



EU FORUM OF JUDGES FOR THE ENVIRONMENT  
UE FORUM DES JUGES POUR L'ENVIRONNEMENT

## TRAINING AND SPECIALISATION OF MEMBERS OF THE JUDICIARY IN ENVIRONMENTAL LAW

### CZECH REPUBLIC

#### I. INTRODUCTION

*General nature of the system of law in the Czech Republic (e.g. civil, common law, codified etc.):*

The Czech legal system is a “continental” legal system, more specifically, due to common historical roots, it can be said it belongs to the “Germanic” legal culture. The characteristics of the legal system are the following ones:

- Principle areas of law and procedure are codified (Civil and Criminal Codes, Codes of Criminal, Civil and Administrative Procedure etc.);
- The system of legal sources is hierarchical, forming a pyramidal structure of legal force within the legal system;
- Only written law (statutes adopted by the Parliament and regulations adopted by the Government and administrative authorities) is recognised as a formal source of law. The court case law is deemed of a high importance and often referred to by the courts, the administrative authorities and the parties to the proceedings.

#### *Constitutional protection of the environment*

The Constitution of the Czech Republic (Act No. 1/1993 Coll., the Constitution of the Czech Republic) adopted by the Czech National Council on December 16, 1992 ( [in English](#) ), defines the Czech Republic as a sovereign, unitary, and democratic state governed by the rule of law, founded on respect for rights and freedoms of a man and citizen.

Already the **Preamble** of the constitution provides a basic proclamation of protection of the environment („*Resolved to guard and develop together the natural and cultural, material and spiritual wealth handed down to us*“) and further on, **Art. 7** of the Constitution states that „*the state shall concern itself with the prudent use of its natural resources and the protection of its natural wealth*“.<sup>1</sup> These stipulations have been nevertheless only rarely called upon by the Constitutional court, usually in the context of property right restrictions. They are not deemed to confer rights on individuals.<sup>2</sup> The term *natural wealth* is basically interpreted as equal to *environment* by the courts.

Pursuant to Art. 10 of the Constitution, all international treaties approved by the Parliament become a part of the domestic legal order and take precedence over the law. However, general obligations stemming from the international law are usually not considered directly applicable and need to be implemented by the national legislator in order to become effective in practice.

The Constitutional Court is empowered to abolish the statutes and implementing legislation which is not in compliance with the Constitution or with the international treaties. It should be emphasized that the Constitutional Court is not positioned above the general courts as the court of final appeal. It reviews “only” constitutionality and not the legality or correctness of judicial decisions. Even if the Constitutional Court decides in favour of the applicant, it cannot, for example, order the legislator or a public authority to adopt specific legal regulation or decision. A petition seeking the annulment of a legal regulation is of an accessory nature as regards a constitutional complaint, which means that it shares its fate. Therefore, if the constitutional complaint is denied for any reason, the petition seeking annulment of a legal regulation is thereby automatically denied.

A petition proposing the annulment of a statute, or individual provisions thereof, may be submitted by the President, a group of at least 41 Deputies or a group of at least 17 Senators, a Panel of the Court deciding a constitutional complaint, the government or anyone who submits a constitutional complaint. This means that for the individuals including the NGOs, the access to the Constitutional Court is restricted to the actual cases and violation of their constitutional rights listed in the **Charter of Fundamental Rights and Freedoms** (Const. Act No. 2/1993 Coll., [https://www.usoud.cz/fileadmin/user\\_upload/ustavni\\_soud\\_www/prilohy/Listina\\_English\\_version.pdf](https://www.usoud.cz/fileadmin/user_upload/ustavni_soud_www/prilohy/Listina_English_version.pdf)). Of these, protection of ownership and privacy is often invoked in environmental cases.

The Charter also grants **the right to a favourable environment (Art. 35 (1))**, but its significance is diminished by Art. 41 which stipulates that it is enforceable merely through and in the scope of regular laws implementing it. There is no single act which would deal with this right and its protection in a comprehensive way, or provide the definition thereof. Current, we are witnessing a lively discussion among legal professionals as regards the character of the right.

In the wide sense, the right to a favourable environment is considered to be reflected in the levels of pollution in water, air and soil protection legislation supported by the procedural framework which provides public participation in decision-making and access to justice. Furthermore, it is reflected in the legal regulation of the rights of the neighbours (§ 1013 of

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<sup>1</sup> It is presumed that the author of this provision is the former President Václav Havel, who thought that the Constitution should not be missing an ecological article.

<sup>2</sup> See, for example, decision of the Czech Constitutional court of 19 August 2010, No. II. ÚS 2614/08.

the Act No. 89/2012 Sb., Civil Code Civil Code).<sup>3</sup> In the narrow sense, the right to a favourable environment is explicitly recognised by the Civil Code within the protection of personality (§ 81(2) of the Civil Code). As regards the personal scope of the right, for a long time, judicial interpretation restricted the NGOs to point at only procedural aspects of the administrative decision because legal entities enjoyed no substantive rights in connection to environmental harm. Nevertheless, the Constitutional Court stepped into the game in 2014, overturned its settled case law and concluded the NGOs may claim a violation of the right to the favourable environment should they demonstrate a close relationship to the issue at question (for more details, see the case description below).<sup>4</sup> As a consequence, the administrative courts have developed a set of conditions of impairment of rights, most notably a local activity of the NGO, which is independent on participation in the administrative proceedings and applies to all environmental cases.

At the moment, protection of personality in the Civil Code offers a plausible way to protect the right to a favourable environment but remains unused in practice. Although explicitly recognized in the Civil Code and the Constitution, the right to a favourable environment has been rarely litigated in courts and never matched with climate change matters. In future, however, it may play an important role in filling the gap between protection of traditional rights such as the right to life and health, and protection provided for the ownership rights. Furthermore, it may contribute to the so-called *forum shopping* in international private law because foreign public concerned may give preference to the Czech legal system and opt for its protection of personal rights to deal with cases with transboundary aspects. However, the concepts of causation are applied rather strictly in the Czech civil law. Moreover, according to the Czech case law, welfare of animals and plants is not considered protected by the constitutional right as far as their state is not detrimental to humans. For example, in case that reached the Supreme Administrative Court in 2010,<sup>5</sup> a resident of a municipality located in the National Park Šumava claimed that her right to a favourable environment had been infringed by the Visiting Rules of the National Park which allowed water sports in a nearby river. This could have a negative impact on the population of critically endangered species of a freshwater pearl mussel (*Margaritifera margaritifera*). The Court stated that the plaintiff enjoys the right to a favourable environment and may ask for protection from various types of pollution. Nevertheless,

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<sup>3</sup> The person affected may ask the court to order the owner to refrain from anything that would cause emissions which are disproportionate to the local circumstances and substantially restrict the normal use of the tract of land. This kind of protection serves only the owners and the tenants, not the public concerned in general. The claimant may also ask the civil court to issue a preliminary injunction in order to provisionally amend the conditions of the parties, or if there is a risk that the enforcement of the (subsequent) court decision could be threatened. However, if the emission is the result of the operation of an enterprise or a similar facility which has been officially approved, a neighbour only has the right to compensation for harm in money, even where the harm was caused by circumstances which had not been taken into account during the official proceedings. This does not apply if the operation exceeds the extent to which it has been officially approved. The neighbours can, therefore, bring a case against a private actor whose acts lead to a large rise in greenhouse gas emissions, but can only claim the emissions are disproportionate to the local circumstances. If the activities of the particular factory have been officially approved, the neighbours may only ask for damages. In this respect, there are principally no limitations to the standing of natural or legal persons in proceedings concerning damages claims, including those from other jurisdictions. There is a specific, strict liability established in the Civil Code for the damage caused by a particularly hazardous operation. A person who operates an enterprise or another facility which is particularly hazardous shall compensate the damage caused by the source of the increased danger; an operation is particularly hazardous if the possibility of serious damage cannot be reasonably excluded in advance even by exercising due care. Otherwise, the person is released from the duty if he proves that the damage was externally caused by *force majeure* or that it was caused by the very acts of the victim or unavoidable acts of a third person; if other grounds for the release from the duty have been stipulated, they are disregarded (§ 2925 of the Civil Code).

