How Can Public Influence Zoning Plans to Protect Environment? – Case of the Czech Republic and Indirect Effect of EU Law

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Abstract: This paper aims to introduce legal possibilities of associations in the Czech Republic to influence adoption of zoning plans and to use legal remedies against the already adopted zoning plans. Czech courts did not allow associations to file actions against zoning plans till recent shift in the case law of the Constitutional Court. The paper analyses the reasons for this shift and finds a significant influence of EU law. Further, the paper seeks conditions laid down by recent case law of administrative courts, under which associations and representative of the public are entitled to lodge actions to repeal the zoning plan or part thereof. It aims to define further conditions. Positive effect of international law, namely the Aarhus Convention, enhancing change in the interpretation of Czech legal acts was found. It can be summoned that the position of associations, which promote environmental protection in the Czech Republic, is comparable to European standards.

Key-Words: Zoning plan, Aarhus Convention, associations, administrative action, representative of the public, indirect effect

1 Introduction

Newly published zoning plan or alteration thereof is usually accompanied by reservations. Complaints, which promote interest in protecting environment, are most common. They strive to prevent interference into environment or minimize the risk of potential changes which could occur in the future as a result of amendments of the already adopted zoning plan.

The word “environment” is derived from the French word “Environ” which means “surrounding”. Our surrounding includes biotic and abiotic factors like human beings, plants, animals, microbes, such as light, air, water, soil, and so on. Environment is a complex of many variables, which surrounds man as well as the living organisms. There is no doubt, that zoning plans which serve as a basis for future decision-making on whether there will be buildings erected in the regulated area, and what types of buildings those will be, may very significantly affect the environment. It is advisable for those who are active in environmental protection, to tackle any environmental issue in its beginnings when the threat is still potential. Therefore, they usually do not wait for the building permit proceedings of specific construction to start, but try to influence the conception embedded in the zoning plan draft.

In practice, it is usually not a sole individual, who supports the interest in environmental protection. Habitually, an individual person connects with a group of like-minded people who are trying to influence the final zoning plan. In the Czech Republic, they can congregate as an environmental non-governmental organization with the legal status of the association within the meaning of Art. 214 et seq. of the Act no. 89/2012 Sb., Civil Code. Also, they can choose a kind of a joint agent for communicating with public authorities with a certain privileged position, who has the status of “representative of the public” according to Art. 23 of Act No. 183/2006 Sb., On territorial planning and building regulations (the "Act on Construction" hereinafter).

Associations or representatives of the public may enter the process of issuing zoning plan or its amendments. When they have failed in their complaints and zoning plan has not been modified to their content, according to the original courts’ restrictive interpretation they could not achieve annulment of such zoning plan in court. Recently, the Constitutional Court and Supreme

Administrative Court case law started reflecting right of public participation granted by Aarhus Convention using the indirect effect of EU law as their argument. Thus, in light of this case law, however, under certain conditions, review of zoning plan by administrative courts may now be initiated by associations pursuing public interest in environmental protection and representatives of public. This article aims to analyze the reasons for change in the courts' opinion and the impact of EU law on the Czech law. It also attempts to define the restrictive conditions under which access to the courts should be guaranteed, as there is still.

2 Public participation in the process of issuing zoning plan or amendment thereof

Zoning plans are not issued in the form of administrative decision. They are general binding measures. The process of issuing them thus does not follow the rules of general administrative procedure. Rules governing the process of issuing general binding measures are contained in Part Six of the Act No. 500/2004 Sb., Administrative Procedure Act. Those rules are modified by specific stipulations related to zoning plans contained in the Act on Construction. Due to the limited scope of this article we will focus only on procedural institutes related to the participation of associations and representatives of the public. [Hendrych, 2012]

2.1 Objections to zoning plan and comments thereon

Reservations to the accepted zoning plan or its altered parts mentioned in the introduction above may be raised by privileged persons in the planning process either in the form of objections, or in the form of comments. Objections may be submitted by property owners whose rights, obligations or interests related to the exercise of property rights may be directly affected by the zoning plan, and other persons whose legitimate interests may be directly affected, if they are allowed by the administrative authority. The public authority must decide upon the objections and give reasons for their decision. This decision then becomes a part of the zoning plan reasons.

