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EU Accession and Legal Change: Accomplishments and Challenges in the Czech Case

Eva Kružíková

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EU Accession and Legal Change: Accomplishments and Challenges in the Czech Case

EVA KRUŽÍKOVÁ

In the environmental sector alone, the legal, regulatory and organisational changes engendered in Central and Eastern European candidate countries by the EU accession process are enormous. This contribution examines the accomplishments of, and the challenges to, the reform of environmental laws in the Czech Republic as driven by the EU. Ongoing candidate state harmonisation and implementation efforts have largely been framed in terms of transposition of EU law into domestic law within various candidate countries. In addition, as discussed in other contributions to this volume, some necessary types of public sector capacity have received a fair amount of attention from both EU and domestic officials. This contribution argues that many remaining barriers to the effective administration, implementation and enforcement of EU environmental policy are posed by the challenges of merging the existing legal cultures, expectations and practices of EU law with those of candidate countries.

The Czech Republic, like other Central European states, is scheduled to join the EU in 2004. Czech officials have engaged in an enormous and somewhat rushed effort to conform to all EU requirements for membership, including those concerning the environment. EU environmental protection law belongs to the group of sectors widely considered among the most difficult for candidate countries, including the Czech Republic, to comply with. The following section briefly presents three waves of environmental legal changes in the Czech Republic since 1990, changes which culminate in a massive 1999–2002 effort towards legal harmonisation and implementation of the Community environmental law. The study then reviews some accomplishments of this effort and catalogues a host of challenges to legal implementation beyond the achievement of EU membership. While the character of the Community law presents accession states with one set of challenges, the domestic legal cultures, practices and participant expectations present a second set. The study closes with a special focus on the role of the European Court of Justice (ECJ) in Community environmental law – the making, interpretation and

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enforcement of it. The role of the ECJ provides excellent illustrations of the many changes in the legal cultures and practices facing accession countries upon EU membership.

A Decade of Change in Czech Environmental Law

The Czech Republic launched systematic approximation efforts in 1999, nine years after crucial changes of the Czech legal system were initiated and eight years after the first post-revolution environmental act was passed. Since the early 1990s, Czech environmental legislation has undergone three waves of changes. During the first wave (1991–92), the main body of environmental legislation was approved and brought into effect. The main driving force of legislative 'storm' was the need to transform the communist system of law to a new one based on democratic grounds. By the end of the first wave, the legislation covered almost all aspects of environmental protection, with several exceptions: access to environmental information, chemicals, major industrial accidents, and genetically modified organisms (GMOs). It involved such major environmental issues as the protection of air, water, soil, nature and landscape, forest, waste, environmental impact assessment. Regarding water and forest management, new legislation was not enacted at that time, keeping the acts from the 1970s in force.[1]

As Table 1 illustrates, the wave of environmental legislation in the early 1990s included framework legislation on environmental protection and laws specific to air pollution, nature and landscape protection, agricultural soil protection, wastes and environmental impact assessment. In this period important acts concerning the institutional framework for environmental protection were also approved, including those that established the Czech Environmental Inspectorate and the National Environmental Fund. In the second wave of environmental law development (1995–98), acts were passed regarding access to environmental information, forests, wastes, ozone layer protection, international trade in endangered species, nuclear energy and technical product standards. The main impetus for this wave was partly the Czech Republic's international obligations that needed to be incorporated into the national law, partly the effort to replace the rest of the old communist-type environmental laws (in the case of forest legislation) and partly to improve the state of laws enacted during the first wave (in the case of the Waste Act).[2]

In 1999, following the establishment of a new government in 1998, a third wave of environmental law development was launched. At that time, the Czech environmental legislation needed substantial changes to comply with Community law. None of the EC directives were fully transposed to Czech law and a number of directives were not even partially transposed. Of particular concern were laws regarding water protection, waste

TABLE 1

THREE WAVES OF CZECH ENVIRONMENTAL LEGISLATION SINCE 1990

First Wave (1991–1992)
Act on the Air Protection (1991)
Act on Waste (1991)
Act on the Czech Environmental Fund (1991)
Act on the National Environmental Fund (1991)
Act on Environment (1992)
Nature and Landscape Protection Act (1992)
Agricultural Soil Protection Act (1992)
Act on Environmental Impact Assessment (1992)