<sup>4</sup> Judgment of the Czech Constitutional Court of 30 May 2014, No. I. ÚS 59/14.

<sup>5</sup> Judgment of the Czech Supreme Administrative Court of 13 October 2010, No. 6 Ao 5/2010–43.

according to the Court, it is hard to imagine that the decline of *Margaritifera margaritifera* population may have a real impact on the life of the plaintiff. Hence her right to a favourable environment was not infringed. The NGOs are considered affected by the loss of biodiversity, but even their claims must be based on the infringement of their rights (the rights of their members).

Art. 35(2) of the Charter also grants **the right to timely and complete information about the state of the environment and natural resources**, which has been implemented by Act. No. 123/1998 Coll., on the Right to Information on the Environment. According to the Act, any individual is entitled to information on the environment<sup>6</sup> such as is available to state administration authorities, municipal authorities and juridical persons established, controlled or charged by them. The applications can be filed verbally (in person or over the telephone), in writing or electronically (by e-mail). Each application has to show clearly who is filing it and what the required information concerns. There are no official application forms. The application reply period is 30 days after receipt of the application.

Last but not least, Art. 35(3) of the Charter stipulates that *“no one may, in exercising her rights, endanger or cause damage to the environment, natural resources, the wealth of natural species, or cultural monuments beyond the extent set by a law,”* similarly to Art. 11(3) of the Charter (*“Ownership entails obligations. It may not be misused to the detriment of the rights of others or in conflict with legally protected public interests. It may not be exercised so as to harm human health, nature, or the environment beyond the limits laid down by law.”*). Protection of environment is therefore classified as the general interest and provided rather strong position towards ownership rights. The Constitutional court often refers to the aforementioned provisions in relationship to various measures, commands and prohibitions used by the official authorities in order to protect the environment.

### ***General law protecting the environment***

Generally speaking, the national environmental law comprises of 1) the rules providing the general framework for further regulation, 2) the cross-sectional regulations, 3) the sectoral regulation, 4) the legislative acts of the local self-government (regions and municipalities).

Ad 1) is represented by constitutional protection of the environment (*see above*) and in particular Act No. 17/1992 Coll., On the Environment, a brief framework Act which stipulates the basic concepts and determines the basic principles of environment protection

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<sup>6</sup> The definition of information on the environment provides several examples: 1. the state and development of the environment, of the causes and consequences of this state; 2. activities in preparation which could lead to a change of the state of the environment and information about the measures taken by the authorities responsible for environmental protection or by other persons in preventing or remedying damage to the environment; 3. the state of water, the atmosphere, soil, living organisms and ecosystems, further, the information about the effects of activities on the environment, about any substances, noise and radiation emitted into the environment and about the consequences of such emissions; 4. the utilization of the natural resources and its consequences on the environment and also the data necessary for the evaluation of the causes and consequences of this utilization and its effects on living organisms and on society; 5. the effects of constructions, activities, technologies and products on the environment; 6. administrative proceedings in environmental matters, environmental impact assessments, petitions and complaints relating to these matters and attending to them and also the information included in written documents relating, especially, to the protected parts of nature and other parts of the environment protected according to special regulations; 7. economic and financial analyses used in decision making in matters relating to the environment, if they were provided from public means, 8. international, state, regional and local strategies and programs, plans of action, etc., in which the Czech Republic participates and reports on their fulfillment, 9. international obligations relating to the environment and the fulfillment of commitments ensuing from international treaties by which the Czech Republic is bound, 10. sources of information about the state of the environment and the natural resources.

and the duties of legal and natural entities for the protection and improvement of environment conditions and for the utilisation of natural resources as well as it follows from the principles of permanently sustainable development. The historical significance of the Act is mostly based on the legal definitions it provides and which were much needed to establish system of legal protection of the environment (definition of terms such as *environment, ecosystem, ecological stability, bearable loading of territory, permanently sustainable development, contamination and damage to the environment*). The Act also provides the basic elements of environmental liability and a list of sanctions for the damage to the environment. Through the course of time, even though it still remains in force, the Act was supplied and complemented by numerous specific acts. As a consequence, it has not been used much in practice.

Ad 2) is represented by laws that contain regulatory means applicable to the protection of all parts environmental compartments and regulation of all threatening and harmful activities. In particular, the construction law (The Building Code), the law on environmental impact assessment (The EIA Act), integrated pollution and prevention (The IPPC Act), and also regulation of liability (The Criminal Code, Environmental Liability Act), ownership matters and access to environmental information.

Ad 3) is represented by specific acts concerning various fields of environmental protection and management. For example: Act No. 114/1992 Coll., on Nature and Landscape Protection, Act No. 334/1992 Coll., Agricultural Land Resources Protection Act, Act No. 289/1995 Coll., Forestry Act, Act No. 185/2001 Coll., on Waste, Act No. 254/2001 Coll., on Water Protection, Act No. 201/2012 Coll., Air Protection Act.

***Code or compilation encompassing all or a substantial part of the laws relating to provisions on environmental protection?***

There was a long discussion in 1990s regarding a comprehensive code on environmental matters. However, such code has never made it far then to a draft. One of the reason is a huge amount of regulation that was either prepared from scratch during this period, or which was under constant amendments dues to changes in society. A set of new environmental laws was adopted immediately after the Velvet Revolution of 1989, supported by the politicians and the public.

At the same time, the Czech Republic was undergoing two major transitions: a major economic transition while returning to democracy and preparation for entry into the European Union. In the wake of the collapse of its traditional export markets, Czech Gross Domestic Product fell by more than 20 per cent before recovery began in 1993. Inflation and unemployment remained much lower than in most other European countries in transition. Many industrial enterprises were privatised and land ownership changed significantly. During this period, the Czech Republic has substantially reduced environmental pressures and achieved tangible environmental results, in addition to those attributable to the decline of economic activities such as industry and agriculture. It has also implemented major legislative and institutional changes concerning the environment. Notwithstanding these successes, much of the accumulated contamination of the past is still in place and current emissions and discharges remain high. Very often, environmental protection is now deemed an obstacle to the traditional coal-based industry and development of transport and energy infrastructure. As a result, the pressure from the

general public has weakened in the last decades and domestic objectives and international commitments of the Czech Republic are frequently not met.

The legislator also had to comply with the EU law before the Czech Republic joined the EU in 2004. The process of harmonization was carried out with respect to individual acts, hence rendering any attempts of codification more difficult. Last but not least, not all competences in the field of environmental protection fall under the Ministry of Environment. The system of official bodies is rather complex and the administrative procedures fragmented, which prevents a full integration of legal protection of environment. Nevertheless, some acts encompass substantial part of the provisions on environmental protection (such as Act on Nature and Landscape Protection, No. 114/1992 Coll.), some play essential role in environmental protection because of their wide scope (such as Act on Environmental Impact Assessment, No. 100/2001 Coll., which covers both EIA and SEA procedures).

## **TRAINING AND INFORMATION**

### **A - Training**

#### *1. General training arrangements*

(a) Please describe the arrangements which exist in your country for training judges –

- for initial training before taking office?

The training of the future judges is provided by the Judicial Academy. However, it is not obligatory. The seminars organised by the Judicial Academy throughout the year are generally open to both judges and judicial trainees or assistants on *first come first served* basis with the preference of the judges. Some seminars are prepared exclusively for the assistants, trainees, judicial clerks or administrative employees of the courts. A set of specific seminars is focused in particular on the judicial exam.