Comments can be raised by anyone whose rights, obligations or interests may be affected by the general binding measure. Comments shall be used as the basis for general binding measure by the administrative authority. It has to deal with them in the reasoning of the zoning plan. However, individual decisions regarding them are not issued.

Thus, associations may raise comments against the zoning plan. Representative of the public may raise objections pursuant to Art. 52 Sec. 2 of the Act on Construction. The mere fact that a person may defend the interest of environmental protection in the course of issuing zoning plan, however, cannot be considered as sufficient protection of rights. Only deciding on subjective rights by independent judicial authorities may be considered to be sufficient protection. Anyone who claims that his rights were prejudiced by generally binding measures issued by administrative authority, may seek protection against it before administrative court by means of a complaint. However, there used to be certain constraints that were interpreted strictly and, until recently, this interpretation considerably narrowed the circle of persons with complaint legitimation, i.e. acceptable petitioners. To ensure that this right could be exercised also by associations protecting environment and representatives of public a shift in the Constitutional Court and Supreme Administrative Court case law had to occur.

3 Court review of zoning plans

Under Art. 101a Sec. 1 of Act No. 150/2002 Sb., Code of Administrative Justice, action for annulment of a generally binding measure may be filed by anyone who claims to have been prejudiced their rights, by a generally binding measure issued by an administrative authority. It is decisive that the change contained in the zoning plan is able to touch the legal sphere of the petitioner. It means that real danger of such prejudice exists. It is immaterial whether other administrative acts have already been issued following the zoning plan change, e.g. planning permission. At the time when the petitioner contests the zoning plan, it might not be clear what specific activity will be implemented in the affected area. [Sládeček, 2013]

The entitlement to file this type of proposal is not limited by the fact that the person concerned already filed, in order to protect his/her rights, objections or comments during the zoning proceedings. However, the petitioner must allege prejudice to his/her substantive rights caused by the contested zoning plan. As a rule, it is insufficient to claim objections of a mere procedural nature relating to the process of the zoning plan's adoption. Nevertheless, under certain conditions, it is necessary to allow for claims of an applicant alleging breach of procedural rights

during process of the zoning plan adoption. It is in case, if it is conceivable that this violation of procedural rights could result in prejudice to the claimant's substantive rights, which determine the locus standi. The alleged procedural defects may not a priori exclude the possibility of their manifestation in the substantive rights sphere. If, however, obviously taking into account the particular circumstances of the case the claimant's substantive rights sphere could not have been affected or such affection seems very unlikely, the claimant is not entitled to sue in this type of proceeding. If someone submits a proposal for a review of general binding measure by the court without having the standing to bring the proceedings, the court rejects his proposal. [Bahýľová, 2011]

On the other hand, the condition of substantive rights sphere prejudice must not be interpreted too harshly. Standing to submit a proposal is not found by prejudice to rights, but already by the claim that the rights were prejudiced. The court examines the veracity of such claim in the stage of substantive examination of the case. It is not possible to condition the access to the court by legitimacy of such claim. It is sufficient if the claimant logically, consistently, and conceivably argues the possibility of prejudice to his legal sphere by relevant generally binding measure. The court assesses eventuality of infringement of rights in relation to the nature and scope, and content of the relevant generally binding measure and method of regulation used in it. Therefore, the court may reject the claim only, if it is prima facie obvious, that by nature of things the claimant's legal sphere could not have been affected by the contested generally binding measure or such prejudice is very unlikely. The Supreme Administrative Court ruled in this way e.g. in its judgment dated 16th December 2008 ref. no. 1 Ao 3/2008-136. [Janderová, 2014]

3.1 Prejudice to public subjective rights of associations

According to previous case law of the Supreme Administrative Court, associations supporting environmental protection did not meet the requirement of "prejudice to the subjective rights". We can quote as an example resolution of the Supreme Administrative Court dated 24th January 2007 ref. no. 3 Ao 2/2007. In principle, the arguments lay in the fact that associations were not holders of substantive rights. Namely, they were not holders of the right to a favorable environment, which according to stable case-law of the Constitutional Court, Article 35 of the Charter of Fundamental Rights and Freedoms granted only to individuals (and not legal entities). While in administrative actions brought against administrative decisions pursuant to Art. 65 Sec. 2 of the Code of Administrative Justice it is sufficient, when environmental associations claim prejudice to their procedural rights, Art. 101a of the Code of Administrative Justice does not contain explicitly similar treatment for the cases of review of generally binding measures. [Záhumenská, 2015]

Originally, the courts accepted legitimation to file an action to the owners of properties located in the regulated area. Property owners claim prejudice to their property rights (e.g. creation of pre-emptive rights, possibility of future expropriation in public interest, or inability to use their plot of land in a certain preferred way, e.g. by erecting a house), or prejudice to the right to carry out business activities. Further, entitled to file the claim may be bearers of other rights in rem, usually rights corresponding to an easement. Tenants of properties located in the area regulated by the zoning plan are not entitled to sue.

