The Czech Society for Environmental Law

Czech Environmental Law Review

Milan Damohorský

Jakub Kanický (eds.)

2022

The Publication has been made possible thanks to financial support No *AV ČR č. 100/RVS/17* from 15. 3. 2017 thanks to the Academy of Sciences of the Czech Republic.

KATALOGIZACE V KNIZE – NÁRODNÍ KNIHOVNA ČR

Czech environmental law review / Milan Damohorský, Jakub Kanický (eds.). – Beroun : Eva Rozkotová, 2022. – 92 stran

Nad názvem: The Czech Society for Environmental Law. – Obsahuje bibliografie a bibliografické odkazy

ISBN 978-80-87488-45-4 (brožováno)

* 349.6 * (437.3) * (048.8:082)

– právo životního prostředí – Česko

– kolektivní monografie

349 – Pracovní, sociální, stavební právo. Právo životního prostředí [16]

Publishing House: Eva Rozkotová, Beroun

Printed in Czech Republic.

ISBN 978-80-87488-45-4

TABLE OF CONTENTS

EDITORIAL PREFACE

Dear readers,

You are holding in your hands another issue of our (non-)regular Yearbook of Czech and European Environmental Law. This issue is rather special in several ways. It is not a summary of only the last year, but it covers legal developments in the field of basically the last five years (2017 to 2021). Moreover, this issue a truly extraordinary collection of contributions because, with two honorable exceptions, it mostly consists of contributions from young environmental lawyers, mostly doctoral students in this field at the Faculty of Law of Charles University and trainee lawyers who are at the very beginning of their professional careers.

This time, the authors' contributions focus more on Czech rather than EU law, although this is not completely neglected either. The reader may get valuable insights on various topics, such as soil protection and agriculture in the Czech Republic from the legal point of view, the need for significant recodification of Czech mining and geological law, as well as selected issues of hunting and game protection, animal protection against cruelty, illegal dumping in the context of the circular economy, but also water and forests protection in the light of recent climate developments. The yearbook also includes a chronological overview of the main laws and other important legal regulations which were adopted in the Czech Republic over the last five years.

The delay in the publication of this yearbook and its wider time span were caused both by personal problems (transition of tasks between the initial editor and the two new editors) and, especially, by the Covid-19 pandemic which has hit us hard over the last three years and which has affected both our professional and private lives, and thus, unfortunately, editorial and research activities, as well. We therefore ask the reader for understanding and forgiveness.

In conclusion, we would like to thank the Eva Rozkotová publishing house in Beroun for its excellent – as always – cooperation in publishing our yearbooks, as well as the Council of Scientific Societies of the Czech Academy of Sciences for its moral but also financial support of this publication.

We wish you pleasant reading and all the best in 2022, especially that the Covid-19 pandemic is finally over and that we can again lead normal lives, in our country and everywhere else in the world.

Prof. JUDr. Milan DAMOHORSKÝ, DrSc.

JUDr. Jakub KANICKÝ

editors

ON THE NEED FOR "AQUATIZATION" OF LAW AND THINKING

Milan DAMOHORSKÝ

Instead of usual extensive introductions, I am taking the liberty of starting off unconventionally and I am including a totally practical essay on the need to protect water not only by means of law in the introduction of this yearbook. This essay is an extension of my recent short reflection article in a Czech nationwide paper, *Právo*.

It is obvious that the state of water (especially fresh thus drinkable water) in the world as well as in the Czech Republic is not very good. Definitely not due to the lack of thereof; the amount of rainwater has not changed very much. It is the distribution of water in place and time which is completely different compared to the past due to climate change. Floods and torrential rains are followed by quite long periods of drought. The Czech landscape is not used to this owing to the massive manmade changes to our landscape following the second world war. The ability of our landscape to accumulate and retain water is therefore completely disrupted in many places.

As a lawyer in the field of environmental law, I would like to briefly and in a simplified manner express my opinion on a possible solution – adaptation to these changes.

What I see as the primary solution (not limited to the field of law) is a process which I call *"aquatization"* (derived from Latin "aqua" – water), a need to view every human action and behaviour from the present to the future through the lens of protection and preservation of water.

It is certainly not only about enacting a few provisions of law into our Constitution and Charter of Fundamental Rights and Freedoms. It is certainly not about the ownership of water by the state either as both surface and underground waters are inherently unownable. The key is the responsibility of the state for the protection of the environment, its components and ecosystems where water as well as nature, forests, soil and biodiversity should be given priority (by modifying article 7 of the Constitution) as it works in Austria *(Staatsziel Umweltschutz)*. Regarding the citizens, the state should guarantee them access to drinkable water. Of course, this would only be given for vital needs such as drinking, washing and maybe toilet flushing and not for e.g. filling swimming pools, watering gardens or washing cars during droughts. What remains a "constitutional stumper" is a question of whether or not access to process water under any circumstances should be guaranteed to artificial persons as well (especially those working in fields such as agriculture) since in compliance with the opinion of the Constitutional Court from the 1990s, the Czech Republic does not acknowledge artificial persons as bearers of the right to a favourable environment.

My personal opinion is that this interpretation is not only unreasonable but also completely outdated.

What I do not consider a solution is an enactment of a separate constitutional act on water protection as considered by the Ministry of Agriculture of the Czech Republic; the suggestion here is that the act should focus solely on supplying the population with drinkable water and new dams would be built in the public interest. Moreover, why should only drinkable water be regulated by a special constitutional act? What about soil, forests or biodiversity?

Apart from possible (and very necessary) constitutional changes, we will have to speedily prepare and enact a lot of changes to primary and secondary legislation, not limited to the Water Act, Act on Water supply and sewerage systems or Act on Fishing. The issue of water and its accumulation cannot be tackled without amendments to the Act on Forests, Act on the Protection of the agricultural land fund, the Act on Nature and landscape protection on as well as tax legislation. Amendments to the state policy on subsidies in these areas will most likely be necessary as well.

Land planning and construction permitting process will undeniably play a vital role in the future. The current draft of the new construction act, which completely sidelines the authorities dealing with water, forest, soil, nature and landscape protection, historical preservation or fire and health protection, is water protection- and public interest-wise absolutely unacceptable and should be quite literally swept away if the state is serious about its intention to protect waters in the future.

Land planning, construction permitting process and land consolidation as well as many state policies have to take water into account and prioritize it. The goal is not to give water a privileged position among environmental components; on the contrary, it should help us to adopt a brand-new concept of protection of all environmental components. Land planning must become a real tool of sustainable development focused on economical, ecological and social aspects equally. It should not and cannot reflect the interests of lobbyist; on the other hand, it can become a tool of rational land use, especially with respect to the protection and retention of water on our land.

The whole Czech legal system should swiftly undergo the process of *aquatization* and it may be an impulse for the European and international law.

Apart from legal changes, substantial changes to thinking and thus our behaviour await us – and these are very often the most difficult ones. We should consider how each and every one of our steps may influence water, its sufficiency and purity and with that influence our country, region, community and family.

We cannot go on without a complex approach and support for diversity in the protection of water resources and natural deposits of water (e.g. meanders of rivers) and without division and functionality of the Czech, Moravian and Silesian landscape. Measures will hurt and will cost a substantial amount of money and effort. But they

will certainly be worth it in the long run, not only water-wise. To behave decently, rationally, and economically (not only) to water and the whole environment will become the main imperative of the future.

The author is a professor of environmental law at the Faculty of Law of Charles University.

PROTECTION OF CULTIVATED LAND: RURAL PLANNING LAW AND AGRICULTURAL PROPERTY AND REAL ESTATE LAW IN THE CZECH REPUBLIC

Milan DAMOHORSKÝ

Alena CHALOUPKOVÁ

Abstract: This article, following the 30th European Congress and the Colloquium of Agricultural Law, which was held on September 18-21, 2019 in Poznan, Poland, presents the Czech national report elaborated for the purpose of this conference. It deals with the issues discussed in the second Commission, namely with protection of cultivated land. It ranges from very fundamental issues concerning legal protection of agricultural soil, to some more specific issues, e.g. the structure of agricultural holdings in the Czech Republic.

Keywords: agricultural land; planning law; environmental law; Czech Republic

Klíčová slova: zemědělská půda; územní plánování; právo životního prostředí; Česká republika

Introduction

On September 18–21, 2019, the 30th European Congress and the Colloquium of Agricultural Law took place in Poznan, Poland.[1] The meeting was divided into three parallel commissions, each of them dealing with current issues of agricultural law: Commission 1 was dealing with food sovereignty and food security, Commission 2 with protection of cultivated land and Commission 3 with significant current developments in international rural law, in the EU as well as in states and regions. As one of the national delegates invited to the conference, prof. Damohorský was asked to participate in the second Commission and share the Czech experience with legal regulation in the field of protection of cultivated land.

Each of the delegates was invited to elaborate a national report based on a questionnaire provided by the organisers of the event. This questionnaire and the national reports based on it turned out to be an interesting source of information in the areas discussed in the conference. The questions relevant to the second Commission range from very fundamental issues discussed in connection with legal protection of agricultural soil, to some more specific issues. With this in mind, we have decided to publish our national report in this yearbook. In the following text we keep the original structure of the questionnaire. The text provided was only slightly modified and

[1] For more information see the website of the conference at: https://www.30cedr.org/ [cit. 1. 2. 2020].

updated after the conference. We also highly recommend comparing other national reports published on the conference website.[2]

1. Characterise the importance of planning instruments to protect agricultural land resources in your country of origin, taking the following issues into account:

1.1 Scope of land-use plans (for the whole territory or only certain areas).

The scope of land-use planning in the Czech Republic includes the whole territory. It takes place at several levels, from the highest "nationwide" level (the most general and binding for the lower levels) to the lowest "local" level (the most detailed one). The relevant legislation is contained in the Act No. 183/2006 Coll., on town and country planning and building code (hereinafter referred to as the "**Building Act**").[3] The basic structure is as follows:

(1) Spatial Development Policy at the nationwide level: It determines, within the stipulated period, the requirements for concretization of the tasks of the town and country planning within the republic wide, over border and international context, especially with respect to the area sustainable development, and determines the strategy and basic conditions for the implementation of these tasks (Sec. 31 (1) Building Act). For more details about its contents see Sec. 32 Building Act. The spatial development policy is binding for procurement and issuance of development principles, plans, regulatory plans and for decision-making within the area […] (Sec. 31 (4) Building Act). Currently, the Spatial Development Policy from 2008 which was first updated in 2015 is in force.[4]

(2) Spatial Development Principles at the regional level: They determine especially the basic requirements for purposeful and economic arrangement of the region's territory, delimit the areas or corridors of the supra local importance and determines the requirements for their utilization, especially the areas or corridors for the public works, public benefit measures, […] (Sec. 36 (1) Building Act). They are binding for procurement and issuance of the plans, regulatory plans and for the decision-making in the area (Sec. 36 (5) Building Act).

---

2 Available at: https://www.cedr.org/events/2019-congress-poznan/ [cit. 1. 2. 2020].

3 For more details see the Act No. 183/2006 Coll., on town and country planning and building code (Czech Republic). It is available [online] also in English language, but its wording is unfortunately not amended: https://www.mmr.cz/getmedia/9a941cf5-268b-4243-9880-d1b169fb33d6/SZ_angl.pdf [cit. 1. 2. 2020].

4 See the publication about Spatial Development Principles as of 2015 [online] in English language: https://www.mmr.cz/MMR/media/MMR_MediaLib/%c3%9azemn%c3%ad%20a%20bytov%c3%a1%20politika/%c3%9azemn%c3%ad%20pl%c3%a1nov%c3%a1n%c3%ad/PUR%20%c4%8cR/2015_VIIII_7_SDP_update1_EN.pdf [cit. 1. 2. 2020].

(3) (Local) Plan at the local level: The plan determines the basic concept of the development of the municipality, protection of its values, its areal and spatial arrangement […], arrangement of the landscape, and the concept of the public infrastructure; delimits the developed area, areas and corridors, especially the areas with development potential and the areas delimited for the alteration of the existing development, etc. (Sec. 43 (1) Building Act). The plan specifies and develops the objectives and tasks of the town & country planning in context and details of the municipality´s territory in accordance with the region's development principles and the spatial development policy. […] (Sec. 43 (3) Building Act). (Local) plan is a facultative planning instrument, i.e. not every municipality has issued one.

(4) Optionally regulatory plan (see Sec. 61 et seq. Building Act).

(5) These levels of spatial planning are followed by concrete decision-making in the territory. This concerns location of buildings and other structures, changes in the use of the area, changes in the impact the use of the structure has on the area, division and consolidation of the plots, and protective zones (Sec. 77 Building Act).

As for agricultural land in relation to land-use planning, the level of the (local) plan and the next level of decision-making about the concrete territory are crucial. In these levels the important decisions about the use of the concrete territory are made. In the context of this questionnaire, it is inseparably connected with the legislation in the field of protection of agricultural land, which provides further conditions.

1.2 Special instruments for the conservation of cultivated land (especially priority areas).

There are no special instruments concerning conservation of cultivated land directly in the Building Act – except for the more generally formulated provisions regarding (local) plans and decision-making about the concrete territory, and partly also except the provisions regarding protection of the non-developed area. The more specific instruments may be found rather in special legislation, especially in the Act No. 334/1992 Coll., on protection of agricultural land fund (hereinafter referred to as the "**Act on Protection of Agricultural Land Fund**").[5] This Act provides for protection of both the quality and quantity of the agricultural land. More information about this Act and about the instruments enshrined in it is provided below. In connection

[5] For explanation, "Agricultural land fund" is defined in Sec. 1 of the Act on Protection of Agricultural Land Fund as follows: The agricultural land fund consists of agricultural (cultivated) land, i.e. arable land, hop gardens, vineyards, gardens, orchards, permanent grassland and land which has been and is to be farmed but it is temporarily not (i.e. "agricultural land"). The agricultural land fund includes also fish farms or water poultry and non-agricultural land needed for agricultural production, such as dirt roads, land with equipment important for field irrigation, irrigation water reservoirs, drainage ditches, dams for protection against waterlogging or flooding, technical anti-erosion measures, etc. An English translation of the Act is unfortunately not available.

with this question, the conceptual instrument of division of five different "classes" of agricultural land is of particular importance.

1.3 Permissibility of activities on agricultural land (in particular buildings) according to land-use plans (or outside of them).

To answer this question, it is necessary to recall some of the above-mentioned general provisions of the Building Act, and explain them in a little bit more detail:

First, the (local) plan determines how the concrete territory may be used. If a plot is designated as an agricultural area, it cannot be used for construction, unless a change in the land-use plan is made. The Act on Protection of Agricultural Land Fund provides for more conditions (these are described below). As for the issue of the possible land uses, more information is provided in the Ministerial Regulation No. 501/2006 Coll., on general land use instruments. In the second part of this Regulation, general requirements on the delimitation of areas in (local) plans are included. According to Sec. 14, agricultural areas are usually separately designated in order to ensure the conditions for the prevailing agricultural use. Agricultural land includes mainly areas included in the agricultural land fund, areas with buildings, equipment and other measures used for agriculture, and areas necessary for the related transport and technical infrastructure. It depends on the given land-use plan whether it specifies the use of agricultural land, e.g. as permanent grassland or as arable land, or whether it declares only generally that it is an agricultural area.

Second, according to Sec. 80 Building Act, a decision on change of the use of the area is necessary in the following cases (provided that the relevant concrete land uses are covered by the delimitation in the (local) plan): changes in the type of land or its use, in particular the establishment, abolition and alteration of vineyards, hop gardens, forests, parks, gardens and orchards, unless other conditions are laid down by approved land consolidation or by other decision. The changes in the type of land or its use do not need such decision in cases when their scope do not exceed 300 m^2. Again, further conditions are specified in the Act on Protection of Agricultural Land Fund. It shall be especially noted that a special consent of the agricultural land fund protection authority is needed in cases of change of usage from permanent grassland (pastures and meadows) to arable land (Sec. 2 Act on Protection of Agricultural Land Fund). In case of construction projects, a decision on location of a structure according to Sec. 79 of the Building Act has to be issued.

Third, in cases where no (local) plan was issued (as mentioned above, issuance of (local) plans is facultative for the municipalities), the Building Act includes also general provisions on protection of the non-developed area. According to Sec. 18 (5) Building Act, within the non-developed area it is possible, in accordance with its character, to locate the structures, facilities and other measures only for agriculture, forestry, water management, raw material extraction, for protection of nature and

landscape, for public transport and public infrastructure, for reduction of danger of ecological and natural disasters and for removing of their consequences, and further technical measures and structures, which will improve the conditions of its utilization for purposes of recreation and tourism, for example, cycle paths, sanitary facilities, ecological and information centres.

Further limitations and more concrete conditions are included in other legislation, especially in the Act on Protection of Agricultural Land Fund. According to its Sec. 3 (1) d), the use of agricultural land for non-agricultural purposes is prohibited unless a consent to the removal from the agricultural land fund is given (except for the cases where such consent is not required). According to Sec. 3 (4), the owner or any other person authorized to use the agricultural land shall use or maintain it in accordance with the characteristics of the respective type of land. More information is provided below.

1.4 Instruments in national planning law aimed at limiting changes to the intended use of agricultural land for purposes not related to agriculture.

The above-mentioned applies also in the case of this question – there are no specific instruments aimed at limiting changes to the intended use of agricultural land for purposes not related to agriculture in the Building Act, i.e. in the context of the general planning law. The most important instruments were described above: it is especially the obligation to use the plot in a way permitted by the (local) plan and the need to obtain the necessary decision for location of buildings and other structures, changes in the use of the area etc.

Nevertheless, some specific instruments are included in the Act on Protection of Agricultural Land Fund. The most important of them are described below, divided into three groups according to the type of instrument - conceptual, administrative and economic.

(1) Probably the most important conceptual instrument is represented by the distinction of five different soil types ("classes") according to their quality. The soil that is awarded as class I or II (i.e. the highest quality soil) is enjoying higher standard of protection. It is forbidden to use the soil of class I or II as plantation of trees (Sec. 3 (5) Act on Protection of Agricultural Land Fund). If it is necessary to remove agricultural land from the agricultural land fund, it is preferable to remove less quality agricultural land (the classes are the basic guide here) (Sec. 4 (1) b)). According to Sec. 4 (3), agricultural land of class I and II can only be removed from the agricultural land fund if another public interest significantly outweighs the public interest in protecting the agricultural land fund. Last but not least, protection classes are considered also when calculating the fee to be paid when agricultural land shall be removed from the agricultural land fund.

(2) The key administrative instrument is enshrined in Sec. 9 (1) of the Act on Protection of Agricultural Land Fund: The removal of agricultural land from the agricultural land fund for non-agricultural purposes requires a consent of the Agricultural Land Fund Protection Authority. Any project requiring the removal of agricultural land from the agricultural land fund cannot be authorized under special legislation (including the Building Act) without this consent (there are, however, some exceptions to this rule). This provision also implies, that in many cases, also a decision according to the Building Act is needed, e.g. decision concerning location of buildings and other structures, changes in the use of the area etc.

(3) Finally, there is also one important economic instrument, namely the obligation to pay a specific fee for removal of agricultural land from the agricultural land fund (also here there are some exceptions to this obligation). The fee has to be paid after the initiation of realisation of the project, i.e. in the stage where the scope of the removal is absolutely clear and fixed (Sec. 11 (2) of the Act on Protection of Agricultural Land Fund). The fee is calculated with respect to the quality (class) of the agricultural land to be removed.

1.5 Consequences of changing the intended use of agricultural land to purposes not related to agriculture in so far as it may alter classification as agricultural land under any regulations of agricultural property transactions.

There are no special consequences in relation to agricultural property transactions. The above-mentioned conditions must be met, i.e. especially the compliance with the (local) land use plan, consent with removal of the land from the agricultural land fund, a decision according to the Building Act (if it is required in the given case), and payment of the fee for removal of the land from the agricultural land fund. It is possible to remove the land from agricultural land fund permanently or temporarily. Temporary removal is possible in cases where after the purpose of the removal is completed, the area can be restored and returned to the agricultural land fund (Sec. 9 (3) of the Act on Protection of Agricultural Land Fund).

1.6 Evaluation of the adopted instruments for the protection of agricultural land resources in the light of national academic literature.

Criticism of an utterly inadequate effectiveness of the existing legal barriers to the removal of agricultural land (especially of arable land) from the agricultural land fund can be found in several academic papers, e.g. DAMOHORSKÝ, M. *Ochrana půdy v právu* (Soil protection in law). In: České právo životního prostředí No. 42/2016.[6]

[6] DAMOHORSKÝ, M. *Ochrana půdy v právu* (Soil protection in law). In České právo životního prostředí (Czech Environmental Law Review) [online], No. 42/2016. ISSN 1213-5542. Pages 8-19. Available at: http://www.cspzp.com/dokumenty/casopis/cislo_42.pdf [cit. 1. 2. 2020].

The issue is usually discussed in the context of general environmental law rather than in the context of agricultural law.

The rates of removal of agricultural land from the agricultural land fund, especially for non-agricultural purposes (permanent development), reach more than 11 ha of agricultural land a day.[7] It is therefore clear that the existing instruments (especially the economic ones – fees) work only partially and that a total ban on removal of the most valuable land classes would be more desirable. However, in some cases, moving the removal to available areas with less valuable soil classes could endanger other ecological and water management functions of the landscape, the issue is therefore very complex and needs to be considered thoroughly.

In any case, the Czech construction industry needs to move "from a green meadow to a brown field" and start using more of the formerly built up and devastated areas, especially former industrial or military sites, etc. Otherwise, shortages of agricultural land for food production, as well as problems with the fulfilment of other ecological functions of the soil, may soon become reality. This change will certainly be quite painful, and its implementation complicated.

2. Characterise the importance of instruments to counteract the degradation and devastation of agricultural land in your country of origin, taking the following issues into account:

2.1 Degree of agricultural land degradation and devastation; issue of erosion and desertification of agricultural land.

The quality of the Czech agricultural land is unfortunately not very high, which impairs its natural functions. This issue relates to the ownership structure of the agricultural land (much of Czech agricultural land is rented), which will be further discussed below, and with shortcomings in the legislation in this area. In the next paragraphs, some basic information and data about the state of the soil in the Czech Republic are presented. They are taken and translated from the Situational and perspective report concerning agricultural land in the Czech Republic, which was published by the Ministry of Agriculture in 2018.[8]

At present, soil degradation is a serious issue in the Czech Republic. The main factors that cause soil loss or degradation include water and wind erosion, soil compaction, further development, organic matter loss, acidification or soil contamination. A major problem in the Czech Republic is also soil waterlogging and

[7] Ministry of Agriculture. *Situational and perspective report Soil 2018* (Situační a výhledová zpráva Půda 2018) [online]. Available at: http://eagri.cz/public/web/file/611976/SVZ_Puda_11_2018.pdf [cit. 1. 2. 2020]. Page 6.

[8] Ministry of Agriculture. *Situational and perspective report Soil 2018* (Situační a výhledová zpráva Půda 2018) [online]. Available at: http://eagri.cz/public/web/file/611976/SVZ_Puda_11_2018.pdf [cit. 1. 2. 2020].

incorrect land management in water protection zones.[9] Only approximately 9 % of agricultural land is very high to high production agricultural land, 11 % is medium production land, 48 % is less to very low production land and up to 32 % are low to not significant production land.[10]

Water and wind erosion is one of the most pressing issues. Some form of water erosion potentially endangers 54 % of agricultural land. The most vulnerable soils are covering 18 % of the area of the Czech Republic. Currently, the maximum loss of land in the Czech Republic is estimated at approximately 21 million tons of topsoil per year, which can be expressed as an economic loss of at least CZK 4.2 billion. Approximately 18 % of agricultural land is potentially endangered by varying degrees of wind erosion (of which 3.2 % is in the highest level of endangerment, and 1.81 % of land is strongly endangered).[11]

Desertification is not a current issue in the Czech Republic, nevertheless, as climate change is advancing, certain areas are experiencing significant periods of agricultural drought.

2.2 Legal instruments to counteract the degradation and devastation of agricultural land (administrative orders and prohibitions; creation of protected areas surrounding industrial facilities; other).

There are several general rules concerning protection of the quality of agricultural land in the Act on Protection of Agricultural Land Fund. The main principles are enshrined in Sec. 3 (1) of the Act: it is especially forbidden (a) to cause contamination of agricultural land […], (b) to cause the agricultural land to be endangered by erosion by exceeding the permissible levels of the erosion hazard laid down in the implementing legislation, […], (d) to deteriorate the physical, chemical or biological properties of agricultural land by compaction, waterlogging, drying, overlaying or erosion, etc.

One of the most pressing issues in the Czech Republic is certainly the erosion of agricultural land. Even though there is the above-mentioned principle enshrined in the Act on Protection of Agricultural Land Fund, it is not usable in practice, as the necessary implementing legislation was never issued. Thus, in the current situation, it is neither possible to determine the level of erosion hazard nor to impose remedial measures pursuant to Sec. 3c of the Act. There were several attempts to issue the implementing legislation, but it hasn't been done yet.

Consequently, the only existing legislative protection instrument usable against erosion is currently the obligation under Sec. 2 of the Act according to which the agricultural land registered as a permanent grassland may be converted to arable land only with the approval of the Agricultural Land Fund Protection Authority granted on

[9] Ibid, page 25–26.
[10] Ibid, page 6.
[11] Ibid, page 6.

the basis of an assessment of its physical or biological characteristics, and of the erosion hazard, including the location of valleys and the measures taken to mitigate such risks.

