3. Questionnaire on National Laws, Practices and Experiences on Enforcement - Czech Republic

1. Please describe generally the most import tools for the enforcement of environmental law in your country. Also describe the relative "weight" of private law, administrative law and criminal law for the enforcement.

The most important enforcement tool in the Czech Republic seems to be fines and corrective/remedial measures including the possibility to withdraw the permit that has been issued. Those are instruments typical for administrative law and they are imposed mostly in the form of the administrative decision. The public, basically, cannot apply for the fine/corrective measure imposition, but it can inform environmental protection authority about the non-compliance and the authority has usually the duty to start the administrative sanction procedure. Certain laws enable the NGOs to participate in it. The administrative law creates the effective complex basis for the environmental law enforcement. In practice, however, it is not always applied effectively.

The private law is used for the environmental law enforcement mainly in nuisance cases and in cases of the damages, which is common in the field of air pollution causing damages to forests.

The criminal law does not play a substantial role in the environmental law enforcement, even though there are special articles devoted to it in the Criminal Code. However, only natural persons are liable for the criminal offence and courts are generally reluctant to impose strict sanctions for the breach of environmental law, even though they are set quite low by the law itself.

2. Please answer sub-questions I-IV **for each situation listed as a-i below**. Also indicate whether you know of national cases where these issues have been dealt with:
   I: Which sanctions are provided under national law (criminal, administrative etc.)?
   II: Can NGOs and/or citizens challenge the enforcement – or lack of enforcement – by the competent authority, or is it within the full discretion of the competent authority to decide whether and how offences should be sanctioned? (If NGOs and citizens can challenge such decisions and omissions, including failures of a procedural character, please describe how.)
   III: In light of European Community law, including the possible direct or indirect effect of directives, does national law grant NGOs and/or affected citizens the right to take direct enforcement measures against the polluter?
   IV: Could the competent authority under national law be held liable for erroneous acts and for omissions (non-enforcement) in the cases listed below? If so, how?

   a. When an EIA project is established without an EIA permit.

I. In the CR, the EIA report is an expertise, which must be elaborated prior the development consent can be issued. Thus, it is considered to be the fault of the authority and there are no sanctions imposed on the developer. The development consent can be

appealled to the 2nd instance authority and then challenged at the court as an illegal decision.

II. NGOs can challenge the decision if they participate in the development consent procedure. There are certain conditions set by the law for NGOs to become the participant - one of them is that the NGO must comment upon the EIA documentation/EIA review. As a participant, they can appeal the development consent. If they do not succeed, they can go to the administrative court.

III. No in respect to the EIA report. It is not possible to challenge it, even though there were some attempts made. The NGOs can challenge only the final decision (development consent). Supreme Court of Justice and Constitutional Court concluded that it is consistent with the Aarhus Convention which enables the parties to set conditions by the national law. The courts did not found any non-compliance with the EC Directve as well. Therefore they excluded the direct effect of those documents.

However, there is a judicial decision (Krajský soud v Ústí nad Labem, č.j. 15 Ca 184/2006-42) admitting the direct efect of an EC directive, not related to the EIA report, though. On the other hand, based on the direct effect of directives, one can claim his rights, but no duty can be imposed on him.

IV. Theoretically, if the development consent would be derogated and the developer would spent some money to carry out the project that was permitted, and, based on the illegal development consent cancellation, the construction had to be removed, the authority would be liable for the damage that the developer had suffered.

b. When conditions attached to the EIA decision, granting a development consent, are disregarded.

I. The same consequences. The appellant has to prove that the decision is not based on the evidence.

II. The same consequences as a.II.

III. No in respect of EIA report.

IV. Yes, if the development consent would be repealed as an illegal decision, similarly to a.IV.

c. When an IPPC facility is established without an IPPC permit.

I. A new facility has to have the IPPC permit prior to the construction/building permit can be issued. Therefore sanctions set in 2 different acts can be imposed. According to the IPPC Act - fine up to 7 000 000,- CZK and according to the Construction Act (if the facility was built without construction permit) it may be decided that the facility must be removed plus fine can be imposed on the developer. The law sets the possibility to issue the additional construction/building permit in cases the facility is in fact in compliance with other legal requirements, especially environmental ones.

II. No. It is within the full discretion of the competent authority.

III. Only if the construction permit would be issued without the IPPC permit, the participants of the construction permit procedure (owners of neighbouring properties) can appeal the construction permit as an illegal decision.

IV. Liability for damage caused by the illegal decision (above).

d. When an IPPC facility is permitted without prior assessment in accordance with article 6(3) of the Habitat Directive.

