efforts are unsuccessful, go to the court. This is the main reason why the question of whether a lawsuit can be filed even if the plaintiff was not entitled to file an appeal was repeatedly addressed in the case-law below.

Right of action of persons who were not parties to the administrative procedure

Special (exceptional) situations must be distinguished from the above, when the participation of third parties in an administrative procedure is excluded according to special laws. This includes, *inter alia*, the case of permitting the operation of a noise source which is exceeding the hygienic limits (§ 31(1) in conjunction with § 94(2) of Act No. 258/2000 Coll., on Protection of Public Health) and the case of certain proceedings under the Atomic Act (§ 9 in connection with § 19(1) of Act No. 263/2016 Coll., Atomic Act). Since, as a rule, in these cases the public concerned is not a party to the administrative procedure, it does not have the right to file an appeal according to § 81 of the Code of administrative procedure. However, there is an extensive and already established case-law that allows these persons to have a standing to file a lawsuit according to § 65(1) of the Code of administrative justice, if they are affected by the decision of the administrative authority in their legal sphere.

To begin with, the courts have found that the provision of § 65(1) of the Code of administrative justice must be interpreted in the sense that a right of action must be given for all cases where the plaintiff's legal sphere is affected (i.e. for all cases where a unilateral act of an administrative authority, relating to a specific matter and specific addressees, bindingly and authoritatively

affects his/her legal sphere). This issue is addressed especially in the Supreme Administrative Court ruling of 23 March 2005, File No. 6 A 25/2002 – 42 (cf. the full text of the ruling here), in the Supreme Administrative Court ruling of 22 February 2011, File No. 2 Afs 4/2011 – 64, para. 17 (cf. the full text of the ruling here) and in the Supreme Administrative Court ruling of 17 April 2014, File No. 7 As 30/2014 – 26 (cf. the full text of the ruling here).

Following this, the courts had to deal with the question of whether the above-mentioned principle of subsidiarity of judicial review applies in cases where the plaintiff was not a party to an administrative procedure, but the decision taken therein may affect his/her legal sphere. For the answer to this question, see the **ruling of the Supreme Administrative Court of 18 April 2014, File No. 4 As 157/2013 – 33** (cf. the full text of the ruling here):

[26] *Furthermore, it was necessary to address the question of whether the proper remedy allowed by the special law, which the plaintiff is obliged to exhaust before filing a lawsuit, is an appeal in the case of a plaintiff who was not a party to the procedure. This question must also be answered in the negative.* […]

[27] *The principle of subsidiarity of judicial review* […] *cannot go so far as to make judicial protection in the proceedings on an action against the decision of an administrative authority conditional on the submission of an extraordinary, inadmissible or non-compulsory remedy. If the law stipulates the condition of exhausting a proper remedy admissible according to a special law (here the code of administrative procedure), it means the appeal in an administrative procedure in cases when the law does not exclude the filing of an appeal, and only in relation to the persons to whom the law allows the filing of an appeal, i.e. to parties in administrative procedure.* […] *If the law does not provide for such an admissible proper remedy, it is necessary to admit a lawsuit directly against the first-instance decision of the administrative authority (cf. ruling of the Supreme Administrative Court of 17 April 2013, File No. 6 Ans 16/2012 - 62, No. 2959/2014 Coll. NSS).* […]

[30] *The Supreme Administrative Court thus concludes that (in general terms) it is conceivable that the contested decision affects the legal sphere of the complainants (or some of them), although they were not parties to the procedure before the administrative authority. In such a situation, their right to file a lawsuit cannot be conditioned by filing an appeal against the contested decision of the defendant, to which they were clearly not entitled and which would have to be rejected as inadmissible. In such a case, a lawsuit against the final decision of the first-instance administrative authority may be exceptionally heard.* […]

Similar conclusions can be found in a number of other rulings. In the context of the cases dealt with before the Compliance Committee, the following can be highlighted in particular:

Ruling of the Supreme Administrative Court of 15 October 2015, File No. 10 As 59/2015 – 42, points 23, 24 and 26 (cf. the full text of the ruling here): In a ruling concerning the location of blocks 3 and 4 of the Temelín NPP, the Supreme Administrative Court stated that it is not possible to reject an action as inadmissible on the grounds of a failure to exhaust proper remedies, when in the given case the plaintiff had no remedy that he/she could effectively use (because he/she was not a party to the procedure). In the rest, however, the ruling is based on a different legal situation compared to the present (in the meantime, there have been significant changes to the Act on Environmental Impact Assessment), it is therefore necessary to read the ruling taking these later changes into account.