Second Wave (1995–1998)
Act on the Right to Access to Environmental Information (1998)
Act on Forests (1995)
Act on Waste (1997)
Act on the Ozone Layer Protection (1995)
Act on Conditions of International Trade with Endangered Species of Wild Fauna and Flora and Other Measures of Protection of Such Species (1997)
Act on Peaceful Use of Nuclear Energy (1997)
Act on Technical Requirements for Products (1997)

Third Wave (1999–2002)
Act on Chemicals and Chemical Preparations (1998)
Act on the Prevention of Major Accidents caused by Certain Dangerous Chemical Substances and Preparations (1999)
Act on Handling with Genetically Modified Organisms and Products (2000)
Act on Indemnification of Damage Caused by Certain Protected Animals (2000)
Act on Hunting (2001)
Act on Environmental Impact assessment (2001)
Water Act (2001)
Act on Waste (2001)
Act on Air Protection (2002)
Act on Integrated Prevention and Pollution Control (2002)
Act amending Penal Code in the Field of the Environment (2002)
Act amending the Act on Peaceful Use of Nuclear Energy (2002)
Act on Conditions for Introduction on the Market of Biocide Preparations and Substances (2002)

management, chemicals, and integrated pollution prevention and control [*Miko, 2000; Ministry of the Environment, 1999*]. As such, the core environmental legislation had to be essentially rewritten or newly drafted. In addition, EU environmental law continued to develop, with new directives being approved throughout the accession negotiation process. For example, the Integrated Prevention and Pollution Control (IPPC) Directive, Water Framework Directive, and a new Environmental Impact Assessment (EIA) Directive were all issued at about this time.

The Czech environmental legislation enacted during the last three years of the accession negotiations (1999–2002) is entirely focused on compliance with EU legal requirements. During this period numerous acts were approved, either covering new issue areas or substantially amending

previously enacted legislation, including laws regarding chemicals and chemical preparations, prevention of major accidents caused by certain dangerous substances, genetically modified organisms and products, indemnification of damage caused by certain protected animals, hunting, environmental impact assessment, water, wastes, air protection, integrated prevention and pollution control, nuclear energy, and biocide preparations and substances. Almost all the acts on this list have been followed by a large number of decrees or governmental regulations implementing the acts, particularly in the field of air and water protection, waste management, noise, civil protection and chemicals.

The Czech Republic was the first candidate country to close negotiations on the Environment chapter, on 1 June 2001. Only two transition periods were agreed by the European Commission for the Czech Republic: the first for packaging waste (Directive 94/62/EC) and the second for municipal wastewater (Directive 91/271/EEC). By comparison, the number of transition periods for other Central European states includes four for Hungary, nine for Poland, seven for Slovakia and two for Slovenia.

In many respects, the Czech Republic has been quite successful in the transposition of the major EU environmental directives. According to the 2002 European Commission Report [*Commission of the European Communities, 2002*], progress continues regarding the transposition and implementation of the environmental *acquis*. By 2002, the Czech Republic had largely eliminated transposition delays in the industrial pollution and nuclear safety sectors – a subject of criticism in the 2001 Report that states that in these fields 'no particular development has been noted in terms of transposition of legislation over the past year' [*Commission of the European Communities, 2001: 83*]. While the Czech Republic has achieved considerable alignment with the EU environmental *acquis*, a number of areas of legal action remain to be completed. These areas include so-called horizontal legislation (such as environmental impact assessment); waste management (regarding titanium dioxide and implementing legislation); industrial pollution and risk management (implementing legislation); water quality (alignment of the Public Health Act and the Water Act, implementing legislation); and nature protection (transposition of the Habitats And Birds Directives).

As accession negotiations drew to a close in the autumn of 2002, several acts were either being drafted, under discussion within the Cabinet, or pending in the Czech Parliament. These included necessary amendments to laws on environmental impact assessment, the right to environmental information, water quality, endangered species, chemicals management and genetically modified organisms. Similarly, a substantial amount of legislation regarding implementation remains in various stages of

development, including that aimed at air and water protection, IPPC, nature conservation and chemicals.