Further conditions may nevertheless be given independently of the above legislative problems as conditions for subsidies. One of the basic conditions for providing the full amount of subsidy is the compliance with the Europewide standards known as "*Good Agricultural and Environmental Conditions*" (GAEC). In relation to erosion, it is especially the GAEC 5 ("minimum land management reflecting site specific conditions to limit erosion") which should be of interest. Moreover, a new GAEC 7d was added recently in the Czech Republic, which limits the area of monoculture on erosion-threatened soils to 30 ha.[12] However, compared to the general rules that should be laid down in the implementing legislation to the Act on Protection of Agricultural Land Fund and which should be dealing specifically with the protection of Czech agricultural land against erosion, this is only a minor satisfaction.

2.3 Reclamation of degraded or devastated agricultural land (its methods; entities obliged to perform this task).

Sec. 3c of the Act on Protection of Agricultural Land Fund is dealing with remedial measures usable in case of contamination of agricultural land or in case of its threat by erosion. As already mentioned above, it does not actually work in case of erosion, because the necessary implementing legislative was not issued. However, in other cases, it authorises the Agricultural Land Fund Protection Authority to impose remedial measures to the originator of the defective condition, who also bears the costs of these measures.

According to Sec. 3c (2) of the Act it is possible to impose the following measures as remedial measures (depending on the respective contamination of agricultural land which was identified): special crop sowing procedures, agrotechnical and melioration measures aimed at improving soil properties, reduction of accessibility or draining off hazardous elements and hazardous substances, or also change of the type of land.

2.4 Evaluation of instruments adopted to counteract the degradation and devastation of agricultural land and methods for reclamation in the light of academic research.

In addition to the above, the academic community has long been pointing out that the limited effectiveness of the current legal protection of agricultural land against its degradation and devastation is not only caused by the above-mentioned insufficiencies

[12] For a more comprehensive overview of the cross-compliance rules, see Annex II of Regulation No. 1306/2013 on financing, management and monitoring of the common agricultural policy. See also Annex 2 of the Government Regulation No. 48/2017 Coll., setting requirements according to acts and standards of good agricultural and environmental condition for cross-compliance rules and the consequences of their breach for the granting of certain agricultural subsidies.

of the available legal instruments, but also (and even rather) by the current way of human thinking about these issues and by people's attitude towards it.

More than 70 % of agricultural land in the Czech Republic is managed based on a lease agreement, i.e. not by its owners.[13] Positive ties of the owner to his or her land are therefore weakened or absent. Many tenants tend to manage the agricultural land in a way to achieve maximum and quick profit, not to cultivate it. They grow the crops which are economically profitable at the moment, and they support it by use of various chemical products. This approach seems to be unsustainable and harmful not only for the quality of food, but also for the quality of soil, water and for biodiversity.

However, even though the academic community has been criticizing this state of things and proposing measures to remedy the situation for a long time now, the situation has not changed significantly yet.

3. Are there any specific regulations concerning agricultural property transactions in your country?

There are no specific regulations. Agricultural property may be disposed of in the same way as any other property. For historical reasons, important amounts of agricultural land is now owned by a number of entities that do not manage it, mainly because of the size and location of the land (this problem is continuously being solved with the help of complex land consolidation) or because of lack of interest and necessary skill (loss of tradition in the family). This land is usually rented or sold to agricultural companies – these transactions are therefore very common in the Czech Republic and they are not specifically regulated.

4. Are there any restrictions as to the acquisition of agricultural property by foreigners in your country?

There are no such restrictions. It should be noted, however, that a restriction on sales of agricultural land to foreigners has existed in the Czech Republic's legal order until relatively recently – it was abolished in 2011.

5. Given the data available to you, does the issue of the so-called land grabbing exist in your country and are there any regulations concerning it, to counteract this phenomenon?

5.1 Scope for land grabbing.

In the Czech Republic, there are several domestic giant agricultural companies (legal entities), which control most of the land and agricultural production. As of 2017,

[13] Ministry of Agriculture. *Situational and perspective report Soil 2018* [online]. Op. cit. Page 80.

the agricultural holdings were farming on 3 456 646 ha of agricultural land in total, thereof only 2 507 business companies were farming on 1 720 555 ha of agricultural land.[14]

The largest group of agricultural holdings is represented by small entities, which make up less than two thirds (60 %) of all agricultural holdings in the Czech Republic. The smallest group of agricultural holdings is represented large agricultural entities (7 %). Although it is the least represented group, a large part of the Czech agricultural production is concentrated within large agricultural holdings. These holdings farm on 66 % of the total agricultural land and, in livestock units, account for 76 % of the total number of farm animals. The opposite situation occurs in the case of small agricultural holdings (the vast majority of them are natural persons) who, as the largest size group, manage only 5 % of agricultural land in the Czech Republic with a share of 4 % of the total number of farm animals.[15]

In 2016, a hypothetical average agricultural subject managed 132 ha of agricultural land. From this total area, the average entity owned 35 ha of agricultural land and leased 97 ha. An average natural person farmed 45 ha of agricultural land, of which 22 ha were owned and 23 ha were leased. An average legal entity farmed 805 ha of agricultural land, of which an average of 144 ha of land were owned and 661 ha were leased.[16]

This state of affairs is usually not associated with the issue of land grabbing in the Czech Republic.[17] For most people, this is not even a familiar term. However, it is true that it resembles it in some ways. Recent article published in the New York Times provides an interesting outlook on the local situation and also on the situation in other Central and Eastern European countries (mostly in connection with the allocation

---

[14] Czech Statistical Office. *Structural survey in agriculture, 2016 – Agricultural holdings by legal forms* [online]. Available at: https://www.czso.cz/documents/10180/46015056/27015117001.pdf/bfb2db12-8d1d-4f56-b30b-49bd6d372285?version=1.0 [cit. 1. 2. 2020].

[15] Czech Statistical Office. *Structural survey in agriculture, analytical evaluation 2016 – Structure of agricultural holdings expressed in classes according to economic size* [online]. Available at: https://www.czso.cz/documents/10180/79535242/27016818k02cz.pdf/eaf95599-31e7-4865-9dff-2f59fcd59f02?version=1.1 [cit. 1. 2. 2020].

[16] Czech Statistical Office. *Structural survey in agriculture, analytical evaluation 2016 – Average agricultural entity* [online]. Available at: https://www.czso.cz/documents/10180/79535242/27016818k07cz.pdf/2652c203-550b-459c-8dbd-cea88cbc7934?version=1.1 [cit. 1. 2. 2020].

[17] Land grabbing is understood here under the following definition: „*Land grabbing can be defined as being the control (whether through ownership, lease, concession, contracts, quotas, or general power) of larger than locally-typical amounts of land by any person or entity (public or private, foreign or domestic) via any means ('legal' or 'illegal') for purposes of speculation, extraction, resource control or commodification at the expense of peasant farmers, agroecology, land stewardship, food sovereignty and human rights.*" Baker-Smith, K., Attila, S., B., M. What is land grabbing? A critical review of existing definitions [online]. EcoRuralis, 2016. Available at: https://drive.google.com/file/d/0B_x-9XeYoYkWSDh3dGk3SVh2cDg/view [cit. 1. 2. 2020].

of European agricultural subsidies).[18] In relation to the allocation of subsidies in Hungary, Bulgaria, Slovakia and the Czech Republic, the author of this article does not hesitate to use terms such as corruption, self-dealing and also land grabbing. This issue has however never been examined in more detail.

5.2 Instruments to counteract this phenomenon.

There are currently no specific legal instruments in the Czech Republic that would prevent the above phenomenon. The purchase or lease of land itself and its management is not illegal, assuming that everything is done in accordance with the civil law, agricultural law and environmental law. If this is not the case, the sanction mechanisms within administrative or criminal law apply. At the same time, compliance with competition rules needs to be observed.

Moreover, further progress in the process of complex land consolidation might contribute to some improvement of the situation, as it aims at, inter alia, ensuring that the agricultural land is accessible to the owners and that it can be managed independently.

5.3 Evaluation of the efficiency of adopted instruments to counteract land grabbing as regards their efficiency.

The efficiency and interest in applying the above instruments is generally relatively low. In a country where the family members of the Prime Minister, Minister of Agriculture or other senior officials control a large part of the agricultural and food sector, it is difficult to fully implement legal, economic and ethical instruments against this phenomenon.

Conclusion

The issue of legal protection of agricultural soil in the Czech Republic is continuously showing certain shortcomings, which is frequently pointed out also by many academics. It concerns both the protection of the land area (especially against further development) and the protection of soil quality (especially against erosion). Various possible legislative adjustments can be considered in this context, such as tightening of requirements for the removal of land from the agricultural land fund (in particular regarding the land of the highest quality) or adoption of the long awaited implementing legislation to the Act on Protection of Agricultural Land Fund which should address the issue of erosion of agricultural land.

However, the problems remain, partly probably due to a certain reluctance to solve these problems in the current political situation as well as in connection with the

[18] Gebrekidan, S., Apuzzo, M., Novak, B. *The Money Farmers: How Oligarchs and Populists Milk the E.U. for Millions* [online]. New York Times, 3. 11. 2019. Available at: https://www.nytimes.com/2019/11/03/world/europe/eu-farm-subsidy-hungary.html [cit. 1. 2. 2020].

current structure of owners and users of Czech agricultural land (or quite likely due to a very specific combination of these factors). Nevertheless, the discussions held at the Conference showed that the Czech Republic is not alone in these difficulties, although its conditions are still very specific in many respects (e.g. particularly high amounts of rented land). Of the conclusions adopted by the second Commission, the following should be highlighted here in particular:

(1) "*Regarding quantitative protection, the commission drew attention to the need to disseminate spatial planning instruments in European countries. In many jurisdictions, the level of dissemination of this type of instruments is insufficient, leading to too easy conversion of agricultural property for other purposes.*"[19]

(2) "*Regarding qualitative protection of agricultural land many reporters indicated limited effectiveness of existing national measures. They stressed however the growing importance of direct payment system linked with cross-compliance requirements as the most important instrument of qualitative protection. At the national level they also highlighted the need for a wider use of voluntary programs enriched with financial incentives for farmers deciding to use environmentally beneficial treatments.* […]"

Other important points which the second Commission has examined in more detail concerned the support for acquisition of agricultural property by young farmers and the issue of quality of agricultural lease contracts. Much attention was paid also to the issue of agricultural property and real estate law in context of land disponibility for agricultural purposes. For more information, see the Conclusions of the work of the Committee.[20]

[19] Blajer, P. *Conclusions of the work of the Committee II of XXX European Congress of Agricultural Law: Protection of cultivated land: rural planning law and agricultural property and real estate law* [online]. Available at: https://www.cedr.org/wp-content/uploads/2019/10/CommII-Conclusions.pdf [cit. 1. 2. 2020]

[20] Ibid.

References

DAMOHORSKÝ, M. *Ochrana půdy v právu*. In České právo životního prostředí, No. 42/2016. ISSN 1213-5542.

Baker-Smith, K., Attila, S., B., M. *What is land grabbing? A critical review of existing definitions* [online]. EcoRuralis, 2016. Available at: https://drive.google.com/file/d/0B_x-9XeYoYkWSDh3dGk3SVh2cDg/view [cit. 1. 2. 2020].

Blajer, P. *Conclusions of the work of the Committee II of XXX European Congress of Agricultural Law: Protection of cultivated land: rural planning law and agricultural property and real estate law* [online]. Available at: https://www.cedr.org/wp-content/uploads/2019/10/CommII-Conclusions.pdf [cit. 1. 2. 2020]

Czech Statistical Office. *Structural survey in agriculture 2016 – Agricultural holdings by legal forms* [online]. Available at: https://www.czso.cz/documents/10180/46015056/27015117001.pdf/bfb2db12-8d1d-4f56-b30b-49bd6d372285?version=1.0 [cit. 1. 2. 2020].

Czech Statistical Office. *Structural survey in agriculture, analytical evaluation 2016 – Structure of agricultural holdings expressed in classes according to economic size* [online]. Available at: https://www.czso.cz/documents/10180/79535242/27016818k02cz.pdf/eaf95599-31e7-4865-9dff-2f59fcd59f02?version=1.1 [cit. 1. 2. 2020].

Czech Statistical Office. *Structural survey in agriculture, analytical evaluation 2016 – Average agricultural entity* [online]. Available at: https://www.czso.cz/documents/10180/79535242/27016818k07cz.pdf/2652c203-550b-459c-8dbd-cea88cbc7934?version=1.1 [cit. 1. 2. 2020].

Ministry of Agriculture. *Situational and perspective report Soil 2018* [online]. ISBN 978-80-7434-476-3. Available at: http://eagri.cz/public/web/file/611976/SVZ_Puda_11_2018.pdf [cit. 1. 2. 2020].

Ministry for Regional Development. Spatial Development Policy of the Czech Republic. Updated version 1 [online]. Praha, 2015. ISBN 978-80-7538-027-2. Available at: https://www.mmr.cz/MMR/media/MMR_MediaLib/%c3%9azemn%c3%ad%20a%20bytov%c3%a1%20politika/%c3%9azemn%c3%ad%20pl%c3%a1nov%c3%a1n%c3%ad/PUR%20%c4%8cR/2015_VIIII_7_SDP_update1_EN.pdf [cit. 1. 2. 2020].

Gebrekidan, S., Apuzzo, M., Novak, B. *The Money Farmers: How Oligarchs and Populists Milk the E.U. for Millions* [online]. New York Times, 3. 11. 2019. Available at: https://www.nytimes.com/2019/11/03/world/europe/eu-farm-subsidy-hungary.html [cit. 1. 2. 2020].

Act No. 183/2006 Coll., on town and country planning and building code

Act No. 334/1992 Coll., on protection of agricultural land fund

Ministerial Regulation No. 501/2006 Coll., on general land use instruments

Government Regulation No. 48/2017 Coll., setting requirements according to acts and standards of good agricultural and environmental conditions for cross-compliance rules and the consequences of their breach for the granting of certain agricultural subsidies

Regulation (EU) No. 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy

DEVELOPMENT OF CZECH FOREST MANAGEMENT LEGISLATION IN THE LIGHT OF CLIMATE CHANGE

Klára DJEMEL

1. Introduction

Forests play an irreplaceable role in mitigation of climate change, but at the same time they are significantly affected by the negative impacts of climate change. Forests, and with it their ecological functions, are weakened by periods of drought, rising temperatures and a lack of water and soil retention capacity. The long droughts observed in recent years have led to a rapid spread of bark beetle in Central Europe, where it is particularly affecting Norway spruce.[21]

Spruce trees make up the largest monoculture forests in Central Europe, including the Czech Republic. In the past, spruce trees accounted for more than 70 % of the Czech forests. Spruce trees have a shallow root system that is unable to exploit the ever-decreasing water levels and, as a result of low rainfall, spruce trees are weakened and their defences against harmful organisms, especially bark beetles, are reduced.[22]

Trees infested with bark beetle have to be cut down, resulting in clear-cuts of around 40,000 hectares per year, which are gradually reforested. As a result of the bark beetle calamity, 90 % of felling in the Czech Republic is incidental felling, i.e. felling carried out to process damaged, dry and infected trees. The total annual harvesting volume has increased by 50 % compared to the long-term average.

Given the rapid progress of climate change, it can no longer be assumed that negative impacts will be overcome by natural adaptation. Human intervention will probably be needed to protect more than just the forest ecosystem. At European level, there is talk of climate-smart forestry, which builds on three pillars: (i) reducing and/or removing greenhouse gas emissions to mitigate climate change, (ii) adapting forest management to build resilient forests and (iii) active forest management aiming to sustainably increase productivity and provide all the benefits that forests can provide.

In order to adapt forests to climate change, a number of approaches are proposed, including the reduction of tree age, and intensive thinning of stands to create robust, climate change resilient stands with a low height/diameter-ratio and a diverse vertical and horizontal structure, the cultivation and planting of genetically-improved, climate-

[21] LINDNER, Marcus, VERKERK Hans. How has climate change affected EU forests and what might happen next? In: *European Forest Institute* [online]. 24. 03. 2021 [viewed date: 13. 02. 2022]. Available from: https://efi.int/forestquestions/q4

[22] POSPÍŠIL, Tomáš. Dopad klimatické změny. Klimatická změna a kůrovec. In: Lesy ČR [online]. 2022 [viewed date: 13. 02. 2022]. Available from: https://lesycr.cz/kurovcova-kalamita/

resilient seedlings, or the human-assisted migration of tree species, i.e. anticipatory planting of tree species outside of their current "natural" distributional range.[23]

As discussed in more detail below, forest management in the Czech Republic is largely dominated by the calamitous state of a large part of forests consisting of spruce monoculture. Prevention is therefore often preceded by measures to remedy the resulting damage, which consist mainly in the felling of trees infested by bark beetles and the subsequent reforestation of the resulting areas.

2. Legal regulation of sustainable forest management in the Czech Republic

The basic legal act regulating not only forest management but also its general use, ownership of forest land and state forest administration is Act No. 289/1995 Sb., on forests (further referred to as "**Forest Act**"). However, other laws, such as the Building Act, the Hunting Act, the Act on Trade in Forest Reproductive Material and the Act on Nature and Landscape Protection, also have a significant impact on the state of the Czech forests.

Incidentally, the Forest Act in particular has been amended several times over the past few years. A more extensive amendment to the Forest Act, which was adopted mainly in response to the bark beetle calamity, was the amendment by Act No. 90/2019 Sb. According to the explanatory memorandum to this amendment, many of the provisions of the Forest Act that under normal circumstances fulfil their purpose have become obstacles in times of exceptional droughts accompanied by the rapid spread of bark beetles. In particular, this concerns the rules on logging and reforestation, for which relatively strict rules are laid out under the normal regime.

In the normal regime, no more than 0.2 ha of clear-cuts shall be created by incidental felling. Should this limit be exceeded during felling, the landowner shall inform the State Forest Administration at least 14 days before such logging activity takes place. Such an obligation may in practice lead to the excessive spread of harmful organisms and the destruction of a larger area of forest during calamities.

Furthermore, in the case of afforestation and reforestation, the obligation to use reproductive material from the same or corresponding forest area and altitude zone applies in the normal regime, i.e., under the applicable legal regulations. This rule has proven difficult to comply with in the case of the large clearings mentioned above when removing trees affected by bark beetles, mainly because of the lack of quality reproductive material. The solution to these exceptional situations is therefore reforestation with 'preparatory tree species', which at the same time makes it possible

[23] European State Forest Association. *European Forests: Tackling Climate Change.* 03. 05. 2021 [viewed date: 03. 02. 2022]. Available from: https://eustafor.eu/uploads/EUSTAFOR-booklet_European-forests-Tackling-climate-change-DEF-high.pdf

to divide the clear-cuts into smaller areas and by gradually replacing them with quality reproductive material, age differentiation of the stand will also be achieved, leading to greater stability and resilience of the forest.

The Forest Act also sets a time limit of two years for afforestation of clear-cuts, when the so-called forest stand securing is to be achieved within 7 years, i.e., the forest stand is to reach a state that does not require intensive protection after afforestation. This time limit was also too short for afforestation of calamity clear-cuts. Under the normal regime, it was possible to grant an extension at the request of individual owners, which, however, proved to be very impractical and administratively too demanding in cases of calamities in large areas of forests owned by several owners.

In the event of extraordinary circumstances and unforeseen damage, the State Forest Administration is entitled to impose measures on the forest owner in the form of restrictions on felling, impose protective interventions to control pests or restrictions on the disposal of timber. Again, it is administratively burdensome and unnecessarily complicated to impose these obligations on a large number of forest owners individually.[24]

The above-mentioned shortcomings of the statutory regulation were resolved by the amendment to the Forest Act of 2019 by introducing a new provision into the Forest Act, which allows the Ministry of Agriculture to issue a measure of a general nature with validity for the territory of several regions or the entire Czech Republic, which imposes obligations on an unlimited number of forest owners. Such a measure may deviate from the above-mentioned provisions of the Forest Act and, for example, extend the time for afforestation of calamity caused clear-cuts, impose measures to restrict the disposal of timber or permit the use of otherwise unauthorised reproductive material for afforestation. The issuance of such a measure of general nature is the first act in the administrative procedure in question and is generally effective from the date of its publication. In this way, a rapid response can be achieved in the event of the spread of bark beetle in a given area and obligations can be imposed on hundreds of forest owners in a single act.

The amendment seems to have solved the most pressing problems related to the complexity of administrative procedures in forest management regulation and accelerated the response to calamity situations. However, it is clear that this is only a solution to the most fundamental administrative obstacles, not a comprehensive solution to the problem. The amendment in question has not introduced new procedures for preventing or solving problems related in particular to drought and the spread of invasive organisms.

[24] Důvodová zpráva k zákonu č. 90/2019 Sb., kterým se mění zákon č. 289/1995 Sb., o lesích a o změně a doplnění některých zákonů (lesní zákon), ve znění pozdějších předpisů.

The overall concept of the Forest Act has long been criticised by many experts in the field of forest ecology, both with regard to the excessive complexity of the legislation, the lack of flexibility and the overall view of the forest as a timber factory. The Forest Act is said to focus primarily on the economic functions of the forest, while ecological and social functions are neglected.[25]

From a legal point of view, it is insufficient to enforce a change in the sub-legislative regulation, namely the issuance of Decree No. 298/2018 Sb., which regulates the details of conceptual instruments that are supposed to determine the prerequisites for sustainable forest management according to the Forest Act. The decree, as a sub-legislative regulation, cannot impose any new obligations beyond the scope of the Act. The decree stipulates, among other things, the minimum representation of soil-improving and pioneering trees in reforestation and the species composition of planted trees. However, despite the calamitous situation, spruce remains the main 'target tree species', being the only coniferous species intended for planting in the lower and middle elevations. The other conifers are classified as 'preparatory tree species.'[26]

It is necessary to mention that in practice, forest regeneration is also faced with a pressing problem in the form of young trees being eaten by game animals, deer especially. Unfortunately, the most frequent victims of browsing are deciduous trees that are supposed to act as soil-improving and pioneering trees. This also shows the interconnectedness of this issue with hunting legislation, which must respond to overpopulated deer, which slows down forest regeneration and causes extensive fiscal damage.

A certain shift in the view of the shortcomings of the current forest management practices is brought by the national conceptual instrument Concept of State Forestry Policy until 2035, which was adopted by the Czech Government Resolution No. 116 of 17 February 2020.

The State Forestry Policy Concept draws attention to the main problems of forest ecosystems, which include, among others, (i) forest restoration in calamitous areas and the lack of standard procedures within forest management in dealing with crisis situations, (ii) insufficiently species- and structure-rich forest ecosystems and insufficiently adapted forest composition to the risks associated with changes in natural conditions, (iv) increased numbers of game animals, which have a major negative impact on forest regeneration, or (v) drying out of the landscape or adjustment of

[25] Botanický ústav AV ČR. *Stanovisko KŽP AV ČR k semináři Současná situace v českém lesnictví – dosavadní přístupy a jejich důsledky a další výstupy* [online]. 09. 01. 2019 [viewed date: 15. 02. 2022]. Available from: http://nasekrajina.eu/blog/2019/01/09/stanovisko-kzp-av-cr-k-seminari-soucasna-situace-v-ceskem-lesnictvi-dosavadni-pristupy-a-jejich-dusledky/

[26] MÜLLEROVÁ, Hana. Úvahy o novém zákoně pro trvale udržitelné lesnictví. *Seminář KŽP AV ČR Současná situace v českém lesnictví – dosavadní přístupy a jejich důsledky"* [online]. 09. 01. 2019 [viewed date: 15. 02. 2022]. Available from: http://nasekrajina.eu/wp-content/uploads/Muellerova.pdf

forest age parameters in relation to climate change. In this respect, the Concept builds on documents adopted at EU level and recognises the seriousness of the impacts of climate change on the state of forests.

The Concept aims to ensure a balanced and full performance of all forest functions for future generations. Emphasis is to be placed in particular on sustainable forest management, incentivising and financially supporting owners, promoting a positive water and carbon balance and adapting game status to the evolution of forest ecosystems.

In relation to the fight against climate change, the Concept sets as another objective the increase in biodiversity and ecological stability of forest ecosystems while maintaining the production function. In order to achieve this objective, the following measures are proposed:

- Encourage an increase in the diversity of species, age and spatial structure of the forest to ensure long-term forest stability, including increasing the proportion of suitable tree species in forest stands.
- Promote forest management to conserve and enhance forest biodiversity
- Encourage the retention of an appropriate proportion of standing timber, logging residues and habitat trees in the forest.

These measures are to be ensured by legal regulation, which is mainly represented by the Forest Act. In particular, the Concept proposes that the amount of wood extraction should be regulated so as not to endanger the state of forest ecosystems and that other measures should be taken to ensure a diverse species composition and natural regeneration. In this respect, the Concept requires the Act on Trade in Forest Reproductive Material to regulate the vertical and horizontal transfer of suitable reproductive material and the introduction of geographically non-native tree species so as to allow a flexible response to changing natural conditions.[27]

The emphasis is therefore placed on the diversity of forest stands, which leads to greater forest resilience against harmful factors, which are not only pests, but also effects from extreme weather occurrences, emissions, and physical or chemical factors associated not only with climate change. The concept now also allows for the introduction of geographically non-native tree species in response to changes in natural conditions due to climate change.