Ruling of the Supreme Administrative Court of 2 May 2019, File No. 7 As 308/2018 – 31, paras. 13, 14, 16 (cf. the full text of the ruling here), excerpts of which were quoted in Annex No. 1 of the plan of action: The ruling refers to a time-limited permission to operate a road that exceeds the established noise limits (i.e. a procedure for the permission of a noise source which is exceeding the hygienic limits pursuant to § 31(1) of the Act on the Protection of Public Health). The Supreme Administrative Court inferred the right of action of the owner and user of the neighbouring family house to file a lawsuit against this noise exception. The ruling also contains a large number of references to other case-law, which demonstrate that this interpretation can be currently considered as well established.

More recently, similar conclusions can be found, for example, also in the ruling of the Supreme Administrative Court of 30 August 2022, File No. 1 As 115/2022 – 35, paras 14, 15 and 16 (cf. the full text of the ruling here).

Right of action of the non-governmental organisations (NGOs)

The above also applies to the case where the plaintiff is a non-governmental organization (NGO). The **Constitutional Court** commented on the right of action of associations in its key **finding of 30 May 2014, File No. I. ÚS 59/14** (cf. the full text of the finding here). The finding addressed the right of associations to submit a proposal for the cancellation of a general measure (it was a case of contesting a municipal spatial plan, which is being issued in the form of a general measure), however, this interpretation was later extended also to other cases:

22. […] *Civic associations, or now associations (as will also be mentioned later, see § 214 et seq. of Act No. 89/2012 Coll., Civil Code) mainly bring together citizens; it is a separate legal entity established for the purpose of achieving an agreed activity and common interest. Therefore, it is not possible to prevent associations completely from accessing the courts and not allow them to propose the cancellation of a municipal spatial plan.*

24. *An association requesting the cancellation of a general measure (here a municipal spatial plan or a part of it) must first of all claim that its subjective rights were affected by this measure. Such a statement must precisely define the intervention that the self-governing unit was supposed to commit, in accordance with the diction of § 101a(1) of the Code of administrative justice (cf. also Article 2(5) of the Aarhus Convention mentioned in para 13). It is not enough for a civic association to claim that the general measure or the procedure leading to its issuance were illegal – without at the same time claiming that this illegality affects its legal sphere.*

25. *The essential criterion here must certainly be a local relationship of the plaintiff to the locality regulated by the municipal spatial plan. If the association has its registered office in this territory or if its members are the owners of real estate potentially affected by the measures resulting from the municipal spatial plan, then in principle the association should have a right to submit the proposal. Substantive (material) grounds, based on the subject of the association's activity, then derive precisely from the local relationship to the contested general measure. In some cases, local and substantive reasons can work in synergy, and it doesn't even have to be an "ecological" association.* […]

26. *In other situations, for the purposes of assessing the right of action of an association, the focus of the association on an activity that has a local justification (protection of a certain*

species of animals, plants) can play an important role. In general, it can be said here that from the point of view of assessing the legal condition of curtailment of rights, local "establishment", i.e. a longer period of association activity, will be more credible. However, it is not possible to exclude the establishment of an ad hoc association for a purpose related to the municipal spatial plan. The fact that a citizen prefers to promote his interest in the form of an association with other citizens cannot be attributed to his burden. […]