Analysing Results: Accomplishments and Challenges

The post-1999 process of harmonisation and implementation of EU environmental legislation offered chances to consider many overall concepts of environmental legislation. During this time, the opportunity was present to establish a comprehensive, transparent and consistent system of legal norms coordinated within the environmental legal system itself as well as with other parts of the Czech legal order. Three years into these implementation efforts, it is now appropriate to evaluate what has been achieved and what challenges remain.

Regarding accomplishments, the Czech Republic is relatively well prepared for the accession as far as the environmental chapter of the *aquis* is concerned. By late 2002, many Czech officials and environmental advocates considered harmonisation and legal implementation efforts a tremendous success. Without a doubt, the implementation of the Community environmental legislation has produced increased stringency and specificity of Czech environmental legislation. This is particularly clear in the fields of chemical management, waste management (including packaging waste, batteries and end-of-life vehicles), GMOs, and the prevention of major industrial accidents. In fact, a number of acts, especially those laying out new approaches and policy instruments, would not have been enacted without the need to comply with the EU requirements. Examples of such legislation include acts on IPPC and the restoration of planning instruments to environmental policy and legislation in areas of waste and water management and air protection. Therefore, in terms of implementation, the post-1999 legal changes have been positive for the Czech legal system, as well as for the environment and for environmental policy. Clearly, Czech law has been drawn closer to the legal systems of the democratic societies of Western Europe.

Implementation Challenges Stemming from the Community Law

Implementation of Community law in the Czech Republic constitutes a large set of difficult and complex tasks [*Miko, 2000; Auer and Legro, forthcoming*]. Their answering and working out represents a major challenge for a country endeavouring to become a standard European democratic country based on rule of law. One set of reasons explaining why this remains a demanding and challenging exercise stems from the Community law itself. First, the Community law, as founded by the

European Court of Justice (ECJ) is a new, distinctive legal order.[3] Its legal basis is the Treaty of Rome, which represents a primary source of law.[4] Community legislation is adopted by EU bodies and it is binding on member states. The Community has its own system of enforcement and its own judicial body – the ECJ. In fact, ECJ decisions can impose fines on those member states that do not comply with obligations established by the Community law. The Community bodies carry out their power in the fields listed in Article 3 of the Treaty of Rome (such as market policy, policies in the field agriculture, fisheries, transportation, environment, social affairs and research), aiming to achieve the goals laid down in Article 2.

The EU system of law is based on the legal culture of West European democratic countries that has been developing (at least) since the end of World War II. During this time, Central and Eastern European (CEE) candidate countries experienced a 40-year breach of legal continuity. The socialist legal order established a very different system of principles and mechanisms, which were frequently unable to reflect the needs of a modern society or to protect the environment. Candidate countries have been attempting to catch a train that left the station long ago and has now travelled a long way down the tracks of the post-World War II era.

A second challenge for the merger of EU and candidate country legal systems lies in the relationship between the Community and national legal systems. This relationship is governed by the principle of supremacy of the former. As argued below, candidate countries remain unfamiliar and unprepared for this substantial change in legal systems and cultures. Thus, national law is subordinated to the Community rules. By delegating certain powers to the Community, the member states give up traditional forms of state autonomy to decide in what ways they will comply with treaty obligations within their national legal order. Community directives take priority over provisions of national law, even when the latter are contained in subsequent statutes or even in a national constitution.[5] The aim is to ensure a uniform effect of the relevant rules of Community law in every member state.[6] Candidate countries are not accustomed to this principle of the supremacy of Community law.

An additional example of the supremacy of Community law over national law can be seen in the important role played by the European Court of Justice (ECJ). Its judgments are a key source of interpretation of Community law and are crucial to its development over time. Also, so-called preliminary rulings of the ECJ are of substantial importance for ensuring the unified interpretation of Community law. As discussed below, Central European candidate countries are not used to such roles for the court.

Third, Community environmental law is constituted by a somewhat scattered set of legal norms that continue to change even while candidate

countries attempt to transpose and implement them. Community environmental law has not developed systematically. Rather, it consists of approximately 200 particular directives and regulations mostly covering single-issue areas in a very detailed fashion. Only recently has the EU begun to enact more comprehensive framework directives to cover broad areas of environmental policy (such as water management or air pollution). The fact that Community law remains a moving target further complicates the implementation tasks faced by the candidate countries [*Miko, 2000*]. Community law has been experiencing comparatively rapid development throughout the period of accession negotiations and candidate harmonisation efforts. Put simply, every year new directives and regulations are approved. This fact alone makes candidate countries' dual tasks of implementing the 'old' legislation and transposing the newest provisions extremely difficult. Further complicating this task is the fact that EU legal developments continue apace across many of the non-environmental legislative areas as well. Until EU candidates sign final EU accession agreements they cannot participate in discussions accompanying drafting of particular pieces of EU environmental legislation. Thus, while being strongly urged to implement the legislation during the approximation period, CEE officials do not have a word on its drafting.