However, the introduction of non-native tree species undoubtedly requires extensive knowledge of the environment and its evolution over time in the light of ongoing climate change. France is one of the countries that has taken up this means of combating the negative effects of climate change on forests. In France, a process

[27] Ministerstvo zemědělství. *Koncepce státní lesnické politiky do roku 2035* [online]. 18. 02. 2020 [viewed date: 12. 02. 2022]. Available from: https://eagri.cz/public/web/mze/lesy/lesnictvi/koncepce-a-strategie/koncepce-statni-lesnicke-politiky-do.html

has been in place since 2005 for forest management that takes into account the effects of climate change. For the purpose of making decisions on the introduction of non-native species, '*long-term monitoring complemented by a modelling tool of the climatic similarity area for 38 forest species largely distributed throughout Europe was introduced. The tool simulates the climatic similarity area of the species at different time horizons (current, 2050, 2070 and 2100) under different representative concentration pathways using EU climate data and three scenarios (optimistic, pessimistic, and medium). It shows the different forest areas where tree genetic resources will either be able to adapt (compatible) to climate change over time, or where they will not (unfavourable).* [28]

Following the Concept of State Forestry Policy until 2035 Czech Government adopted a Resolution No. 72 of 25 January 2021 on the Application Document to the Concept of State Forestry Policy until 2035. The Application Document stipulates partial performance tasks and imposes more specific obligations on individual state authorities, which are responsible for the given areas. For example, tasks are set to meet the goal of adapting the composition of tree species to changing natural conditions and increasing species diversity. For afforestation the document sets out the task, which is to be carried out continuously from 2022, of using (if the environmental conditions allow) at least three different tree species in sufficient representation (3x20 %) and, where appropriate, using promising geographically non-native tree species.[29]

In view of the above, if the relevant state authorities proceed in accordance with the Application document, the first changes in the method of forest management should take place as early as this year. However, the adoption of a new Forest Act is not yet envisaged, therefore changes to the current legislation and the adoption of non-binding documents, methodologies and recommendations is more likely to be expected.

3. Conclusion

The adaptation of forests to climate change is clearly associated with a number of problems, both legal and practical. The introduction of new forest management practices often requires long-term research, but the negative effects of climate change on the state of forests are often already ongoing and even urgent. Especially in the Czech Republic, whose spruce forests are often in a state of calamity, legislative changes have been adopted in recent years to speed up the response to the critical situation regarding the spread of bark beetle.

---

[28] European State Forest Association. *European Forests: Tackling Climate Change*. 03. 05. 2021 [viewed date: 13. 02. 2022]. Available from: https://eustafor.eu/uploads/EUSTAFOR-booklet_European-forests-Tackling-climate-change-DEF-high.pdf

[29] Ministerstvo zemědělství. *Aplikační dokument ke Koncepci státní lesnické politiky do roku 2035* [online]. 18. 02. 2020 [viewed date: 12. 02. 2022]. Available from: https://eagri.cz/public/web/file/669446/Aplikacni_dokument_ke_Koncepci_statni_lesnicke_politiky_do_roku_2035.pdf

However, as the EU and now also Czech conceptual instruments indicate, it is necessary to come up with solutions that will work in the long term and reflect changes in climate conditions. Rather than partial amendments, we may be inclined to believe that a new Forest Act should be adopted. Taking into account the above-mentioned findings on the development of practice and legislation in the Czech Republic and abroad, the following shortcomings of the current legislation and priorities for further legislative changes can be highlighted.

Non-productive, especially ecological, functions of the forest should be at least equal to the productive functions of the forest. The new law should thus formulate more precisely the objectives and principles underlying the legislation. In the light of these principles, effective regulation would be interpreted and new legal rules adopted.

In line with the principles of environmental law, the focus should be on preventing and avoiding the negative impacts of climate change. Effective prevention is a long-term activity based on broad knowledge of the environment. It is therefore appropriate to carry out long-term and systematic monitoring of forest soils and vegetation, the presence of harmful organisms and the water and carbon balance. On the basis of this knowledge, it is desirable to predict possible changes in the environment and to react to them within a reasonable timeframe to maintain the health and resilience of the forest.

The categorisation of forests in the Forest Act, which places the vast majority of forests in a single category of 'production forest', can also be considered almost unused. It is worth considering working with altitude grades, which is already partly used by the 2018 Decree, or to identify in another way the areas in which forest stands are most weakened, particularly as a result of drought.

In the context of felling, the priority should be to maintain the resilience and stability of the forest, which requires, above all, species and age diversity of stands. In this respect, clear-cutting age limits should also reflect the vulnerability of the forest to climate change.

A critical point is the way forests are restored, which will affect the health of forests for decades to come. Emphasis must therefore be placed on species composition, which must be chosen on the basis of knowledge and justified ideas about the long-term development of natural conditions in the area. It is also advisable to regulate phasing of the planting of trees so that age differentiation also occurs.

As the overall legal regulation imposes considerable demands on forest owners, efforts should be made to reduce the administrative burden and simplify the legal procedures that may precede the actual forest management itself. Legal requirements for felling and reforestation practices should be simplified and set minimum requirements for owners that would allow greater flexibility in management decisions. With regard to strengthening the role of forest ecological functions, it can be considered desirable

that forest owners be motivated as much as possible by economic instruments to take steps to strengthen the ecological functions of their forests.

In view of all the above, it can be assumed that the current Forest Act does not seem to provide a sufficient legislative framework for sustainable forest management in times of climate change. The reason why it is not possible to consider it appropriate only to amend the current Forest Act is mainly that the Forest Act must be based on other values and principles that reflect the current situation affected mainly by climate change. A new Forest Act would make it possible to equate the production and non-production functions of the forest and to build further legal rules in this sense.

THE CZECH REGULATION OF WILDLIFE CRIME IN THE INTERNATIONAL AND EUROPEAN CONTEXT

Tereza FABŠÍKOVÁ

1. Introduction[30]

Environmental crime, in general, is an immense contemporary issue as it is increasing rapidly in its amount and has the potential to put in danger the entire planet. According to a report published by Interpol in 2016,[31] environmental crime is currently the fourth largest area of crime in the world, and the rank may even change as the increase in environmental crime seems to be quite rapid.[32] Environmental crime is by perpetrators often perceived as the one that provides high profits with relatively low risks of inference of liability and punishment[33] and this fact may be the reason why the amount of this type of crime increases. The term environmental crime describes unlawful actions that have negative impacts on the environment as a whole and its biotic as well as abiotic components.[34] A significant type of environmental crime, which poses an enormous threat to biodiversity, is the one affecting wildlife.

It is clear from these points that a proper legal regulation may play a significant role in the fight against environmental crime. Even amongst the recommendations made by Interpol for the improvement of the current situation is listed the strengthening of environmental legislation and environmental law compliance.[35] Environmental crime, to be combated effectively, must be regulated by different legal norms – mainly the administrative and commercial ones, but discussing the topic of environmental crime, also the criminal liability set by the criminal law plays its significant role.

In the Czech legal system, the term of environmental crime may be understood directly as a "crime" regulated by the Criminal Code (an unlawful act that results in criminal liability), or, in a broader sense, as an offense (an unlawful act that results in administrative liability). This paper is focused primarily on the proper criminal liability consequences of wildlife crime. It analyzes the Czech legal regulation related to the protection of species of wildlife fauna, examines the international and European law context, and also provides a comparison of the Czech legal regulation with the

[30] The article was created Under Charles University research project Q16 Environmental Research.

[31] UNEP-Interpol Report: The Rise of Environmental Crime (2016), p. 4. Available online via Interpol website [online]. [4. 6. 2019]. https://www.interpol.int/Crimes/Environmental-crime/Wildlife-crime.

[32] Ibid.

[33] Compare: INTERPOL-UN Environment. *Strategic Report: Environment, Peace and Security – A Convergence of Threats,* p. 61 [online]. [4. 6. 2019]. Available online via UN Environmental Programme webpage. [4. 6. 2019]. https://wedocs.unep.org/handle/20.500.11822/17008.

[34] The definition of the author.

[35] UNEP-Interpol: The Environmental Crime Crisis, p. 11. Available online via Interpol webpage. https://www.interpol.int/Crimes/Environmental-crime/Wildlife-crime.

regulation of wildlife crime set by some of the neighbouring countries. Even in the case of comparisons, the main attention is paid to the criminal offences regardless of the norm by which they are regulated. The plain administrative offences are left aside.

2. Basic information on wildlife crime

So-called wildlife crime poses an immense threat to biodiversity, mainly by a direct loss of individuals of wildlife species. It is quite common and very profitable type of environmental crime (the characteristic of *high profits, low risks* is very fitting in these cases), appearing also with frequent involvement of organized groups,[36] in some areas also armed ones. The so-called convergence of crimes,[37] meaning the interconnection between environmental crimes and other illicit activities, as, for example, drug trafficking, arms trade, money laundering, or different kinds of fraud,[38] also very often occurs in relation to this type of environmental crime. According to the Czech Conception on the Fight Against Organized Crime, these general characteristics may be related to the Czech Republic situation as well.[39]

The issue of wildlife crime is an important one also in the Czech Republic. As an European country with quite high living standards, the Czech Republic may be perceived as a typical destination (importing) country.[40] Especially "status reasons" may be found in the motivation for obtaining individuals of wildlife species or its parts in the Czech Republic, and the specimens are sought as "a collection item".[41] Medical or other similar (e.g. traditional) reasons, which are common for example in some Asian countries,[42] are not so usually found in the Czech Republic. The situation mildly changes, but at least this is not the main motivation.

---

[36] *Compare*: The Global Initiative Against Transnational Organized Crime. Tightening the Net: Towards a Global Legal Framework on Transnational Organized Environmental Crime [online]. [17. 6. 2019]. Available online https://www.unodc.org/documents/congress/background-information/NGO/GIATOC-Blackfish/GIATOC_-_Tightening_the_Net.pdf.

[37] EUROPOL – SOCTA. European Union Serious and Organized Crime Threat Assessment Report, 2017, p. 41. [online]. [cit. 14. 5. 2020]. Available online https://www.europol.europa.eu/activities-services/main-reports/european-union-serious-and-organised-crime-threat-assessment-2017.

[38] The Conception on the Fight Against Organized Crime, p. 11. Available online via the Ministry of Interior website. [online]. [10. 7. 2019]. https://www.mvcr.cz/clanek/bezpecnostni-hrozby-337414.aspx?q=Y2hudW09Mg%3D%3D.

[39] The Conception on the Fight Against Organized Crime, p. 11.

[40] More details in: CHMELÍK, Jan a kol. *Ekologická kriminalita a možnosti jejího řešení*. [Ecological criminality and the options of its solution]. Linde Praha, 2005, p. 50. ISBN 80-7201-543-5.

[41] Compare for example R. Wong. WONG, Rebecca W. Y. Criminological perspectives on environmental crime. In MITSILEGAS, Valsamis, HUFNAGEL Saskia a MOISEIENKO Anton (eds.). Research Handbook on Transnational Crime. Cheltenham: Edward Elgar Publishing, 2019, p. 164. ISBN 9781784719432.

[42] The Conception on the Fight Against Organized Crime, p. 11.

Especially exotic species of wild birds, reptiles, snakes, or butterflies are imported into the Czech Republic quite often.[43] What might be interesting and slightly surprising is that the Czech Republic is also an exporting country. This fact may be proved by some recent judicial decisions and conception documents addressing crime.[44] The abovementioned Czech Conception on the Fight Against Organised Crime states that some efforts to export specimens into Asia, especially in connection with tigers, have been recorded. Naturally, the Czech Republic is also a transit country, cases of seizure of protected animals at the Vaclav Havel Airport Prague are common. The numbers of seized individuals of wildlife species are shown by the Statistical Sheets of the Czech Environmental Inspectorate.[45]

A statistic made by the Czech Justice shows that cases of unlawful handling of protected species occur and are brought before courts. Every year a few persons are convicted of the intentional crime of unlawful handling of protected species of wild fauna and flora. The exact number ranges from individual cases to about sixteen convicted physical persons a year.[46]

3. International and European law context

Analyzing the international legal context, the main attention must be brought to the so-called "CITES Convention" (The Convention on International Trade in Endangered Species of Wild Fauna and Flora).[47] The CITES Convention aims at the protection of species endangered by international commerce. In its article VIII/1/(a) it contains the requirement for the penalization of such acts that constitute a threat for species endangered by international commerce. It states: "*The Parties shall take appropriate measures to enforce the provisions of the present Convention and to prohibit trade in specimens in violation thereof. These shall include measures: (a) to penalize trade in, or possession of, such specimens, or both; and (b) to provide for the confiscation or return to the State of export of such specimens."*

Although the meaning of „penalize" is not completely clear in the international legal theory, the obligation included in the CITES Convention may most probably be perceived as truly leading to inflicting criminal liability for such actions, not just administrative one. In support of such an explanation, many criminal codes worldwide include such a crime in their provisions and quite harsh sanctions may be imposed upon

[43] CHMELÍK, Jan, p. 50.

[44] Compare for example: Decision of The Supreme Court of the Czech Republic in the case 4 Tdo 464/2019.

[45] The statistic is available online https://www.cizp.cz/temata/logo-cites/statistika [14. 10. 2019].

[46] The Statistical Sheets. Available online: https://cslav.justice.cz/InfoData/prehledy-statistickych-listu.html [15. 10. 2019].

[47] The Convention on International Trade in Endangered Species of Wild Fauna and Flora, hereinafter „CITES Convention". Available online https://cites.org/eng/disc/text.php. [online] [17. 6. 2019].

such harmful acts commonly.[48] On these grounds, the unlawful handling of protected wildlife species may be perceived as a so-called conventional international crime.[49]

At the European level, the first to mention is that the European Union is a party to the CITES Convention. What is crucial for the legal point of view is that a regulation based on the CITES Convention has been adopted in the European Union. It is the Council Regulation (EC) No. 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein.[50] Unlike the CITES Convention, the Wildlife Trade Regulation does not contain the „liability provision" in its text, but for the inflicting of liability at the national law levels some parts of the regulation are very important. First of all, in the Annexes to the Wildlife Trade Regulation, the protected species are listed. The Annexes are therefore crucial for further legal regulation and application. It should also be noted that the Annexes are broader than the ones to the CITES Convention. The regulation further contains some definitions and the most important one with regard to the scope of this paper is the definition of "specimen" ("exemplář" in the Czech language). "Specimen" is defined as any animal (or plant), alive or dead, which is listed in Annexes A to D.[51] Under the term "specimen", the regulation also means any part or derivative thereof, and the protection relates also to any goods, which appear from an accompanying document, the packaging or a mark or label, or from any other circumstances, to be or to contain parts or derivatives of animals (or plants) of those species. The definition of "specimen" (or "exemplář" in the Czech language) is crucial for inference of liability as for example the Czech Criminal Code works with "specimen" ("exemplář") in its text.

Of crucial legal importance for the criminal law regulation is naturally the Environmental Crime Directive.[52] The Environmental Crime Directive designates some actions that shall be penalized by the measures of criminal law in case of physical persons or by means of administrative law (or some other means) in case of artificial persons in individual countries. Such wrongful activities are listed in Article 3. Regarding wildlife crime, the Environmental Crime Directive states that any "*killing, destruction, possession or taking of specimens of protected wild fauna or flora species, except for cases where the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species"* shall constitute a criminal

[48] ZAGARIS, Bruce. *International White Collar Crime: Cases and Materials*. Cambridge: Cambridge University Press, 2015, p. 254, 259. ISBN 978-1-10751-972-5.

[49] For the term of conventional crime see for example: ŠTURMA, Pavel. Metamorfózy mezinárodních zločinů: příběh s otevřeným koncem. [Metamorphoses of international crimes: an open-ended story]. In ŠTURMA, Pavel (ed.) a kol. Odpověď mezinárodního práva na mezinárodní zločiny. [The response of international law to international crimes]. Praha: Univerzita Karlova. Právnická fakulta, 2014, p. 9–26. ISBN 978-80-87975-16-9.

[50] Hereinafter reffered as "the Wildlife Crime Regulation".

[51] Article 2, letter (t).

[52] Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law. Hereinafter "Environmental Crime Directive".

offence. Other activities related to wildlife crime are under letter (f) leaning in the "*trading in specimens of protected wild fauna or flora species or parts or derivatives thereof, except for cases where the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species."* Significant is also Article 2 of the Environmental Crime Directive which provides definitions of some terms, among others, it explains the meaning of "protected wild fauna and flora species". From this provision[53] it is clear that the letter (f) aims at the higher protection of such species that are listed in the annexes to the Natura 2000 directives, the Habitats Directive,[54] and the Birds Directive.[55]

From the above-mentioned, it is clear that the legislation in particular European countries regulating this issue shall be quite similar as it is strongly governed by European law and also the international convention.

4. Czech legislation

The Criminal Code in its Chapter VIII establishes crimes against the environment, meaning crimes construed with the aim of the protection of the environment, as the public interest in the protection of the environment undoubtedly exists. In Section 299 the crime of unlawful handling of protected wildlife species is set in an intentional form. A similar crime committed by negligence is laid down in Section 300. The fault (*mens rea*) must be therefore fulfilled in the form of direct or indirect intent or negligence. The intentional form of the crime is naturally more serious with harsher sanctions imposed on it. The described crime of unlawful handling of protected species aims at the protection of both nationally protected species, the species protected on the basis of the Act on the conservation of nature and landscape[56], as well as the specimens protected under the CITES Convention.

The wrongful act (*actus reus*) rests in any handling of specially protected species, namely in their killing, destroying, damaging, taking away from nature, processing, importing, exporting, transporting, storing, offering, mediating, or getting to oneself or others. In its basic form, it must be committed on at least 25 individuals of the protected species. However, when it comes to the protected species with a higher degree of protection, strongly or critically protected, only one individual is enough to constitute criminal liability (§ 299 (2)). In this regard, the criminal liability for such actions is quite severe.

---

53 Article 2, letter (b) of the Environmental Crime Directive

54 Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora ("The Habitats Directive").

55 Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds ("The Birds Directive").

56 Act No. 114/1992 Coll., on the conservation of nature and landscape.

The penalty that may be imposed upon the perpetrator in both versions of the crime is imprisonment for up to three years, prohibition of an activity (that may be prohibited – for example, some special permission is needed), or forfeiture.

However, the penalties are much higher when a circumstance conditioning a higher penalty occurs. In such cases, the penalty may rise up to five years or up to eight years of imprisonment. In the case of the most serious cases (§ 299 (3)) the sentence of imprisonment must be imposed in duration between two and eight years. It is not possible to substitute it with forfeiture or prohibition of an activity. The circumstances conditioning a higher penalty regard the amount of profit gained by the crime, the involvement of an organized group/organized group operating in the area of more than one state, or the significance of the harm caused to the whole population of the species (long-term and irreversible loss). The penalties that may be imposed upon the negligent form of the crime (§ 300) are much lower – imprisonment for up to one year, prohibition of an activity, or forfeiture. The penalties for such wrongful activities are probably sufficient and, as is analyzed further in the paper, such a conclusion may be made even in comparison with other countries.

In the Czech criminal law, attempt and consummated crime are punishable both the same. However, crime preparation is punishable only on condition of so-called particularly serious crimes. According to Section 14 of the Czech Criminal Code, these are crimes, on which the sentence of imprisonment for up to ten years may be imposed. Naturally, they must be intentional. In my opinion, taking into account the seriousness of such crime and the frequent involvement of organized groups, it is to consider whether also the crime of unlawful handling of protected species in its intentional form should not have been punishable even in the stage of preparation. However, according to the Czech Criminal Code, such a change would require an increase in the possible duration of the sentence of imprisonment up to ten years. In my opinion, such a change would be acceptable and the possibility to punish preparation may be helpful in the fight against wildlife crime.

To complete, the protection of wildlife species may be partly carried out also by other crimes set in the Czech Criminal Code, especially the crime of poaching or the crime of animal cruelty (especially in connection with the transportation of individuals of protected species).

5. Broader context

To recognize the broader legal context on this topic, it is important to take a look into some foreign criminal law regulations as well. The Slovakian Criminal Code[57] in its Section 305 sets a crime of violation of the protection of plants and animals. Criminally punishable is (among other wrongful acts) the unlawful handling of an individual of

[57] Act No. 300/2005 Coll., the Criminal Code of Slovakia. Available online for example https://www.zakonypreludi.sk/zz/2005-300 [online] [7. 11. 2019].

protected animal species,[58] namely its killing, injuring, catching or displacing, or even destroying its habitat and dwelling. Under the letter (d), a criminal offence is also constituted by endangering an animal species. The sentence for this crime may be imprisonment for up to two years. In Subsection 3, the crime of unlawful handling with individuals of protected species or specimens under the CITES Convention is established. The crime is defined in a similar manner as is in the Czech Criminal Code and also the circumstances conditioning a higher penalty are very similar as in the Czech regulation. The sentences may also range up to eight years of imprisonment in the case of the most serious acts.

The Polish Criminal Code[59] contains crimes against the environment in Chapter XXII. In connection to wildlife crime, in Section 181 Subsection 1 it states that "*whoever causes destruction of plant or animal life of considerable dimensions shall be subject to the penalty of the deprivation of liberty for a term of between 3 months and 5 years."* According to Section 181 Subsection 2 "*whoever, in violation of the provisions in force in the protected area, destroys or damages plants or animals, causing serious harm shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years."* Very important is the provision of Subsection 3 that states that punishable is also anyone who destroys or damages plants or animals under protection regardless of the place (whether it is a protected area or not), on condition that he or she is causing essential harm to them. In Subsections 4 and 5 the Polish Criminal Code deals also with such crimes when they are committed by negligence.

The German regulation of crimes is different from the Czech one as there are some crimes included in the German Criminal Code[60] and some are included in the administrative acts regulating a particular area. The German Criminal Code itself deals with the protected species in its Sections 329 and 330. Section 329 governs the criminal liability for wrongful acts committed in specially protected areas. That means, it does not aim at the preservation of the protected species, but clearly at the protection of areas. Partly it may be also related to the protection of species as the paragraph states that punishable is: "*killing, catching, hunting or destroying or removing, in whole or in part, the eggs of animals of a specially protected species within the meaning of the Federal Nature Conservation Act."*[61] The crimes against protected species are also included in the Federal Nature Conservation Act, namely in Section 71. This provision is therefore

[58] Section 305, letter (b).

[59] The Criminal Code of the Republic Poland. The English unofficial version is available online https://www.legislationline.org/documents/section/criminal-codes/country/10/Poland/show. [online] [7. 11. 2019]. Ustawa z dnia 19 kwietna 1969 r. Kodeks karny. Available online https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19690130094. [online] [7. 11. 2019].

[60] German Criminal Code. English translation available: https://www.gesetze-im-internet.de/englisch_stgb/ [7. 11. 2019].

[61] German act on nature protection: "Bundesnasturschutzgesetz".

complementary to the provisions of the German Criminal Code.[62] These crimes are the ones that aim at the typical protection of specially protected species and it may be noted that the German regulation there is quite similar to the one in other examined countries. The unlawful acts rest in killing, capture or other destruction of protected species.[63] The penalties may vary from fine to up to five years imprisonment.[64]

6. Conclusion

Environmental crime is a very dangerous issue in the contemporary world. It can be characterized as a kind of criminality that provides quite high profits in comparison with the level of risk of punishment or some liability inferring. Organized groups are often involved in committing environmental crimes. The level of dangerousness of such acts is thus obvious. An important means in the fight against environmental crime is also legal regulation. In the analyzed topic of wildlife crime, the most important international legal tool is the CITES convention, followed by the European Wildlife Trade Regulation. At the European level, a significant legal tool is also the Environmental Crime Directive. When discussing Czech law, it may be concluded that the level of protection provided through criminal law to wildlife species is high and the regulation fulfills European and international obligations. In the Czech Republic, the systematics is simple, all crimes are included in the Czech Criminal law. The most important crime in connection to wildlife is the crime of unlawful handling of protected species of wild fauna and flora. In comparison with the regulation in other countries, it may be noted that the Czech regulation is really complex and strong with quite high penalties. Nevertheless, some proposals for improvement may be laid. Especially, it may be really useful to consider the possibility of criminalization of crime preparation and its punishment. Taking into account the frequent involvement of organized criminal groups, the preparation of unlawful handling of wildlife species probably shall be treated as the most serious act. In the current state of the Czech criminal law, such a proposal to be feasible would require a change in the maximum period of the sentence of imprisonment to "up to ten years". Effective legal regulation is crucial in wildlife protection, the criminal law one included. The need for its continual improvement is thus apparent, and a very positive fact is that the Czech Republic has a really good criminal law background when it comes to the topic of wildlife crime.

---

62 EFFACE Fighting Environmental Crime in Germany: A country report, 2014, p. 32. Available online https://efface.eu/fighting-environmental-crime-germany-country-report/index.html https://www.gesetze-im-internet.de/englisch_stgb/ [10. 12. 2019].

63 *Compare*: EFFACE Fighting Environmental Crime in Germany, p. 33.

64 *Compare*: EFFACE Fighting Environmental Crime in Germany, p. 33.