27. *The Constitutional Court states, not obiter dictum, that the criteria it has mentioned do not have to apply only in relation to those associations whose main activity is the nature and landscape protection. The indicated criteria, which will no doubt be made more concrete by the case-law, can be applied to associations regardless of the subject of their activity, namely to those for which there will be a presumption of a curtailment of rights by a general measure in the sense of § 101a(1) of the Code of administrative justice.*

In the **ruling of the Supreme Administrative Court of 25 June 25, File No. 1 As 13/2015 – 295** (cf. the full text of the ruling here), this interpretation has been applied to the case of a lawsuit against a decision of an administrative authority. At the same time, the local relationship criterion has been further developed:

[79] *The Supreme Administrative Court is aware that the above-quoted case-law refers to the review of a general measure, but the conclusions regarding the affecting of the substantive legal sphere of the potential plaintiff and the necessity of a local element can also be applied to the question of the possible application of § 65(1) of the Code of administrative justice.*

[80] *The Supreme Administrative Court assessed whether the plaintiff, who is based in Brno but operates within the territory of the entire Czech Republic, could have been affected by the contested decision in his substantive legal sphere, which is a prerequisite for the existence of his right of action.*

[82] *According to the court's belief, the plaintiff in this particular case could have been affected by the contested decision in his substantive rights. Although the project KO EPR II is located in the Ústí Region, the operation of a power plant of such importance undoubtedly exceeds the borders of the region in question, or has an impact on the entire territory of the Czech Republic. The plaintiff is demonstrably performing long-term and erudite activities related to nature and landscape protection throughout the Czech Republic (e.g. implementation of the so-called "Prague Circle", implementation of projects in the Jeseníky Protected Landscape Area, construction of the R52 road or felling of trees in the Šumava National Park). In the ruling of 18 September 2014, File No. 2 Aos 2/2013 – 69, the Supreme Administrative Court decided that the main criterion for granting the association a right of action is the existence of a sufficiently strong relationship of the applicant to the given territory. The Supreme Administrative Court considers that, in the case of the given projects with impacts on the territory of the entire Czech Republic, it is possible to conclude that the plaintiff, who performs an activity within the entire Czech Republic, is affected in the substantive sphere, or that in this particular case the criterion of a sufficiently strong relationship of the plaintiff to the territory in question is fulfilled.*

[83] […] *Therefore, § 65(1) of the Code of administrative justice can be applied to the given case, i.e. the plaintiff is entitled to file objections of both procedural and substantive nature.*

Furthermore, the interpretation was also elaborated in the **ruling of the Supreme Administrative Court of 26 April 2017, File No. 3 As 126/2016 – 38** (cf. the full text of the

ruling here). In this case, the subject of judicial review was again a municipal spatial plan (not a decision of an administrative authority):

In any case, however, it is necessary to take into account the fact that the Constitutional Court in its finding of 30 May 2014, File No. I. ÚS 59/14, did not limit the conclusion regarding the infringement of material rights only to the infringement of the property right or other right in rem of a member of an association, who seeks the protection of his/her rights through this legal entity, but expressly in the context of the Aarhus Convention also admitted the infringement of the rights of members of the association to a favorable environment (without being derived from an existing property right in the regulated territory), if the alleged intervention has consequences for achieving the goals that the given association focuses on (in addition to associations for the protection of nature and landscape, one can imagine, e.g. gardening associations, associations organizing recreational use of a certain location, etc.).

At the same time, the Supreme Administrative Court admitted that the emphasis on the local relationship of the association may differ depending on how wide are the impacts associated with the adoption of the plan (ruling dated 25 June 2015, File No. 1 As 13/2015-295, regarding the plan for the comprehensive restoration of the Prunéřov II Power Plant), or also according to the importance of the protected natural and landscape values, as in the ruling of 6 November 2016, File No. 1 As 182/2016-28, the Supreme Administrative Court admitted that "…it is possible to imagine a situation where an association established for the purpose of nature and landscape [protection] *could have the right of action even if it usually operates in a different place than the object whose protection is sought. Such a situation could typically arise if an object with a certain degree of national protection (e.g. a national park) would be concerned in the administrative procedure."*