Implementation of Community legislation is also a challenge for current EU member states [see *Schreurs, this volume; Knill and Lenschow, 2000*]. Many of these challenges result from their different legal cultures and systems, varying division of powers among different levels of public authorities, varying economic and social conditions, and so on. Furthermore, and partially as a result of these differences, the wording of Community law provisions is not always clear and unambiguous [*Auer and Legro, forthcoming*]. The difficulty of implementing Community legislation is evidenced by problems encountered by the current member states, including those with highly developed environmental policy. These states face difficulties realising accurate and full implementation of particular Community directives even though their legal systems have been absorbing Community provisions for decades and they participate in the drafting and approval processes of new Community legislation. As an example, Germany had problems with the implementation of Directive 90/313/EEC on freedom of access to environmental information. Similarly practically all the member states had problems implementing Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora and Directives 85/337/EEC and 97/11/EC on the assessment of the effects of certain public and private projects on environment.

Fourth, certain directives, particularly recent ones, set out new, innovative (or unusual) policy and legal instruments and approaches [*Knill and*

Lenschow, 2000; Holzinger and Knoepfel, 2000]. For example, the IPPC Directive aims at the protection of the environment as a whole, by integrating existing multi-media permitting processes into a single process covering all aspects of environmental protection against pollution. The Directive does not prescribe obligatory standards for relevant facilities. It prescribes the use of the so-called best available techniques (BAT) in facilities. The BAT are also considered the basis for setting emission limits in the integrated permits for each facility. Legislation such as the IPPC Directive requires substantial intervention in the existing domestic legal order and in functioning of domestic institutions. Their implementation affects a large number of legal norms, and not only those that are environmental.

The IPPC requires coordination and integration of different administrative/permitting procedures. In the Czech Republic they were regulated by sectoral environmental legislation and also by the Construction Act and the Act on Administrative Procedure. All the procedures, according to the legislation in force before the implementation of the IPPC Directive, were carried out by different competent authorities. These authorities were obliged to take into account the opinion of public authorities dealing with special concerns such as air, water, soil or nature protection.

IPPC calls for one procedure linking together all the relevant aspects of the environmental protection, carried out by a single competent authority as a priority. When designing a new IPPC Act the Czech drafters had to keep in mind that the integrated permit requires a high professional level of those who issue the permit because of a broad range of issues covered. It was also necessary to change the concept of the permit which, in the case of the IPPC, does not stipulate a particular technology to be used by a facility. It lays down emission limits or other measures to reach a high level of environmental protection by the way of BAT. Also, competent authorities need to carefully follow technical developments in each field.

The need to ensure the professional competence of decision makers gave rise to frequent discussions about which authority should be charged with the authority to grant the integrated permit. A suggestion to create an Environmental Protection Agency that would be entrusted with this responsibility was rejected. Instead, the approved Act on IPPC delegated this power to regions. The crucial reason for this decision was an application of the subsidiarity principle and the reluctance to establish another administrative authority at the national level.

It was a particular challenge to avoid the introduction of an additional administrative procedure and thus to further multiply the number of procedures required by Czech environmental legislation. In this context it was inevitable that there were issues that had to be addressed regarding the relationship between the new integrated permits and procedures according

to the Act on land use planning and construction rules. Only implementation and enforcement of the new Act will demonstrate the extent to which the approved solution is efficient and effective.

Implementation Challenges from within the Czech Republic

A second set of challenges to implementing Community environmental law are related to attitudes, traditions and practices within the Czech Republic. While this study addresses the Czech case, there is little reason to doubt that most of the domestic challenges outlined here are applicable to other Central and Eastern European candidate countries. In these countries, implementation requires more than a transposition of legal provisions. It requires their application and enforcement, both of which require building and maintaining appropriate institutional capacities [*Crisen and Carmin, 2002; Holzinger and Knoepfel, 2000*]. The institutional capacity in the Czech Republic is not yet developed to the extent necessary to ensure full and correct implementation of the Community legislation [see also *Auer and Legro, forthcoming*].