Literature

Act No. 300/2005 Coll., the Criminal Code of Slovakia. Available online for example https://www.zakonypreludi.sk/zz/2005-300 [online] [7. 11. 2019].

Decision of The Supreme Court of the Czech Republic in the case 4 Tdo 464/2019.

CHMELÍK, Jan a kol. *Ekologická kriminalita a možnosti jejího řešení*. [Ecological criminality and the options of its solution]. Linde Praha, 2005. ISBN 80-7201-543-5.

EFFACE Fighting Environmental Crime in Germany: A country report, 2014. Available online https://efface.eu/fighting-environmental-crime-germany-country-report/index.html https://www.gesetze-im-internet.de/englisch_stgb/ [10. 12. 2019].

EUROPOL – SOCTA. European Union Serious and Organized Crime Threat Assessment Report, 2017. [online]. [cit. 14. 5. 2020]. Available online https://www.europol.europa.eu/activities-services/main-reports/european-union-serious-and-organised-crime-threat-assessment-2017.

German Criminal Code. English translation available: https://www.gesetze-im-internet.de/englisch_stgb/ [7. 11. 2019].

INTERPOL-UN Environment. *Strategic Report: Environment, Peace and Security – A Convergence of Threats,* [online]. [4. 6. 2019]. Available online via UN Environmental Programme webpage. [4. 6. 2019]. https://wedocs.unep.org/handle/20.500.11822/17008.

ŠTURMA, Pavel. Metamorfózy mezinárodních zločinů: příběh s otevřeným koncem. [Metamorphoses of international crimes: an open-ended story]. In ŠTURMA, Pavel (ed.) a kol. Odpověď mezinárodního práva na mezinárodní zločiny. [The response of international law to international crimes]. Praha: Univerzita Karlova. Právnická fakulta, 2014. ISBN 978-80-87975-16-9.

The Conception on the Fight Against Organized Crime. Available online via the Ministry of Interior website. [online]. [10. 7. 2019]. https://www.mvcr.cz/clanek/bezpecnostni-hrozby-337414.aspx?q=Y2hudW09Mg%3D%3D.

The Criminal Code of the Republic Poland. The English unofficial version is available online https://www.legislationline.org/documents/section/criminal-codes/country/10/Poland/show. [online] [7. 11. 2019].

The Czech Environmental Inspectorate website – statistics. https://www.cizp.cz/temata/logo-cites/statistika.

The Global Initiative Against Transnational Organized Crime. Tightening the Net: Towards a Global Legal Framework on Transnational Organized Environmental Crime [online]. [17. 6. 2019]. Available online https://www.unodc.org/documents/congress/background-information/NGO/GIATOC-Blackfish/GIATOC_-_Tightening_the_Net.pdf.

The Statistical Sheets. Available online: https://cslav.justice.cz/InfoData/prehledy-statistickych-listu.html.

UNEP-Interpol Report: The Rise of Environmental Crime (2016). Available online via Interpol website [online]. [4. 6. 2019]. https://www.interpol.int/Crimes/Environmental-crime/Wildlife-crime.

UNEP-Interpol: The Environmental Crime Crisis. Available online via Interpol webpage. https://www.interpol.int/Crimes/Environmental-crime/Wildlife-crime.

Ustawa z dnia 19 kwietna 1969 r. Kodeks karny. Available online https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19690130094. [online] [7. 11. 2019].

WONG, Rebecca W. Y. Criminological perspectives on environmental crime. In MITSILEGAS, Valsamis, HUFNAGEL Saskia a MOISEIENKO Anton (eds.). Research Handbook on Transnational Crime. Cheltenham: Edward Elgar Publishing, 2019. ISBN 9781784719432.

ZAGARIS, Bruce. *International White Collar Crime: Cases and Materials*. Cambridge: Cambridge University Press, 2015. ISBN 978-1-10751-972-5.

Key words:

wildlife crime, criminal liability, environmental crime, wildlife protection, legal regulation

Abstract:

The paper analyzes the criminal law regulation of wildlife crime in the Czech Republic and in the international and European context. Firstly, the environmental crime and the wildlife crime specifically is described and the need for proper legal regulation is explained. In the following parts, the paper focuses on the analysis of the CITES Convention, Wildlife Trade Regulation and Environmental Crime Directive. After that, the attention is paid to the Czech Criminal Code in the European context. At the conclusion, the legal regulation is evaluated and some proposals are made.

ILLEGAL DUMPING OF WASTE IN THE CZECH REPUBLIC FROM A CIRCULAR ECONOMY PERSPECTIVE

Jakub KANICKÝ

1. Introduction: Illegal Dumping of Waste

Illegal dumping of waste is a dangerous but still quite common phenomenon in the Czech Republic.[65] It has many names: illegal dumping, midnight dumping, fly tipping and others. And it has many forms as well. To name just a few examples: individuals dumping their used packaging waste in nature; families getting rid of old kitchen appliances and furniture on the outskirts of the town they live in; companies discarding production waste in an illegal manner to avoid high disposal costs.[66] Some business entities even make illegal dumping the basis of their business model which may include illegal waste shipment, too.[67] Although there are no official statistics and no central database of illegal dumpsites in the Czech Republic, it is obvious that illegal dumping is a significant environmental[68], social and economic[69] problem which requires appropriate legal solutions.

The aim of this article is to analyse the newly introduced legal framework pertaining to illegal dumping in the Czech Republic. The article does not aspire to provide an exhaustive discussion of the topic in all of its aspects but rather to examine the legal side of the issue from a new perspective: the circular economy. More specifically, the article looks at remedial measures which may be adopted in reaction to illegal dumping and discusses how the relevant legal provisions relating to remedial measures should be interpreted and applied in view of transitioning to a circular economy.

For the purposes of this article, a circular economy may be defined as an economic system where the value of products, materials and resources in the economy is

---

[65] The number of illegal dumpsites in the Czech Republic rose even further during the Covid-19 pandemic. See BREZOVSKÁ, Katka. *Pandemie navýšila počet černých skládek v Česku* [online]. Český rozhlas, 6. 9. 2021 [cit. 30. 1. 2022]. Available at: https://cesky.radio.cz/pandemie-navysila-pocet-cernych-skladek-v-cesku-8727783.

[66] SIGMAN, Hilary. Midnight Dumping: Public Policies and Illegal Disposal of Used Oil. *RAND Journal of Economics*. 1998, Vol. 29, No. 1, pp. 157–178.

[67] *Strategie prevence a potírání trestné činnosti související s odpady na období let 2021–2023* [online]. Ministerstvo vnitra, 2020 [cit. 30. 1. 2022]. Available at: https://www.mvcr.cz/soubor/strategie-prevence-a-potirani-trestne-cinnosti-souvisejici-s-odpady-na-obdobi-let-2021-2023.aspx.

[68] See e. g. JAKIEL, Michał; BERNATEK-JAKIEL, Anita; GAJDA, Agnieszka; FILIKS, Maciej; PUFELSKA, Marta. Spatial and temporal distribution of illegal dumping sites in the nature protected area: the Ojców National Park, Poland. *Journal of Environmental Planning and Management*. 2019, Vol. 62, No. 2, pp. 286-305.

[69] See e. g. SIGMAN, Hilary. Midnight Dumping: Public Policies and Illegal Disposal of Used Oil. *RAND Journal of Economics*. 1998, Vol. 29, No. 1, pp. 157-178.

maintained for as long as possible and the generation of waste minimised.[70] In other words, a circular economy is an economy focused on the prevention of waste, on preparing waste for reuse and on waste recovery where waste cannot be prevented or prepared for re-use. A circular economy thus places emphasis on the higher ranks of the waste hierarchy.[71] The opposite of a circular economy is a linear economy.[72]

This article is structured as follows: Firstly, the problems with identifying an illegal dumpsite are discussed in the context of a circular economy. Secondly, an analysis of the legal options for the remediation of illegal dumpsites under Czech law is presented. This is followed by concluding remarks.

2. What Is an Illegal Dumpsite?

An illegal dumpsite may be defined as a site where waste is being discarded or collected despite the site not being designated for waste disposal or collection under relevant laws.[73] Identifying an illegal dumpsite, i. e. telling whether an individual site is an illegal dumpsite or not, may therefore seem like a trivial question because if waste is being disposed of or collected illegally, it is often obvious *prima facie*. It is true that in many cases it will go undisputed that a certain place is an illegal dumpsite. However, certain cases may give rise to disputes due to the problematic legal definition of waste, as it may not always be clear whether certain substances or objects in a particular site constitute waste or not.[74]

Waste means any substance or object which the holder discards or intends or is required to discard.[75] Although the definition of waste in the European Union

[70] For a legal definition of the circular economy, see Article 2(9) of Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088. For a similar definition, see also Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions (COM(2015) 614 final): Closing the loop – An EU Action Plan for the Circular Economy.

[71] Article 4 of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (hereinafter also referred to as "Waste Framework Directive").

[72] For a further discussion of the legal aspects of circular economy, see e. g. DE RÖMPH, Thomas J.; CRAMER, Jacqueline M. How to improve the EU legal framework in view of the circular economy. *Journal of Energy & Natural Resources Law*. 2020, Vol. 38, No. 3, pp. 245–260; SNOPKOVÁ, Tereza. Strategie pro oběhové hospodářství. *Odpadové fórum*. 2020, Vol. 21, No. 3, pp. 16–17.

[73] Under Czech law, a waste management site (facility) is defined in § 11 (1) (q) and (r) of Act No. 541/2020 Coll., on Waste. The Act does not use or define the term "illegal dumpsite". Instead, the Act defines the term "illegally collected waste" (*nezákonně soustředěný odpad*) as waste collected outside a designated waste management facility.

[74] See e. g. CHEYNE, Ilona. The Definition of Waste in EC Law. *Journal of Environmental Law*. 2002, Vol. 14, No. 1, pp. 61–73.

[75] See Article 3(1) of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives. Under Czech law, waste is defined in § 4 (1) of Act

(or then the European Communities) has remained without significant changes for decades[76], its application in individual cases remains complicated even today. The wording of the definition seems rather simple, as it turns on the meaning of one term: discard.[77] However, the interpretation and application of the term "discard" entails much complexity. It is mainly this particular term which has given rise to innumerable caselaw of the Court of Justice and national courts and it has prompted the European Commission and national authorities to adopt guidance documents, as well, to help in the interpretation and application of the term.[78]

Identifying an illegal dumpsite therefore lies on the proper interpretation of the concept of waste and namely of the term "discard". Nevertheless, it is not always easy to determine whether a certain operation concerning a substance or an object amounts to discarding or not. Whether a substance or object is discarded, is intended to be discarded or is required to be discarded must always be assessed on a case-by-case basis, in the light of all individual circumstances, regard being had to the aim of waste legislation and the need to ensure that its effectiveness is not undermined.[79]

The Court of Justice has adjudicated on certain circumstances which may serve to indicate the existence of waste.[80] However, these should only be taken as auxiliary because proper assessment, taking into account all specific circumstances, must always be undertaken in each individual case. So, for example, the sole fact that a certain

---

No. 541/2020 Coll., on Waste, as any movable property which the holder discards or intends or is required to discard. This slightly different definition seems to be narrower than its EU law counterpart and may amount to incorrect transposition of the Directive; for more detail, see SOBOTKA, Michal. Odpad: opravdu pouze jen věc movitá?. In: DAMOHORSKÝ, Milan (ed.). *Pocta Doc. JUDr. Jaroslavovi Drobníkovi, CSc. k jeho 70. narozeninám*. Praha: Vodnář, 2007, s. 166–170. This may entail further issues when identifying an illegal dumpsite.

76 The current definition of waste is contained in Article 3(1) of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, under which *„'waste' means any substance or object which the holder discards or intends or is required to discard"*. Thirty years prior to that, the Council Directive 78/319/EEC of 20 March 1978 on toxic and dangerous waste defined waste in Article 1(a) as *„any substance or object which the holder disposes of or is required to dispose of pursuant to the provisions of national law in force"*. Therefore, it may be noted that despite a certain evolution in the wording of the definition, the gist of it remains the same.

77 Judgement of the Court of Justice of 15 June 2000, *ARCO Chemie and EPON*, joined cases C-418/97 and C419/97, paragraph 36.

78 FISHER, Elizabeth; LANGE, Bettina; SCOTFORD, Eloise. *Environmental Law. Text, Cases, and Materials*. Oxford: Oxford University Press, 2013, pp. 668–699.

79 Judgement of the Court of Justice of 15 June 2000, *ARCO Chemie and EPON, joined cases C-418/97 and C419/97, paragraphs 88 and 97.*

80 It would go beyond the aim of this article to discuss all these circumstances in detail, as these have been extensively discussed by many other authors. I am only providing a few examples to illustrate my point. For a concise overview of the interpretation of the concept of waste, see e. g. HANÁK, Jakub. Co je odpadem podle evropské a české legislativy?. *Časopis pro právní vědu a praxi*. 2011, Vol. 19, No. 3, pp. 239–243.

substance or object is capable of further economic reutilization[81] or that it does not have a potential to pollute the environment[82] does not preclude the substance or object from being waste. Similarly, the sole fact that a holder of a certain substance or object intends to re-use that substance or object may not suffice to avoid the legal status of waste.[83] Also, if a substance or object undergoes a certain operation listed in the Waste Framework Directive as a disposal or recovery operation, it does not necessarily mean that the substance or object constitutes waste.[84]

The unclear definition of waste may hinder the transition to a circular economy. In a circular economy, by its very nature, individuals and entities are expected to minimise the generation of waste and, where waste is generated, give priority to preparation for re-use and waste recovery. This means that individuals and entities are also expected to properly assess whether the substances and objects, which they are holders of, are waste or not. As noted above, this may often be difficult to evaluate. A wrong assessment of the status of a substance or object may lead an individual or entity, who may be in good faith that he/she/it is supporting the circular economy, to operating a waste management facility without a license which may amount to an illegal dumpsite.

This may be illustrated by a recent case adjudicated upon by the Supreme Administrative Court of Justice of the Czech Republic (*Nejvyšší správní soud*).[85] The facts of the case, simply put, were as follows: a company had an old building demolished and intended to re-use the demolition debris to build a new building which, eventually, happened, but it took almost two years during which the company stored the demolition debris on a plain plot of land (i. e. not in a designated waste management facility). As a result, the company got a fine from the Czech Environmental Inspection (*Česká inspekce životního prostředí*) for storing waste in a non-designated facility. The company sought redress, arguing that the demolition debris did not constitute waste because the company intended to re-use it to build a new building. The Supreme Administrative Court held that demolition debris will usually constitute waste and may only in exceptional circumstances be a by-product (and thus non-waste). Regard being had to all individual circumstances, in the present case, the demolition debris amounted to waste and thus the company was storing it illegally (although contributing to the circular economy). It is beyond the scope of this article to discuss

[81] Judgement of the Court of Justice of 28 March 1990, *Vessoso and Zanetti*, joined cases C-206/88 and C-207/88, paragraph 9.

[82] Judgement of the Court of Justice of 18 April 2002, *Palin Granit*, C-9/00, paragraph 51.

[83] This is especially important with respect to by-products and with respect to substances and objects which are to cease to be waste. See Articles 5 and 6 of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, which are, partially, the result of the caselaw of the Court of Justice.

[84] Judgement of the Court of Justice of 15 June 2000, *ARCO Chemie and EPON*, joined cases C-418/97 and C419/97, paragraph 51.

[85] Judgement of the Supreme Administrative Court of the Czech Republic of 29 December 2020, Ref. 2 As 22/2019-45.

why the demolition debris constituted waste in the present case, but it shall be noted that actions which may be beneficial to the circular economy may not always be legal and may amount to running an illegal dumpsite, all this being the result of an unclear definition of waste.

It is obvious that having a clear definition of waste is crucial for an easier transition to a circular economy. Legal uncertainty is always detrimental to achieving the objectives of law. The current unclear definition of waste may lead individuals and entities to, unintentionally but illegally, managing waste in a non-designated facility, although contributing to the circular economy.[86]

3. Remediation of Illegal Dumpsites

Another important aspect of illegal dumpsites is how they should be remediated[87], with view to transitioning to a circular economy. In general, there are many possibilities how to regulate the remediation of illegal dumpsites.[88] Ideally, in line with the polluter-pays principle[89], the remediation of illegal dumpsites should be the responsibility of the individual or entity who illegally discarded the waste in question. However, this is not always possible, owing to various reasons: the responsible individual or entity may not be known or has ceased to exist (without a legal successor)[90] or he/she/it does not

[86] From another perspective, having a clearer definition of waste would also be beneficial to public authorities while tackling illegal dumpsites. If the authorities are to adopt measures against illegal dumping, they must first establish that there is an illegal dumpsite which, as discussed above, requires them to establish that there is waste. A clearer definition of waste might therefore facilitate the adoption of appropriate measures against illegal dumping by public authorities.

[87] The topic of remediation in environmental law in general and in relation to illegal dumpsites in particular has been extensively analysed elsewhere, see (in alphabetical order) e. g. BAHÝĽ, Ján; BAHÝĽOVÁ,Lenka. *Deliktní odpovědnost na úseku skládkování odpadů a řešení následků "živelného" skládkování* [online]. Právní rádce, 24. 3. 2010 [cit. 30. 1. 2022]. Available at: https://pravniradce.ekonom.cz/c1-41717580-deliktni-odpovednost-na-useku-skladkovani-odpadu-a-reseni-nasledku-zivelneho-skladkovani; BAHÝĽOVÁ, Lenka. Nápravná opatření v právu životního prostředí. In: *COFOLA 2010: the Conference Proceedings.* Brno: Masarykova univerzita, 2010, pp. 963-986; DAMOHORSKÝ, Milan. *Právní odpovědnost za ztráty na životním prostředí.* Praha: Karolinum, 1999; HLAVÁČOVÁ, Lenka. Nápravná opatření a likvidace černých skládek – vybrané otázky. *České právo životního prostředí*. 2019, Vol. 54, No. 4, pp. 44–66; JANČÁŘOVÁ, Ilona. Opatření k nápravě v právu životního prostředí. *Právní rozhledy*. 2010, No. 16, pp. 575 et seq. The aim of this article is only to discuss the remediation of illegal dumpsites in the context of a circular economy.

[88] Remedial measures may be adopted under various laws, depending on the context, e. g. under Act No. 114/1992 Coll., on Nature and Landscape Protection, Act No. 334/1992 Coll., on Agricultural Land Protection, Act No. 289/1995 Coll., on Forests, Act No. 254/2001 Coll., on Waters, or Act No. 167/2008 Coll., on the Prevention and Remediation of Environmental Damage.

[89] See e. g. Article 191(2) of the Treaty on the Functioning of the European Union; Article 14(1) of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives.

[90] This is especially relevant in the Czech Republic with regards to old illegal dumpsites which came into existence before modern waste legislation was enacted and enforced.

have sufficient funds to bear the costs of remediation.[91] Therefore, in such cases, it may be necessary to make someone else responsible for the remediation: the State, regions, municipalities or owners of the affected plots of land.

Ever since the first modern Act on Waste[92] in the Czech Republic, Czech law has always put primary responsibility on the individual or entity who discarded waste illegally, in accordance with the polluter-pays principle. In cases where this was not possible, the rules varied in time, from no special rules[93], to making the owner of the affected plot of land responsible under certain circumstances[94], to giving municipalities the right to arrange for the remediation on their own[95], to having a mixed model today.

With the adoption of the current Act No. 541/2020 Coll., on Waste, the responsibilities are more nuanced. Primary responsibility still lies with the owner of the illegally discarded waste.[96] When such a person is not known or has ceased to exist (without a legal successor)[97], the competent municipal office (*obecní úřad obce s rozšířenou působností*) shall formally invite the owner of the affected plot of land to arrange for the transfer of the waste to a designated waste management facility (at his/her/its own expenses[98]).[99] Nevertheless, this invitation is not binding upon the owner of the land and he has the right to refuse to comply with the invitation. However, if the owner of the land refuses to comply with the invitation, the competent municipal office may impose upon the owner of the land the duty to secure the affected plot of land against further illegal dumping of waste, if necessary.[100]

---

91 It should be noted that the Czech Republic has no special fund designated for the financing of the remediation of illegal dumpsites. In relevant cases, however, remediation may be supported by funds from the State Environmental Fund of the Czech Republic (*Státní fond životního prostředí*) or certain other funds.

92 Act No. 238/1991 Coll., on Waste.

93 *Ibid.*

94 See § 3 (7) of Act No. 125/1997 Coll., on Waste.

95 See § 79 (1) (g) of Act No. 185/2001 Coll., on Waste, as amended.

96 See § 14 (1) of Act No. 541/2020 Coll., on Waste. It may be of interest that the current Act on Waste uses the term "owner" of waste while the Waste Framework Directive uses the term "holder" of waste (not in connection with illegal dumpsites, but in general). In fact, the owner and the holder of waste may not always be the same person. Identifying the owner of waste may, however, sometimes be rather more difficult than identifying the (last) holder of waste. It is questionable whether the use of the term "owner" in this case is appropriate.

97 It is the duty of the competent municipal office to make efforts to find out who is the owner of the illegally discarded waste; see § 14 (3) of Act No. 541/2020 Coll., on Waste.

98 The expenses might be reclaimed from the owner of the illegally discarded waste as damages under civil law, if e. g. the owner of the waste becomes known only later after the illegal dumpsite has already been remediated. Nevertheless, this will be rare in practice.

99 See § 14 (4) of Act No. 541/2020 Coll., on Waste.

100 For example, by putting warning signs or by building a fence, as may be relevant. In this case, the owner of the land would have to comply; see § 14 (5) (a) of Act No. 541/2020 Coll., on Waste.

Other possibilities, given by law to the competent municipal office, are to secure the illegally discarded waste against release of pollutants into the environment, if necessary, or to transfer the illegally discarded waste to a designated waste management facility.[101] It shall be noted that these two options may not be imposed upon the owner of the land. They may only be arranged for by the municipal office itself.[102] However, these are mere options for the municipal office and the municipal office has no legal duty to make use of them.[103]

As can be seen from the above, the current Act on Waste in the Czech Republic has introduced a mixed model for the remediation of illegal dumpsites. Primary responsibility rests with the owner of the waste in question. Where relevant, the owner of the affected plot of land may be invited to remediate the site but may not legally required to do so. The owner of the land may only be required to secure the plot of land against further illegal dumping. If the illegal dumpsite is to be remedied, this may rather be arranged for by the competent municipal office.

When we look at the relevant provisions on remediation, there is no obvious connection with the concept of circular economy. However, it must not be forgotten that an illegal dumpsite may also be viewed as a site with potentially valuable natural resources. And it is the aim of the concept of circular economy to reduce the pressure on natural resources by maintaining their value in the economy for as long as possible. The current practice of remediating illegal dumpsites, where the primary responsible person is not known or has ceased to exist (without a legal successor), has usually been such that, due to limited financial resources, municipalities were rather hesitant to take steps towards remediation, unless the illegal dumpsite presented a significant hazard to the environment (e. g. from the release of pollutants or due to other hazardous properties of the waste in question). In a circular economy, on the opposite, an illegal dumpsite is not a problem for the environment only when it contains hazardous waste. An illegal dumpsite in a circular economy shall always be viewed as a serious environmental issue when it contains potentially valuable and re-usable natural resources.

---

[101] See § 14 (5) (a) and (b) of Act No. 541/2020 Coll., on Waste.

[102] These measures need to be financed by the municipality itself (unless it manages to secure funds from the State Environmental Fund of the Czech Republic or from elsewhere). Again, in theory, the incurred expenses might be reclaimed from the owner of the illegally discarded waste as damages under civil law, but in practice it will be rare.

[103] This is understandable because if the municipal office had a duty to remediate each illegal dumpsite in its territory, where the primary responsible person is not known or has ceased to exist, the municipalities might soon use up all their funds and go bankrupt. Such a model might also be easily abused by entities wanting to avoid high disposal costs and might lead to moral hazard. However, in exceptional circumstances, especially if lives were strongly endangered by an illegal dumpsite, it might be argued that it is the legal duty of the municipality to make use of the measures provided by law to protect the lives of its citizens (in this regard, see the caselaw of the European Court of Human Rights, e. g. judgement of 18 June 2002, *Öneryıldız v. Turkey*, Ref No. 48939/99).

Hence, in a circular economy the remediation of illegal dumpsites should be arranged for in more cases, not only when there is hazard but always when there are valuable natural resources. This might be supported by giving municipalities the option to make use of the illegally dumped waste, where relevant. For example, the municipality might make use of illegally discarded demolition waste for its own building purposes or it might sell it to a third entity who could make use of it. All this would require a transfer of ownership of the illegally discarded waste to the municipality. The current legislation does not allow this and only gives the municipality the option to transfer the waste to a waste management facility. The current model does not create incentives strong enough to fully achieve the goals of the circular economy with regards to illegal dumpsites.

4. Conclusion

The transition to a circular economy invites us to reconsider our approach to tackling illegal dumping of waste. This article has shown that there are at least two points which require further attention.