Still, even applicants without any experience at the court or any judicial training may be appointed as judges. Appointment of new judges is currently a hot topic in the Czech Republic. For a long time, there were no precise rules as regards the selection procedure of the candidates.<sup>7</sup> After the graduates served for 3 years in the legal position, they could apply for the judicial exam. Most of the candidates recruited from the judicial trainees and assistants of judges. After the judicial exam, they could apply for a tender (selection procedure), which was usually prepared *ad hoc* for certain regional court and the lower courts (also, the attorneys and notaries could apply for the tender as the particular exams

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<sup>7</sup> For further details see the article by Michal Bobek: [https://www.coleurope.eu/system/files\\_force/research-paper/researchpaper\\_3\\_2014\\_bobek.pdf?download=1](https://www.coleurope.eu/system/files_force/research-paper/researchpaper_3_2014_bobek.pdf?download=1)

are basically exchangeable). This was not considered very transparent but the tenders could actually match the needs of the individual courts. Successful applicants were put on the list by the Ministry of justice and recommended to the president for appointment. Several judges fought for a long time for the establishment of the Judicial Council, which would be more or less independent on the ministry and deal with these matters. However, in 2017, the minister adopted an internal instruction which set new rules for appointment of the judges. In particular, the candidates must register as trainees, gain 5 years of experience and pass the exam. The tenders will be prepared by the Ministry for all the courts. This step was met by criticism as it was not discussed properly and as it is deemed not correct to set the rules by the instructions and not by the law (act).<sup>8</sup> Currently, it seems that the internal instruction will be postponed and will not come into force any time soon.

- for continued training?

The training of the judges is provided by the Judicial Academy in the main fields of law. Furthermore, the judges are encouraged to participate in the training events organised at the EU level (for example by ERA or EJTN in environmental law).

(b) How is *initial training* arranged?

Where and by whom is it conducted, for example –

- universities,
- other specialised training establishments
- organised by government or by judicial bodies?

The initial training of the trainees and assistants is almost exclusively provided by the Judicial Academy and usually takes places in Kroměříž or in Prague, in the premises of the Academy. The Academy was established in 2002 by the Act No. 6/2002 Coll. as the central institution of the justice sector for the training of judges, state prosecutors and other target groups. Since it took over the Judicial school in 2005, the Judicial Academy is a unique state body in the Czech Republic responsible for training all target groups in the Czech judiciary.

The seat of the Czech Judicial Academy is in Kroměříž. The Academy has got training and accommodation facilities in Kroměříž and training facilities in Prague and 7 other cities. Among main activities of the Judicial Academy are:

- Initial training of trainees

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<sup>8</sup> You can find the instruction in Czech attached and here are some reactions also in Czech (google translate may help): Czech Chamber of Attorneys: <https://www.cak.cz/scripts/detail.php?id=7824> Czech Union of the Judges: <http://www.soudci.cz/zpravy-a-stanoviska/pohledy-a-nazory/133-k-navrhu-instrukce-ministerstva-spravedlnosti-o-vyberu-a-navrhovani-uchazecu-o-funkci-soudce.html> <https://zpravy.e15.cz/domaci/politika/soudci-napadaji-pelikana-za-vyber-svych-kolegu-1345612> [http://ceskapozice.lidovky.cz/zpusob-vyberu-soudcu-v-cesku-by-se-mel-radikalne-zmenit-pis-/tema.aspx?c=A171114\\_180335\\_pozice-tema\\_lube](http://ceskapozice.lidovky.cz/zpusob-vyberu-soudcu-v-cesku-by-se-mel-radikalne-zmenit-pis-/tema.aspx?c=A171114_180335_pozice-tema_lube)

- Continuous training of judges and prosecutors
- Continuous training of middle professional staff at courts and prosecution offices
- Continuous training of senior staff at courts and prosecution offices
- Training in cooperation with partner institutions (e.g. Czech Bar Association)
- Association of Judges, Association of Prosecutors, Chamber of Court Appointed Interpreters and Translators
- Training in cooperation with European training institutions; etc.

The training is focused on domestic law, EU law, legal skills and social sciences. It is provided in form of lectures, seminars, workshops, short-term courses, moots, mock trials, etc.

On some occasions, the Academy organises seminars outside its premises, for example at the Supreme Administrative Court (located in Brno). These seminars are usually open to judges from other courts as well.

Does it include *stages* or similar arrangements (e.g. internships, pupillages, apprenticeships) -

- with courts
- with lawyers
- with government departments
- with other agencies?

No, the stages are arranged by the courts themselves, and not as initial training. There are internships of the judges at the court of a higher level (for example judges from the regional courts serve at the Supreme Administrative Court for 6 months). The judges may also apply for an internship at the foreign court via various professional associations.

Besides, there are internships for law students (undergraduates) arranged and organised by each particular court, usually in cooperation with the main universities.

(c) How is *continuing training* organised? For example –

Where and by whom is it conducted?

The continuing training of the judges and judicial employees is almost exclusively provided by the Judicial Academy and usually takes places in Kroměříž or in Prague, in the



premises of the Academy. For example, there are approx. 60 seminars scheduled for September 2018, some devoted to education of the judicial trainees, assistants or other employees such as the HR.

The training of the judges is provided almost exclusively by the Judicial Academy.

Is it compulsory (for all or some categories of judges), or voluntary?

The judges are generally required to improve their knowledge and professional skills. The participation in training is however voluntary. The Supreme Administrative Court has developed a practice of annual or bi-annual meetings which take place outside of the court building. For one week, the judges and their assistants discuss organisational and professional matters, including recent development in administrative law. Participation in such meeting might be considered compulsory.

Is there a regular programme of continuing training? If so, how often? What is the average period in a year? Are there special requirements, for example on a change of office?

Yes. In particular, there is a regular annual training program for the trainees and judicial clerks composed of series of seminars in various fields of law. Seminars for the judges are mostly organised *ad hoc* on specific topics.

Is it supervised? If so, by whom? Who determines the content of the courses (e.g. government, judicial bodies, individual judges)?

The education is provided pursuant to the regular annual training program, created on the basis of the analysis of educational needs in cooperation with the Ministry of Justice, courts and the state prosecution offices. In practice, seminars in the field of administrative law often reflect the demand and feedback of the participants. Very often, the judges themselves participate in the seminars as the lecturers - and are provided discretion as regards the choice of the topic.

Are the training fees paid for? Are judges entitled to leave from work for the training?

There are no fees paid for the training. The judges are entitled to leave work for the training, with the consent of the president of the court.

Is such training given weight in decisions on career choices or appointments to particular responsibilities?

Not to our knowledge.

## *2 Training in environmental law*

Do the training arrangements for judges include special arrangements for training in environmental law –

- for initial training
- for continuing training?

Yes, there have been couple of seminars focused exclusively on environmental law or combination of construction law and environmental law. The seminars are open to all the administrative judges (from the regional courts and from the Supreme Administrative Court) and their assistants.

If so, please describe the arrangements, covering the same points as for general training.

In particular –

- is such training in environmental law given to all judges or only those with specific functions in that field?

The training in environmental law given to all judges interested, which, in practice, means couple of administrative judges and their assistants. There is no specific function in this field.

- on average, how many judges receive such training in every year?

The seminars are open to up to 60 - 80 participants and there are approx. 20 judges in the audience. However, that depends on the particular topic. In case there are serious legislative amendments introduced (especially concerning proceedings at the courts), more judges are willing to participate and take part in the discussion.

- what form does it take and for what periods?