The Supreme Administrative Court in its judgment dated 21st April 2010 ref. no. 8 Ao 1/2010 has granted entitlement to sue to owners of land (it can in principle be generalized to all real estate owners), which is adjacent to the area covered by the zoning plan, eventually to other persons entitled to rights in rem, related to such property. They are entitled to sue, if they claim that their ownership or other property right would be directly affected by an activity, the operation of is allowed by the challenged zoning plan. While for determining who could potentially be affected in their rights, it is not possible to fix a generally applicable key. It is necessary to take into account particular circumstances of the case, typically to consider the size of the agglomeration, landscape, density of population (concentration of buildings), and character of the area (agricultural or industrial). The reasoning of the judgement states that three categories may be affected in their rights:

- Person with direct and intermediate relationship with the territory - the owner or co-owner of real estate in the regulated area, or a person with a right in rem over such property, but not tenant;

- Person with an ownership or other rights in rem related to immovable property in the area adjacent to the zoning plan controlled area, if he /she claims that his/her rights will be affected by a particular activity that the zoning plan allows in the regulated area – usually die to air pollution, noise or odors; or potentially this activity will lead to a significant reduction in the value of its assets;
- "Members of the public concerned" as defined in Art. 9 Sec. 2 and 3 of the Aarhus Convention.

Let's move on to explaining who the concerned public according to the Aarhus Convention are and what rights the concerned public holds.

4 Aarhus Convention

The so called Aarhus Convention, fully the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, establishes a number of rights of the public (individuals and their associations) with regard to the environment. The Parties to the Convention are required to make the necessary provisions so that public authorities (at national, regional or local level) will contribute to these rights to become effective. Inter alia it guarantees access to justice in environmental matters. Czech Republic ratified the Aarhus Convention with effect from 4th October 2004. Under the conditions set out in Art. 9 Sec. 2 of the Aarhus Convention members of the public concerned having a sufficient interest or, alternatively, maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition, shall have access to a review procedure before a court of law 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 and, where so provided for under national law and without prejudice to Section 3 below, of other relevant provisions of this Convention.. "The members of public concerned" are defined in Art. 2 Sec. 5 of the Aarhus Convention as public affected or likely to be affected by, or having an interest in, the environmental decision-making. For the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest. Decisions according to Art. 6, are decisions on whether to permit activities listed in Annex I, therefore, in principle, enable construction or operation of a facility which may have a significant impact on the environment.

Regarding zoning plans, Art. 7 of the Aarhus Convention concerns the creation of plans, programs and policies relating to the environment.

The Czech initial interpretation of the rights granted by the Aarhus Convention can be demonstrated on the Supreme Administrative Court's judgment dated 24th January, 2007, ref. no. 3 Ao 2/2007. In this judgement the court concluded that the Aarhus Convention is a part of Czech law, but its provisions are not directly enforceable. Without its implementation it can not be clearly determined which legal and natural persons must be granted the right of access to court. Its provisions therefore do not directly grant any rights to individuals without any conditions set by the Parties to the Convention and possibilities for their consideration. So that any international treaty could take precedence over any national source of law, it must meet the condition of self-enforcement. This condition is not met, and even if associations, whose purpose is to protect the environment, should be considered as "members of the public concerned", their right to sue before court in such cases is not founded by the Aarhus Convention.

5 EU law on environment protection

The European Union in the area of Environmental protection has shared competence between the Member States. The principle of subsidiarity however gives EU right to act in matters it has no exclusive competence in an objective way than the member states (1997 Council resolution on the drafting, implementation and enforcement of EC Environmental Laws).

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development according to Art. 37 of the Charter of Fundamental Rights of the European Union. The Charter recognizes a number of rights, freedoms and principles that apply to the EU Institutions and Member States when they implement EU law. Environment protection is further covered by Treaty of Functioning of the European Union (TFEU) Article 191. However, it is secondary legislation, namely directives which are dedicated to detailed rules covering environmental protection.

