I.ÚS 59/14 of 30 May 2014

Locus Standi of Civic Association to File a Petition Seeking the Annulment of a Measure of a General Nature (Land-use Plan)

Czech Republic
JUDGMENT
of the Constitutional Court
in the Name of the Czech Republic

HEADNOTES

The Supreme Administrative Court inferred in the above cited resolution of the extended panel of 21 July 2009, file No. 1 Ao 1/2009, that in terms of the assessment of the locus standi to file a petition seeking the annulment of a measure of a general nature the petition arguing that the petitioner's rights were prejudiced by the respective measure of a general nature is permissible. The petitioner should, therefore, claim that there are individual rights belonging to it, which are affected by a measure of a general nature. These conclusions are the alpha and omega of the assessment of the subject-matter locus standi of the petitioner in the proceedings concerning the petition seeking the annulment of a measure of a general measure.

The fact that the citizen gives priority to defending his or her interest by means of an association with other citizens cannot be considered to the detriment of the citizen. In view of the above described development of the international obligations of the Czech Republic, the EU law, and the legal regulation of the status of associations focused on the protection of nature and landscape, the previous practice of the Constitutional Court in relation to the locus standi of associations to represent the interests of its members in the protection of their right to the healthy environment, as expressed in its resolution of 6 January 1998, file No. I ÚS 282/97, may be considered outdated. The natural persons, when associated in a civic association the purpose of which under its by-laws is the protection of nature and landscape, may exercise their right to the healthy environment, as laid down in Article 35 of the Charter, through such association.

VERDICT

The Constitutional Court has decided through the panel composed of its presiding judge Kateřina Šimáčková, judge Ludvík David (judge-rapporteur), and judge Ivana Janů in the case of the constitutional complaint filed by the complainant, Sdružení pro ochranu krajiny, with its registered office at Petkovy, Čížovky 4, district of Mladá Boleslav, represented by JUDr. Petr Kužvart, lawyer based at Prague 4, Za Zelenou liškou 967, against the judgment of the Supreme Administrative Court of 24 October 2013, ref. No. 5 Aos 3/2012-36, with the participation of the Supreme Administrative Court as a party to the proceedings, as follows:
I. The judgment of the Supreme Administrative Court of 24 October 2013, ref. No. 5 Aos 3/2012-36, has violated the complainant's right to judicial protection guaranteed by Article 36 (1) of the Charter of Fundamental Rights and Freedoms.

II. Therefore, the judgment is annulled.

REASONING

I.
Course of proceedings before ordinary courts

1. The complainant contested through its constitutional complaint the judgment of the Supreme Administrative Court, identified in the header, claiming that its rights (as a legal person associating citizens) were significantly prejudiced, namely its right to participate in the decision-making and, in particular, its right to judicial protection guaranteed by Article 36 (1) of the Charter of Fundamental Rights and Freedoms (hereinafter referred to as the "Charter").

2. The subject of proceedings before the ordinary courts was the complainant's petition seeking the annulment of general measure No. 1/2009 adopted by the Municipal Council of Petkovy - Land-Use Plan of Municipality. The complainant is a civic association founded in 1994 that associates citizens from the municipalities located in the Čížovky Natural Park (area of the cadastral district of Čížovky, Petkovy, Domousnice, and their near

surroundings). The scope of activities (in the words of the Civil Code, also the purpose or principal activity) of the association is the protection of the natural and landscape environment, including its cultural and historical values. The complainant contested the above-mentioned measure of a general nature because according to its statement its rights were prejudiced by the measure and the unlawful procedure of the municipality of Petkovy, which resulted in the unlawfulness of the land-use plan.