These seminars are usually organized once a year by the Judicial Academy in cooperation with the Supreme Administrative Court and take either one day or three days. They are composed of lectures provided by the judges and experts from the universities, official authorities and the NGOs. Once a year, there is a seminar at the Supreme Administrative

Court during which the representatives of the State presents the new case law of the CJEU and the ECHR in all fields of administrative law, including environmental matters.

Is there a mechanism for assessing the training needs of judges and periodically reviewing this?

The Judicial Academy continually evaluates feedback submitted by the participants. Moreover, it is monitoring demand on seminars on current topics.

Have you already made use of training material prepared at EU level (e.g. within the framework of DG ENV programme for cooperation with national judges and prosecutors: <http://ec.europa.eu/environment/legal/law/judges.htm>). Do you have any suggestions for improvements?

Not directly. The training materials prepared at EU level are presented to the participants as one of the options where to find more information on the topic. The case studies are usually tailored to the national circumstances and deal with specific issues the judges are likely to come across in practice.

The judges are also encouraged to participate in the seminars organised by ERA or EJTN in the field of environmental law. Nevertheless, not many use such opportunity and the interest in the EU seminars is even lower than it used to be. This might be ascribed to several aspects: 1) General knowledge of the EU law among the judges has improved and the need of further education in this respect is not perceived urgent as before or immediately after joining the EU. 2) The administrative judges are not specialised in any field of law (aside from their personal interests). Hence the environmental cases form a small margin of their case load - and are simply not worth sacrificing a work that can be done during the week the seminar takes part. 3) The seminars organised at the EU level are constantly getting better which also means they are more demanding and focus on even narrower topics. No longer are they perceived as an opportunity for vacation.

## **B – Availability of Information on environmental law**

(a) Are there any specialised collections of national or EU case law relating to environmental law -

- in paper form

No, there is no comprehensive collection which would focus on national or EU case law relating to environmental law. There is, however, a long tradition of commentaries (books) on individual legal acts in all fields of law including environmental regulation (the EIA Act, the Nature Protection Act, the Forestry Act, the Air Protection Act, etc.) The updated

commentaries provide a deep analysis of the particular stipulations including the summary of the case law of both the national courts and the Court of Justice - and are often referred to by the official authorities or the courts themselves.

- on the Internet?

The most important decisions of the Supreme Administrative Court are published each month on-line in the official Collection of the Decisions of the Supreme Administrative Court (<http://sbirka.nssoud.cz/>). Furthermore, all decisions of the administrative courts are made publicly available (in Czech only) on the website of the Court. The case law relating to environmental law is not collected separately; however, it often finds its place in the Collection and is also frequently reported by the press releases of the Court.

Commentary on complete recent environmental case law of the CJEU and the ECHR is published regularly on-line by Czech Environmental Law Magazine which is available for free (<http://www.cspzp.com/casopis.html>). Not all the judges are aware of its existence, though.

The judges can also use collections or fact sheets prepared recently at the EU level (access to justice, EIA Directive) or concerning human rights and protection of the environment (fact sheets of the ECtHR).

(b) Are judges equipped with computers giving them free access to databases (with case law and literature) on environmental law, including

- national databases
- European databases
- international databases?

Yes, the judges are equipped with computers giving them access to internet databases. However, this is more or less restricted to the databases available to general public with some minor exceptions such as the beck-online database. Licences for access to academic databases are generally not purchased. The judges also use ASPI (Wolters Kluwer), a software database dedicated to legal regulation, case law and national literature.

## **C – Proposals for training or improving availability of information**

(a) In what areas would it be helpful to develop training materials and organise training sessions, for example -

General principles of law, e.g. –

International environmental law  
European environmental law  
Comparative environmental law

Particular aspects of environmental law, e.g –

Environmental Impact Assessment  
Sustainable Development  
Access to Justice and Standing (Aarhus Convention)  
Administrative and civil liability in environmental law  
Criminal Liability of Corporations  
The role of NGOs

Role of environmental inspectors, police officers and others on evidence collection  
Language training (e.g. judicial terminology)?

Technical issues, e.g. -

Evaluation of ecological damage, including use of forensic methods  
Measures to restore the environment

Specific topics, e.g. -

Freshwater Pollution,  
Protection of the Seas  
Nature Protection  
Landscape and Monuments – Natural Sites  
Air pollution  
International trade in protected species  
International transfer of waste  
Genetically modified organisms  
Polluting or Dangerous Industries  
Environmental procedural requirements, in particular impact assessments relevant for spatial planning, energy and transport

Other topics?

The answer may vary depending on a particular judge or a judicial branch.

The administrative justice, which plays pivotal role in environmental justice, mainly provides the individuals protection against acts and omission of the official authorities. The administrative decision is usually subject to judicial review and must withstand requirements of the legal regulation related to the topic listed above. Since the judges in Czechia can only quash illegal acts and cannot replace them, it is important to **raise awareness regarding environmental law among the official authorities** and develop training materials and organise training sessions for that purpose.

In our opinion, the judges should regularly receive **updated materials or factsheets** concerning applicable EU law and corresponding case law. In this respect, the website of DG ENVI serves pretty well in certain fields of environmental law, especially if complemented by factsheets, analyses and training materials. It would be helpful if it was also **translated** to all the official EU languages or at least to English, German and Spanish. This applies also to the factsheets and guidelines in the main fields such as environmental impact assessment, Natura 2000 protection, air protection, waste management and access to justice. Training materials and guidelines tend to become obsolete rather quickly and should be kept up-to-date. The **training sessions should be organised by national judicial academies in cooperation with the EU-wide agencies** (ERA, EJTN) and take place in the particular Member States. The lectures and workshops should be held by both EU and domestic specialists in order to introduce EU legislation and explain its application in the context of national regulation and case law.

Last but not least, the judges should be supplied with information concerning the **new preliminary references** submitted to the CJEU. Currently, they can only find on their own that there are proceedings before the CJEU which may have enormous impact on a national case they are dealing with - and decide whether to commit further or stay the proceedings until the judgment is delivered by the CJEU.

## **II. ORGANISATION OF COURTS AND ENFORCEMENT AGENCIES**

### **A – Courts or tribunals responsible for environmental law**

(a) Please describe the arrangements in your country for determining environmental law disputes, criminal, administrative and civil. In particular -

Most of the environmental cases end up before the administrative courts which review a particular decision of the official authority, a measure of general nature, inactivity or illegal interference of the official authorities. The organisation of the administrative justice is laid down in Act No. 150/2002 Coll., the Code of Administrative Justice. The administrative justice is a two-instance system. Specialized administrative chambers at the regional courts rule on cases related to administrative law at first instance. The Supreme Administrative Court, which is the highest judicial body specialized exclusively in the field

of administrative justice, as a court of second instance decides on cassation complaints and as a court of the first instance decides on specific matters such as electoral matters (including presidential election), local and regional referendum and matters of political parties and political movements including their dissolution. The Supreme Administrative Court is also called to decide some conflicts of competence between administrative authorities (competence conflicts between authorities of state administration on one side and authorities of self-governing units on the other side, conflicts between self-governing units versus each other and conflicts between authorities of central state administration versus each other. It is also the disciplinary court in matters of judges, state prosecutors and enforcement agents.

Civil and criminal courts share the same judicial structure. Together, they form the courts of general jurisdiction. They are competent in all types of disputes with the exception of those expressly reserved for the administrative courts or the Constitutional Court.

Are there separate courts or tribunals for civil and criminal matters?

Yes, even though the civil and criminal courts share the same judicial structure:

- Supreme Court located in Brno;
- 2 High Courts (one located in Prague with jurisdiction over Bohemia and the other seated in Olomouc with jurisdiction over Moravia);
- 8 Regional courts;
- 86 District courts ( the district court in the district Brno is called City Court, Art. 12 Judges Act 2002).