I. No sanctions, only the possibility of NGOs to appeal the IPPC permit as an illegal decision or the possibility to appeal development consent and then to go to the Administrative Court for the review.

II. If there is the IPPC permit, there cannot be any offence. There is only the possibility to repeal it as an illegal decision.

III. No.

IV. Not directly.

e. When an IPPC facility is operated in violation of conditions of an IPPC permit.

I. A corrective measure, the order to stop the operation and/or fine up to 7 mil. CZK can be imposed on the operator.

II. It is within the full discretion of a competent authority.

III. No.

IV. No.

f. When an IPPC facility releases greenhouse gases beyond what is provided for by allowances under the ET Directive.

I. Fine; withdrawal of the permit to emit greenhouse gasses.

II. It is within the full discretion of a competent authority.

III. No.

IV. No.

g. When an IPPC facility has negative impact on Natura 2000 sites beyond the threshold in article 6(2) of the Habitat Directive.

I. Sanctions set by the different laws can be applied in this case (IPPC Act, Nature protection Act, Environmental Damage Liability Act) - fines, corrective measures, an order to stop the operation.
II. There is the Art. 70 in the Nature Protection Act enabling NGOs to apply for "the information on all intended interventions and all administrative procedures in which the nature protection interest can be concerned". Based on this information, the NGO can announce its participation in selected proceeeding. This provision is maily used in permitting procedures, not in offence procedures, because "the nature protection concern" is interpreted restrictively. According to the official interpretation of the Ministry of the Environment "the nature protection concern" can be present only in the administrative proceedings dealilng with corrective measures or orders to stop the operation. Fine

imposition cannot be considered to be "the nature protection concern". As for the administrative omissions, there is a special legal gap consisting in impossibility to initiate any review procedure by NGO or private persons in situation when the authority fails to start the procedure itself, even if it is required by the law. The public has only the possibility to announce a non-compliance. The administrative procedure is then started by the competent authority. If not, the public can suggest it to the Ministry of the Environment which is assigned by the supreme state supervision in the field of environmental protection. The Ministry of Environment is entitled to require corrections of other authorities´ activities.
III. No.
IV. No.

h. When water plans adopted under the Water Framework Directive – or for the moment existing water quality standards laid down in the "old" water directives – are not complied with.

I. The compliance with the water/air quality standard is basically the problem of a permitting procedure, because the waste water may not be discharged without a permit. In this permit, emission limits and other conditions are set that are addressed to the polluter. At the same time, the permits to discharge waste water should not result in breach of the water quality standard in the recepient. It is the poluter´s duty to comply with the permit. Therefore, if water quality standards are not kept, it can be a failure of the competent authority, or a failure to keep emission limits by the polluter. Fines and corrective measures can be imposed on the polluter or the operation can be stopped if the facility fails to keep emission limits and other conditions set in the permit. The permit is time limited and it can also be changed if conditions, on wich it was based, have changed or the requirements set by the permit are not kept in a serious manner and/or repeatedly or if the legislation was changed.

II. The Water Act entitles NGOs, based on their specific request, to be informed on the administrative proceedings held according to the Water Act and the NGO can become the participant of this procedure if they announce their participation in a specific proceeding within a given time period. In this position, it can appeal the decision and then to go to the administrative court for the review. Generally, though, it is within the full discretion of the competent authority to decide whether and how offences should be sanctioned.

III. No.

IV. No.

i. When air plans under the Air Framework Directive are not complied with.

Please, comment on whether you find the national means of enforcement adequate, and if, based on the national experiences, you have any general suggestions for improving the enforcement.

I. Air plans are related to the ambient air quality standards. Similarly to the surface water protection, the air protection authorities are oblidged to respect air plans in permitting procedures. Their decision-making activity is not subject to any sanctions, however, the

administrative decision could be abolished as an illegal decision. The emission limits are set by the legal regulation for different kind of polluters that they have to comply with. In case of a non-compliance, a fine and/or corrective measure can be imposed on the polluter, in specified cases the operation can be stopped.

II. It is wihin full discretion of a competent authority.

III. No.

IV. The Ministry of the Environment of the CR fulfills the role of a supervisor. It checks, if the air protection authorities and legal and natural persons obey the law in the field of air protection and the EC law as well. In case of non-compliance, it can impose corrective measures.

3. How is article 9(3) of the Aarhus Convention, regarding access to administrative or judicial procedures for members of the public to challenge violations of environmental law, complied with? In which situations is it NOT complied with?