Institutional arrangements for environmental protection and enforcement are in place and competencies for the main requirements of the *acquis* have been identified. The Czech institutional framework for environmental protection and enforcement was established at the beginning of the 1990s. However, the existence of a large number of institutions dealing with environmental issues does not contribute to efficient allocation of resources or clear administrative responsibilities. Competencies set up by Community environmental legislation do not necessarily fall under the jurisdiction of the Czech Ministry of Environment. Instead, many fall under other ministries, especially the Ministries of Agriculture, Industry and Trade, Public Health, and Transportation and Communication, as well as the National Agency for Nuclear Safety. The Czech environmental administration employs a very large number of staff with strong technical knowledge. In contrast, the staffing at regional and local levels seems quite low [*Commission of the European Communities, 2002*].

During the EU accession negotiations, the Czech Republic also has been engaged in broad-based public administration restructuring and reform. Regions, or geographic areas comprised of a number of districts were abolished in 1991 and then re-established in 2001. In 2003, the districts will disappear, resulting in national, regional and municipal levels of administration. The administrative reform process is intended to transfer numerous powers from the national to the local levels (and vice versa). By removing layers of administration, government is supposed to become more efficient and to establish closer ties between the local and national levels.

The transfers are not entirely well conceived and coordinated. Nonetheless, it will influence the efficiency of environmental enforcement, potentially weakening the goals of Community environmental policy. The last Report from the European Commission states:

> While the setting up of the new three tier administrative structures has started well, the lack of clear allocation of competencies and overlapping seems to continue since the reform has not been based on a holistic approach, considering only the division of competencies among the different governmental levels. There is a need to establish decision-making procedures, co-operation and co-ordination among different governmental bodies at all levels in particular in the water sector. At the regional and local level, enforcement and application of environmental legislation need to be further improved by additional staff, financial support, equipment and well-defined division of competencies as well as the guidance provided by central administration [*Commission of the European Communities, 2002*].

Pre-existing attitudes and expectations of policymakers, legal practitioners and other administrators also pose challenges to the implementation of EU environmental law in accession countries [*Miko, 2000*]. Environmental experts, including legislators, have been accustomed to a certain established stereotype of legal approaches and enforcement practices. They are not always willing to change. Water management offers one example. The Water Framework Directive (WFD) has introduced an ecosystem approach, based on watersheds and the territory influencing the quality and quantity of water. The previous Czech water legislation worked only partly with watersheds. It distinguished special areas of water accumulation or buffer zones around waters used as sources of drinking water. However, it did not provide comprehensive protection of all watersheds. It did not require a systematic and strategic approach towards water resources management including, for example detailed management plans for whole watersheds.

The WFD also established a very different and sophisticated set of water quality goals (ecological and chemical water quality status) and related standards. This concept is also new for Czech environmental legislation. This system of goals and standards is so complex that even EU bodies and existing member states do not know how it will work in practice. Therefore, it is hard to say at present whether it is more efficient than the 'old' approach. Time will tell whether the water quality in the EU, including in the Czech Republic, is improved.

In addition, regulations – a secondary source of Community law – are directly applicable at the national level. In other words, they automatically become a part of member states' legal systems. They may not be transposed,

modified or amended and they do not need to become part of national pieces of legislation. Yet, Czech legislation must comply with Community law including regulations. Czech law now has provisions identical with those of the regulations, such as those concerning ozone layer protection. Thus after becoming a member of the EU, Czech law will have two sets of provisions dealing with the same issues. Solutions of such accession state problems are not clear, and the approaches to dealing with them are often inconsistent. Such challenges extend beyond the environmental sector.

Likewise, while transposing provisions of directives, legislators have not taken into account judgments of the ECJ – because they are not used to doing so – and EU member states' experiences of Community environmental law implementation. In addition, high-quality translations of Community directives into the Czech language are not always available in a timely fashion. Thus, the future likely includes problems regarding legal terminology and concepts.