A clear summary of the above can be found in the **ruling of the Supreme Administrative Court of 31 January 2019, File No. 2 As 250/2018 – 68** (cf. the full text of the ruling here):

[13] *Ecological associations can defend both their procedural and substantive rights in proceedings before the administrative court. They either do so from the position of the so-called "interested parties" according to § 65(2) of the Code of administrative justice, in case that they could not be affected in their legal sphere in the previous proceeding, but they have exercised a certain interest protected by the law there (hence the interested parties), or, under specified conditions, they may seek protection of their substantive rights according to § 65(1) of the Code of administrative justice, in case that the given decision affected their legal sphere (see ruling of the extended senate of 23 March 2005, File No. 6 A 25/2002 - 42, publ. under No. 906/2006 Coll. NSS). According to the extended senate, standing to file a lawsuit pursuant to Section 65(1) of the Code of administrative justice, in contrast to Section 65(2) of the Code of administrative justice, is not tied to the fact that the plaintiff was a party to the previous proceeding, from which the contested decision resulted (i.e. from the point of view of the formal concept of participation), but the essential question is whether the decision of the administrative authority actually affects the plaintiff's legal sphere.*

[16] *The association is thus entitled to derive its right of action from § 65(1) of the Code of administrative justice, if it claims that there are subjective rights belonging to it that are affected by the intervention in question. It does not have to be only the property right or other right in rem of the members of the association, the intervention may also affect the right of the members of the association to a favourable environment (without being derived from an existing*

property right in the regulated territory), if the alleged intervention has consequences for achieving the goals that the association focuses on […]. […]

These conclusions were recently repeated also by the **Constitutional Court in its finding of 26 January 2021, File No. Pl. ÚS 22/17** (cf. the full text of the finding here):

84. *If, despite the above-mentioned arguments, associations, as well as other persons to whom the legislation does not grant participation in certain administrative procedures, feel that their rights and freedoms have been affected by the decision of the administrative authority* […], *they may, in accordance with Article 36(1) and (2) of the Charter* [of Fundamental Rights and Freedoms] *go to the administrative court. Review of administrative decisions by an administrative court is not excluded; the procedural right to file a lawsuit against a decision of an administrative authority pursuant to § 65(1) of the Code of Administrative Justice is based on a simple claim of curtailment of one's rights by an administrative decision, either directly or as a result of a violation of rights in the previous procedure. Therefore, participation in the administrative procedure is not a condition for procedural right to file a lawsuit according to § 65(1) of the Code of Administrative Justice. If the plaintiff's rights were actually curtailed by an administrative decision is not a matter of a procedural right of action, but of the substantive right, i.e. of the question if the administrative action is reasonable. These conclusions are in accordance not only with the opinions of legal doctrine, but also with the approach of the Supreme Administrative Court,* […].

Interpretation of the Czech law in accordance with the Aarhus Convention

The Aarhus Convention was repeatedly referred to in the above case-law of the courts. First of all, it is possible compare the above-mentioned **ruling of the Supreme Administrative Court of 18 April 2014, File No. 4 As 157/2013 – 33** (cf. the full text of the ruling here):

[37] *Last but not least, when assessing the right of action of the plaintiffs, the Municipal Court must also take into account the fact that the project is subject to an environmental impact assessment (EIA), and as a result, the interpretation of the procedural laws regarding the admissibility of the action must also be based on the Aarhus Convention and the Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment. According to para. 21 of the recitals of the said Directive, the objective of the Directive is, among other things, the implementation of the provisions of the Aarhus Convention, which provides for access to judicial or other procedures for challenging the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of Article 6 of that Convention. Court of Justice of the European Union further stated in its judgment of 8 March 2011, in case C-240/09, Lesoochranárske zoskupenie VLK, para. 45 et seq.: "It must be held that the provisions of Article 9(3) of the Aarhus Convention do not contain any clear and precise obligation capable of directly regulating the legal position of individuals. Since only members of the public who meet the criteria, if any, laid down by national law are entitled to exercise the rights provided for in Article 9(3), that provision is subject, in its implementation or effects, to the adoption of a subsequent measure. However, it must be observed that those provisions, although drafted in broad terms, are intended to ensure effective environmental protection. In the absence of EU rules governing the matter, it is for the domestic legal system of each Member*