3. The Regional Court in Prague (hereinafter referred to as the "Regional Court") rejected the complainant's petition by its resolution of 22 November 2012, ref. No. 50 A 16/2012-47. The court concluded that the complainant had not the locus standi to file the petition seeking the annulment of the concerned measure of a general nature. The court referred to the case-law of the Supreme Administrative Court, inter alia, the judgment of 24 January 2007, ref. No. 3 Ao 2/2007-42, and the subsequent judgment of 18 September 2008, ref. No. 9 Ao 1/2008-34, the judgment of 13 August 2009, ref. No. 9 Ao 1/2009-36, and the judgment of 13 October 2010, ref. No. 6 Ao 5/2010-43. Further, the court justified its conclusion by referring to Section 101a (1) of Act No. 150/2002 Coll., the Administrative Procedure Code, as amended (hereinafter referred to as the "Administrative Procedure Code"), and Article 9 (2) and (3) of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, done at Aarhus on 25 June 1998, published under No. 124/2004 of the Collection of International Treaties (hereinafter referred to as the "Aarhus Convention").

4. The complainant filed a cassation complaint against the judgment of the Regional Court, which was decided by the Supreme Administrative Court, through judgment of 24 October 2013 under ref. No. 5 Aos 3/2012-36, by dismissing the complaint. The Supreme Administrative Court stated that the complainant, as a civic association established under Act No. 83/1990 Coll., on the association of citizens, as amended, focusing especially on the protection of nature and landscape, is a legal person that is a separate holder of material and procedural rights other than the rights of individuals who are its members. The court noted that the case-law implies that civic associations had not the procedural locus standi to file a petition seeking the annulment of a measure of a general nature in the form of land-use plan. The court cited, among other things, the resolution of an extended panel of the Supreme Administrative Court of 21 July 2009, file No. 1 Ao 1/2009, under which the court grants the procedural locus standi to file the concerned petition to the holders of rights in rem (especially the owners) in the real property located in the area regulated by the land-use plan or in the real property adjacent to the regulated area or located in its vicinity.

5. Further, the Supreme Administrative Court stated that neither its judgment of 13 October 2010, file No. 6 Ao 5/2010, departs from the conclusion on the absence of locus standi of the civic association to file a petition under Section 101a of the Administrative Procedure Code. In this case, the civic association contested the visiting rules of the national park, not the land-use plan. At the same time, it is not possible to apply to the present case Council Directive 85/337 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2003/35/EC of the European Parliament and of the Council providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC (EIA Directive). Whether it is possible to infer the locus standi to file a petition seeking the annulment of a measure of a general nature from the Aarhus Convention is dealt with by the judgment of 24 January 2007, file No. 3 Ao 2/2007. The Supreme Administrative Court stated in the judgment that the Aarhus Convention falls under the category of international treaties which are part of the legal order. However, as regards the application priority of international treaties over the law, it is also necessary to examine the condition of self-enforceability or direct enforceability of various provisions of the Convention. The Supreme Administrative Court concluded that from Article 9 (2) in connection with Article 2 (5) of the Aarhus Convention it was not possible to infer the complainant's locus standi to file a petition seeking the annulment of a measure of a general nature - land-use plan (cf. also the judgment of 18 January 2008, file No. 9 Ao 1/2008). At the same time, the court inferred that the civic association whose purpose is the protection of the environment had to be considered the "public concerned" (cf. the judgment of 13 October 2010, file No. 6 Ao 5/2010). However, even this conclusion, that is granting the position of the public concerned, would not constitute the complainant's locus standi from the procedural point of view. In the case under consideration, a petition seeking the annulment of a measure of a general nature in the form of land-use plan, not an action against a decision of an administrative authority, has been filed, while the petition of the complainant does not imply that it disputes a violation of the substantive EU law in the environmental protection or the provisions of the national law which the EU law is transposed into.

6. According to the Supreme Administrative Court, the complainant's locus standi to file the concerned petition can be based neither on the judgment of 24 October 2007, file No. 2 Ao 2/2007. In the reasoning of the judgment, the Supreme Administrative Court did not address in detail the issue of locus standi; in addition, a

judgment can be considered replaced by the later resolution of an extended panel of the Supreme Administrative Court (see Item 4 above).