The directives give obligations to members to transpose them into local legal framework; there is practical application of these directives in individual

situations. Enforcement is by the Commission however, in the event of non-compliance it resorts to administrative or criminal sanctions. EU has substantive environmental standards applying to specific environmental media or sources of environmental interference (sectorial) and procedural environmental standards applying to conduct of environmental policy by public authorities and environmental rights of citizens (horizontal). The substantive Environmental Laws covers the areas of; water quality, air quality, noise control, industrial pollution control, waste prevention and management, management of chemicals management of GMOs as well as nature conservation and biodiversity. The procedural standards include; Integrated environmental permits (IPPC), environmental impact assessment (EIA), Strategic environmental assessment (SEA), environmental management and audit (EMAS), freedom of access to environmental information, public participation in environmental decision-making and access to justice in environmental matters.

EU is further signatory to the Aarhus Convention, which will be decisive for the issue discussed by this article.

6 Shift in the Constitutional Court's and Supreme Administrative Court's case law

The idea that associations should be able to seek judicial protection against zoning plans, was first hinted by the extended panel of the Supreme Administrative Court. In its resolution of 21st July 2009 ref. no. 1 Ao 1/2009, the court obiter dictum remarked that "with regard to the obligations arising for the Czech Republic from international law and European Community law, entitlement to file a claim under Art. 101a et seq. of the Administrative Justice Code may not be ruled out a priori for the so-called "members of the public concerned" within the meaning of Art. 9, Sec. 2 and 3 of the Aarhus Convention. Nevertheless with regard to powers of the extended panel, it is not in place to deal with this issue in the present case." Yet in the years to come, all chambers of the Supreme Administrative Court remained on the earlier interpretation, which did not confer locus standi on associations.

6.1 The right of action of association to challenge a general binding measure - Visiting Rules of a National Park

Subsequently, in 2010, a certain shift regarding the entitlement of associations to sue, came in the Supreme Administrative Court's judgment dated 13th October 2010 ref. no. 6 Ao 5/2010. The court concluded that associations representing the interests of environmental protection are entitled to bring an application for annulment of generally binding measure. The case concerned visiting rules of the national park. In the case law that followed, however, the Supreme Administrative Court remained at the earlier opinion that associations may not challenge any zoning plans, as they found the visiting rules of a national park to be specific and not comparable to zoning plans. Although both administrative documents are issued as a generally binding measure, the court argued that the visiting rules of a national park is a specific type of generally binding measure and differently from zoning plans, the intent is not discussed at any other stage of the proceedings (typical are proceedings on planning permit and construction permit proceedings which follow after the adoption of zoning plan). The court deduced the direct effect of Art. 11 sec. 2 of 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 (hereinafter the "EIA Directive").
Article 11 of the EIA Directive foresees similarly to the Aarhus Convention, that non-governmental organizations promoting environmental protection should have access to review of administrative decisions issued during proceedings laid down in the EIA Directive by a court or other independent and impartial body.

6.2 Indirect effect of EU law and duty to interpret Czech law in conformity with Aarhus Convention

Constitutional Court shifted from its previous case law in its judgment dated 30th May 2014 ref. no. I. ÚS 59/14. By this judgement the Constitutional Court annulled judgment of the Supreme Administrative Court dated 24th October 2014 ref. no. 5 Aos 3/2012 concerning zoning plan of the village Petkovy and accepted arguments of Association for the protection of landscape. This association was founded for the purpose protection of a specific national park's protection. It proposed abolition of the zoning plan adopted as it allowed for new buildings to be erected in this national park. It originally failed with its proposal at the Regional Court in Prague, and failed even with subsequent cassation complaint addressed to the Supreme

Administrative Court. The Supreme Administrative Court stayed in its judgment using the above summarized arguments not granting the entitlement to file a claim to associations. The Constitutional Court found the arguments in favor of the locus standi of environmental associations and annulled the judgment of the Supreme Administrative Court as it infringed fundamental right of the claimant to seek judicial remedy. The Constitutional Court applied logical argument ad absurdum, which will be explained in more detail below. Further the court concluded, that national law needs to be interpreted in accordance with the law of the European Union and hence the Aarhus Convention, which has become part thereof.