Firstly, there can be an illegal dumpsite only when there is waste. Therefore, having a clear definition of waste is vital to preventing illegal dumping and adopting effective measures where illegal dumping has already happened. The current definition of waste, although long established, stills entails much legal uncertainty which may hinder the transition to a circular economy. Wrong assessment of the legal status (waste/non-waste) of a substance or object by an individual or entity may lead them to undertake illegal waste management operations, even unknowingly while contributing to the circular economy. The definition of waste may be even more problematic in a circular economy. Hence, the legal uncertainty surrounding the definition of waste must be further worked upon.

Secondly, the new Czech Act on Waste has introduced a mixed framework for the remediation of illegal dumpsites. Primary responsibility lies with the owner of illegally discarded waste but the owners of the affected plots of land and municipalities are also given an important role in tackling illegal dumping. Although the new legislation presents a positive step forward, it still does not create incentives strong enough for municipalities to fully achieve the goals of the circular economy with regards to illegal dumpsites.

There are several other points which were not discussed in this article due to its limited scope and which would benefit from further scholarly analysis, such as the role of punitive measures (criminal and administrative liability) in the context of a circular economy or the question of creating a specialized fund to finance the remediation of the most problematic illegal dumpsites.

To conclude, the current legal framework represents a solid basis for the tackling of illegal dumping in the Czech Republic, although it is not particularly tailored to the goals of the circular economy. On the other hand, appropriate practical application of the relevant legal provisions by the competent authorities may do more for the circular economy than a legislative amendment. We may also hope that the circular economy itself, by strengthening the market for secondary raw materials, will create incentives for individuals and entities to avoid illegal dumping which will progressively be on the decline.

References

BAHÝĽ, Ján; BAHÝĽOVÁ, Lenka. *Deliktní odpovědnost na úseku skládkování odpadů a řešení následků "živelného" skládkování* [online]. Právní rádce, 24. 3. 2010 [cit. 30. 1. 2022]. Available at: https://pravniradce.ekonom.cz/c1-41717580-deliktni-odpovednost-na-useku-skladkovani-odpadu-a-reseni-nasledku-zivelneho-skladkovani.

BAHÝĽOVÁ, Lenka. Nápravná opatření v právu životního prostředí. In: *COFOLA 2010: the Conference Proceedings*. Brno: Masarykova univerzita, 2010, pp. 963–986.

BREZOVSKÁ, Katka. *Pandemie navýšila počet černých skládek v Česku* [online]. Český rozhlas, 6. 9. 2021 [cit. 30. 1. 2022]. Available at: https://cesky.radio.cz/pandemie-navysila-pocet-cernych-skladek-v-cesku-8727783.

CHEYNE, Ilona. The Definition of Waste in EC Law. *Journal of Environmental Law*. 2002, Vol. 14, No. 1, pp. 61–73.

DAMOHORSKÝ, Milan. *Právní odpovědnost za ztráty na životním prostředí*. Praha: Karolinum, 1999.

DAMOHORSKÝ, Milan a kol. *Právo životního prostředí*. 3rd edition. Praha: C. H. Beck, 2010.

DE RÖMPH, Thomas J.; CRAMER, Jacqueline M. How to improve the EU legal framework in view of the circular economy. *Journal of Energy & Natural Resources Law*. 2020, Vol. 38, No. 3, pp. 245–260.

FISHER, Elizabeth; LANGE, Bettina; SCOTFORD, Eloise. *Environmental Law. Text, Cases, and Materials.* Oxford: Oxford University Press, 2013.

HANÁK, Jakub. Co je odpadem podle evropské a české legislativy?. *Časopis pro právní vědu a praxis*. 2011, Vol. 19, No. 3, pp. 239–243.

HLAVÁČOVÁ, Lenka. Nápravná opatření a likvidace černých skládek – vybrané otázky. *České právo životního prostředí*. 2019, Vol. 54, No. 4, pp. 44–66.

JAKIEL, Michał; BERNATEK-JAKIEL, Anita; GAJDA, Agnieszka; FILIKS, Maciej; PUFELSKA, Marta. Spatial and temporal distribution of illegal dumping sites in the nature protected area: the Ojców National Park, Poland. *Journal of Environmental Planning and Management*. 2019, Vol. 62, No. 2, pp. 286–305.

JANČÁŘOVÁ, Ilona. Opatření k nápravě v právu životního prostředí. *Právní rozhledy*. 2010, No. 16, pp. 575 et seq.

SIGMAN, Hilary. Midnight Dumping: Public Policies and Illegal Disposal of Used Oil. *RAND Journal of Economics*. 1998, Vol. 29, No. 1, pp. 157–178.

SNOPKOVÁ, Tereza. Strategie pro oběhové hospodářství. *Odpadové fórum*. 2020, Vol. 21, No. 3, pp. 16–17.

SOBOTKA, Michal. Odpad: opravdu pouze jen věc movitá?. In: DAMOHORSKÝ, Milan (ed.). *Pocta Doc. JUDr. Jaroslavovi Drobníkovi, CSc. k jeho 70. narozeninám*. Praha: Vodnář, 2007, s. 166–170.

Strategie prevence a potírání trestné činnosti související s odpady na období let 2021–2023 [online]. Ministerstvo vnitra, 2020 [cit. 30. 1. 2022]. Available at: https://www.mvcr.cz/soubor/strategie-prevence-a-potirani-trestne-cinnosti-souvisejici-s-odpady-na-obdobi-let-2021-2023.aspx.

Council Directive 78/319/EEC of 20 March 1978 on toxic and dangerous waste.

Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives.

Communication from the Commission to the European Parliament, the Concil, the European Economic and Social Committee and the Committee of the Regions (COM(2015) 614 final): Closing the loop – An EU Action Plan for the Circular Economy.

Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088.

Act No. 238/1991 Coll., on Waste.

Act No. 114/1992 Coll., on Nature and Landscape Protection.

Act No. 334/1992 Coll., on Agricultural Land Protection.

Act No. 289/1995 Coll., on Forests.

Act No. 125/1997 Coll., on Waste.

Act No. 185/2001 Coll., on Waste.

Act No. 254/2001 Coll., on Waters.

Act No. 167/2008 Coll., on the Prevention and Remediation of Environmental Damage.

Act No. 541/2020 Coll., on Waste.

Judgement of the Supreme Administrative Court of the Czech Republic of 29 December 2020, Ref. 2 As 22/2019-45.

Judgement of the Court of Justice of 28 March 1990, *Vessoso and Zanetti*, joined cases C206/88 and C-207/88.

Judgement of the Court of Justice of 15 June 2000, *ARCO Chemie and EPON*, joined cases C-418/97 and C-419/97.

Judgement of the Court of Justice of 18 April 2002, *Palin Granit*, C-9/00.

Judgement of the European Court of Human Rights of 18 June 2002, *Öneryıldız v. Turkey*, Ref No. 48939/99.

Abstract

Despite various efforts to tackle illegal dumping of waste in the past decades, this dangerous but common phenomenon does not seem to be on the decline in the Czech Republic and the effectiveness of previous regulatory frameworks for the remediation illegal dumpsites was questionable. This article analyses new rules introduced by Act No. 541/2020 Coll., on Waste, aimed at tackling illegal dumping of waste. Remedial measures envisioned by these new provisions are discussed from a circular economy perspective: how should they be interpreted and applied in view of transitioning to a circular economy?

Keywords

illegal dumping – waste – circular economy

SUMMER COURSE IN ANIMAL LAW AT AARHUS UNIVERSITY

Gabriela KUBÍKOVÁ

From 6th to 27th June 2020, Aarhus University in Denmark hosted the third year of its annual summer course in Animal Law. This time, though, due to the worldwide pandemic caused by COVID-19, students from Denmark, France, Australia, Brazil and (for the first time ever) the Czech Republic did not gather in the beautiful city of Aarhus but studied from their home countries via the videoconferencing software program Zoom.

The course was a mixture of lectures and discussions as students were encouraged to share their opinion on a variety of animal law related topics. For each day of the class, a list of mandatory as well as recommended readings was provided, sometimes supplemented by assignments to prepare such as a court simulation. Apart from a three-day exam when students were supposed to answer three questions on an essay, a group project was a part of the course. Six groups of students presented on a topic they had agreed on within six categories (wild animals, farm animals, aquatic animals, companion animals, animals in research and animals in entertainment) with presentations focusing on poaching of elephants, lameness in dairy cows, legal protection of fish, dog breeding, testing of cosmetics on animals and confinement of animals in ZOOs.

The lecturer and brains behind the first animal law course in Scandinavia, Sacha Lucassen, is an expert on animal law, holds a Master's Degree in Animal Law and Society from Autonomous University of Barcelona, is a chairman and founder of the Danish organisation *Center for Dyrs Forsvar* (Center for Animal Defense) and has experience working for the Ministry of Environment and Food where she dealt with the protection of animals during transport. Thanks to her, it was possible for us students to spend a part of our summer learning about this fascinating field and to meet remarkable guest speakers who shared their experience and ideas with us.

The whole course was divided into three clusters. In the first week, we took a look at animal regulation in the EU and the Council of Europe and started the course off talking about animal protection in a historical perspective and in the current EU legislation with a special focus on Article 13 of the Treaty on the Functioning of the European Union. We discussed the meaning of frequently used yet very vague expressions in animal welfare legislation such as 'unnecessary suffering' and the role of recognition of the sentience of animals in the primary law of the European Union. Klaas Maes, a political and communications officer at the embassy of the UK in Belgium, joined us for the third day to introduce political institutions of the European

Union and the law-making process as well as interest representation in the EU and its different strategies. We finished the first week with a lecture by Mette Herskin, a scientist researching the issue of animal welfare during transport. Her presentation revealed a very high number of cull animals arriving at slaughterhouse sick, injured or lame as well as the unsettling fact that many farmers are not aware of potential health risks to animals during transport, drivers are not given a proper training regarding welfare of animals and even vets are not always able to correctly assess whether an animal is fit for transport or not. This week made us realize the importance of representation of animals' interest at EU level as well as the vital role science plays in animal law as scientific data are undeniably the base for all regulation which aims to improve animals' living conditions.

During the second week, we further dealt with the regulation on animals in the European Union examining challenges with enforcement of the EU legislation in relation to animals as we studied two specific cases – tail-docking of pigs and transport of live animals. Both of these issues showcase routine breaches of the EU regulation and unwillingness of the European Commission to act by initiating legal actions before the EU Court of Justice as well as the fact that vagueness of phrasing in legal acts will most likely always be interpreted to the disadvantage of animals. We went on to discuss animal law at EU or national level focusing on the principle of proportionality and the role it plays for animal legislation. From there, we moved on to the protection of wildlife and explored the co-existence and conflict of people and wolves. This week brought a very interesting clash of interests as we were joined by two guest speakers, one of them representing a pro-wolf non-governmental organization called *Ulvetid* and the other one coming from a very anti-wolf opposition with a name which speaks for itself – *Ulvefrit Danmark*, which can be translated as Wolf-free Denmark. Both parties presented their arguments on why wolves should or should not be protected by law with the anti-wolf party striving to have wolves declared as a pest as they claimed that wolves are a danger to people, domestic animals and even nature. It was indeed interesting to witness both sides present completely divergent opinions on the same question (e.g. whether or not wolf-proof fences are sufficient to keep cattle safe from wolves) and showed how very important it is to be aware of arguments of all parties involved when tackling such a complicated issue. On the last day of the second week, we had an opportunity to listen and talk to Niels Fuglsang, a Danish politician who is a Member of the European Parliament, who gave a presentation on policy campaigns and elaborated on his efforts in the European Parliament regarding live transport of animals. We were also joined by Nina Mirza, a lawyer who does *pro bono* work for animal rights organizations whose joint effort has recently made Denmark legally recognize the sentience of animals, and Tobias Holm, an animal rights activist, who talked about legality versus legitimacy and challenged our views on the morality of exploitation of animals.

The very last week of our course dealt with animal rights and different approaches to the regulation and focused on the animal welfare versus animal rights debate; although these two very often join forces on certain issues (such as animals in circuses), they disagree when it comes to the core question: is it morally acceptable for humans to use animals, especially with regard to farm and laboratory animals? Whereas the animal welfare approach strives to give animals a life worth living but does not necessarily condemn using them for food or science, the animal rights approach sees animals as individuals with an inherent value who have interests of their own and are end-to-themselves rather than means to an end for humanity. Gary Francione, an American lawyer and abolitionist, believes that animals should be given only one right – the right not to be treated as property – and that animal welfare approach cannot work due to an excessive amount of exceptions with regard to many painful practises which are considered necessary in farming (in his opinion, animal welfare regulation only leads to so-called 'happy exploitation', meaning that although lives of animals remain miserable, people might feel better about the exploitation due to better welfare standards). David S. Favre, an American law professor, opposes Francione's idea and believes that a new category of property should be established – a living property – which would preserve the right to own animals but would give animals rights which would be enforced by courts, e.g. the right not to be held for or put to prohibited uses or not to be harmed. Based on the work of these and other lawyers and philosophers, we discussed the best possible paths for greater protection of animal interests. As it is impossible to talk about animal law without taking a proper look at philosophy, Alessia Bacigalupo took us on a journey which started in ancient times with Pythagoras and finished with contemporary philosophers. The centre of our attention was deontological versus utilitarian ethics and the way it reflects on animal law as well as John Rawl's Veil of Ignorance in relation to animal contractualism. As an example of deontology versus utilitarianism, we discussed the philosophy of Tom Regan and Peter Singer, whose book published in 1975, Animal Liberation, remains one of the most influential pieces of work on animal ethics up to this day. After these two philosophy-packed days, together with our guest speaker Tarah Daly, we examined the link between non-human abuse and human violence, which is more often than not overlooked by authorities, although it could potentially work as prevention of violence on people (considering the graduation hypothesis which shows that many violent criminals including serial killers actually started with animal abuse). Exploring various ways to make use of the existing link, we talked about a multiagency collaboration of social services, veterinarians, law enforcement personnel and animal welfare officers or intervention programs from problematic youth. On the very last day of the course, David Rosengaard introduced his work as a senior staff attorney in the Animal Legal Defense Fund's Criminal Justice Program and touched upon the protection of animals in the United States of America. Finally, we talked about the Nonhuman Rights Projects, a US-based civil rights organization, and its founder, Steven M. Wise, who

strives to achieve legal personhood for highly intelligent animals such as chimpanzees and elephants using the writ of *habeas corpus* to make it possible for them to spend the rest of their lives in sanctuaries. Although not having been successful so far, the Nonhuman Rights Projects has inspired many similar endeavours all around the globe, some of which actually achieved their goal. This last day wrapped up three weeks full of thought-provoking discussion and presentations by intriguing speakers from all over the world.

Animal law is an emerging field of law which is going to keep gaining profound importance as the way we treat animals is challenged. Its multidisciplinary nature intertwines law, science and ethics to find answers to some of the most difficult questions humans have to ask themselves with regard to animals. Despite being rather overlooked in many countries, animal law has a rich history of being taught at universities and practised before courts in the United States with even the Ivy League universities such as Harvard and Yale offering an animal law course. It is definitely a positive sign that more and more courses devoted to animal law take place all over the world and that more and more students take an interest in it. It is impossible to leave the way we treat billions of non-human animals which we share the planet with without any criticism. And quite frankly, law remains disarmed on this battlefield of injustice to animals. But lawyers as well as other professionals play a crucial role if we are to create a better world not just for us but also for our fellow Earthlings. I would like to thank Aarhus University and Sacha Lucassen for organizing the course in these difficult times and making it possible for us to meet, talk, listen, learn, brainstorm and share our ideas. This year might have been quite different but certainly no less informative, educational and inspiring.

‘END THE CAGE AGE’ INITIATIVE: WILL THE EUROPEAN UNION BECOME CAGE-FREE?

Gabriela KUBÍKOVÁ

Animal welfare legislation in the European Union is often thought to be at the highest level in the world. However, the legislation on the protection of farmed animals is proving to be outdated, with some of the legislative acts dating back to the late 1990s and no longer keeping up with the latest scientific findings in the field of animal welfare. Moreover, the consumer interest in where the products they buy come from is on the rise, creating pressure on both producers and lawmakers to abolish the worst practices in animal farming. One of those is the use of cage systems, the prevailing housing system in the European Union and in the world. Ten years ago, the European Union ban on battery (or unenriched) cages for laying hens came into effect, only allowing keeping hens in so-called enriched cages. This has not proved, though, to significantly raise the level of welfare of hens and many campaigns have been led to phase out cages once and for all. These efforts have succeeded at national levels, with ten EU countries having already adopted legislation which either bans or sets specific requirements for enriched cages for laying hens, sow stalls and farrowing crates for sows and gilts and cages for rabbits.[104] But last year, significant changes have been promised at the EU level as well, which would see all 27 Member States replace cages with alternative housing systems for farmed animals. That was thanks to the European citizens’ initiative ‘End the Cage Age’, which gathered enough support from citizens to secure support from the European Union bodies as well.

The aim of this article is to introduce this initiative and to discover how the phase-out of cages fits within the EU legislative framework with respect to environmental policies and welfare of farmed animals and finally, take a look at financial tools that may be used for the envisaged transition to cage-free Europe to see if there are resources in place which make the change possible.

I. Cage-free Europe: from initiative to legislation

European citizens’ initiative (ECI) is a significant tool of participatory democracy established by the Lisbon Treaty of 2007.[105] According to rules laid down in Regulation (EU) 2019/788 on the European citizens’ initiative,[106] a group of organizers from at

[104] Communication from the Commission on the European Citizens’ Initiative (ECI) “End the Cage Age” (2021/C 274/01).

[105] Citizens‘ right to turn to the European Commission with a certain issue is rooted in Article 11 of the Treaty on the European Union and Article 24 of the Treaty on the Functioning of the European Union.

[106] Regulation (EU) 2019/788 of the European Parliament and of the Council of 17 April 2019 on the European citizens’ initiative [2019] OJ L 130 currently co-exists with Regulation (EU) No 211/2011 of

least seven Member States must get support of at least 1 million EU citizens (who are old enough to vote in the European Parliament) during a timeframe of 12 months. Signatures must surpass a threshold in at least seven Member States. If successful, the group of organisers gets an opportunity to present their initiative during a public hearing in the European Parliament within three months and the European Commission has six months to respond to the initiative in a communication. Although not obligated to comply with the initiative's demands, the Commission must give justification for its decision.

'End the Cage Age' started collecting signatures in September 2018 and managed to gain almost 1.4 million of them by the end of a one-year collection period, with a third of signatures coming from Germany. This made the initiative the sixth one to pass the necessary threshold, the first successful ECI on farmed animals and the third most successful one overall, surpassed only by Right2Water and One of Us.[107] The goal of 'End the Cage Age' was to *"propose legislation to prohibit the use of: cages for laying hens, rabbits, pullets, broiler breeders, layer breeders, quail, ducks and geese; farrowing crates for sows; sow stalls, where not already prohibited; individual calf pens, where not already prohibited"*.[108] After a public hearing, the initiative was supported by the European Parliament in its resolution in June 2021. The European Parliament called on the Commission to *"propose a revision of Directive 98/58/EC with the objective of phasing out the use of cages in EU animal farming"*.[109] At the same time, the European Parliament stressed the issue of a lack of any minimum species-specific standards for rabbit farming and called for a ban on force-feeding of ducks and geese for the production of a traditional dish associated mainly with French cuisine, *foie gras*. The European Commission responded to the initiative favourably the same month; in its communication, the European Commission envisaged that it would present a legislative proposal to phase-out cages for all farmed animals mentioned in the initiative by 2023.[110] Scientific opinion of the European Food Safety Authority (EFSA) will be taken into account, considering that EFSA had already been given mandates for scientific opinions on welfare on farms and during transport and slaughter, with the Commission additionally requesting opinions on cage(-free) farming of quails, ducks and geese.[111]

---

the European Parliament and of the Council of 16 February 2011 on the citizens' initiative [2011] OJ L 65, which continues to apply for initiatives registered before 1st January 2020.

[107] European Citizens' Initiative – portal. *European Citizen's Initiative* [online][cit. 24. 01. 2022]. Retrieved from: https://europa.eu/citizens-initiative/_cs.

[108] EUROPA – European Union Website. *End the Cage Age* [online][cit. 06. 01. 2022]. Retrieved from: https://europa.eu/citizens-initiative/initiatives/details/2018/000004_en.

[109] European Parliament resolution of 10 June 2021 on the European Citizens' Initiative 'End the cage age' (2021/2633(RSP)).

[110] Commission communication (2021/C 274/01).

[111] European Food Safety Authority. *Animal welfare* [online][cit. 23. 01. 2022]. Retrieved from: https://www.efsa.europa.eu/en/topics/topic/animal-welfare.

The occurrence of such strong support for this initiative does not come as much of a surprise. With growing awareness on the treatment of animals in animal farming, there is a bigger pressure on lawmakers to keep up with the science on animal cognition and behaviour and the ethical progress of the society. According to a Eurobarometer survey, 94% of the EU citizens consider the protection of farmed animal welfare to be important and 82% believe that their welfare should be protected better than now.[112] Although consumers have a choice to seek higher welfare products, 83 % of them believe that animal welfare should be handled by either the public authorities alone or jointly by public authorities and businesses; only 12% think that should be handled by businesses only, so it is up for consumers to choose higher welfare products on their own will.[113]

The legislative proposal to phase out cages fits well into the EU policy envisaged by the proposals of the European Green Deal, especially the Farm to Fork Strategy. This strategy, adopted by the European Commission in May 2020, focuses on creating a sustainable, resilient and healthier food system and acknowledges the vital role of animal welfare and health as well as the need to combat antimicrobial resistance and presents the European Commission's intention to evaluate and revise animal welfare legislation, the process which has been undergoing and is expected to be completed by the end of 2023.[114] The Farm to Fork Strategy is a recognition of the fact that the current food system – which has been taken over by the industrial-scale production – has proven to be broken. According to studies, 71% of all agricultural land in the European Union (arable land and grassland) is dedicated to feeding farmed animals and animal agriculture is responsible for up to 17% of greenhouse gas emission in the EU.[115] Whereas a number of farmed animals in the EU is rising, the number of farms is decreasing, pointing to a worrying trend of keeping animals in intensive production units, also commonly known as factory farms.[116] As such sites are an ideal breeding ground for pathogens to spread and mutate, the United Nations Environment Programme has named increasing human demand for animal protein and unsustainable agricultural intensification as drivers of zoonotic disease emergence.[117] The heavy use

[112] European Union. *Special Eurobarmeter 442: Attitudes of Europeans towards Animal Welfare*, p.4 [online] [cit. 03. 01. 2022]. Retrieved from: https://europa.eu/eurobarometer/surveys/detail/2096.

[113] Ibid, p. 44.

[114] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system (COM/2020/381 final).

[115] Greenpeace (2019). *Feeding the Problem: The dangerous intensification of animal farming in Europe*, p. 5-6 [online][cit. 07. 01. 2022]. Retrieved from:. https://www.greenpeace.org/static/planet4-eu-unit-stateless/2019/02/83254ee1-190212-feeding-the-problem-dangerous-intensification-of-animal-farming-in-europe.pdf.

[116] Ibid, p. 7.

[117] United Nations Environment Programme (2020). *Preventing the Next Pandemic: Zoonotic diseases and how to break the chain of transmission* [online][cit. 07. 01. 2022]. Retrieved from: https://www.unep.org/resources/report/preventing-future-zoonotic-disease-outbreaks-protecting-environment-animals-and.

of antibiotics in factory farms to compensate for poor hygiene and welfare conditions is linked to antibiotic resistance, a major public health threat, causing 33 000 deaths in the EU alone.[118] Given these figures, it can be assumed that the number of animals farmed for food production in the European Union must be significantly decreased. Cages are historically a tool which enabled factory farming to boom, making use of vertical space and stacking animals onto each other in cages. Therefore, their phase-out could be a step towards the Green Deal's objectives; the Commission admits that *"discontinuation of cages will necessitate changes to current farming systems"*,[119] but precisely that is needed.

II. The welfare of animals in cages

In the European Union alone, 300 million animals are housed in caged system for their whole life or a majority of it.[120] Cages have become a widespread system of housing animals, mainly due to its economic feasibility. From the animal welfare point of view, though, cages tend to score the lowest when compared to other housing systems and are accompanied by several welfare-compromising challenges which are impossible to overcome. This clashes with the core of animal protection in the European Union, Article 13 of the Treaty on the Functioning of the European Union (TFEU), which recognizes the sentience of animals and states that *"full regard to the welfare requirements of animals"* shall be paid when formulating the Union's policies, including agricultural policies. This principle is further elaborated on in animal welfare legislation, with Council Directive 98/58/EC of 20 July 1998 concerning the protection of animals kept for farming purposes (the "general" directive of animal farming) explicitly stating that *"the freedom of movement of an animal, having regard to its species and in accordance with established experience and scientific knowledge, must not be restricted in such a way as to cause it unnecessary suffering or injury"* and requiring provision of *"space appropriate to [an animal's] physiological and ethological needs"*.[121] To truly comply with this law – one which has been in place for over 20 years – phasing out cages seems inevitable. This part shall take a brief look at the most severe issues linked to cage farming of poultry, sows and rabbits as well as at available and currently used alternatives which would replace this housing system. Organic farming, although not named explicitly below, is an alternative to conventional farming of all species

[118] European Centre for Disease and Prevention Control (2018). *33000 people die every year due to infections with antibiotic-resistant bacteria* [online][cit. 07. 01. 2022]. Retrieved from: https://www.ecdc.europa.eu/en/news-events/33000-people-die-every-year-due-infections-antibiotic-resistant-bacteria.