II.
Proceedings before the Constitutional Court

7. In the case under consideration, the conditions of the factual discussion of the petition are complied with. These are proceedings concerning a constitutional complaint pursuant to Section 72 et seq. of Act No. 182/1993 Coll., on the Constitutional Court, as amended, (hereinafter referred to as the "Act on the Constitutional Court"). The constitutional complaint was filed within a statutory two-month period (Section 72 (3) of the Act on the Constitutional Court) and its submission occurred after the complainant has used all procedural remedies provided by the law to protect its rights (Section 75 (1), the sentence before the semicolon, of the Act on the Constitutional Court). The text of the constitutional complaint complies with the requirements under Section 34 (1) of the cited Act, the complainant files the petition seeking the annulment of the judgment of the Supreme Administrative Court, and the reason for the required prayer for relief is infringement upon the fundamental right to a fair trial, respectively to access to a court, as it is clear from the content of the constitutional complaint.

8. In the constitutional complaint, the complainant stated that the limitation of the locus standi of the civic association to mere procedural issues in the proceedings before public authorities is unsustainable both in terms of international obligations of the Czech Republic but also in terms of the wording of the applicable national law [Section 70 (1) of Act No. 114/1992 Coll., on the protection of nature and landscape, as amended (hereinafter referred to as the "Act on the Nature and Landscape Protection")]. According to the complainant, the citizens associated in civic associations may not be denied the right to joint participation in the decision-making about their environment only because the association was founded as a specific legal person to whom they have delegated their rights to the direct participation in the protection of nature and landscape. The complainant pointed out that it was created for the protection of a specific natural park and, therefore, proposed the cancellation of the land-use plan due to new development in this park. While doing so, it acted fully in order to promote the interests of its members and within its scope of activity according to its by-laws. Therefore, it is entitled to have its "concern" as well as its subject-matter locus standi to file a petition seeking the annulment of a measure of a general natural recognised.

9. The Supreme Administrative Court commented on the constitutional complaint. The court stated that its contested judgment thoroughly dealt with the legal issue raised and confirmed its established case-law. Further, the court also commented on the arguments of the complainant as regards the applicable provisions of the Aarhus Convention and the absence of its direct effect. The proposed constitutional complaint contains only a dispute at the level of sub-constitutional law. The Supreme Administrative Court also referred to the complainant's failure to act, when the complainant filed the petition seeking the annulment of the measure of a general nature (land-use plan) as late as the last day of the time limit prescribed for filing it. In conclusion, the court suggested that the constitutional complaint should be rejected as manifestly unfounded.

10. After familiarisation with the decisions of ordinary courts and the required file documents, the Constitutional Court came to the conclusion that the complainant's constitutional complaint was justified.

II. a/
Relevant provisions

11. Pursuant to Article (36) (1) of the Charter, everyone can enforce legally its rights before an independent and impartial court, and before another authority in specified cases.

12. The first sentence of Section 101a (1) of the Administrative Procedure Code reads as follows: "The petition seeking the annulment of a measure of a general nature or any part thereof may be filed by the person who claims that his or her rights have been prejudiced by a measure of a general measure issued by an administrative authority."

13. Pursuant to Article 2 (5) of the Aarhus Convention, the "public concerned" is defined as the public that is (or may be) affected by the environmental decision-making or has a particular interest in making the decision. For the purposes of this definition, the non-governmental organisations promoting the environmental protection and meeting any requirements under the national law shall be deemed to have an interest in the environmental decision-making.