Lastly, a number of challenges are engendered by the rapid rush towards implementation. As in other candidate countries, implementation started relatively late in the Czech Republic and the majority of transposition has taken place in less than four years. Thus, candidate countries have transposed decades of EU law in a very short period of time. The transposition process was carried out under pressure resulting from a presumed EU accession date of 1 January 2004. Consequently, there has not been enough time or institutional capacity to establish a sufficiently conceptual and systematic approach towards the implementation of environmental law. In many respects, Czech officials have missed opportunities to improve the whole system of environmental law. Like EU law, Czech environmental legislation is now a complicated set of acts and other regulations that are relatively scattered, compared to other legal sectors. In the Czech Republic there are currently about 40 environmental acts, more than 30 Cabinet regulations and about 90 ministerial decrees – and these numbers can change monthly.

The rush to implement the new laws has a number of additional consequences. For example, the complete reform of Czech law has gone largely unplanned and uncoordinated, with legislators proceeding in a fairly unsystematic fashion. One possibility might have been to proceed from the general legal instruments to the special or particular ones. For example, it would be much more reasonable to approve the IPPC Act first and then sectoral or multi-media permit rules in the field of water or air protection and waste management. This could avoid the need to amend recently approved provisions after enacting the IPPC Act.

The rush towards implementation has left overlapping, and potentially contradictory, legislation and administrative procedures to be carried out under the law. This is likely to result in unclear interpretations of law. Also,

many administrative procedures, such as permit procedures, have become more complicated than before and more complicated compared to practices and approaches in EU member states. This will leave a host of challenges for public administration, private sector actors and the general public. Furthermore, insufficient knowledge of Community requirements and particularly of interpretation of legal provisions has led to repeated amendments or rewriting of acts immediately following their approval. Waste management and chemical legislation are good examples of this. Still it is likely that many issues remain omitted, or are not properly understood or interpreted, during the legislative process. These omissions and contradictions are likely to produce numerous administrative and implementation problems in the years to come, some of which are likely to end up before the European Court of Justice.

The ECJ as a Potential 'Surprise'

The ECJ has the authority to influence environmental protection in several types of jurisdictions entrusted to it by the 1956 Treaty of Rome. First, Article 226 of the Treaty empowers the ECJ to hear cases brought against member states by the European Commission or by other member states. This is the basis of the so-called infringement procedure, the purpose of which is to ensure that member states comply with obligations set out by Community law.[7] Thus, the ECJ forces member states to take actions they have been unwilling and/or unable to take. In areas within ECJ jurisdiction, the court has succeeded in enforcing environmental legislation many times [*Koppen, 1993; McCormick, 2001*]. Its judgments have led to substantial changes in current practices, the end of activities carried out in breach of Community provisions, and the removal of facilities that were sited without respect of Community law.[8] This might be surprising and difficult to accept in countries where enforcing environmental concerns is often framed in opposition to development concerns. Furthermore, in such cases the judgment of the court 'overrules' a decision by public authorities considered more important in the Czech Republic. Courts are not always perceived as independent, unbiased bodies. Their decisions are still often challenged by even the highest politicians of the country who do not accept their independent character and who try to find ways and mechanisms to influence courts. In part, such practices are legacies of the old system, which lacked both the rule of law and an independent judiciary, and in which all the bodies, including courts, were obliged to follow Communist Party guidance.

The power of the ECJ also has been strengthened by the introduction of penalties in the Treaty of Rome. When a member state does not comply with the ECJ's judgments, the Court – after another action of the Commission –

may impose penalty payments. These sums are calculated according to Commission guidelines,[9] based on a flat-rate, a coefficient of seriousness, a coefficient of duration, and a member state's economic conditions (ability to pay). Penalties are to be paid for each day that Community law is violated.

A second 'surprise' for which candidate country legal systems may be unprepared lies in Article 234 of the Treaty of Rome. Accordingly, the ECJ interprets Community environmental law with preliminary rulings.[10] Preliminary rulings are initiated by national courts asking for ECJ interpretation, in particular cases, of Community provisions *vis-à-vis* national rules. Preliminary rulings contribute to the uniformity of interpretation and application of Community environmental law. They are crucial for development of the Community legal order and its concepts and principles. Yet, in candidate countries such as the Czech Republic, courts lack expertise on the ECJ and its powers. They are not used to asking higher courts for an opinion concerning the interpretation of legal norms.