[119] Commission communication (2021/C 274/01).

[120] Compassion in World Farming. *End the Cage Age: Why the EU must stop caging farm animals* [online] [cit. 17.01.2022]. Retrieved from: https://www.ciwf.org.uk/research/animal-welfare/end-the-cage-age-why-the-eu-must-stop-caging-farm-animals/.

[121] Annex of Council Directive 98/58/EC of 20 July 1998 concerning the protection of animals kept for farming purposes [1998] OJ L 221.

farmed for food, offering more advanced minimum standards such as access outside, restricting painful mutilations and lowering the stocking densities.[122]

Cages are still a leading housing system for hens, housing around 180 million laying hens in the European Union.[123] Compared to battery cages which have been banned since 2012 in accordance with article 5(2) of Council Directive 1999/74/EC of 19 July 1999 laying down minimum standards for the protection of laying hens, so-called enriched cages provide slightly more space, a nest, litter and perches.[124] Despite that, the ability to perform foraging and dust bathing, two major behaviour needs of laying hens, is low in these cages due to limited space and amount of litter.[125] Moreover, space afforded to each hen in an enriched cages does not allow an animal to even spread wings.[126] Alternative (non-cage) systems, that is barn (floor housing and aviary system) and free-range, bring different welfare issues. Although present in all housing systems, feather-pecking and cannibalism occur more in non-cage systems, especially due to large flock sizes (totalling 8% mortality rate compared to 3% in enriched cages). Keel bone fracture also occurs more in cage-free systems, especially in aviaries when animals try to fly up and down the levels.[127] However, whereas problems of non-cage systems can be solved (to a certain degree) with good management (access outside, environmental enrichment, higher quality feed etc.), cages are a faulty system at their root, inherently preventing hens from carrying out their behavioural needs. Caged are also other domesticated birds such as geese, ducks and quails. Geese and ducks are kept in cages to produce *foie gras* ("fatty liver") for about two weeks. More specifically, for the process of force feeding, which is rather violent and accompanied by very poor welfare; this is a reason why 15 countries in the European Union have

[122] Minimum standards for the keeping of animals in organic farming are set by Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products [2018] OJ L 150; and Commission Implementing Regulation (EU) 2020/464 of 26 March 2020 laying down certain rules for the application of Regulation (EU) 2018/848 of the European Parliament and of the Council [2020] OJ L 98.

[123] Compassion in World Farming. *End the Cage Age: Why the EU must stop caging farm animals* [online] [cit. 17. 01. 2022]. Retrieved from: https://www.ciwf.org.uk/research/animal-welfare/end-the-cage-age-why-the-eu-must-stop-caging-farm-animals/.

[124] Article 6 of Council Directive 1999/74/EC of 19 July 1999 laying down minimum standards for the protection of laying hens [1999] OJ L 203.

[125] European Parliament (2020). End the cage age*: Overview of alternatives to cage housing and the impact on animal welfare and other aspects of sustainability (*study requested by the PETI committee), p. 20 [online][cit. 22. 1. 2022]. Retrieved from: https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2020)658539.

[126] DAWKINS, M. a HARDIE, S (1989). *Space needs of lying hens.* British Poultry Science, 30 (2), p. 413–416 [online][cit. 16. 01. 2022]. ISSN 1466-1799. Retrieved from: https://www.researchgate.net/publication/232933151.

[127] European Parliament (2020). End the cage age*: Overview of alternatives to cage housing and the impact on animal welfare and other aspects of sustainability (*study requested by the PETI committee), p. 21–22 [online][cit. 22. 01. 2022]. Retrieved from: https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2020)658539.

already banned the production of *foie gras* in their national legislations (including the Czech Republic).[128] Quails are kept in high densities in battery cages for meat and egg production, which leaves similar problems as with other birds.[129]

Sows are usually kept in cages for a majority of their lives – in sow stalls after servicing and in farrowing crates for a period starting shortly before gestation and ending with weaning of piglets. Pursuant to article 3(4) of Council Directive 2008/120/EC of 18 December 2008 laying down minimum standards for the protection of pigs, the time spent in a sow stall is limited to a maximum of four weeks. After that, sows are moved to groups until one week before farrowing, when they are moved to a farrowing crate. They stay in farrowing crates until piglets are weaned, typically around 28 days of age, which is also the minimal weaning age set by the Directive.[130] As these crates are extremely movement-limiting, enabling the sow to only stand up and sit back or lie down, sows are frustrated and stressed during the confinement. Even more so given the fact that their strong instinct to build a nest before farrowing is suppressed, as the sow has no nesting material available and no space to move in.[131] Free-farrowing systems such as simple or modified pens and free-range are the most common alternative to farrowing crates. More space gives a sow more behaviour possibilities, leads to a better bonding between her and piglets and creates a better environment for learning of social behaviour. Although farrowing crates are often justified on the grounds of having a record of lower incidence of piglet mortality due to piglet crashing by a sow, the overall pre-weaning mortality in farrowing crates and free-farrowing systems is similar.[132]

Most rabbits (85%) in the European Union are reared in barren (unenriched) cages; the same system which is forbidden for laying hens. According to the EFSA's latest publication on rabbits, this type of confinement scores the lowest when it comes to animal welfare of fattening rabbits as well as breeding does out of all possible housing systems in commercial facilities. The cages severely restrict rabbits' freedom of movement and do not offer opportunities to carry out natural behaviours, partly due to a lack of environmental enrichment in such systems.[133] Usually, fattening rabbits

---

[128] Ibid, p. 34. In the Czech Republic specifically, it is prohibited by § 4 (1)(r) of Act No 246/1992 Coll., on the protection of animals against cruelty *(zákon č. 246/1992 Sb., na ochranu zvířat proti týrání).*

[129] Ibid, p. 35.

[130] C(3) of Chapter II of Annex I of Council Directive 2008/120/EC of 18 December 2008 laying down minimum standards for the protection of pigs [2009] OJ L 47.

[131] European Food Safety Authority (2007). *Scientific Opinion of the Panel on Animal Health and Welfare: Animal health and welfare aspects of different housing and husbandry systems for adult breeding boars, pregnant, farrowing sows and unweaned piglets* [online][cit. 22. 01. 2022]. Retrieved from: https://doi.org/10.2903/j.efsa.2007.572.

[132] European Parliament (2020). End the cage age*: Overview of alternatives to cage housing and the impact on animal welfare and other aspects of sustainability (*study requested by the PETI committee), p. 31 [online][cit. 22. 01. 2022]. Retrieved from: https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2020)658539.

[133] European Food Safety Authority (2020). *Health and welfare of rabbits farmed in different production systems* [online][cit. 17. 12. 2021]. Retrieved from: https://doi.org/10.2903/j.efsa.2020.5944.

are afforded mere 450–600 cm^2 of space each, not making it possible for them to e. g. hop around, forage or dig. Cages are also usually not high enough to provide rabbits with enough space to even sit or stand with their ears erect, a natural position for them due to their ears being a tool to monitor the environment.[134] For non-pregnant does, these cages tend to be even smaller and make it even less possible for them to move properly, e. g. to even turn around or stand up.[135] Wired flooring leads to paw lesions, especially in breeding rabbits who are kept in cages for a much longer time than growing rabbits.[136] Enriched cages account for 9% of the EU production in commercial systems, adding slightly more space and some enrichment as well as lowering stocking densities a little bit, but even enriched cages still cannot offer rabbits good welfare. An alternative to cages for rabbit farming include pen systems and outdoor (or partially outdoor) systems. Pen systems provide rabbits with enrichment such as tubes for hiding (simulating their natural behaviour since they dig burrows for hiding) or material for gnawing as well as more space for movement.[137]

The transition to cage-free systems for laying hens and sows has already been happening in many Member States; enriched cages for laying hens have been banned in Austria, Luxembourg, France, Czechia, Wallonia, Germany and Slovakia,[138] sow stalls and farrowing crates (both or either of those) were banned or their use severely restricted in Sweden, Germany, Denmark, the Netherlands and Austria.139 There is, therefore, a lot of know-how that can be shared, and many producers are ready for the transition. On the other hand, in the rabbit farming sector, changes are rather slower. Although some progress has been made in countries such as Belgium, Austria, Germany and the Netherlands, with bans on barren cages or cages altogether and environmental enrichment requirements, there is no legislation in place to protect rabbits in Spain, France or Italy, where 83% of rabbit farming is concentrated.[140] For ducks and geese, there is currently no viable cage-free alternative for the force-feeding process, so banning the practice

[134] European Food Safety Authority (2005). *Scientific Opinion of the Scientific Panel on Animal Health and Welfare on "The Impact of the current housing and husbandry systems on the health and welfare of farmed domestic rabbits"* [online][cit. 17. 12. 2021]. Retrieved from: https://doi.org/10.2903/j.efsa.2005.267.

[135] European Commission, DG Health and Safety (2017). *Overview Report: Commercial Rabbit Farming in the European Union* [online][cit. 17. 12. 2021]. Retrieved from: https://op.europa.eu/s/stVE.

[136] European Food Safety Authority (2005). *Scientific Opinion of the Scientific Panel on Animal Health and Welfare on "The Impact of the current housing and husbandry systems on the health and welfare of farmed domestic rabbits"* [online][cit. 17. 12. 2021]. Retrieved from: https://doi.org/10.2903/j.efsa.2005.267.

[137] European Commission, DG Health and Safety (2017). *Overview Report: Commercial Rabbit Farming in the European Union* [online][cit. 17. 12. 2021]. Retrieved from: https://op.europa.eu/s/stVE.

[138] In Slovakia, the Slovak Ministry of Agriculture signed a memorandum with the Slovak Poultry Union and the Trade Union to phase-out cages by 2030. The memorandum can be seen here: https://viacnez-nesiem.sk/wp-content/uploads/2020/07/memorandum.pdf.

[139] Commission communication (2021/C 274/01).

[140] European Commission, DG Health and Safety (2017). *Overview Report: Commercial Rabbit Farming in the European Union* [online][cit. 17. 01. 2022]. Retrieved from: https://op.europa.eu/s/stVE.

altogether is the only way how to get ducks and geese out of cages. Although there are disputes whether some sectors are ready for the change (especially rabbit and quail farming) and whether we should not move to a ban on battery cages with these species first, this seems to only delay the inevitable and prolong the animals' suffering in confinement. As it has already been proven with laying hen cages, the change comes sooner or later, and enriched cages would require substantial investments, which could turn out to be futile in a few years' time. Cage-free systems do not automatically ensure good animal welfare, since the major problems in animal farming are linked to high stocking densities, which are possible also in alternative systems. However, the transition is a sensible step towards decreasing the intensity of animal farming.

III. Financing the transition and creating a level playing field

The target date for the legislation to come into effect proposed by the organizers is year 2027, whose feasibility the Commission will evaluate during the preparation works.[141] The transitional period for a 1999 battery cage ban was significantly longer but did not prove to have the desired effect of leaving the Member States and producers enough time to make sure the transition is finished smoothly before the phase-out deadline; by 1 January 2012 when the cage ban came into effect, 13 EU countries had missed the deadline and had not implemented the legislation properly.[142] Although there are factors playing in favour of the 2027 target date – e. g. a limited lifespan of cages (usually around 15 to 20 years), so by 2027, many farmers would have to invest into a new cage system, or the rising pressure from customers to move to cage-free products as soon as possible – what the transition stands or falls on is financial support for farmers to refurbish the current systems. This part will focus on the financial tools at the EU level, but it is important to note that the Member States are free (and expected) to aid farmers at the national level as well.[143]

Under the new common agricultural policy (CAP) for 2022-2027, which takes up more than a third of the EU's overall budget,[144] there are tools which could be used to support the transition towards cage-free systems – eco-schemes under the first pillar of the CAP and support for higher animal welfare under the second pillar of the CAP. However, their eventual success depends on how ambitious and well-designed the Member States' National Strategic Plans are. Strategic Plans present *"interventions*

[141] Commission communication (2021/C 274/01).

[142] European Commission (2013). *Animal Welfare: Commission refers Greece and Italy to Court for failure to enforce ban on cages for laying hens* [online][cit. 09. 01. 2022]. Retrieved from: https://ec.europa.eu/commission/presscorner/detail/en/IP_13_366.

[143] In the Communication (2021/C, 274/01), the Commission points out that *„[a]gricultural state aid rules allow [the Member States] to grant financial aid to farmers as long as EU standards are not yet in force. In the case of newly introduced EU standards, farmers can receive aid for related investments for a limited period of time"*.

[144] European Commission. *The common agricultural policy at a glance* [online][cit. 18. 01. 2022]. Retrieved from: https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/cap-glance_en.

addressing the specific needs of that EU country and deliver tangible results in relation to EU-level objectives"[145] and constitute a shift towards a new phase of the CAP, in which the Member States play a vital role in the creation of agricultural policy in the EU, taking their countries' specific circumstances into account. The Member States had until 31st December 2021 to submit their National Strategic Plans,[146] after which the European Commission is given six months to approve them before they are expected to come into effect on 1 January 2023.[147]

Eco-schemes, allocating 25% of direct payments and funded by the European Agricultural Guarantee Fund, are a new mandatory[148] instrument intended to support farmers who carry out practices beneficial for the environment and animal welfare and health (especially with regards to antimicrobial resistance)[149] and who help fulfilling the CAP's specific objectives[150] as well as the EU Green Deal targets, which include reduction in pesticide use, fertilisers and antibiotic dependence and increase of organic farming and aquaculture and high-diversity landscapes.[151] These practices should go beyond the basic obligations stemming from the EU legislation and the payment is not based on eligible hectares but on servicing certain programs.[152] Each Member State will choose practices which will be included in its National Strategic Plan, but the European Commission has published a list of potential practices, giving an idea of what they should look like; the list includes support for friendly housing conditions (more space per animal, better flooring, free farrowing, environmental enrichment) as well as

---

145 European Commission. *CAP strategic plans* [online][cit. 28. 01. 2022]. Retrieved from: https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/cap-strategic-plans_en.

146 Euractiv informed that nine countries missed the deadline, including the Czech Republic. The article can be retrieved from: https://www.euractiv.com/section/agriculture-food/news/nine-member-states-including-germany-missed-first-cap-deadline/.

147 European Commission. *Delivering on the new CAP objectives* [online][cit. 03. 01. 2022]. Retrieved from: https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/cap-strategic-plans_en.

148 Mandatory for the Member States to include them in their Strategic Plans, but voluntary for farmers to participate.

149 Article 97 (1) of Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013 [2021] OJ L 435.

150 Ibid, Article 6.

151 European Commission (2021). *Commission publishes list of potential eco-schemes objectives* [online][cit. 03. 01. 2022]. Retrieved from: https://ec.europa.eu/info/news/commission-publishes-list-potential-eco-schemes-2021-jan-14_en#moreinfo.

152 Article 31 Article 97 (1) of Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013 [2021] OJ L 435.

providing access to pastures and regular access to open air areas, all of which could be linked to the cage-free transition. Moreover, support for conversion to organic farming can also be used for this purpose, as cages are banned under the Regulation (EU) 2018/848 on organic production and labelling of organic products.[153,154] Therefore, well-designed eco-schemes have a potential to provide financial resources for farmers choosing better welfare for their animals.

There are two potential interventions under the second pillar of the CAP and co-financed by the European Agricultural Fund for Rural Development and national budgets which could be relevant for the phase-out of cages.[155] Firstly, it is environmental, climate-related and other management commitments, which include support for higher animal welfare.[156] This support is intended for farmers who voluntarily go beyond the minimum requirements set in animal welfare legislation, therefore once again helping to achieve one of the CAP's specific objectives. Secondly, support for investments could be used to enhance the transition to cage-free farming by providing finances to refurbish old systems.[157] However, it is necessary to mention that under the 2014-2020 CAP, measure 14 programmed to improve animal welfare (of which support for higher animal welfare is a continuation), was severely underused. As stated by a 2018 report from European Court of Auditors (ECA), only 18 out of 28 Member States actually allocated finances to this measure, which eventually accounted for mere 1,5% of the total planned expenditure for all measures.[158] For this course of the CAP, the Member States need to design and the European Commission needs to approve such National Strategic Plans which allocate a significantly higher percentage of money to support for animal welfare and make good use of the measure. The Commission has already promised to highlight the issue of animal welfare when

---

153 European Commission (2021). *Commission publishes list of potential eco-schemes objectives* [online][cit. 03. 01. 2022]. Retrieved from: https://ec.europa.eu/info/news/commission-publishes-list-potential-eco-schemes-2021-jan-14_en#moreinfo.

154 1.6.8 of Annex II of Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007 [2018] OJ L 150.

155 European Commission. *Common agricultural policy funds* [online][cit. 03. 01. 2022]. Retrieved from: https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/financing-cap/cap-funds_en.

156 Article 70 of Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013 [2021] OJ L 435.

157 Ibid, Article 73.

158 European Court of Auditors (2018). *Special report No 31/2018: Animal welfare in the EU: closing the gap between ambitious goals and practical implementation* [online][cit. 01. 01. 2022]. Retrieved from: https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=47557.

evaluating the Member States' Strategic Plans.[159] To sum it up, when it comes to the CAP, it all boils down to how the National Strategic Plans turn out to be. The finances are there, but the main responsibility regarding their allocation lies on the Member States and partially on the Commission as a watchdog to make sure that the plans are in line with the broader goals of the Union.

Increased revenues for animal products are another economic incentive that makes the transition possible, moving a part of the investment costs onto consumers. According to statistics, Europeans are ready to pay more for higher-welfare animal products (59%),[160] but they are usually not very familiar with standards and practices in animal farming. What could provide consumers with more information on what they buy and motivate them to choose higher-welfare products, thus creating a higher demand for cage-free products and showing producers that it is economically feasible to transition sooner rather than later, is labelling. Animal welfare label is envisaged in the Farm to Fork Strategy to *"to better transmit the value through the food chain"*.[161] Such a label provides consumers with direct information on the level of welfare animals were afforded during production, usually using pictorial symbols (e.g. stars) or letters on the front of the product package. Slightly differently, a method-of-production label informs about the level of welfare indirectly as it provides only information on the farming methods.[162] Currently, there are mandatory EU-wide method-of-production labels in place for eggs and for fishery and aquaculture products. In case of eggs, these are labelled with numbers from 0 to 3 (0 for organic farming, 1 for free-range eggs, 2 for barn eggs and 3 for eggs from caged hens) to differentiate between housing systems for laying eggs.[163] Ever since this labelling system was introduced, many consumers have shifted to eggs from non-caged systems and the market has adapted to this trend, increasing the number of hens reared in alternative systems;[164] in Germany, only 0,8% of eggs consumed come from cages as German

[159] Commission communication (2021/C 274/01).

[160] European Union. *Special Eurobarmeter 442: Attitudes of Europeans towards Animal Welfare* [online] [cit. 03. 01. 2022]. Retrieved from: https://europa.eu/eurobarometer/surveys/detail/2096.

[161] Communication from the Commission on the European Citizens' Initiative (ECI) "End the Cage Age" (C(2021) 4747 final).

[162] There are two voluntary method-of-production labels in the EU, German *Haltungsform* and Italian *Etichettatura Benessere Animale*, and eight voluntary animal welfare labels established by non-profit organisations and governments of the countries. A hybrid of an animal welfare and a method-of-production label is also possible; such a mixed label provides information on both level of animal welfare and the housing system in which the animal was reared in and it can also be currently found on the market, for example French *Etiquette bien-être animal*.

[163] Regulation (EC) No 589/2008 of 23 June 2008 laying down detailed rules for implementing Council Regulation (EC) No 1234/2007 as regards marketing standards for eggs [2008] OJ L 163.

[164] Eurogroup for Animals (2020). *Animal welfare and food labelling: initiating the transition through high quality consumer information* [online][cit. 02. 01. 2022]. Retrieved from: https://www.eurogroupforanimals.org/sites/eurogroup/files/2020-10/E4A-AW-Food_Labeling-2020-web-version.pdf.

households have widely moved to eggs from alternative systems.[165] Apart from the two aforementioned labels, pre-packed food products coming from organic farming in the EU are mandatorily labelled with the organic logo; as it was mentioned before, many practises including the use of cages are prohibited under organic farming, therefore the logo also conveys information on the minimal standards animals are afforded.[166] The European Commission is still evaluating how such an animal welfare label could look like (especially if it is going to be mandatory of voluntary, with a majority country supporting solely a voluntary one).[167] However, given the fact that 64% of Europeans expressed that they would like to have more information about conditions of farmed animals in their country, there is certainly a gap in the knowledge of consumers that needs to be closed.[168] Tackling this issue might ultimately help producers to promote cage-free products, making the transition easier.

Possible impact on international trade has to be considered as well, especially given the fact that the European Union is the largest exporter of animal products in the world.[169] Rather justifiably, European farmers have expressed their concern about competition in the form of import from third countries undercutting EU products due to significantly lower production costs (since the farming standards are mostly lower as well). Therefore, a cage ban should be accompanied by import rules, which would allow producers from outside the EU to import their products only if animals were farmed under comparable standards. This would mean a trade restriction, one that would need to be evaluated through the lens of the World Trade Organization (WTO) framework. The European Union has already had to defend a ttrade ban justified on the grounds of public morals as well as animal health pursuant to the Article XX(a) and (b) of the General Agreement on Tariffs and Trade in the EU Seal Regime case, when the EU claimed that a ban on the placing of seal products on the internal market[170] was necessary to protect the public morals concerning the welfare of

---

165 Institute for European Environmental Policy (2020). Assessment of environmental and socio-economic impacts of increased animal welfare standards: Transitioning Towards Cage-Free Farming In The Eu, p. 21 [online][23. 1. 2022]. Retrieved from: https://ieep.eu/publications/assessment-of-environmental-and-socio-economic-impacts-of-increased-animal-welfare-standards.

166 Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007 [2018] OJ L 150.

167 75% of the 25 Member States who replied to a questionnaire do not support a mandatory animal welfare label. The figure was presented by the German presidency during the 8th meeting of the EU Platform on Animal Welfare on 3 November 2020.

168 European Union. *Special Eurobarmeter 442: Attitudes of Europeans towards Animal Welfare* [online][cit. 03. 01. 2022]. Retrieved from: https://europa.eu/eurobarometer/surveys/detail/2096.

169 CHATELLIER, V. (2021). *Review: International trade in animal products and the place of the European Union: main trends over the last 20 years*, In: *Animal 15(1)* [online][cit. 14. 01. 2021]. Retrieved from: https://doi.org/10.1016/j.animal.2021.100289.

170 Regulation (EC) 1007/2009 of the European Parliament and of the Council on Trade in Seal Products [2009] OJ L 286/36.

seals during hunt, as well as their health.[171] We may argue that a well-designed measure would be compatible with the WTO rules and would ultimately help to create a level playing field for the farmers in the EU.

Conclusion

Phase-out of cages for animals kept for food production in the European Union partially remedies the current situation when the principles of animal welfare, especially under Article 13 of TFEU, and requirement in Council Directive 98/58/EC to afford animals freedom of movement without unnecessary suffering have been ignored for over two decades. Although not a panacea to all the problems animals face on farms, a phase-out of a fundamentally flawed system such as cages is necessary. Alternative systems, although still troublesome in many aspects, are slightly better at mitigating animal welfare compromising issues. More importantly though, it might be a step addressing industrial animal production and a broken food system which has been consequently created. The phase-out will be presented as a part of animal welfare legislation revision under the Farm to Fork Strategy, showing a close link between animal welfare and health and sustainability of food systems. Although we cannot be sure if the legislative proposal, which is now in works, successfully passes through the whole legislative procedure, a positive response from the EU bodies so far is a good signal. It is also a testament of the citizen participation and shows that the EU citizens are increasingly interested in animal welfare and want it to become a part of the narrative in the EU.

What can be used as an argument against a phase-out is the fact that it will require substantial investments. However, there are options at the EU level which can provide farmers with finances necessary to refurbish housing system on their farms, and the common agricultural policy (2022-2027) offers support within both pillars in eco-schemes and support for rural development. Therefore, it is up to the Member States' National Strategic Plans to truly utilize them. Moreover, an animal welfare label, a much-discussed topic in the EU now, could help the transition as the consumer awareness regarding animal welfare is growing.

The pressure on the European Union to improve animal welfare standards is increasing, even more so given the self-proclaimed role of the EU as an animal welfare leader. However, with the animal welfare legislation worldwide being at a race to the bottom, there is an urgent need to step up. The European Union could therefore be a source of inspiration for other regions in the world where the use of cages is

[171] European Communities – Measures Prohibiting the Importation and Marketing of Seal Products, Panel Report, WTO Doc. WT/DS400/R, WT/DS401/R, 25 Nov. 2013; European Communities – Measures Prohibiting the Importation and Marketing of Seal Products, Appellate Body Report, WTO Doc. WT/DS400/AB/R, WT/DS/401/AB/R, 22 May 2014.

widespread, but where legislation at a national or federal level is desperately lacking, such as China or the United States.