14. On the basis of Article 9 (2) (a) of the Aarhus Convention, each Party under its national legislation shall ensure that members of the public concerned having a sufficient interest may achieve that the court or another independent and impartial authority established by the law shall examine, from the substantive and procedural point of view, the lawfulness of any decision, act or failure to act under Article 6 of the Aarhus Convention and in the cases where this is provided for by the national law and without prejudice to Article 9 (3) and other provisions of this Convention. The projection of the provisions of the Aarhus Convention into the Czech law was carried out, inter alia, by the inclusion of Section 70 (1) of the Act on the Nature and Landscape Protection, under which the protection of nature shall be implemented under this act with the direct participation of citizens, through their civic associations and volunteer corps or groups.

II. b/
The case-law of the Supreme Administrative Court

15. The resolution of the Supreme Administrative Court of 24 January 2007, file No. 3 Ao 2/2007, states that until 31 December 2006 [apparently due to the becoming effective of the applicable provisions of Act No. 183/2006 Coll., on land-use planning and building regulations (the Building Act), as amended, on 1 January 2007] it was not possible to infer from the legal order of the Czech Republic an authorisation of the civic association whose objective under its by-laws is the protection of nature and landscape, to file a petition seeking the annulment of a measure of a general nature, which consists in a change in a municipality land-use plan. As for this, it is also given that according to the established case-law of courts in administrative court proceedings "the environmental initiatives do not hold substantive rights". These entities can successfully plead the unlawfulness of the decision, but only to the extent that their procedural rights have been prejudiced in the proceedings. The locus standi in the proceedings concerning an action against decisions of administrative authorities is based on Section 65 (2) of the Administrative Procedure Code. In the proceedings concerning the annulment of a measure of a general nature, however, the law does not provide for any right to bring an action that would be similar or analogous to that under Section 65 (2) of the Administrative Procedure Code. Under the national law, the public participation is limited to the participation in the administrative proceedings within the meaning of Section 70 (3) of the Act on the Nature and Landscape Protection, under which the civic association is entitled to announce its participation in the proceedings after it is provided with the information about the initiation thereof (see the cited provisions).

16. In the resolution of the extended panel of the Supreme Administrative Court of 21 July 2009, file No. 1 Ao 1/2009, the court stated that the procedural locus standi to file a petition seeking the annulment of a measure of a general nature or any part thereof depends (in addition to the fulfilment of other conditions, in particular, that the petition should comply with general requirements prescribed by the law) on the fulfilment of specific procedural conditions of this petition defined, in particular, in Section 101a (1) of the Administrative Procedure Code, especially in the first sentence of the mentioned provision. The petition based on the prejudice to the rights of the petitioner as a result of the respective measure of a general nature is therefore permissible. In the first place, the petitioner must state that it is entitled to certain individual rights which are affected by a measure of a general nature. It is not therefore enough if the petitioner asserts that a measure of a general nature or a procedure leading to its issue is unlawful without claiming at the same time that this unlawfulness affects its legal sphere.

17. In its judgment of 21 April 2010, file No. 8 Ao 1/2010, the Supreme Administrative Court came to the conclusion that in order to file a petition seeking the annulment of a measure of a general nature or any part thereof pursuant to Section 101a et seq. of the Administrative Procedure Code the locus standi may also be held by the owners of the lands (real properties) or other beneficiaries based on the rights in rem in the real properties adjacent to the area regulated by a measure of a general nature (land-use plan), if they claim that their property or other rights in rem would be directly affected by the activity allowed by the plan to be pursued in the regulated area. The question of to what extent the rights are affected cannot be answered generally, but it depends on the particular circumstances of the case. Usually, it is necessary to consider the size of agglomeration, landscape, density of population (land coverage), the character of the area (agricultural or industrial), etc. In the reasoning of its judgment, the Supreme Administrative Court stated that the fulfilment of the conditions of the procedural locus standi will always be given with regard to the particular circumstances of the case, i.e. depending on the nature, scope, content, and manner of regulation performed by the measure of a general nature currently under consideration. The land-use plan may affect three categories of persons: (1) Primarily, it is a person who has a direct relationship to any part of the area which is regulated by the land-use plan, that is the owner (co-owner) of the land or other real property (residential and non-residential premises) and the beneficiary based on the right in rem in such property, but not a tenant. Further, in some cases, (2) even a petitioner may have the locus standi who, although not being a real property owner or a beneficiary based on the right in rem in the real property in