A third potential ECJ surprise for candidate country legal practitioners lies in the ECJ's role in contributing to the progressive, participatory democratic nature of environmental law and decision making. Some environmental law, on both international and national levels, opens policymaking processes to the public, even giving the public *locus standi* (right for standing) in environmental matters.[11] Article 230 of the Treaty of Rome reads: 'Any natural or legal person may … institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former.' The ECJ law is not unambiguous in this respect. It shows certain limits to openness of its procedures to the public [*Jans, 2000; Winter, 1999*].[12] However, even its views are developing under the influence of the EU's international obligations (particularly under the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters), public awareness and increasing understanding of environmental problems [*Ward, 2000*].

In sum, all three of the ECJ roles noted above offer significant opportunities to influence the enforcement of Community environmental legislation and demonstrate the importance of the Court judgments. Such ECJ influence may surprise, confound and/or frustrate many legislators, judges, attorneys and plaintiffs in accession countries following accession to full membership. Although the judgments are not precedents (as a source of law in the common law system), they are respected by EU institutions and by member state authorities. The Czech Republic and the other candidate countries will have to accept this significant change in domestic legal systems upon EU membership.

Conclusion

To date, the domestic implementation process has been perceived mainly as a process for transposing EU environmental legislation and, to some extent, to establish the necessary institutional frameworks [*Holzinger and Knoepfel, 2000*]. A strong influence of the Court jurisdiction on legislative and administrative decisions is an issue to which the relevant institutions and their staffs must get accustomed. In a country where legal culture and legal awareness was heavily influenced by decades of the communist regime, enormous tasks lie ahead. Intensive training of civil servants at all levels of public administration, as well as of judges and other lawyers, will be necessary. To date, little of this training has been done.

In 2004 the EU will accept ten more countries. The process preceding this important step is challenging both for the EU itself and for individual candidate countries in particular. The field of environmental protection requires substantial changes not only in legislation, but in the usual ways of legal enforcement, legal thinking and legal practices. Therefore, the changes taking place concern public authorities as well as the courts. The Czech example provides insight into how difficult these processes are and it identifies obstacles and challenges faced by accession countries. As the Czech case suggests, it is essential to acknowledge that challenges stem from legal thinking and administrative practices of individual applicant states as well as from specific features of EU legislation. It also illustrates that many implications of EU membership for domestic institutions and practices in CEE states and societies will be experienced well beyond the formal date of EU enlargement.

NOTES

1. The classification of the environmental legislation used in the European Communities and in the EU member states at the beginning of the 1990s was used to make these assumptions.
2. For comparison of the Czech situation with several other candidate countries see Homeyer, Kempmann and Klasing [*1999*].
3. Case C-26/62 *Van Gend en Loos* [1963] ECR 1 at 2; case C-6/64 *Costa v. ENEL* [1964] ECR 585 at 593.
4. Treaty Establishing the European Community.
5. Case C-11/70 *Internationale handelsgesellschaft mbH v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel* [1970] ECR 1125 at 1134.
6. Case C-6/64 *Costa v. ENEL* [1964] ECR 585 at 593.
7. Article 226 of the Treaty reads as follows: 'If the Commission considers that a Member State has failed to fulfil an obligation under this Treaty, it shall deliver a reasoned opinion on the matter after giving the Member State concerned the opportunity to submit its observations. If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice.'
8. Case C-355/90 *Commission v. Spain* [1993] ECR I-4221.
9. Commission Communication on the method of calculating the penalty payments pursuant to Article 171 EC Treaty [1997] OJ C63/2.

10. Article 234 reads: 'The Court of Justice shall have jurisdiction to give preliminary rulings concerning: a) the interpretation of this Treaty; b) the validity and interpretation of acts of the institutions of the Community; c) the interpretation of the statutes of bodies established by an act of the Council, where those statutes so provide. Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, it if considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.'
11. See particularly the UN ECE 'Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters'.
12. Case T-585/93 *Stichting Greenpeace Council (Greenpeace International) and 18 other applicants v Commission of the European Communities, supported by Spain* [1995] ECR II-2205; Case C-321/95P, *Appeal by Stichting Council and Others v. Commission of the European Communities, supported by Spain* [1998] ECR I-1651.

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