The Constitutional Court essentially agreed with the position of the claimant, stating that "associations gather primarily citizens and it would be absurd for a person meeting at first sight the defined conditions, i.e., the owner of the land adjacent to the controlled area, not to be entitled to bring a claim for zoning plan revocation just because he gathered together with other people (residents of the same village or neighboring villages) and on behalf of the association requests cancellation of the zoning plan or part thereof."

The shift in application of the Aarhus Convention can be summarized, that the Constitutional Court remained on the previous interpretation, according to which the Aarhus Convention has no direct effect, but it is to be taken into account as an interpretative guide. One of the fundamental principles of EU law is that when the national law allows for dual interpretation, then the one that is in compliance with EU law needs to be chosen. The European Community acceded to the Aarhus Convention in 2005 and it is now part of EU law (formerly Community law) in the regime of the so/called "Mixed Treaties". The right of access to judicial protection must therefore be interpreted so as to fulfill the requirements of the Aarhus Convention. Besides, the Court of Justice of the EU in its judgment of 8th March 2011, C-240/09 interpreted Art. 9, Sec. 3 of the Aarhus Convention, in favor of ensuring judicial protection.

6.3 Criteria of associations' locus standi to file petition aiming to repeal zoning plan

However, the right of associations is not limitless and must have certain restraints. The Constitutional Court has indicated only some of those restraints, leaving it to administrative courts for their decision-making practice to create conditions of associations' right to access judicial protection in matters of zoning plans annulment. "It is up to a reasonably contemplating judge, to ascertain trough complex reasoning and having in mind the social significance of area development, whether a specific legal entity should be entitled to participate in the procedure for annulment of generally binding measures."

The Constitutional Court, however, indicated which way the considerations of administrative judges should proceed and what facts should be decisive. According to the above cited judgment ref. no. I. US 59/14, associations must most importantly claim that their rights were affected by the issued zoning plan, or parts thereof. In doing so, they must specify the interference, which the administrative authority made when it issued the zoning plan. It is not sufficient that for the associations to argue only generally that the zoning plan is illegal or perhaps that the process of its adoption was illegal. Important criterion to determine whether association could have been affected in its legal sphere is the existence of association's local relationship to the area regulated by the zoning plan. The fact, that the association has its seat and headquarters in this area, or its members are property owners who may be potentially affected by measures resulting from the zoning plan, should in principle testify in favor of entitlement to sue. Factual reasons in favor of this entitlement, which depend on the scope of activities carried out by association, will often be derived just from the local relation to the contested zoning plan.

The Constitutional Court goes in their argument even further when it infers possible locus standi even for associations that are not primarily "green". The court offers as example an association with purpose to protect interests of citizens of the city or neighborhood where the zoning plan could intervene with a recreation zone, where these people are used to spend their leisure time. The main activity of the association thus does not have to be nature and landscape protection.

Another type of associations for whom the right of action will come into consideration, is defined by the Constitutional Court through activity that has given locality substantiation – e.g. an association that focuses its activities generally to protect certain species of animals and plants and those can be found among others in the area covered by the zoning plan.

Criterion of length of time for which relevant activities have been carried out by the association in question will serve as further guide. Thus "established" associations should in principle be entitled to bring in actions. However, even associations created ad hoc for the purpose relevant to the zoning plan, cannot be generally excluded from the group with entitlement to sue.

It is therefore evident that the Constitutional Court leaves sufficient space to administrative courts to refine by their own decision-making the specific criteria. At the moment, not much time has passed since the Constitutional Court's judgment, but first indications of how administrative courts will decide can already be detected.

The Supreme Administrative Court builds upon the Constitutional Court's judgement in case ref. no. 4 As 217/2015 related to citywide significant changes I + II of the Zoning Plan of the Capital City Prague. The complainants disagreed with the change from the originally planned park to become residential houses. They argued that it will result in increased traffic and therefore noise and pollution burden, which will affect their right to favorable environment. It is significant that one of the claimants in this case was an association. The Municipal Court of Prague in light of the Constitutional Court's decision concluded that this association is entitled to sue. This conclusion was challenged by a cassation complaint; therefore the Supreme Administrative Court has had the opportunity to specify the general conclusions already set out by the Constitutional Court.