the area regulated by the land-use plan, claims that its property or other right in rem in the real property situated outside the regulated area would be directly affected by a particular activity allowed to be pursued in the area regulated by the land-use plan (usually, the owner of the adjacent land significantly affected by the effects of the activities performed on the regulated area, such as air pollution, noise, odour, etc., or leading to a significant reduction in the value of its real property). Finally, (3) it is a category defined in Article (9) (2) and (3) of the Aarhus Convention as members of the "public concerned". Generally, also the petition arguing against a violation of procedural rules that could lead to the unlawfulness of a measure of a general nature and also could cause that such unlawfulness affects the petitioner's legal sphere is then permissible. The petition would therefore be rejected if it is obvious from the petition that the alleged procedural error would exclude a priori the possibility of prejudice to the legal sphere of the petitioner.

18. The decision-making on the subject-matter locus standi of the civic association to file a petition under Section 101a (1) of the Supreme Administrative Court 13 October 2010, file No. 6 Ao 5/2010, was also dealt with by the judgment of the Administrative Procedure Code of 13 October 2010, file No. 6 Ao 5/2010. The court inferred therein that the civic association whose scope of activities includes the environmental protection has the locus standi to file a petition seeking the annulment of a measure of a general nature - visiting rules of the national park if the measure regulates the issues being the subject of the evaluation in accordance with Section 45h of the Act on the Nature and Landscape Protection (evaluation of the implications of concepts and projects on the sites of European importance and bird areas).

II. c/
Interpretation of the Constitutional Court

19. The Constitutional Court does not intend to question the current interpretation of the Aarhus Convention in terms of the 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")] in terms of the priority over the law. It is not possible to act rightly without taking into account the Aarhus Convention as an interpretative source. The Constitutional Court commented on this matter in its plenary judgment of 19 November 2008, file No. Pl. ÚS 14/07 (N 198/51 of the Collection of Judgments of the Constitutional Court 409), in its judgment of 17 March 2009, file No. IV. ÚS 2239/07 (N 57/52 of the Collection of Judgments of the Constitutional Court), and in its resolution of 30 June 2008, file No. IV. ÚS 154/08. The Constitutional Court holds that the obligations arising from any of the provisions of the Aarhus Convention have no direct effect. However, the Constitutional Court is obliged to interpret the provisions of the constitutional order which concern the right to judicial protection, in such a way as to allow for the effective protection of the rights of natural persons and legal persons. If it is, therefore, possible to interpret national regulations in several possible ways, the interpretation that meets the requirements of the Aarhus Convention shall have the priority. Through Council Decision No. 2005/370/EC of 17 February 2005, the European Community acceded to the Aarhus Convention (Official Journal of the European Union of 17 May 2005, L 124/1) and the Aarhus Convention has become part of the Community law, in the mode of mixed agreements. Even though the conditions of direct effect [sufficient clarity and unconditional nature - cf. the case 26/62, Van Gend en Loos (1963) ECR 1 or the case C-8/81, Becker v. Finanzamt Münster-Innenstadt (1982) ECR 53] are not complied with, the authorities of the Member States (including the courts) have the obligation of harmonious interpretation, i.e. the obligation to interpret its own legislation in accordance with the international legal obligation of the European Communities [cf. the case C-300/98 and C-392/98, Parfums Christian Dior SA (2000) ECR I-11307, items 47 to 48].