State to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from EU law, in this case the Habitats Directive, since the Member States are responsible for ensuring that those rights are effectively protected in each case (see, in particular, Case C-268/06 Impact [2008] ECR I-2483, paragraphs 44 and 45). (…) Therefore, it is for the referring court to interpret, to the fullest extent possible, the procedural rules relating to the conditions to be met in order to bring administrative or judicial proceedings in accordance with the objectives of Article 9(3) of the Aarhus Convention and the objective of effective judicial protection of the rights conferred by EU law (…)" […]

The above-mentioned **finding of the Constitutional Court of 30 May 2014, File No. I. ÚS 59/14** (cf. the full text of the finding here) was also crucial in this respect:

19. *The Constitutional Court does not intend to question the current interpretation of the Aarhus Convention when it comes to its lack of direct effect. However, it is necessary to take into account the status of the Aarhus Convention [see Article 10 of the Constitution of the Czech Republic (hereinafter referred to as the "Constitution")] from the point of view of its application priority over the law. It is not possible to act relevantly without taking into account the Aarhus Convention as a source of interpretation.* […] *The Constitutional Court did not grant direct effect to the obligations arising from any of the provisions of the Aarhus Convention. However, the Constitutional Court is obliged to interpret the provisions of the constitutional order, which affect the right to judicial protection, in such a way as to enable the effective protection of the rights of natural and legal persons. Therefore, if it is possible to interpret national law in several possible ways, the interpretation that fulfils the requirements of the Aarhus Convention takes precedence. By Council Decision No. 2005/370/EC of 17 February 2005, the European Community also acceded to the Aarhus Convention* […] *and the Aarhus Convention became part of the Community law in the regime of the so-called mixed agreements. Although the conditions for a direct effect are not fulfilled [sufficient clarity and unconditionality - cf. case 26/62, Van Gend en Loos (1963) ECR 1 or case C-8/81, Becker v. Finanzamt Münster-Innenstadt (1982) ECR 53], the authorities of the member states (including the courts, of course) have the obligation of consistent interpretation, i.e. the obligation to interpret its own legislation in accordance with the international legal obligation of the European Community [cf. case C-300/98 and C-392/98, Parfums Christian Dior SA (2000) ECR I-11307, paragraphs 47-48].*

Similar conclusions can be found, for example, in the finding of the Constitutional Court of 17 March 2009, File No. IV. ÚS 2239/07 (cf. the full text of the finding here), in the ruling of the Supreme Administrative Court of 25 June 2015, File No. 1 As 13/2015 – 295, para 72 (cf. the full text of the finding here), or in the ruling of the Supreme Administrative Court of 31 January 2019, File No. 2 As 250/2018 – 68, para. 14 (cf. the full text of the finding here). The ruling of the Supreme Administrative Court of 26 April 2017, File No. 3 As 126/2016 – 38 (cf. the full text of the ruling here) also contains a number of references to the Aarhus Convention.

Conclusion

The above can be summarized as follows:

- If the public concerned is a party to an administrative procedure, it is entitled to file an appeal and subsequently to file a lawsuit in the administrative court directly on the basis

of general legislation. If it files a lawsuit pursuant to § 65(2) of the Code of Administrative Justice, it acts as an interested party and does not have to prove that the decision takes interferes with its legal sphere.

- If the public concerned is not a party to the administrative procedure, but the decision taken therein may affect its legal sphere, it can file a lawsuit against this decision according to § 65(1) of the Code of Administrative Justice. In this case, it must claim and prove that the decision affects its legal sphere, i.e. it must claim that it owns subjective rights that are affected by the given decision. In can be also the right to a favorable environment, if the alleged intervention has consequences for achieving the goals that the affected public (typically an NGO) is aiming for. The local relationship criterion must be interpreted with consideration of the nature of the activity to which the decision relates and of the activity targeted by the NGO.
- If it is possible to interpret Czech law in several possible ways, the interpretation that meets the requirements of the Aarhus Convention takes precedence.