Key words:

European law, animal welfare, European citizens' initiative, cage farming, common agricultural policy

Sources:

European Union law

Council Directive 98/58/EC of 20 July 1998 concerning the protection of animals kept for farming purposes [1998] OJ L 221;

Council Directive 1999/74/EC of 19 July 1999 laying down minimum standards for the protection of laying hens [1999] OJ L 203;

Council Directive 2008/120/EC of 18 December 2008 laying down minimum standards for the protection of pigs [2009] OJ L 47;

Communication from the Commission on the European Citizens' Initiative (ECI) "End the Cage Age" (2021/C 274/01);

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system (COM/2020/381 final);

European Parliament resolution of 10 June 2021 on the European Citizens' Initiative 'End the cage age' (2021/2633(RSP));

Regulation (EU) 2019/788 of the European Parliament and of the Council of 17 April 2019 on the European citizens' initiative [2019] OJ L 130;

Regulation (EC) No 589/2008 of 23 June 2008 laying down detailed rules for implementing Council Regulation (EC) No 1234/2007 as regards marketing standards for eggs [2008] OJ L 163;

Regulation (EC) 1007/2009 of the European Parliament and of the Council on Trade in Seal Products [2009] OJ L 286/36;

Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products [2018] OJ L 150;

Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013 [2021] OJ L 435;

Treaty on the Functioning of the European Union [2012] OJ C 326.

Case law

European Communities – Measures Prohibiting the Importation and Marketing of Seal Products, Panel Report, WTO Doc. WT/DS400/R, WT/DS401/R, 25 Nov. 2013; European Communities – Measures Prohibiting the Importation and Marketing of Seal Products, Appellate Body Report, WTO Doc. WT/DS400/AB/R, WT/DS/401/AB/R, 22 May 2014.

Articles

DAWKINS, M. a HARDIE, S (1989). *Space needs of lying hens.* In: British Poultry Science, 30 (2), p. 413-416 [online][cit. 16. 1. 2022]. ISSN 1466-1799.

Retrieved from: https://www.researchgate.net/publication/232933151;

CHATELLIER, V. (2021). *Review: International trade in animal products and the place of the European Union: main trends over the last 20 years*, In: Animal 15(1) [online][cit. 14. 1. 2021].

Retrieved from: https://doi.org/10.1016/j.animal.2021.100289

Web sources

Compassion in World Farming. *End the Cage Age: Why the EU must stop caging farm animals* [online][cit. 17. 01. 2022]. Retrieved from: https://www.ciwf.org.uk/research/animal-welfare/end-the-cage-age-why-the-eu-must-stop-caging-farm-animals/.End the Cage Age. *How close are we to a cage free Europe?* [online][cit. 19. 1. 2021]. Retrieved from: https://www.endthecageage.eu/how-close-are-we-to-a-cage-free-europe/;

Eurogroup for Animals (2020). *Animal welfare and food labelling: initiating the transition through high quality consumer information* [online][cit. 02. 01. 2022]. Retrieved from: https://www.eurogroupforanimals.org/sites/eurogroup/files/2020-10/E4A-AW-Food_Labeling-2020-web-version.pdf;

EUROPA – European Union Website. *End the Cage Age* [online][cit. 19. 01. 2022]. Retrieved from: https://europa.eu/citizens-initiative/initiatives/details/2018/000004_en;

European Centre for Disease and Prevention Control (2018). *33000 people die every year due to infections with antibiotic-resistant bacteria* [online][cit. 07. 01. 2022]. Retrieved from: https://www.ecdc.europa.eu/en/news-events/33000-people-die-every-year-due-infections-antibiotic-resistant-bacteria;

European Citizens' Initiative – portal. *European Citizen's Initiative* [online][cit. 24. 01. 2022]. Retrieved from: https://europa.eu/citizens-initiative/_cs;

European Commission (2013). *Animal Welfare: Commission refers Greece and Italy to Court for failure to enforce ban on cages for laying hens* [online][cit. 09. 01. 2022]. Retrieved from: https://ec.europa.eu/commission/presscorner/detail/en/IP_13_366;

European Commission. *CAP strategic plans* [online][cit. 28. 01. 2022]. Retrieved from: https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/cap-strategic-plans_en;

European Commission. *Common agricultural policy funds* [online][cit. 03. 01. 2022]. Retrieved from: https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/financing-cap/cap-funds_en;

European Commission. *Delivering on the new CAP objectives* [online] [cit. 03. 01. 2022]. Retrieved from: https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/cap-strategic-plans_en;

European Commission (2021). *Commission publishes list of potential eco-schemes objectives* [online] [cit. 03. 01. 2022]. Retrieved from: https://ec.europa.eu/info/news/commission-publishes-list-potential-eco-schemes-2021-jan-14_en#moreinfo;

European Commission. *The common agricultural policy at a glance* [online] [cit. 18. 01. 2022]. Retrieved from: https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/cap-glance_en;

European Commission, DG Health and Safety (2017). *Overview Report: Commercial Rabbit Farming in the European Union* [online][cit. 17. 9. 2021]. Retrieved from: https://op.europa.eu/s/stVE;

European Court of Auditors (2018). *Special report No 31/2018: Animal welfare in the EU: closing the gap between ambitious goals and practical implementation* [online][cit. 01. 01. 2022].

Retrieved from: https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=47557;

European Food Safety Authority. *Animal welfare* [online][cit. 23. 01. 2022]. Retrieved from: https://www.efsa.europa.eu/en/topics/topic/animal-welfare;

European Food Safety Authority (2020). *Health and welfare of rabbits farmed in different production systems* [online][cit. 17. 12. 2021]. Retrieved from: https://doi.org/10.2903/j.efsa.2020.5944;

European Food Safety Authority (2007). *Scientific Opinion of the Panel on Animal Health and Welfare: Animal health and welfare aspects of different housing and husbandry systems for adult breeding boars, pregnant, farrowing sows and unweaned piglets* [online] [cit. 22. 01. 2022]. Retrieved from: https://doi.org/10.2903/j.efsa.2007.572;

European Food Safety Authority (2005). *Scientific Opinion of the Scientific Panel on Animal Health and Welfare on "The Impact of the current housing and husbandry systems on the health and welfare of farmed domestic rabbits"* [online][cit. 17. 12. 2021]. Retrieved from: https://doi.org/10.2903/j.efsa.2005.267;

European Parliament (2020). End the cage age*: Overview of alternatives to cage housing and the impact on animal welfare and other aspects of sustainability (*study requested by

the PETI committee), p. 20 [online][cit. 22. 01. 2022]. Retrieved from: https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2020)658539;

European Union. *Special Eurobarmeter 442: Attitudes of Europeans towards Animal Welfare* [online][cit. 03. 01. 2022]. Retrieved from: https://europa.eu/eurobarometer/surveys/detail/2096;

Greenpeace (2019). *Feeding the Problem: The dangerous intensification of animal farming in Europe* [online][cit. 07. 01. 2022]. Retrieved from:. https://www.greenpeace.org/static/planet4-eu-unit-stateless/2019/02/83254ee1-190212-feeding-the-problem-dangerous-intensification-of-animal-farming-in-europe.pdf;

Institute for European Environmental Policy (2020). Assessment of environmental and socio-economic impacts of increased animal welfare standards: Transitioning Towards Cage-Free Farming In The Eu, p. 21 [online][23. 01. 2022]. Retrieved from: https://ieep.eu/publications/assessment-of-environmental-and-socio-economic-impacts-of-increased-animal-welfare-standards;

Our World in Data. Soy [online][cit. 14. 01. 2022]. Retrieved from: https://ourworldindata.org/soy;

United Nations Environment Programme (2020). *Preventing the Next Pandemic: Zoonotic diseases and how to break the chain of transmission* [online][cit. 07. 01. 2022]. Retrieved from: https://www.unep.org/resources/report/preventing-future-zoonotic-disease-outbreaks-protecting-environment-animals-and.

LEGAL ASPECT OF USING VEHICLES DURING HUNTING ACCORDING TO THE CZECH LAW

Jana SEHNALOVÁ

Key words: vehicles, hunting, (un)loaded firearms, Czech Republic

Introduction

The environment of wild animals and thus hunting has changed significantly in the last few years not only in the Czech Republic, which is in the focus of this article. There are certainly many influences that cause changes in game behaviour and even though the purpose of this text is not to discuss them in more depth, I would like to highlight the considerable increasing recreational and touristic pressure on nature and the landscape, especially in recent years. Not only the coronavirus pandemic has caused that spending of leisure time has massively moved from all other mostly indoor sectors of hobbies and entertainment into nature. The growing recreational pressure on landscape, regardless of season, represents a long-lasting trend causing issues that even the supreme authorities are aware of.[172] This phenomenon affects natural behaviour of game when it naturally brings with it a change in the conditions of hunting itself.[173]

This – generally speaking – requires, above all, **greater agility** of hunters. The intensification of hunting of primarily hoofed game is called upon mainly by foresters in an effort to restore the forest vegetation which has recently been affected by the bark beetle calamity.[174] In addition, in relation to wild boar, we will undoubtedly face another wave of African swine fever, after the Ministry of Agriculture of the Czech Republic in late October explicitly recommended intensifying the hunting of wild pigs (*Sus scrofa*).[175] Reducing game levels by hunting is therefore a priority for hunters today more than ever before. However, mainly as a result of human activity, game is to some extent slowly abandoning established patterns of behaviour, and so its hunting may gradually become disproportionately more demanding or significantly different, although modern times bring hunters a number of previously unthinkable aids and

[172] ŠEPLAVÝ, Petr, Jaroslav RŮŽIČKA a Jiří PONDĚLÍČEK. *Myslivost v České republice*. 3. aktualizované vydání. Praha: Ministerstvo zemědělství, 2018. ISBN 978-80-7434-423-7.

[173] DRIMAJ, Jakub, Jiří KAMLER, Ondřej MIKULKA, Miloslav HOMOLKA a Radim PLHAL. Vliv rekreačních aktivit na distribuci a chování srnce obecného a prasete divokého v příměstských lesích. *Zprávy lesnického výzkumu*. Strnady: Výzkumný ústav lesního hospodářství a myslivosti, v. v. i., 2021. 66 (4). ISSN 0322-9688.

[174] HLÁSNY, Tomáš, Katarína MERGANIČOVÁ, Roman MODLINGER, Robért MARUŠÁK, Radim LÖWE a Marek TURČÁNI. Prognóza vývoje kůrovcové kalamity a nová platforma pro šíření informací o lesích České republiky. *Zprávy lesnického výzkumu.* Strnady: Výzkumný ústav lesního hospodářství a myslivosti, v. v. i., 2021. 66 (3). ISSN 0322-9688.

[175] Metodický pokyn orgánům státní správy myslivosti k redukci početních stavů prasete divokého ze dne 27. 10. 2021, Sekce lesního hospodářství, Mgr. Patrik Mlynář, náměstek pro řízení sekce.

technologies. In this context, I have come across a seemingly banal question several times – what is the view of the Czech law on combining motor vehicles and hunting rifles and using only vehicles as a hunting observatory.

There are basically two practical levels to this question: first, is it possible to move in a motor vehicle in a hunting area with a loaded hunting rifle, and second, can such a vehicle be used as a "*relocatable*" or mobile hunting observatory. The views on correct (i.e. legal) answers seem rather ambiguous.

Legal aspects of (un)loaded guns in vehicles

For example concerning driving a vehicle around hunting area with a loaded hunting rifle, I often come across guidance suggesting that such action is not suitable – primarily for safety reasons but also legal reasons with regard to some provisions of Act No. 119/2002 Sb. (Weapon Act). Personally, however, I believe that the Weapon Act does not contain such a general ban – on the contrary.

It is necessary to take into account primarily § 29 (4) of the Weapon Act, which states that the holder of a group C firearms license is obliged to transport an unloaded weapon in a closed case only to the place "*…where he is entitled to* ***carry*** *it, use it for shooting or otherwise manipulate it.*" From § 2 (2, b)) of the Weapon Act it is clear that the term "*carry*" does not include all the true Czech linguistic meanings for the purposes of this Act (i.e. to wear something, to repeatedly hold something in your hands while moving, to repeatedly transport something somewhere, for more details see the LINGEA Internet Dictionary of Contemporary Czech language from),[176] but it narrows down to the simple right to have a weapon with you, except for "*possession*", as defined in § 2 (2, a)) of the Weapon Act. In addition, the relevant passage of the Explanatory memorandum (Dz 119/2002, Special Part) to the Weapon Act in question explicitly states that: "T*he fact that the holder of the weapon has the weapon with him, but it cannot be used, is not and cannot be perceived as carrying, but only as transport.*"

Unfortunately, the paragraph in question, as well as other provisions of the Weapons Act, does not in any way elaborate on the meaning of the phrase "*to have a weapon with you*", but a certain conclusion can be reached by interpretation using the method of analogy. For example, Act No. 40/2009 Sb. (Criminal Code) uses a similar term, which according to established case law[177] does not necessarily mean holding the object directly in your hands or having it otherwise connected to your body. It is quite enough that the object in question (in this case a hunting weapon) is in the **immediate vicinity and power** of the person. In the given case of rifle in a moving vehicle this is apparently fulfilled.

---

[176] Slovník současné češtiny – nosit. Nechybujte | *Portál o českém jazyce* | Lingea s.r.o. [online]. [cit. 25. 1. 2022] Dostupné z: https://www.nechybujte.cz/slovnik-soucasne-cestiny/nosit?

[177] For example usnesení Nejvyššího soudu ČR ze dne 26. 1. 2005, sp. zn. 8 Tdo 1297/2004.

In addition to the shooting range, the place entitling the hunter to carry a weapon is undoubtedly also a hunting area, for which the hunter in question possesses a relevant hunting license, i.e. a hunting permit. However, it is important to keep in mind that Act No. 449/2001 Sb. (Hunting Act) in § 2 (i)) defines hunting as a set of hunting lands and at the same time determines in an exhaustive list which pieces of land are non-hunting (§ 2 (e)). It is therefore possible to carry – i.e. to have a loaded rifle with you, or in the immediate vicinity of the hunting land – also in a motor vehicle but **only** on hunting land (for example on the land of the Agricultural Land Fund pursuant to Act No. 334/1992 Sb., on lands intended for functions of the forests according to Act No. 289/1995 Sb., or special-purpose roads according to Act No. 13/1997 Sb.) within a hunting area for which the holder of the weapon possesses a valid hunting permit. According to the former interpretation of the Ministry of Agriculture, the hunting right also applies to narrow lanes not interrupting the connection of pieces of hunting lands according to § 2 (g)) of the Hunting Act. This includes roads that do not represent an obstacle to the movement of game (i.e. all roads with the exception of highway-type roads).

Thus, although driving a vehicle with a loaded hunting rifle may theoretically present a higher level of safety risk in terms of safe handling of weapons, it also represents a significant increase in the ability to perform (unscheduled) hunting, especially of those species of game whose numbers are a priority to regulate by the legislator.

In this context, I would just like to point out briefly the situation in other countries, where the regulation of arms transportation is disproportionately stricter. For example, in some U.S. states, an authority may confiscate an improperly transported rifle (even an unloaded rifle – but out of suitable transporting case). The weapons removed in this manner are then sold in special shops with the proceeds from their sale allocated directly to the budget of the local sheriff's office.

Legal aspects of using motor vehicles for hunting

Regarding the possibility of using only motor vehicles as a hunting observatory, I would like to draw readers' attention to the legal regulation of prohibited hunting methods. According to § 45 (1, h)) of the Hunting Act, it is prohibited: *"…to hunt game* ***with the help of mechanisms moving on land****, above ground or on water, unless it is a boat floating at less than 5 km per hour."* Unfortunately, a legal definition of the phrase "*using mechanisms moving on land*" absents. In this case, it is also not possible to use an analogy from another legal regulation or act due to lack of any similar concept elsewhere in the Czech legal system. However, considering the very wording of the provision in question, which in its own second part expressly regulates ships sailing at a certain speed, it seems very likely that the legislature has indeed shown a willingness

to regulate only **actively moving mechanisms** at the moment of hunting itself, not all mechanisms with general movement ability.

The Explanatory memorandum (449/2001 Dz, Special section) to the Hunting Act states that the aim of regulating prohibited hunting methods at the legal level is not to allow the use of means as follows: "*…which would further reduce the handicap of game in relation to the hunter.*" Although the Explanatory memorandum cannot serve as a binding source of law in Czech legal system, it may facilitate an easier interpretation of certain terms, especially if it contains an approximation of the objective which the legislature seeks to achieve by the regulation in question. In our case, it is relatively clear that the goal is to limit some of the benefits that modern technologies bring to hunters at the expense of the wildlife's natural instincts of the game. Here, it is necessary to take into account the fact that the current Hunting Act, and therefore the cited Explanatory memorandum, are both more than two decades old. From the point of view of today (when the growing demand for regulating numbers of certain species means the legislator is abandoning some hitherto prohibited hunting methods – i.e. use of night vision or thermal scopes as well as relaxation of rules for common hunting or hunting during agricultural harvest) the interests in very strong wildlife protection would seem illogical and pointless. However, I would like to point out that many a lawyer with focus on hunting topic had come up with a strict interpretation like this in the past.[178]

Contrary to this view, I personally believe that the provision in question is not primarily intended to exclude all mechanisms **capable of movement**, even if they are currently stationary (i.e. a parked car which the hunter uses as a hunting observatory, or which is only used for greater stability when shooting, etc.), but to really exclude only mechanisms **moving** at a given moment within the hunt itself. The wording in question is, of course, relatively unfortunate, because if the legislator really intended to exclude all moving or possibly moving mechanisms, some hunting devices would often reach the illegal level. Especially if they are constructed in compact dimensions, often equipped with towing devices and wheels for easier movement in response to the current situation in the hunting area. The so-called mobile hunting observatories, which are used mainly to make it much easier for hunters to protect sensitive agricultural commodities, would therefore – if the Hunting Act is interpreted in the strictest way – constitute a prohibited method of hunting. So then *ad absurdum* any relocatable or mechanically movable hunting observatory would fall under the strictest interpretation in the illegal level. At this point, however, we will probably all agree that the legislator did not intend such rigor and therefore this is only an inappropriately chosen formulation of the norm.

[178] Compare for example with PETR, Bohuslav. *Zákon o myslivosti: komentář*. Praha: Wolters Kluwer, 2015. Komentáře (Wolters Kluwer ČR). ISBN 978-80-7478-781-2. Page No. 184, or ONDRÝSEK, Roman. Lov za pomoci dopravního prostředku a převážení zbraní. *Myslivost. Stráž myslivosti.* Praha: Myslivost, 2020. (9). ISSN 0323-214X.

If we accept the legality of mobile hunting observatories, we can hardly defend the possible illegality of a parked vehicle, which should ultimately perform exactly the same function for hunters. Moreover, from the economic point of view (with regard to the acquisition price of the hunting observatory) and considering that the hunting land is usually owned by third parties (whose consent for placement of the permanent hunting observatory hunters need in advance according to the Czech law), using mobile hunting observatories and allowing them to be easily moved to where they best perform their function seems logical and functional.

Conclusion

The time has come to the point of higher pressure on hunters to significantly reduce the numbers of some game species. At the same time, this is a moment which, for this purpose, brings a considerable relaxation of some hunting methods, which were prohibited in the past. In this context, I am convinced that a **more liberal interpretation** of the relationship between the use of motor vehicles, i.e. potential mobile mechanisms and firearms is entirely appropriate.

Given that the interpretation relates to a possible administrative punishment – committing an offense, the principle of prohibition of extensive (i.e. broadening) interpretation applicable in criminal law, which also applies to administrative punishment, should also be taken into account. Furthermore, one of the essential principles of public power according to which public power can be exercised only in cases, limits and methods stipulated by law, cannot be neglected. Opposite to this there is a *Praeter legem* principle that allows everyone to do everything that the law does not prohibit and at the same time relieves every one of the obligation to do anything that the law does not require. However, I would like to point out that only case law or amendments of the legal norms in the form of a more precise specification of the provisions in question can provide a clear answer to these issues.

Bibliography

* *Note: All direct citations of Czech legal norms are author's translation.*

- ŠEPLAVÝ, Petr, Jaroslav RŮŽIČKA a Jiří PONDĚLÍČEK. *Myslivost v České republice*. 3. aktualizované vydání. Praha: Ministerstvo zemědělství, 2018. ISBN 978-80-7434-423-7.
- DRIMAJ, Jakub, Jiří KAMLER, Ondřej MIKULKA, Miloslav HOMOLKA a Radim PLHAL. Vliv rekreačních aktivit na distribuci a chování srnce obecného a prasete divokého v příměstských lesích. *Zprávy lesnického výzkumu.* Strnady: Výzkumný ústav lesního hospodářství a myslivosti, v. v. i., 2021. 66 (4). ISSN 0322-9688.
- HLÁSNY, Tomáš, Katarína MERGANIČOVÁ, Roman MODLINGER, Robért MARUŠÁK, Radim LÖWE a Marek TURČÁNI. Prognóza vývoje kůrovcové kalamity a nová platforma pro šíření informaci o lesích České republiky. *Zprávy lesnického výzkumu.* Strnady: Výzkumný ústav lesního hospodářství a myslivosti, v. v. i., 2021. 66 (3). ISSN 0322-9688.
- Metodický pokyn orgánům státní správy myslivosti k redukci početních stavů prasete divokého ze dne 27.10.2021, Sekce lesního hospodářství, Mgr. Patrik Mlynář, náměstek pro řízení sekce.
- Slovník současné češtiny – nosit. *Nechybujte | Portál o českém jazyce | Lingea s.r.o.* [online]. [cit. 25.1.2022] Dostupné z: https://www.nechybujte.cz/slovnik-soucasne-cestiny/nosit?.
- Usnesení Nejvyššího soudu ČR ze dne 26. 1. 2005, sp. zn. 8 Tdo 1297/2004.
- PETR, Bohuslav. *Zákon o myslivosti: komentář*. Praha: Wolters Kluwer, 2015. Komentáře (Wolters Kluwer ČR). ISBN 978-80-7478-781-2.
- ONDRÝSEK, Roman. Lov za pomoci dopravního prostředku a převážení zbraní. *Myslivost. Stráž myslivosti.* Praha: Myslivost, 2020. (9). ISSN 0323-214X.
- Zákon č. 119/2002 Sb., o střelných zbraních a střelivu (Weapon Act)
- Zákon č. 40/2009 Sb., trestní zákoník (Criminal Code).
- Zákon č. 449/2001 Sb., o myslivosti (Hunting Act)
- Zákon č. 334/1992 Sb., o ochraně zemědělského půdního fondu.
- Zákon č. 289/1995 Sb., lesní zákon.
- Zákon č. 13/1997 Sb., o pozemních komunikacích.
- Dz 449/2001, Důvodová zpráva k vládnímu návrhu zákona o myslivosti (vydán pod č. 449/2001 Sb. dne 31. 12. 2001).
- Dz 119/2002, Důvodová zpráva k zákonu č. 119/2002 Sb.

30 YEARS OF OPERATION OF THE CZECH MINING REGULATIONS – TIME TO CHANGE?

Ondřej VÍCHA

Introduction

In 2018 we commemorated the 30th anniversary of the coming into effect of the key regulations that form the basis of the mining law in the Czech Republic. The current performance of public administration in the area of mining law is significantly influenced by the fact that these key legal regulations in force in this domain were adopted in 1988, only shortly before the major social changes taking place after 1989. Despite the most evident effect on the terminology used in the regulations, content problems have proved to be far more important. At the time of the adoption of these regulations, social (state) ownership of mineral extraction organisations (owned by the state too) clearly dominated. The importance of legal regulation of due, but also effective, performance of public administration, had been considerably smaller than in the conditions of a democratic rule of law with respect for property rights and other fundamental rights and freedoms (including the right to a favourable environment). Although the legal regulation in the domain of mining and geology has been amended several times, it can be considered fragmented, obsolete and problematic in terms of its application in the changed social conditions after 1989.

Historical Development of the Mining Law in the Czech Republic

Mining law, the subject of which is the regulation of legal relationships arising in mining and relating, in particular, to the mining and treatment of natural mineral resources, belongs among the traditional legal fields with a rich history in the territory of the Czech state. The most well-known sources of medieval written mining law in our territory is the so-called Jihlava mining law (*Iura montium et montanorum*) and especially the so-called Kutná Hora mining law (*Ius regale montanorum or Constitutiones iuris metallici*). The Kutná Hora mining law from 1 300 was valid in our territory until 1854, when it was abolished and replaced by the General Mining Law (Imperial Law Gazette 146/1854).[179]

[179] For more details on the history of Czech mining law, cf. e.g. POŠVÁŘ, Jaroslav. České horní právo a jeho pronikání v Evropě v období feudalismu. (Czech mining law and its extension in Europe in the period of feudalism.) *Acta Universitatis Brunensis, Iuridica*, 1973, no. 8, EFFENBERGER, Karel. O horním právu. (On the mining law.) *Právní rádce*, no. 6-12/1996 or MAKARIUS, Roman. Historický vývoj horního práva na území českého státu. (The historical development of mining law in the territory of the Czech State.) *Uhlí, rudy, geologický průzkum*, 1999, no. 11.

The Act No. 11/1918 Coll., on the Establishment of an Independent Czechoslovak State (Art. 2)[180] brought about, inter alia, the passing of the imperial General Mining Law (Imperial Law Gazette 146/1854,), which was in force in our territory until 1957, when it was abolished by the National Assembly of the Czechoslovak Republic and with effect from 1 January 1958, it was replaced by the Act No. 41/1957 Coll., on the Utilisation of Mineral Resources (the Mining Act).