District courts have subject-matter jurisdiction at first instance unless the law stipulates otherwise. In enumerated cases regional courts rather than district courts have the jurisdiction at first instance for reasons relating to greater specialisation and consistent decision making. Regional courts as courts of first instance hear and rule on cases, which are complicated and specialized and/or occur infrequently. Regional courts decide on appeals against the decisions of district courts rendered on the first instance. In cases where the court of first instance is the regional court, the appellate court is one of the two High Courts. The Supreme Court has the jurisdiction to decide on extraordinary appeal against final decisions of regional or high courts, acting as appellate courts. Unless the law stipulates otherwise, the extraordinary appeal is admissible against every final decision (a judgment or a resolution) of an appellate court if the challenged decision is based on answering an issue of substantive or procedural law which the appellate court has decided differently from the constant case-law of the Supreme Court, which has not been decided by the Supreme Court yet, which has not been answered uniformly by various panels of the Supreme Court, or which is proposed to be answered differently.

Civil environmental cases belong to the district courts. The courts of first instance in criminal matters are generally also the district courts. If, however, the criminal offence is punishable under the Criminal Code (Act no. 40/2009 Coll.) by at least 5 years imprisonment, the courts of first instance become the regional courts. Once again, an appeal against the first-instance decision of the district court goes to the regional court. Appeals against decisions rendered on the first instance by regional courts are assessed by a High Court on appeal and The Supreme Court decides on extraordinary appeals.

Are there special constitutional or administrative courts or tribunals (for litigation involving government agencies or public bodies)?

Yes, the administrative courts (see above). The Constitutional Court stands above the system of ordinary civil, criminal and administrative courts. It has jurisdiction (pursuant to Article 87 paragraphs 1 and 2 of the Constitution):

- to annul statutes or individual provisions thereof if they are in conflict with the constitutional order;
- to annul other legal enactments or individual provisions thereof if they are in conflict with the constitutional order or a statute;
- over constitutional complaints by the representative body of a self-governing region against an unlawful encroachment by the state;
- to decide jurisdictional disputes between state bodies, state bodies and bodies of self-governing regions, and between bodies of self-governing regions, unless that power is given by statute to another body;
- over constitutional complaints of natural or legal persons against final decisions or other encroachments by public authorities infringing constitutionally guaranteed fundamental rights and basic freedoms;
- over remedial actions from decisions concerning the certification of the election of a Deputy or Senator;
- to resolve doubts concerning a Deputy or Senator's loss of eligibility to hold office or the incompatibility under Article 25 of some other position or activity with holding the office of Deputy or Senator;
- over a constitutional charge brought by the Senate against the President of the Republic pursuant to Article 65, paragraph 2;
- to decide on a petition by the President of the Republic seeking the revocation of a joint resolution of the Assembly of Deputies and the Senate pursuant to Article 66;
- to decide on the measures necessary to implement a decision of an international tribunal which is binding on the Czech Republic, in the event that it cannot be otherwise implemented;
- to determine whether a decision to dissolve a political party or other decisions relating to the activities of a political party is in conformity with constitutional acts or other laws; and
- to decide concerning the conformity with the constitutional order of a treaty under Article 10a or Article 49, prior to the ratification of such treaty.

Are there specialised courts or tribunals for environmental law (or particular aspects of environmental law, including town and country planning, energy, or transportation)?

No, the cases from the abovementioned fields would fall under jurisdiction of administrative courts, unless there are specific civil law aspects, which would effectively split the case into both administrative and civil jurisdiction.

What powers are available to the different types of court, for example -

- criminal penalties



- orders or injunctions to remedy environmental damage
- awards of financial compensation or compensation in kind?

Others?

### **Criminal courts:**

According to the Czech Criminal Code main penalties regarding environmental crimes represent imprisonment and judicial prohibition to undertake professional activities. Certain crimes could be also punished through forfeiture. Court may also impose (pecuniary) fine under the condition the perpetrator has obtained or at least tried to obtain for himself or somebody else property benefit by committing intentional environmental crime. If the condition is not fulfilled the pecuniary fine can be imposed only where provision of the Criminal Code explicitly say so. If perpetrator committed only minor offence, he can be sentenced also to house arrest or to community services. Criminal judges cannot impose remedial sanctions, since it is the task of the administrative authorities.

In context of the **imprisonment sentence**, there is not always stated (by the CC) the minimum length of imprisonment however the maximum period is mentioned every time. Of course the length varies according to type of environmental crime. Generally there are basic and qualified facts of crime while the latter lead to longer periods of imprisonment (e.g. perpetrator commits certain crime repeatedly; he cause permanent or long-term damage to environment or somebody's death; he commits crime as a part of organized group etc.).

Regarding the second abovementioned type of punishment – **judicial prohibition to undertake professional activities** – the court can impose it from 1 up to 10 year under the condition that the crime was committed in connection with such activities. However as an individual punishment it may be imposed only A) if Criminal Code explicitly allows it in connection with committed crime and B) if according to type and seriousness of the crime and person of the perpetrator it is not necessary to impose other kind of punishment.

**Forfeiture** is type of punishment which comes into question where the perpetrator obtains some kind of

thing thanks to the committed crime or as reward for it. Court may impose it A) towards the thing that was used to commit the crime or which was intended to be used or B) towards the thing that the perpetrator obtained in exchange of the thing he had acquired through the crime or as a reward of it. However there is condition that value of the latter thing must not be negligible compared to “*exchanged thing*”. Of course there is also general condition for this type of punishment that is the thing must be owned by the perpetrator.

**Pecuniary fine** is imposed in form of daily charges/penalties from 20 up to 730 charges. Daily charge is set from 100 CZK to 50 000 CZK (approx. 4 - 2000 EUR) at most. As an individual punishment it may be imposed if according to type and seriousness of the crime and person as well as property situation of the perpetrator it is not necessary to impose other kind of punishment.

**House arrest** can be imposed in length up to 2 years as a punishment for minor offence A) if it seems

appropriate with character and seriousness of the minor offence as well as with person and property situation of the perpetrator and at the same time it is seemed to be sufficient punishment itself or perhaps as additional punishment next to another and B) the perpetrator gives written assurance that he will stay at specific address and will provide cooperation. Once again also house arrest may be imposed as an individual punishment only under the condition that there is no need to choose another kind of punishment.

Finally **community service** is another punishment which is possible to impose in connection with minor

offences. As an individual punishment it must meet abovementioned condition that it is appropriate to type and seriousness of the minor offence and person as well as property situation of the perpetrator so it is not necessary to impose other kind of punishment.

### **Administrative courts:**

The administrative justice applies the cassation principle and cannot simply adopt orders or injunctions to remedy environmental damage. There are a few exceptions to this rule - for example the courts may order the administrative authority to provide the information to the complainant (in the case concerning access to information).

Nevertheless, at the complainant's request the court can award **suspensory effect** to the complaint (or cassation complaint) providing the execution of the decision or other legal consequences of the decision would result in irreparable damage to the complainant, the award of suspensory effect does not unreasonably affect the acquired rights of third persons and is not contrary to the public interest. The award of suspensory effect stays the effect of the contested decision until the conclusion of the proceedings before the court. The Supreme Administrative Court has noted that courts must grant injunctions in environmental cases even without proof of irretrievable personal harm in order to be in compliance with the Aarhus Convention, and administrative courts have been easing the requirements in environmental cases. Moreover, if a petition has been submitted for the commencement of proceedings and if it is necessary to take temporary measures to adjust the parties' circumstances liable to cause serious harm, the court may resolve to impose on the parties the obligation of having to do something, to restrain from doing something or to endure something by a **provisional ruling**. For the same reason the court may impose such an obligation on a third person, if he or she can be justly requested to do so. The court may even rescind or modify the decision on a provisional ruling if the circumstances change even without a petition. The provisional ruling terminates at the latest on the day when the decision of the court whereby the proceedings are concluded has become enforceable.