20. The case-law of the Constitutional Court has developed in relation to the issue of locus standi of civic associations in the matters containing the aspect of a fundamental right to the healthy environment (Article 35 (1) of the Charter, according to which everyone has the right to the healthy environment). Based on the finding that the rights relating to the environment belongs only to natural persons [the resolution of 6 January 1998, file No. I. ÚS 282/97 (U 2/10 of the Collection of Judgments of the Constitutional Court 339)], the Constitutional Court came to the conclusion that "... in the democratic rule of law, the environment is a value the protection of which is to be implemented with the active participation of all segments of civil society, including civic associations and non-governmental organisations being legal persons. The discourse in an open society, implemented where appropriate by legal means and in proceedings before courts, then constitutes the effective guarantee of the protection of the natural wealth of the country (Article 7 of the Constitution)" (resolution of 28 June 2005. file No. I. ÚS 486/04). In other decisions, the Constitutional Court then accepts the principle of interpretation of national regulations concerning the environment in accordance with the Aarhus Convention. In addition to the judgment file No. Pl. ÚS 14/7 (see the previous paragraph), it did the same in the above cited

judgment, file No. IV. ÚS 2239/07, according to which the interpretation conforming to the Aarhus Convention has the priority in the case of alternative interpretations.

21. The Supreme Administrative Court inferred in the above cited resolution of the extended panel of 21 July 2009, file No. 1 Ao 1/2009, that in terms of the assessment of the locus standi to file a petition seeking the annulment of a measure of a general nature the petition arguing that the petitioner's rights were prejudiced by the respective measure of a general nature is permissible. The petitioner should, therefore, claim that there are individual rights belonging to it, which are affected by a measure of a general nature. These conclusions are the alpha and omega of the assessment of the subject-matter locus standi of the petitioner in the proceedings concerning the petition seeking the annulment of a measure of a general measure. In their context, the imperative propositions contained in the resolution of the Supreme Administrative Court, file No. 3 Ao 2/2007 (see Item 15), according to which civic associations had not the procedural locus standi to file a petition seeking the annulment of a measure of a general nature in the form of land-use plan or, in other words, until 31 December 2006 it was not possible to infer from the legal order of the Czech Republic an authorisation of the civic association whose objective under its by-laws is the protection of nature and landscape, to file a petition seeking the annulment of a measure of a general nature, which consists in a change in a municipality land-use plan, cannot stand.

22. Indeed, it would be absurd at first glance if the person meeting the specified conditions, that is for example the owner of the land directly adjacent to the regulated area, has not the locus standi to file a petition seeking the annulment of a land-use plan only because together with other persons (residents of the same municipality or adjacent municipalities) have associated and on behalf of the association seek the annulment of the land-use plan or any part thereof. The civic associations (hereinafter associations under Section 214 et seq. of Act No. 89/2012 Coll., the Civil Code) associate primarily citizens; it is an independent legal person set up for the purpose of achieving the agreed activities and common interest. It is therefore not possible to prevent, without any further act, the associations from accessing the courts and proposing the annulment of a land-use plan.

II. d/
Criteria of the locus standi of a civic association to file a petition seeking the annulment of a measure of a general nature

23. The Constitutional Court is aware that the locus standi of the associations that were established for the purpose of the protection of nature and landscape cannot be unlimited. The basic criteria for the assessment of their locus standi resulting from the law (Section 101a (1) of the Administrative Procedure Code) is desirable to be outlined even more while there is the need to oppose the excessively resolute and, as compared with the general text of Section 101a (1) of the Supreme Administrative Court, impermissibly limiting conclusion of the Supreme Administrative Court. The court concluded in the currently contested decision, file No. 5 Aos 3/2012 (see the legal sentence of the decision as published in the Collection of Decisions of the Supreme Administrative Court under No. 2976/2014) that the civic associations, even though their principal activity in accordance with their by-laws is the protection of nature and landscape or the environmental protection, have not under Section 101a of the Administrative Procedure Code as compared to others entities the special procedural locus standi to file a petition seeking the annulment of a measure of a general nature in the form of land-use plan. The denial of the access of thus pre-defined range of persons to judicial review is impermissible.