The Code of Administrative Judiciary (CAJ) grants standing to start a review procedure of an act of the administrative authority to
a) persons whose rights or obligations were established, changed, nullified or bindingly determined by the act, or
b) other parties to administrative proceedings who assert that their rights have been infringed in these proceedings, which could cause the final act is illegal.
Commonly it means that the public must become a party to the previous administrative decision, which is not a general rule in the Czech Republic. The provisions enabling NGOs to participace in administrative proceedings are spread in many different acts. Another condition can be observed in the judicial practice; according to it, the access to review procedures is granted only to persons "maintaining impairment of a right."
Direct incompatibility with the Aarhus Convention and the EC law requirements can be seen in Act No. 167/2008 Sb., on the ecological damage liability. In case of the ecological damage, the administrative proceeding can be started based on the own iniciative of the competent authority or upon the request of a legal or natural person whose rights are impaired or likely to be impaired. There are no special rules for participation of the public in this procedure and thus it is not open to NGOs, since their rights usually cannot be considered to be impaired by the decision on corrective/remedial mearures. On the other hand, they can become participants of the proceedings based on the Nature protection Act (§ 70/2,3), if the nature protection is concerned by the decision. Despite this possibility, the Ecological Damage Liability Act is not fully consistent with the Directive 2004/35/EC. In this relation, there is a possibility to claim the standing based on the direct effect of the EC Directive.
Direct non-compliance is represented by strict delimitation of participants in permitting procedures under the Nuclear Act and Public Health Act (problems of noise regulation) disabling participation of the public.
In general, it can be concluded that the Article 9.3 of the Aarhus Convenion has not been fully transposed into the Czech legislation de lege lata. A very "progressive" amendment to the EIA Act (No. 100/2001 Sb.) is prepared and currently is just about to come into effect. Based on the amendment, NGO´s are entitled to claim the abolition of the development consent that is based on the environmental impact report/statement on the condition the NGO commented upon the EIA documentation and/or its review at the administrative court. Thus the public interest action provision contained in the CAJ will be implemented (§ 66/3: The action can be

brought (beside others) by the person, who is explicitly entitled to it by a special law or by the international convention which is a part of the national legal system) .

4. Please identify possible factors, such as costs, length of procedures or other practical matters, that may prevent effective access to justice for members of the public.

NGOs have generally a good knowledge of law, especially in the field of EIA, IPPC, land use planning and decision-making procedures, as well as the access to justice. Other members of the public are usually not involved because of the lack of interest or the lack of knowledge of their rights, resp. how to assert their rights. Legal regulation became so complicated that it is difficult to find a lawyer with deep orientation in this area, without beeing specialized to it.

5. Do NGOs and/or citizens have access to injunctive relief and interim legal remedies? Do you know any national cases which have dealt with this?

Supreme court of Justice repeatedly expressed the opinion that courts must grant injunctive relieves, if the members of public concerned ask for them in their lawsuit concerning environmental protection (SAC 1 As 13/2007 - 63) At the same time, however, courts often abolished unlawful decisions many years after the project had been carried out. The basic problem is, that the environmental impact report (statement), as a non binding opinion, is not subject to the judicial review. Only the final development consent can be reviewed.

6. Are there any examples where a final administrative decision has been reopened because of a complaint based on later case law from the ECJ?

There will probably be some cases decided depending on the result of the preliminary ruling dealing with the question of self executing efect of the Aarhus convention submitted to the European Court of Justice by Slovak Supreme Court (C-240/09) on July 3rd 2009.

7. Has there been any national case in which the State or the local authority have been held liable for not remedying environmental damage or other damage in violation of EC environmental law?

Not to my knowledge.

8. Do you now of any significant developments, good practices or failures (e.g. cases, new laws, new institutional arrangements, or new policies) with regard to the enforcement of EC environmental law, not covered by the previous questions, that you

would like to highlight?

Supreme Administrative Court and Constitutional Court held that Art. 9/3 is not self-executing because it is binding on states and patries are expected to implement it into their national legal systems. According to the SAC, participating states are free to set their own procedural rules. The Convention anticipates the internal national regulation and it does not have any direct effect to persons, resp. to the public.
At the national level, the big problem is, that there is no single approach in legislation regulating the access of the public to the review procedure. For example, provisions enabling the public to participate in administrative proceedings are contained in different laws setting different conditions etc.
Another problem is, that Constitutional Court held that the right to the favourable environment belongs only to natural persons, not legal ones. Therefore it is generally accepted that NGOs can challenge only procedural legality of the act. Based on the "impairment of a rights doctrine" the courts developed a case-law according to which the NGOs can only successfully state infringement of their procedural rights in their lawsuits - as these are the only subjective rights they can have in environmental procedures.[1]

[1] More: Černý, P.: Selected problems of the Aarhus Convention application in the CZECH REPUBLIC, Environmental Law Service, http://www.eps.cz