### **Civil courts:**

Civil courts may adopt injunctions to remedy environmental damage, order certain performance or rule on awards of financial compensation or compensation in kind. The requirements for an injunction are different in the civil courts. Usually, a bond of about 1800 EUR is required. However, environmental cases are rarely brought in civil law courts.

(b) Please give examples of typical environmental law cases handled –

(i) By civil courts or tribunals;

Disputes between the private actors in environmental matters are usually solved on the basis of the provisions protecting the rights of the neighbours (§ 1013 of the Civil Code). According to these, the person affected may ask the court to order the owner to refrain from anything that would cause emissions which are disproportionate to the local circumstances and substantially restrict the normal use of the tract of land. This kind of protection serves only the owners and the tenants, not the public concerned in general. The claimant may also ask the civil court to issue a preliminary injunction in order to provisionally amend the conditions of the parties, or if there is a risk that the enforcement of the (subsequent) court decision could be threatened.

However, if the emission is the result of the operation of an enterprise or a similar facility which has been officially approved, a neighbour only has the right to compensation for harm in money, even where the harm was caused by circumstances which had not been taken into account during the official proceedings. This does not apply if the operation exceeds the extent to which it has been officially approved.

The neighbours can, therefore, bring a case against a private actor whose acts lead to a large rise in emissions, but can only claim the emissions are disproportionate to the local circumstances. If the activities of the particular factory have been officially approved, the neighbours may only ask for damages. In this respect, there are principally no limitations to the standing of natural or legal persons in proceedings concerning damages claims, including those from other jurisdictions. There is a specific, strict liability established in the Civil Code for the damage caused by a particularly hazardous operation. A person who operates an enterprise or another facility which is particularly hazardous shall compensate the damage caused by the source of the increased danger; an operation is particularly hazardous if the possibility of serious damage cannot be reasonably excluded in advance even by exercising due care. Otherwise, the person is released from the duty if he proves that the damage was externally caused by *force majeure* or that it was caused by the very acts of the victim or unavoidable acts of a third person; if other grounds for the release from the duty have been stipulated, they are disregarded (§ 2925 of the Civil Code).

However, there is a huge difference between damage sustained more or less directly and for example damage caused indirectly by the emissions of greenhouse gases. The plaintiff can hardly prove the existence of the causal nexus between droughts or floods and the operation of the particular facility.

(ii) By criminal courts or tribunals;

From the point of view of frequency regarding bringing the case to the criminal court we can say that most often it is the case of the offence of poaching; less commonly the offences of cruelty to animals, dereliction of duty of care for animals with negligence and damaging and threatening of environment; finally not so often there are offences of unauthorized handling protected wild fauna and flora and unauthorized handling the waste. In most cases the imprisonment is not used. If so, it is usually with probation.

The main reasons why environmental offences would not reach a criminal court are as follows:

- the proceeding ends by the Czech Environmental Inspectorate (the conduct is not regarded as a criminal offence),
- there is an unknown offender,
- insufficient qualification of investigative, prosecuting and adjudicating bodies, difficulty with proving causal relation etc.,
- favouring of other types of delinquency by the investigative, prosecuting and adjudicating bodies,
- the offender often commits more serious offence so the environmental offences are therefore „set aside“ or punished through the punishment for the more serious offence.

Generally we would not say that the conduct of the perpetrators remain unpunished, but it is either penalized with administrative sanctions. There is – besides the environmental authorities – also important role of building departments consisting in preventing or avoiding of causing damage to the environment.

(iii) By administrative courts or tribunals;

An individual may bring a case against a public actor charged to authorise for example a major infrastructure if all the procedural requirements are met. Nevertheless, the court will only quash the decision provided that 1) it truly does not comply with obligations leading to a rise in greenhouse gas emissions and there is no other way to fulfil these obligations, 2) this fact renders the authorisation illegal.

At the moment, administrative courts play a pivotal role in environmental protection. The number of environmental cases that reach Czech administrative courts is rather constant and presents minor, but not negligible part of the general caseload. The court disputes concerning urban planning, development of infrastructure and permitting procedures of various industrial applications especially raise public awareness. Nevertheless, climate change is still a new topic. Within the wide framework of various state policies, urban planning or environmental impact assessment, climate change based arguments of both the claimants and the courts rarely play any substantive role and usually serve as the introductory remarks or general observations. It is assumed that the climate change issues are somewhat a vague concept which does not affect the individuals in particular cases concerning their rights or duties.

Four main types of judicial protection are provided by the administrative courts: action against a decision of an administrative authority, protection against a failure to act, protection against unlawful interference and a judicial review of measures of a general nature.

Provided the state climate change policy is implemented in the form of administrative decision, the individuals and the NGOs may challenge such decision if they meet conditions of access to justice set out in the Czech Administrative Justice Code (Act. No. 150/2002 Coll.). They must be directly affected by the decision and must exhaust all appropriate remedial actions before the submission of a complaint. Some claimants are allowed to reach the judicial protection easily. For example, the owners may rely on their

*in rem* rights, but the tenants are not considered sufficiently concerned, even though they have been tenants for a long period of time. However, some decisions are deemed not to interfere with the rights of other persons than the applicant in the administrative proceedings himself, for example, the authorizations to operate a nuclear facility.

As regards measures of general nature, there is no administrative appeal allowed and the only possible legal remedy against the measure of general nature (such as the municipality plan) is a judicial review. Once again, the administrative courts deal with the question of impairment of rights because pursuant to § 101a of the Czech Administrative Justice Code, any person which claims infringement of his or her rights by the measure of general nature, is entitled to file an action against it. In this case, there is no previous administrative proceeding with a list of participants, but the courts follow their case law concerning the owners, tenants, NGOs and other subjects. The scope of the review encompasses both procedural and material issues but is restricted to the rights of the plaintiff. In the judicial review of the measures of general nature, the courts recognize there is a considerable space for political discretion – and the more abstract the measure of general nature gets, the wider this space is. Without a doubt, climate change cases will open questions as regards reviewability of administrative discretion and state policies, proportionality and effectiveness of measures adopted at various levels of state administration. Traditional legal concepts may serve their purpose but will hardly be applied straightforward. But this is yet to be seen.

Theoretically, the NGOs or other individuals may opt for protection against unlawful interference. In this case, the court would have to agree that the inability or unwillingness of the state to comply with international climate change obligations would result in such interference. There have been already some cases suggesting this is feasible. On the other hand, the scope of protection against a failure to act is restricted to the omission to adopt a decision in administrative proceedings. As a consequence, it cannot be used against the lack of will to adopt a specific policy or a measure of general nature.