24. An association requesting the cancellation of any measure of a general nature (a land-use plan or any part thereof) must firstly assert that its subjective rights have been affected by that measure. Such assertion must clearly specify the infringement allegedly committed by a self-governing entity pursuant to the wording of Section 101a (1) of the Administrative Procedure Code (cf. also Article 2 (5) of the Aarhus Convention in Item 13). It is not enough if the civic association asserts that a measure of a general nature or procedure leading to its issue is unlawful without claiming at the same time that this unlawfulness affects its legal sphere.

25. An important criterion must surely be here the petitioner's relationship to the locality regulated by the land-use plan. If the association has its registered office in the territory or if its members are the owners of real properties potentially affected by the measure resulting from the land-use plan, then, in principle, it should have the locus standi to file a petition. The subject-matter (material) locus standi reasons based on the scope of activities of the association is then derived from the local relation to the contested measure of a general nature. In some cases, the local and subject-matter reasons may act in synergy, not only in the case of an "environmental" association. For example, if citizens living in a particular city or its district establish an association to protect their interests and the land-use plan is to affect the recreational area in which they are used to spending their free time, then the association may be granted the locus standi regardless of the details of its scope of activities.

26. In other situations, for the purposes of assessing the locus standi of an association, the focus of the association on the activity that has any local justification (protection of certain species of fauna, flora, etc.) might have an important role. Generally, it can be said that in terms of the assessment of the legal condition of prejudice to rights, the "established character" of the association, i.e. its long-term operations, would be more credible. However, it is not possible to exclude the establishment of an ad hoc association directly connected with the land-use plan. The fact that the citizen gives priority to defending his or her interest by means of an association with other citizens cannot be considered to the detriment of the citizen. In view of the above described development of the international obligations of the Czech Republic, the EU law, and the legal regulation of the status of associations focused on the protection of nature and landscape, the previous practice of the Constitutional Court in relation to the locus standi of associations to represent the interests of its members in the protection of their right to the healthy environment, as expressed in its resolution of 6 January 1998, file No. I ÚS 282/97, may be considered outdated. The natural persons, when associated in a civic association the purpose of which under its by-laws is the protection of nature and landscape, may exercise their right to the healthy environment, as laid down in Article 35 of the Charter, through such association. We can only repeat that in this regard the Constitutional Court now follows, in terms of merits, the case-law conclusions contained in its judgments, file No. Pl. ÚS 14/07 and IV. ÚS 2239/07, and its resolution, file No. I. ÚS 486/04 (cf. Items 19 and 20).

27. The Constitutional Court states, last but not least, that the criteria mentioned by it do not have to be fulfilled only in relation to those associations whose main activity is the protection of nature and landscape. The indicated criteria which will undoubtedly be specified by the case-law may be related to the associations, regardless of the scope of activity, and namely those as for which any prejudice to rights by any measure of a general nature might be assumed within the meaning of Section 101a (1) of the Administrative Procedure Code.

III.
Conclusions

28. The beginning of the entire case must be mentioned: The complainant described in the petition seeking the annulment of a measure of a general nature a number of specific facts supporting its petition. This was done in very specific seven points formulated in a detailed manner; in particular, the complainant stated that the measure of a general nature was not properly published, that the area of new residential development was increased, that the boundaries of the Čížovky Natural Park were not drawn in the drawings, and that the distance of the proposed development from the existing settlements is insufficient. These claims should be the matter of consideration based on facts. Instead, the administrative courts considered the case only in terms of (generally conceived) the locus standi of the petitioner, based on, among other things, the case-law perceiving the civic association with the purpose of ensuring the protection of nature and landscape as a "green initiative".