Mining Law in Force in the Czech Republic

The core of mining law, consisting of a total of three different laws, which are still in force in the Czech Republic to this day, was adopted in 1988. On 19 April 1988, the Act No. 44/1988 Coll., on the Protection and Utilisation of Mineral Resources (the Mining Act), Act No. 61/1988 Coll., on Mining Activities, Explosives and on the State Mining Administration, and Act No. 62/1988 Coll. on Geological Works and on the Czech Geological Office[181] were published in the Collection of Laws. The Mining Act was adopted by the Federal Assembly of the Czechoslovak Socialist Republic as a federal law; the remaining laws were adopted by the national councils as laws of the republic, applicable for the individual parts of the federation.[182] All these laws became effective on 1 July 1988, only shortly before the major social changes commencing in 1989. Over the next thirty years, a number of implementing legislation to these laws was adopted, including one governmental decree[183], and dozens of bylaws issued mainly by the Czech Mining Authority, but also by the Ministry of the Environment or the Ministry of Industry and Trade.[184]

---

[180] Cf. e.g. SLÁDEČEK, Vladimír. K prvnímu tuctu zákonů přijatých takřka před sto lety. (The first dozen laws passed almost a century ago.) *Právní rádce*, no. 9, 2018.

[181] The words ‚and on the Czech Geological Office' were deleted from the title of the Act by the first amendment No. 543/1991 Coll. with effect from 20 December 1991.

[182] In the Slovak Republic the Slovak National Council adopted Act No. 51/1988 Coll. on Mining Activities, Explosives and the State Mining Administration (still in force), and Act No. 52/1988 Coll. on Geological Works and on the Slovak Geological Office [currently replaced by Act No. 569/2007 Coll. on Geological Works (Geological Act)]. For more details on the Slovak legislation in the field of mining and geology, cf. KOŠIČIAROVÁ, Soňa. et al. *Právo životného prostredia* (Environmental Law), 2nd amended and extended edition. Bratislava: Vysokoškolská učebnice. Bratislava Law School, Euro Kodex; Plzeň: Vydavatelství a nakladatelství Aleš Čeněk, s.r.o., 2009, pp. 491–512.

[183] Governmental Decree No. 98/2016 Coll., on Reimbursement Rates.

[184] E.g. Decree of the Czech Mining Authority No. 104/1988 Coll., on the Rational Use of Exclusive Deposits, Permitting and Reporting on Mining Activities and Notification of Activities Carried out by Mining, Decree of the Czech Mining Authority No. 99/1992 Coll., on the Establishment, Operation, Safeguarding and Disposal of Facilities for Waste Disposal in Underground Spaces, Decree on the Czech Mining Authority No. 172/1992 Coll., on Mining Space, Decree of the Ministry of the Environment No. 363/1992 Coll., on the Discovery of Old Mine Works and Keeping Records thereof., Decree of the Ministry of the Environment No. 364/1992 Coll., on Protected Deposit Territories, Decree of the Czech Mining Authority No. 435/1992 Coll., on Mining Surveying Documentation in Mining Activities and some Activities Carried out by Mining, Decree of the (then) Ministry for Economic Policy and Development No. 497/1992 Coll., on Recods of Stocks of Reserve Deposits, Decree of

The adoption of the mining regulations in force was preceded by a relatively lengthy preparation, which began after 1968. In the course of the preparation, more than ten mining acts were drafted.[185] The Act No. 41/1957 Coll., on the Utilisation of Mineral Resources (the Mining Act)[186] was repealed and replaced by new mining regulations in 1988 due to the effort to increase the level of protection and exploitation of mineral resources caused by the steady increase in the consumption of basic mineral raw materials necessary for the development of the national economy while considering their limited sources.

The explanatory memorandum to the Mining Act 1988[187] states, inter alia, that *'the Mining Act No. 41/1957 Coll. was issued at the beginning of the era of building socialism in the Czechoslovak Socialist Republic. Therefore, it does not contain the changes that characterise the developed form of socialism. Although in the field of mining legislation it was a pioneering act under new social conditions, mining has undergone significant changes in the following years. The extraction of minerals has increased considerably in the past period. Also, there have been some changes in opinion regarding the assessment of the importance of mineral raw materials in the development of the national economy'*.

The purpose of the Mining Act (No. 44/1988 Coll.)[188] in force is to establish the principles for the protection and economical use of mineral resources, in particular in the course of prospecting and exploration, opening, preparation and exploitation of mineral deposits, the treatment and upgrading of minerals carried out in connection with their exploitation, as well as operational safety and environmental protection during these activities. The Act No. 61/1988 Coll., on Mining Activities, Explosives and on the State Mining Administration, as amended,[189] lays down conditions for carrying out mining activities and activities carried out by mining (including operational safety and protection of human health during these activities), conditions for handling explosives and explosive objects, conditions for the safe operation of

the Ministry of the Environment No. 268/2004 Coll., on Geological Documentation, Decree of the Ministry of the Environment No. 369/2004 Coll., on the Planning, Implementation and Evaluation of Geological Works, Notification of Risk Geofactors and on the Procedure for Calculating Reserves of Reserved Deposits, or Decree of the Ministry of Industry and Trade No. 29/2017 Coll., on Mining and Technical Records.

185 MAKARIUS, Roman. Historický vývoj horního práva na území českého státu. (Historical development of mining law in the terriory of the Czech state.) *Uhlí, rudy, geologický průzkum*, 1999, No. 11, p. 7.

186 For more details of this act cf. MRÁZ, Emanuel. Horní předpisy. *Praktická rukověť usnadňující správně uplatňovat horní zákon a předpisy podle něho vydané.* (Mining regulations. Practical handbook facilitating correct application of mining law and regulations adopted on its basis.) Praha: Práce, 1959.

187 Federal Assembly of the Czechoslovak Socialist Republic, 5th parliamentary term, print No. 49, 1987.

188 Cf. VÍCHA, Ondřej. *Horní zákon. Zákon o hornické činnosti, výbušninách a o státní báňské správě. Komentář.* (Mining Act. Act on mining activities, explosives and on state mining administration. Commentary.) Praha: Wolters Kluwer CR, 2017, pp. 1–468.

189 Cf. VÍCHA, Ondřej. *Horní zákon. Zákon o hornické činnosti, výbušninách a o státní báňské správě. Komentář.* (Mining Act. Act on mining activities, explosives and on state mining administration. Commentary.) Praha: Wolters Kluwer ČR, 2017, pp. 471–909.

underground structures, and, last but not least, the organisation and scope of the authority of the state mining administration bodies. The Act No. 62/1988 Coll. on Geological Works, as amended,[190] provides for the conditions for the planning, carrying out and evaluation of geological works, their control and sanctions.

The preparation of the new Mining Act had already commenced by the end of 1991 (at the initiative of the then Chairman of the Czech Mining Authority), but over the past thirty years a new, modern and more user-friendly mining code has not been adopted. There exist many reasons for this, three of which, in my opinion, are crucial:

1. The division of competencies in this field of public administration among the three central state administration bodies (the Czech Mining Authority, the Ministry of Industry and Trade and the Ministry of the Environment) and related conceptual disputes on the nature of the Mining Act among the materially competent ministries. Especially in the first ten years of the preparation of the new Mining Act, there was a dispute on the nature of this legal regulation between the Ministry of Economic Policy and Development (and subsequently the Ministry of Economy, or more precisely, the Ministry of Industry and Trade) on one side and the Ministry of the Environment on the other.[191]
2. Harmonisation of a number of conflicting interests that occur in this sector of public administration. It is primarily the interest of the state as the owner of mineral wealth in its protection and economical usage[192], the interest of private business entities (organisations[193]) in the mining of minerals and related profits, the interest of owners and other users of real estate affected by the mining in the protection of their rights in rem and, last but not least, the public interest in the protection of the environment, health, and cultural heritage.
3. The absence of a comprehensive regulation of mining law at the level of the European Union. EU law is based on the assumption that the area of mining and the regulation of the usage of mineral resources lies – with some exceptions – within the exclusive authority of individual Member States of the EU. Over time, however, this area has also come under the influence of EU law, in particular in the context of the need to meet the requirements of ensuring work safety, environmental protection and health and, more recently, the need to secure the

[190] Cf. VÍCHA, Ondřej. *Zákon o geologických pracích s komentářem, judikaturou a prováděcími a souvisejícími předpisy.* (Act on geological works with commentary, case law and implementing and related regulations.) 1st ed. Praha: Leges, 2014.

[191] Cf. ŘEZNÍČEK, Václav. Problematika přípravy nového horního kodexu a jeho úskalí v současných společenských podmínkách (duben 1999). (Issues related to the new mining code and its pitfalls in the current social conditions (April 1999). *Uhlí, rudy, geologický průzkum*, 1999, No. 12, pp. 13–18.

[192] Under Article 7 of the Constitution of the Czech Republic the state shall take care of the careful usage of natural resources and of the protection of natural resources. In accordance with Section 5 of the Mining Act the state is the owner of mineral resources which form deposits of reserved minerals.

[193] Section 5a of the Mining Act, or Section 3a of the Act No. 61/1988 Coll.

supply of critical raw materials.[194] However, at the EU level no comprehensive mining code (e.g. in the form of a directive or a regulation of the European Parliament and of the Council) that would lay down unified conditions for the prospecting, exploration and exploitation of mineral resources in individual Member States of the EU has been adopted yet.[195] Only some directives providing for partial issues, such as the prospecting, exploration and exploitation of oil and natural gas (so-called hydrocarbons),[196] management of mining waste,[197] handling explosives[198] or occupational safety in mining[199] have been adopted.

Amendments to Mining Regulations

Over time the scope of mining regulations has expanded and currently it includes, besides the protection and usage of mineral resources, related areas that concern the operation of all types of mining activities or activities carried out by mining, management of mining waste or handling explosives or the management of underground facilities.[200] After the change in social and political conditions in 1989 the above mentioned regulations became repeatedly the subject of interest of the legislator, as evidenced by a number of amendments. So far, 26 Acts directly amending

194 Cf. VÍCHA, Ondřej. Europeizace horního práva. (Europeisation of Mining Law.) *Acta Iuridica Olomoucensia*, 2017, Vol. 12, No. 1, pp. 264–281.

195 To the most recent development of EU law in this area cf. e.g. PELLEGRINI, Mattia. Fostering the Mining Potential of the European Union. *European Geologist Journal*, 2016, No. 12, pp. 10–15.

196 Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the Conditions for Granting and Using Authorisations for the Prospection, Exploration and Production of Hydrocarbons. Cf. VÍCHA, Ondřej. *Prospection, exploration and production of hydrocarbons under the EC-Law.* DAMOHORSKÝ, Milan (ed.) et al.: Czech and European Environmental Law Yearbook – Volume 3, 1st ed., Beroun: Eva Rozkotová – IFEC, 2008, pp. 49–54.

197 Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006, on the Management of Waste from the Extractive Industries and amending Directive 2004/35/EC. Cf. VÍCHA, Ondřej. Nejnovější přístupy EU k nakládání s těžebními odpady. (The latest approaches of the EU to the extractive waste management.) *Ekologie a právo*, year 3, No. 6, 2007, pp. 2–9.

198 Directive 2014/28/EU of the European Parliament and of the Council of 26 February 2014, on the Harmonisation of the Laws of the Member States Relating to the Making Available on the Market and Supervision of Explosives for Civil Uses (recast), Commission Directive 2008/43/EC of 4 April 2008, Setting up a System for the Identification and Traceability of Explosives for Civil Uses.

199 E.g. Directive 92/91/EEC of 3 November 1992, concerning the Minimum Requirements for Improving the Safety and Health Protection of Workers in the Mineral-Extracting Industries through Drilling, Directive 92/104/EEC of 3 December 1992, on the Minimum Requirements for Improving the Safety Health Protection of Workers in Surface and Underground Mineral-Extracting Industries or Directive 2013/30/EU of the Parliament and of the Council of 12 June 2013, on Safety of Offshore Oil and Gas Operations and Amending Directive 2004/35/EC. Cf. VÍCHA, Ondřej. *The newest EU law approaches to the offshore oil and gas prospection, exploration and production activities*. In DAMOHORSKÝ, M., STEJSKAL, V. (eds.) et al. Czech and European Environmental Law. A Collective Monograph. Praha: Czech Society for Environmental Law, 2011, pp. 103–110.

200 VÍCHA, Ondřej. *Základy horního a energetického práva.* (Basics of mining and energy law). 1st ed. Praha: Wolters Kluwer, 2015, p. 41.

the Mining Act (No. 44/1988 Coll.), 39 Acts amending Act No. 61/1988 Coll., on Mining Activities, Explosives and the State Mining Administration, and 16 Acts amending Act No. 62/1988 Coll. on Geological Works.

However, most of the amendments to the Mining Act adopted in the Czech Republic over the past thirty years were of a legislative and technical nature. Only a few acts amending the Mining Act were introduced by reason of substantive change to individual provisions or institutes. The legislative and technical amendments include the so-called transposition amendments to the Mining Act, which are an outcome of the need to transpose the relevant legal acts of the EU into the legal order of the Czech Republic. This concerns for example the transposition of the so-called 'Hydrocarbon' Directive (by Act No. 315/2001 Coll. and No. 3/2005 Coll.), Directive on Management of Mining Waste (Act No. 157/2009 Coll.) or Directive on the Natural Geological Storage of Carbon Dioxide (Act No. 85/2012 Coll.). Further, it concerned amendments brought about by the adoption of acts in other areas of legal regulation, such as the Act on the Protection of Public Health (No. 258/2000 Coll.), the Insolvency Act (No. 296/2007 Coll.), Act on Basic Registers (227/2009 Coll.), the Tax Code (No. 281/2009 Coll.), the Cadastral Act (No. 257/2013 Coll.), Atomic Act (No. 264/2016 Coll.), Act on Liability for Administrative Offenses (No. 183/2017 Coll.), as well as the Building Act (No. 186/2006 Coll.) and amendments to it (Acts No. 350/2012 Coll. and No. 225/2017 Coll.). Last but not least, the legislative and technical amendments to the Mining Act include acts adopted in connection with changes in the territorial administrative division of the Czech Republic, such as the establishment of regions (Act No. 132/2000 Coll.) or the termination of activities of district authorities (Act No. 320/2002 Coll.).

The group of substantive amendments to the Mining Act comprises in particular the Act of the Czech National Council No. 541/1991 Coll., amending and supplementing Act No. 44/1988 Coll., on the Protection and Usage of Mineral Resources (the Mining Act). In operation as of 20 December 1991, this amendment of the Mining Act enabled private business in mining and laid down conditions for obtaining licenses and permits for mining activities and for activities carried out by mining. Act No. 168/1993 Coll., amending and supplementing Act No. 44/1988 Coll., on the Protection and Usage of Mineral Resources (the Mining Act), as amended by the Act of the Czech National Council No. 541/1991 Coll. and the Act of the Czech National Council No. 10/1993 Coll., with effect from 22 June 1993 introduced the obligation to create financial reserves for mining damage, rehabilitation and reclamation after mining. Act No. 366/2000 Coll., amending Act No. 62/1988 Coll., on Geological Works and on the Czech Geological Office, as amended by Act No. 543/1991 Coll. and Act No. 44/1988 Coll., on the Protection and Usage of Mineral Resources (the Mining Act), as amended by subsequent legislation, with effect from 22 November 2000, introduced the ban on the use of technologies of cyanide leaching in the treatment

and refining of minerals. Act No. 498/2012 Coll., amending Act. No. 44/1988 Coll., on the Protection and Usage of Mineral Resources (the Mining Act), as amended by subsequent legislation, with effect from 15 January 2013 abolished the possibility of the expropriation of land due to mining of reserved minerals[201] (the petition for annulment of this act was rejected by the Constitutional Court's plenary resolution of 5 August 2014, file ref. Pl. ÚS 26/13). Act No. 89/2016 Coll., amending Act No. 44/1988 Coll., on the Protection and Usage of Mineral Resources (the Mining Act), as amended, with effect from 1 January 2017 introduced, inter alia, the obligation to maintain mining and technical records and it newly adjusted payments for mining areas and their management (in connection with this amendment to the Mining Act, a governmental decree No. 98/2016 Coll. on Reimbursing Rates, was adopted).

The Recent Development of Mining Law in the Czech Republic

The latest development of Czech mining regulations is influenced by several governmental documents approved by the government of the Czech Republic in 2017. These include, for example, the Report on the Possibility of Solving Issues Related to the Financial Reserve to Provide Remediation and Reclamation in the Process of Smoothing out the Consequences of Mining Activities in Brown Coal Mines[202] or the Report on the Need to Safeguard the Economic Interests of the State in the Use of Critical EU Superstrategic Raw Materials and Certain Other Raw Materials,[203] outlining the efforts of the state to strengthen its role over the use of critical raw materials and to include state components (e.g. DIAMO, state enterprise, or the Czech Geological Survey) until the effectuation of geological exploration and mining projects.[204]

Undoubtedly, the most important of these is the Raw Materials Policy of the Czech Republic in the field of Minerals and Their Resources.[205] It is a strategic document that expresses the objectives of the state in the area of mineral resources in accordance with the needs of the economic and social development, including environmental protection. It is based on the principle of sustainable development[206] as a general overarching factor. The aim of this strategy is to ensure the raw material needs of the state, to secure stable, safe and economically beneficial access to mineral raw

[201] Cf. MAKARIUS, Roman. Zákon č. 44/1988 Sb. přestává být horním zákonem. (Act No. 44/1988 Coll. ceases to be the Mining Act.) *Uhlí, rudy, geologický průzkum*, 2012, No. 5, pp. 7–9.

[202] Resolution of the government of the Czech Republic of 3 May 2017, No. 333.

[203] Resolution of the government of the Czech Republic of 11 October 2017, No. 713.

[204] Cf. MAREŠ, David. Stát jako podnikatel v oblasti vyhledávání nerostů a jejich těžby? (The state as an entrepreneur in the field of mineral prospecting and mining?) *Epravo.cz*, 16 February 2018. [cit. 14. 10. 2019] available at https://www.epravo.cz/top/clanky/stat-jako-podnikatel-v-oblasti-vyhledavani-lozisek-nerostu-a-jejich-tezby-107072.html.

[205] Resolution of the government of the Czech Republic of 14 June 2017, No. 441.

[206] Sustainable development of society is a development that preserves the ability of current and future generations to satisfy their basic needs while not reducing the diversity of nature and preserving natural functions of ecosystems (compare Section 6 of Act No. 17/1992 Coll. on the Environment).

materials for the sustainable development of the whole society. The Czech Republic as the owner of the mineral resources has declared in this document that *'securing sufficient mineral raw materials for the domestic economy is one of its priorities, it is interested in the further refinement of knowledge about its mineral resources potential and in the consistent protection of mineral deposits, and it supports science and research, in particular in the segment of material-saving technologies, new modern or non-destructive mining methods, and a search for new types of raw materials and the new modern usage of known raw materials'*. Under this governmental policy a more extensive amendment to the Mining Act should be preceded by a factual expert debate and the seeking of a political consensus on selected areas (such as strengthening the role of the state in prioritising, coordinating and the targeted support for land exploration, as well as in deciding on the usage of mineral raw materials, regulation of the institute of mining area or in resolving the institute of expropriation for adequate compensation in favour of the state or its organisational units).

In the context of the latest legislative developments in the area of mining law in the Czech Republic, it is necessary to mention the governmental draft amendment of the Mining Act[207], currently debated by the Parliament of the Czech Republic, which, among other things, legislates for state raw material policy, specifies the regulation of mining law in the area of remediation, creation and management of reserves, reimbursement of extracted minerals and links the records of mining areas with the register of territorial identification, addresses and real estates. In order to determine the need for amendments in mining law, mainly in terms of meeting the consistent advancement of interests of the state in the usage of mining areas, the government of the Czech Republic has elaborated and adopted a schedule for drawing up a new Mining Act.[208] Last but not least, we should mention the establishment of a so-called coal commission,[209] the main objective of which is to provide the Czech government with an objective and consensual assessment of future needs of brown coal with a focus on assessing individual large combustion sources and analysing the possibilities of future diversion from coal usage in combustion sources, including all related aspects (such as legislative aspects with an impact on mining law).

---

[207] Government proposal of act amending Act No. 44/1988 Coll., on the Protection and Usage of Mineral Resources (Mining Act), as amended, and other related acts (Parliamentary Press No. 531/0). Cf. Další novela horního zákona. (Another amendment to the mining act.) *Právní rozhledy*, No. 13-14/2018, p. II. This amendment to the Mining Act was adopted as Act No. 88/2021 Coll., which entered into force on 1 July 2021.

[208] Resolution of the government of the Czech Republic of 17 June 2019, No. 420 to the Schedule for drawing up a new Mining Act.

[209] Resolution of the government of the Czech Republic of 30 July 2019, No. 565 on the Statute of the Coal Commission.

Conclusion

As a traditional national legal sector, mining law is inherently conservative and should be altered with prudence, as it must balance various (and in many cases conflicting) interests. From the point of view of the state, on the one hand, we must take into account its interest to act as the owner of mineral resources and its constitutionally based duty to ensure the careful usage of natural resources. On the other hand, the current raw material policy of the state manifests its interest to motivate private entities on the activity of which the mining and manufacturing sector is based in the Czech Republic to invest in a branch where the outcome is very often unknown or uncertain (depending on geological research and the adoption of the deposit).

The relationship between the Mining Act and the Act on Mining Activities, Explosives and the State Mining Administration, or, the Act on Geological Works, determined by the historical development of these legal rules, has proved to be completely non-systemic. A number of obligations and individual legal institutes appear in several acts, some in only one of them. Some institutes are partly enshrined in the Mining Act, partly in the Act on Mining Activities and partly in the Act on Geological Works. For individual users, the relationship of these basic acts in the field of mining and geology is generally very confusing. The inclusion of the regulation on the handling of explosives in the regulations on mining (specifically in Act No. 61/1988 Coll.) can be considered non-systemic too. For the sake of clarity, *de lege ferenda* it seems appropriate to earmark this relatively independent area of regulation for a separate law and subsequently, to unify the legal regulation of the mining sector into a single Mining Act (Code), which would establish a unified legal regime for all stages of exploitation of mineral raw materials, from the prospecting and exploration of mineral deposits through mining up to remediation and reclamation of land affected by the mining of mineral deposits.

The fact that mineral deposits are not renewable, and can only be exploited at the sites of their occurrence, requires a special approach to mineral resources, rational and complex usage and its protection for the future. When preparing new regulations in the sector of mining and geology, emphasis should be placed not only on simplifying and accelerating the administrative processes leading to the protection of mineral resources and its rational and environmentally friendly usage. In addition, it will be necessary to ensure that the legislation in question respects the protection of property rights and the protection of the environment or its individual components (in particular soil, water, forests, nature and landscape or air) in accordance with the requirement to ensure sustainable development. The new regulation will have to be strictly based on the constitutional order of the Czech Republic and ensure compliance with the basic principles of the performance of public administration, such as the principle of legality, fair trial, and compensation for the restriction of property rights. Adequate safeguards for public participation (following the Aarhus

convention commitments) and environmental protection together with its adequate interconnection with environmental legislation will be an unquestionable precondition for the adoption of a completely new comprehensive regulation in the mining sector. Over time, the area of mining law has also come under the influence of international and EU law, particularly in connection with the need to ensure occupational safety, protection of the environment and human health, and most recently also the need to secure the supply of critical raw materials. Therefore, in this context it will be necessary to ensure the proper implementation of international and Union obligations in this area.

Addressing the complex and societal challenges of climate change, how to mitigate and adapt to them, requires the cooperation of many scientific sectors, including legal science. Mining law regulating the conditions for the use of fossil mineral resources, the combustion of which causes climate change, cannot stand aside. In this context, it will undoubtedly be necessary to revise the Mining Law (as indicated by the establishment of a coal commission in the Czech Republic) and to involve it in measures aimed at solving these problems.

We conclude with the hope that the Czech Republic will not have to wait more than 500 years (as in the case of replacing the Kutná Hora Mining Law) nor more than 100 (as in the case of the abolition of the imperial General Mining Code) for a new, modern, user-friendly mining code.

LIST OF CONTRIBUTORS

Prof. JUDr. Milan DAMOHORSKÝ, DrSc.

(Head of the Environmental Law Department, Law Faculty of Charles University)

JUDr. Klára DJEMEL

(PhD. Student of the Environmental Law Department, Law Faculty of Charles University, Trainee Barrister)

JUDr. BcA. Tereza FABŠÍKOVÁ, PhD.

(Senior Lecturer of the Environmental Law Department, Law Faculty of Charles University)

JUDr. Alena CHALOUPKOVÁ, PhD.

(Researcher of the Institute of State and Law, Academy of Science of the Czech Republic)

JUDr. Jakub KANICKÝ

(Junior Lecturer of the Environmental Law Department, Law Faculty of Charles University, Trainee Barrister)

Mgr. Gabriela KUBÍKOVÁ

(PhD. Student of the Environmental Law Department, Law Faculty of Charles University)

JUDr. Jana SEHNALOVÁ

(PhD. Student of the Environmental Law Department, Law Faculty of Charles University, Trainee Barrister)

JUDr. Ondřej VÍCHA, PhD.

(Senior Lecturer of the Administrative Law Department, Law Faculty of Palacký University, Olomouc)