The Supreme Administrative Court was therefore assessed interference with subjective rights, local relationship with the regulated area and whether the association is focused on a locally founded activity. It has been proven that the association was founded in 2001 and since its foundation it has developed a systematic activity involving public participation in zoning plan processes in Prague. Its aim is to protect favorable environment for residents, supervising legality of zoning plans, planning and building permits and monitoring of development projects. The Court therefore concluded that the conditions for entitlement to sue have been fulfilled.

6.4 Representative of the public

First of all, it needs to be explained, who may represent the public, according to the Czech legislation. It is any fully legally competent natural or legal person that meets further conditions who may become representative of the public according to Art. 23 Sec. 2 of the Act. on Construction Representative of the public must be authorized at least by one tenth of the citizens of municipalities with fewer than 2,000 inhabitants, or at least 200 citizens of the respective municipality who apply the same substantive comments on the proposed zoning documentation. Representative of the public may also be authorized by citizens of the region who have filed substantively identical comments on the proposed territorial development principles (documentation concerning the area of region).

The original position of the Supreme Administrative Court can be summarized as follows: that the representative of the public is entitled to bring an administrative action against a decision on objections pursuant to Art. 65 et seq. Code of Administrative Justice, but not for the annulment of a generally binding measure under Art.101a of the Code of Administrative Justice.

In the above mentioned case Ref. No. 4 As 217/2015, the Municipal Court in Prague originally denied access to court to representative of the public with his application for annulment of generally binding measure. The extended panel of the Supreme Administrative Court, however, in its resolution dated 29th March. 2016 Ref. No. 4 As 217/2015-182, followed the recent ruling of the Constitutional Court, and annulled the Municipal Court's decision.

The extended panel's arguments can be summarized that the representative of the public represents and defends the common interest of citizens of a community who apply joint remarks to a draft zoning plan. Representative of the public thus, unlike any other citizen of the community, who may file a mere comment, is entitled to file an objection. The extended panel of the Supreme Administrative Court therefore finds that the Act on Construction "elevates" quantified majority of citizens of a municipality, represented by representative of the public, to be on the same level with any individual owner of land and buildings affected by the proposed zoning plan, as it recognizes their right to defend their joint, commonly expressed interest in a qualified procedure – by submission of objections.

Representative of the public is according to the court, differently from associations, endowed even a considerable degree of legitimacy because he first had to be empowered by the prescribed number of residents who are directly related to the regulated area. The objection filed by him has some evidence power, because it represents a substantial part of the population. On the contrary, interests observed by associations are not necessarily always transparent.

There is no significant difference on the basis of which it would be possible to deal with a representative of the public differently from associations, and thus to deny him the right to judicial review. In both cases, the same purpose, which is to ensure access to justice to the public, is followed. Therefore, it is necessary to deduce sue even among members of the public.

7 Conclusion

The case law of the Constitutional Court and the Supreme Administrative Court, concerning the locus standi of associations seeking environment protection has undergone a significant shift recently. The courts' initial position may be summarized so that associations bear no substantive rights that could be affected by any zoning plan under the meaning of Art. 101a of the Code of Administrative Justice. Neither does such authorization follow from other acts. The right to sue would also come into consideration if it resulted from commitments that the Czech Republic has under international law, or European Union law. The Constitutional Court in its judgment ref. no. I. ÚS 59/14 dated 30th May 2014 deduced, using the indirect effect of EU law, the necessity of conforming interpretation of Art. 101a of the Code of Administrative Justice with the Aarhus Convention ensuring access to justice to the public. Through this interpretation he court has acknowledged the right to challenge zoning plans before an administrative court to environmental associations. The Supreme Administrative Court subsequently extended this entitlement to representatives of the public. Thus, the position of public promoting environmental protection in the Czech Republic, is comparable to European standards.

However, this new interpretation of Art. 101a Code of Administrative Justice does not remove from associations the obligation to assert interference with their individual rights. The courts will in each case individually assess whether the asserted prejudice could have been possibly experienced by the claimant, and not until after they reach a positive conclusion, shall the claim be discussed. As not much time has passed since the ground-breaking ruling of the Constitutional Court, no detailed criteria for this assessment have been established in case law yet. Still, it is possible to argue that these criteria may be the direct relation to the regulated area, the pursued interest, the association's focus on activity that is relevant to the affected area, the length of time for which the association has carried out its activities, the real activities of the association and further criteria alike.

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