29. Such designation, not without a pejorative tinge, mistakenly implies a mere activist and a supporting role which civic associations of this type are expected to play in relation to judicial proceedings. Civic associations which are equivalent persons having a legal personality are, at the same time, an important and highly democratic elements of civic society. It is not fair to side-line an association to an informal role, lacking the necessary authorisations in promoting its interests. On the other hand, it is not only legitimate but also legal that it has the opportunity to defend the common interests of the citizens it deems justified in the proceedings concerning a petition seeking the annulment of a land-use plan.

30. The above-mentioned is closely connected with the interpretation of Section 101a (1) of the Administrative Procedure Code, that is absolutely crucial in the present case, and the Constitutional Court does nothing else than that it specifies in the desired direction the starting position that has already been taken by the Supreme Administrative Court (its extended panel) in its resolution, file No. 1 Ao 1/2009. The subject-matter locus standi of the petitioner seeking the annulment of a measure of a general nature is based on the condition of the eligibility of the claim that its rights have been prejudiced by a measure of a general measure issued by an administrative authority. The "prejudice to the rights" cannot be interpreted to the detriment of the associations established for the protection of nature and landscape as narrowly as the Supreme Administrative Court does in other decisions of the case-law as cited herein. The prejudice to the rights cannot be in principle reduced in a civil-law manner only to a possible infringement upon the rights of real property owners or in other words to the nuisance affecting or endangering real property owners (the holders of rights to the real property) within the range of control by a measure of a general nature (land-use plan). The rights of communities may be affected in a broader manner: any defects of a land-use plan might in a negative sense affect the legitimate interests of citizens living in the area concerned, may significantly hamper the fulfilment of the concept proposed by the land-use

plan, and thus endanger its social function. In this case, it is desirable to give the opportunity for judicial protection not only to individuals but also to legal entities in which the individuals associate. Also in this area it is necessary, with a projection into the Czech legal environment, to interpret the above-quoted passages of the Aarhus Convention, which have found their expression in Section 70 (1) and the related Act on the Nature and Landscape Protection.

31. By means of its binding and, from the perspective of current judicial practice, expanding interpretation, the Constitutional Court wishes to express more than has been said, at the same time, however, no more than it is in its powers. It is up to a sensibly deliberating judge to assess, in the context of a complex reasoning while being aware of the social importance of territorial development, whether a certain person having a legal personality entity is entitled to participate in the proceedings concerning a measure of a general nature. It seems that some decisions of the case-law echoed the concern of excessive intricacies of the proceedings in which the entities defending the interests of citizens will act in a broader manner. However, such concern is not unfounded: in order to ensure that the proceedings are efficient, the court may still serve documents by means of a public notice and, for example, may decide that the persons participating in the proceedings should exercise their procedural rights through a common representative whom they choose for this purpose.

32. Therefore, the general conclusion of the Supreme Administrative Court in the present case, according to which (cf. Item 23) the civic associations established for the purpose of protection of nature, landscape, and the environment have not the procedural locus standi under Section 101a (1) of the Administrative Procedure Code to file a petition seeking the annulment of a measure of a general nature in the form of land-use plan, cannot stand.

33. The fundamental right of the complainant to a fair trial or access to a court under Article 36 (1) of the Charter has thus been infringed upon as the aspects of the locus standi of the complainant have not been examined in their entirety; the material point of view (regarding values implicitly), now presented by the Constitutional Court, is missing. Therefore, the Constitutional Court upheld the constitutional complaint pursuant to Section 82 (2) (a) of the Act on the Constitutional Court and annulled the contested judgment of the Supreme Administrative Court pursuant to Section 82 (3) (a) of the Act on the Constitutional Court.

34. However, the Constitutional Court did not proceeded to the annulment of the resolution of the Regional Court in Prague of 22 November 2012, ref. No. 50 A 16/2012-47. In its constitutional complaint, the complainant does not oppose the resolution of the Regional Court, and defects of the proceedings before the Regional Court may be remedied following the procedure under Section 110 of the Administrative Procedure Code.

Appeal: No appeal is permissible against the judgment of the Constitutional Court.

In Brno on 30 May 2014