In connection with the above, the situation examined before the Aarhus Convention Compliance Committee in case ACCC/C/2016/143 (specifically in relation to the recommendation according to **para. 6 (b) of decision VII/8e**) can be specified. In the proceedings, reference was made in particular to this case law:

Ruling of the Supreme Administrative Court of 27 October 2011, File No. 7 As 90/2011 – 144 (cf. the full text of the ruling here): The subject of this court proceeding was only the question of whether the plaintiff could be a party to the procedure before an administrative authority (i.e. a party to the procedure pursuant to § 9 of the Atomic Act). Participation in the administrative procedure is excluded in this case, which was confirmed by the Supreme Administrative Court. However, it is necessary to distinguish this fact from the issue of standing to file a lawsuit in administrative court. Here, the plaintiff had the right of action, but the judicial review only concerned the decision on the plaintiff's participation in the administrative procedure, not the decision in the case itself. Therefore, the ruling does not really address the above-discussed issue regarding access to justice.

Resolution of the Constitutional Court of 11 June 2012, File No. IV. ÚS 463/12 (cf. the full text of the resolution here): The same applies here as was said about the previous ruling of the Supreme Administrative Court – the Constitutional Court does not change in any way the interpretation of the Supreme Administrative Court.

Ruling of the Supreme Administrative Court of 15 October 2014, File No. 10 As 59/2015 – 42 (cf. the full text of the ruling here): This ruling was already mentioned in the text above. The Supreme Administrative Court confirmed that it is not possible to reject an action as inadmissible on the grounds of a failure to exhaust proper remedies, when in the given case the plaintiff had no remedy that he/she could effectively use (because he/she was not a party to the procedure). In the rest, however, the ruling is based on a different legal situation compared to the present (in the meantime, there have been significant changes to the Act on Environmental Impact Assessment), it is therefore necessary to read the ruling taking these later changes into account.

Ruling of the Supreme Administrative Court of 29 January 2020, File No. 4 As 267/2019 – 35 (cf. the full text of the ruling here): In this case, the plaintiff again only sought participation in the procedure before the administrative authority, not a review of the decision taken in the

procedure. The subject of the procedure was therefore not the decision on the merits, but a decision that the plaintiff is not a party to the administrative procedure for granting of a permit for the operation of a nuclear facility. Therefore, the Supreme Administrative Court has only repeated its previous conclusions, according to which in this case the participation of the public concerned in this administrative procedure is not possible.

Resolution of the Constitutional Court of 8 September 2020, File No. II. ÚS 940/20 (cf. the full text of the resolution here): Here again, the same applies as what was said about the previous ruling of the Supreme Administrative Court – the Constitutional Court did not change in any way the interpretation of the Supreme Administrative Court regarding the participation of the public in administrative procedure according to Section 9 of the Atomic Act.

With the exception of ruling 10 As 59/2015 – 42, the case law mentioned in this section does not address the question of whether access to justice is ensured in cases under the Atomic Act, as they only deal with the question of participation in the administrative procedure. With the exception of this one case, the public concerned did not file lawsuits against the decision in the matter itself. In the case of 10 As 59/2015 – 42, the filing of this lawsuit was successful – the Supreme Administrative Court clearly stated that the lawsuit is admissible. For that reason, it is necessary to compare also other case law concerning access to justice, which is referred to in the text above. It is clear from this case law that access to justice is provided. **We therefore believe that the recommendation in para. 6 (b) of decision VII/8e is currently fulfilled and that it does not require adoption of further measures (the same also applies to the recommendation in para. 2 (a) (i) of decision VII/8e).** In relation to the ACCC/C/2016/143 case, it is primarily necessary to address issues other than the issue of access to justice. These issues are reflected in recommendation para 6 (a) of decision VII/8e.