(iv) By the constitutional court

It is difficult to determine typical environmental law cases that reach the Constitutional Court as they basically cover the whole agenda of administrative and civil courts. Recent cases that raised attention of both the judiciary and wide public, deal with the rights of the NGOs. As mentioned above, in 2014, the Constitutional Court overturned its settled case law and concluded the NGOs may claim a violation of the right to the favourable environment should they demonstrate a close relationship to the issue at question.<sup>9</sup> In this ground-breaking decision, the Constitutional Justices were commenting the role of environmental NGOs in a democratic society as highly positive. Regarding the right to environment, the decision emphasized that it would not be correct to deny the environmental NGOs the chance to defend the environment. It stressed that these NGOs are created by individuals to protect their own right to a favourable environment, and that the previous interpretation restricting the personal scope of this right to only individuals seemed to be "outdated". This decision is expected to play a crucial role in an interpretative shift. Hopefully, it can at the same time point to a desired more significant role of Czech courts in the protection of the environment. The main contribution of the judgement is that it removes the major barrier that blocked the environmental NGOs their way to courts in order to invoke the right to environment. Now, the courts will hopefully get to the merits of cases and will shed some light on the essence and

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<sup>9</sup> Judgment of the Czech Constitutional Court of 30 May 2014, No. I. ÚS 59/14.

content of the constitutional right to environment. The conclusions of the Constitutional Court have been further developed in 2015. In this case, a local environmental NGO challenged a territorial plan in administrative courts but was rejected even by the Czech Supreme Administrative Court. It then referred to the Constitutional Court asserting that its rights to a fair trial and to a favourable environment were breached. The Constitutional Court satisfied the complainant. The Court stated that the interpretation of the right to environment “had undergone certain development” and emphasized that the requirements of the Aarhus Convention must be fulfilled in the Czech Republic as the State Party to this Convention, and criticized the persisting over-restrictive interpretation in the field of access to justice, esp. Art. 9 (2) of the Convention.<sup>10</sup>

(v) By specialist environmental tribunals.

There are no specialist environmental tribunals in the Czech Republic.

(c) Are there available statistics on environmental cases handled by the different categories of court and tribunal? If so, please summarise the figures for the most recent year available.

## **B – Specialised jurisdictions**

(a) If your system has specialised courts relevant to environmental law, please describe the nature of their jurisdiction (so far as not covered under A above), for example –

- how is the extent of the jurisdiction defined?
- is it exclusive, or concurrent with that of the ordinary courts?
- how, and by whom, are conflicts of jurisdiction resolved?
- are they independent of the executive?

There are no specialist environmental tribunals in the Czech Republic.

(b) How, and by whom, are members of such courts recruited? Is knowledge or experience in environment law a specific requirement?

(c) What powers do the specialised courts have, for example -

- annulment of regulations or individual acts
- orders to enforce environmental laws
- power to substitute a decision for that of the government agency

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<sup>10</sup> Judgment of the Czech Constitutional Court of 13 October 2015, No. IV. ÚS 3572/14.

- orders for financial compensation or compensation in kind
  - other (e.g. granting environmental licences or consents)

(d) How and by whom are conflicts of jurisdiction with other courts resolved?

## **C - Criminal violations**

(a) In your country which agency or agencies have responsibilities for investigating and prosecuting criminal violations of environmental law –

- the police, or a particular branch of the police (national or local)
- customs authorities
- local authorities
- one or more specialised environmental agencies
- other bodies (public or private)

There are specific administrative authorities that perform supervision regarding environmental protection in certain areas. These are authorized to impose fines. For example, according to law no. 114/1992 Coll. on Nature and Landscape Protection, there are following administrative authorities who are authorized to impose fines: municipality with extended powers, natural person providing the protection of nature (so called “*stráž přírody*”) and the Czech Environmental Inspectorate. Only the police and prosecutors are responsible for cases which reach intensity of criminal violation of environmental law.

The offences against environment according the Czech Criminal Code are:

- damaging and threatening of environment (§ 293 CC),
- damaging and threatening of environment with negligence (§ 294 CC),
- damaging of water source (§ 294a CC),
- damaging of forest (§ 295 CC),
- unauthorized discharge of pollutants (§ 297 CC),
- unauthorized handling the waste (§ 298 CC),
- unauthorized production and other handling substances damaging the ozone layer (§ 298a CC),
- unauthorized handling protected wild fauna and flora (§ 299 CC),
- unauthorized handling protected wild fauna and flora with negligence (§ 300 CC),
- damaging of protected nature component (§ 301 CC).
- cruelty to animals (§ 302 CC),
- dereliction of duty of care for animals with negligence (§ 303 CC),
- poaching (§ 304 CC),
- unauthorized production, possession and other handling pharmaceuticals and other substances that affect utility of livestock (§ 305 CC),
- spreading an infectious animal diseases (§ 306 CC),
- spreading an infectious diseases and pest of useful plants (§ 307 CC).

Furthermore, the Criminal Code sets states detailed criteria of liability which, in effect, drafts the line between the administrative and criminal liability, and also determines the jurisdiction of administrative authorities and authorities responsible for the criminal prosecution. However, the line is often subject to interpretation. For example the Criminal Code stipulates in § 294 CC (damaging and threatening of environment with negligence) that: "*Whoever ... with gross negligence injures or endangers soil, water, air or any other component of the environment, to a greater extent, or in a larger area, or in such a way that it could cause serious bodily injury or death or if the elimination of the consequences of such behavior must incur costs to a considerable extent, ... shall be punished with imprisonment up to six months or with a judicial prohibition to undertake professional activities*".

(b) What special arrangements do the police or customs have for ensuring that those involved have expertise in environmental law? Do they have specialised units, organised locally or nationally?

To our knowledge, there are no specialized units in the strict sense. The specialization of the customs stems from the fact that they deal with highly specialized regulation as the CITES regulation concerning trade with wild fauna and flora.

(c) If a specialised environmental agency is responsible for prosecutions –

- how is it organised, and under what authority
- is it independent of government
- how are its officers recruited and trained
- does it have similar powers to those of the police for investigating and prosecuting?

The Czech Environmental Inspectorate (CEI) is an expert executive body within the state administration charged primarily with supervision in the area of environmental legislation enforcement. Additionally, CEI also supervises over the legal compliance of administrative decisions taken by the public administration bodies in the area of the environment. CEI was set up in 1991 by the Act. No. 282/1991 Coll., on the Czech Environmental Inspectorate and its competencies in forestry protection. The other environmental sectors - air and nature protection as well as waste management - were gradually incorporated. The activities of CEI can be divided into five core areas air protection, waste management, nature, water and forests management supervision. CEI was gradually assigned also additional responsibilities in other areas: protection of the Earth's ozone layer, supervision over the handling of chemical substances, industrial accident prevention, packaging management and genetically modified organisms (GMOs).

Nevertheless, the CEI is not responsible for criminal prosecutions. It works as an administrative authority, independent organization subordinate to the Ministry of the Environment and funded from the state budget. Therefore, its powers for investigating and prosecuting similar to other administrative authorities (such as the customs) and different to those of the police.

(d) Which courts have power to impose criminal sanctions in environmental cases?



Only the criminal courts have power to impose criminal sanctions in environmental cases.

(e) Are there available reports or statistics of criminal sanctions imposed in environmental cases? If so, please give examples from recent cases.

There are no comprehensive reports on criminal sanctions. In most cases the imprisonment is not used. If so, usually with probation. The fines imposed for the offences against the environment usually stretch up to approx. 600 EUR. In some cases, larger fines have been imposed, but still only up to approx. 2000 EUR. As regards frequency, the cases most often deal with the offence of poaching; less commonly the offences of cruelty to animals, dereliction of duty of care for animals with negligence and damaging and threatening of environment; finally not so often there are offences of unauthorized handling protected wild fauna and flora and unauthorized handling the waste. As regards administrative sanctions, there are statistics regarding fines imposed by the Czech Environmental Inspectorate. Annually, approx. 2500 - 3000 fines are imposed by the Inspectorate and for the most serious administrative offences, the fines reach up to 200.000 EUR.

(f) The role of the public prosecutor's office

Does the public prosecutor's office have services specialising in environmental area ?

In the Czech Republic neither prosecution offices nor courts have specialized sections regarding environmental crimes. Generally there are no specialized sections focusing on certain kind of crime.

Is this specialisation created by law or by internal organisational rules?

Is its jurisdiction national or local?

Does it relate to all environmental law violations or particular violations only?

Is it exclusive or concurrent with the office's general jurisdiction?

Do members of the public prosecutor's office who specialise in environmental law have assistance from civil servants or experts appointed on a permanent basis to provide them with technical assistance?

How are these assistants recruited?

#### **D. Administrative violations/cases**

See the questions in the previous section. Who and how decides on the choice of administrative vs criminal enforcement?

Breaching of the “environmental laws” can be punished through administrative fines within area of the administrative law. In the Czech Republic we distinguish “přestupky“ (administrative infractions) which are committed by natural persons, and there is personal liability; and so-called “jiné správní delikty” (other administrative delicts). These are committed by legal persons and by natural persons if they are conducting their business; liability is no-fault. The former are regulated at law. no 200/1990 Coll. on Administrative Infractions, as well as in special laws, e.g. law no. 114/1992 Coll. on Nature and Landscape Protection; law no. 254/2001 Coll. on Water; law no. 201/2012 Coll. on Air Pollution. So-called other administrative delicts are regulated just in special laws – e.g. law on Nature and Landscape Protection, law on Water; law on Air Pollution.

A given violation of law is always either an administrative infraction (eventually other administrative delict), or a crime, never both at the same time. It follows that every time only one type of proceedings (administrative or criminal) can be conducted with respect to a determined violation of law, never both of them. The above mentioned relates to one subject, not to one conduct. It means that one person cannot be punished with both criminal and administrative sanction at the same time. However, regarding one conduct there can be punished e.g. an employer (legal person) with an administrative sanction and at the same time an employee (natural person) with a criminal sanction.

## **E. Civil cases**

In what circumstances are civil courts involved in environmental law cases?

In summary, an individual can bring a case against a public or private actor that allegedly does not comply with its climate change obligations. However, the lack of class action or *actio popularis* renders any defence against complex pollution and climate change issues very difficult, even though the system of judicial protection is deemed accessible. To a large extent, the civil judiciary is perceived as complementary to the administrative one. The main instruments of the civil law protection mostly deal with contractual obligations and liability, nuisance or protection of personal rights. As such, they are not applicable against the state environmental policies, decisions of public authorities or basically any future nuisance or interference. Still, the civil courts may provide effective protection in some situations, for example, if no administrative remedies are available to the public concerned. This could be the case of major industry productions authorized long years ago.

Disputes between the private actors in environmental matters are usually solved on the basis of the provisions protecting the rights of the neighbours (§ 1013 of the Civil Code, see above).

At the moment, protection of personality in the Civil Code (Act no. 89/2012 Coll.) offers a plausible way to protect the right to a favourable environment but remains unused in practice. Although explicitly recognized in the Civil Code and the Constitution (Art. 35), the right to a favourable environment has been rarely litigated in courts and never matched with climate change matters. In future, however, it may play an important role in filling the gap between protection of traditional rights such as the right to life and health, and protection provided for the ownership rights. Furthermore, it may contribute to the so-called *forum shopping* in international private law because foreign public concerned may give preference to the Czech legal system and opt for its protection of personal rights to

deal with cases with transboundary aspects. However, the concepts of causation are applied rather strictly in the Czech civil law.

A major disadvantage of civil law disputes is the length of legal proceedings, which is a long-term and endemic problem in Czechia. The average duration of civil proceedings can take several years in one region, yet only a few months in another. The length of the proceedings in front of the administrative courts also vary, but not to such a large extent.

Can they award remedies other than orders for damages?

Yes, see above.

Are there civil courts specialised in environmental law?

No.

## **F. Standing**

Do environmental NGOs have standing in the different courts?

The NGOs have very limited standing before the criminal and civil courts. They can become parties of the proceedings as ordinary individuals, but not in their pursuit of the public interest (protection of the environment). Liability matters are generally considered to fall outside of their interest. As a consequence, the NGOs cannot participate in proceedings concerning administrative punishment as well. They cannot claim compensation for environmental loss or for any damages suffered by their members.

In 1992, the comprehensive Act No. 114/1992 Coll., on Nature and Landscape Protection, was adopted. It replaced and codified the previous regulation and most notably added general nature and landscape protection, which would apply to all parts of nature even without specific qualities. A complex, systematic approach to the protection of biodiversity was implemented and several modern legal instruments were introduced, for example, territorial systems of ecological stability or the protection of important landscape elements. Furthermore, NGOs were granted the right to participate in all proceedings that would involve interests protected by the Act, including all the important permit procedures under the Czech Building Act.<sup>11</sup> Later on, most notably the EIA Act widened participation of the public concerned in environmental matters even outside nature and landscape protection - to all the proceedings subsequent to the EIA process.

And many NGOs used the opportunity. The analysis of judicial case law in environmental matters suggests that NGOs are much less active than suggested. Between 2012 and 2016, they have challenged a total of 166 administrative decisions before the courts, which is equivalent to 3.02 cases annually per regional court. More importantly, NGOs have been often successful and the courts ruled that 79 decisions were illegal. Not a single action has

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<sup>11</sup> Act No. 183/2006 Coll., on Town and Country Planning and Building Code (Building Act).

been rejected for abuse of participatory rights. However, in an unprecedented move, Czech Parliament members, supported by the project developers and lobbyists, recently decided to restrict environmental NGOs from participation in a wide range of permitting procedures.<sup>12</sup> Since 1 January 2018, NGOs may not participate in procedures concerning building projects other than those requiring an EIA. Some decisions under the Act on Nature and Landscape Protection have been transformed into binding statements, effectively further restricting public participation. It is rather symbolic that this change occurred without proper public discussion and the amendment was adopted after being proposed by a single Parliament Member with no reasons provided.<sup>13</sup>

-What requirements apply for the grant of standing?

As far as the judicial protection is concerned, the plaintiffs including the NGOs and other members of the public have to meet criteria of *locus standi*. Conditions for legal standing in administrative and judicial proceedings are similar, yet not the same. The administrative courts consider impairment of rights independently on the participation in administrative proceedings, although in theory, both proceedings match each other and form related phases of effective public participation. For a long time, judicial interpretation restricted the NGOs to point at only procedural aspects of the administrative decision because legal entities enjoyed no substantive rights in connection to environmental harm. Under the threat of the European Commission, minor changes have been introduced and the NGOs may now challenge the outcome of the subsequent proceedings in court from both substantive and procedural aspects. Nevertheless, the Constitutional Court stepped into the game in 2014, overturned its settled case law and concluded the NGOs may claim a violation of the right to the favourable environment should they demonstrate a close relationship to the issue at question.<sup>14</sup> As a consequence, the administrative courts have developed a set of conditions of impairment of rights, most notably a local activity of the NGO, which is independent on participation in the administrative proceedings and applies to all environmental cases.

- Must they have obtained formal recognition or accreditation by the authorities, or is the right to standing assessed on a case by case basis ?

The NGOs must obtain formal recognition and registration at the court.<sup>15</sup> According to the case law of administrative courts, the NGO can register even after the proceedings started to effectively participate in it. Furthermore, there are some additional requirements stipulated by the EIA Act for participation in the proceedings subsequent to the EIA process: 3 years of activity or 200 supporting persons. Any further requirements for standing such as existence of relationship to the matters in question are assessed on a case by case basis.

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<sup>12</sup> A substantive amendment (Act. no. 225/2017 Coll.) to the Czech Building Act was supposed to speed up the procedures.

<sup>13</sup> Unlike government proposals, amendments drafted by the Parliament Members do not have to provide any reasons or undergo impact assessment.

<sup>14</sup> Judgment of the Czech Constitutional Court of 30 May 2014, No. I. ÚS 59/14.

<sup>15</sup> With respect to the passing of the new Civil Code and the cancellation of the current Commercial Code, Act No. 304/2013 Coll, on the Public Registers of Legal Entities and Natural Persons was adopted in 2013. This Act includes regulation of association registry, commercial registry and foundation registry, registry of institutes, associations of owners of units registry and registry of generally beneficial societies.

