

COUNTRY REPORT: CZECH REPUBLIC

Recent Statutory Developments

MILAN DAMOHORSKY*, PETRA HUMLICKOVA[#]

Our article aims to describe the main changes in the Czech legal regulation of environmental protection in its broad context of the European Union in the last twelve months.

Act on Integrated Pollution Prevention and Control

The Act on Integrated Pollution Prevention and Control (Act No. 69/2013 Coll.) underwent complex amendment following the transposition of *Directive 2010/75/EU on industrial emissions*.¹ The aim of the amendment is to further reduce polluting emissions, and improve the environment, whilst improving the efficiency of the permitting process, reducing unnecessary administrative burdens and optimizing legislative duties. The amendment mainly strengthens the role of ‘best available technique’ as the basis for the authorization of activities and sets the binding limits of such activities. The Act also puts the emphasis on the exchange of information on ‘best available techniques’, promoting new technologies and reviewing permits in the light of newly available technologies. It also extends the scope of industrial activities that must be assessed under the Act. The main goal is to protect soil and groundwater against pollution. In response to the restrictive judicial interpretation of ‘public concern’, the Act redefines the test for public interest groups with the right to participate in the permitting process

* Milan Damohorsky is the professor of environmental law at the Law Faculty of the Charles University in Prague, Czech Republic. He is the Vice Dean, Head of the Environmental Law Department and President of the Czech Society for Environmental law. Contact information is damohors@prf.cuni.cz.

[#] Petra Humlickova is a Lecturer in Law Faculty of Charles University in Prague, Czech Republic. She teaches environmental law. She has published on issues of Aarhus Convention and environmental liability in English, German, Polish and Czech. Contact information is humlic.prf@gmail.com.

¹ Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control).

No Expropriation for Mineral Reserves

The controversial amendment to *the Mining Act (Act No. 798/2012 Coll.)* was approved. The amendment solves the conflict of interest between the protection of private property and public interest in relation to the exploitation of mineral resources. It significantly enhances the protection of the rights of property owners potentially affected by the designation of mining minerals. Designated mining minerals are owned solely by state. Amongst others they are: coal, radioactive minerals and oil. The ability to expropriate from the private owners for the purpose of mining these strategic mineral reserves was removed by this amendment. As a result, the state, or the operator of mining industry, must always reach an agreement with the concerned owners. This amendment was accepted after several years of painstaking efforts and it is a key instrument enhancing protection of municipalities facing demolition due to new mining. The Czech Ministry of Industry and Trade responded to the amendment by promising to adopt a new mining law that would at least partially return the possibility of expropriation.

Protection of Trees Outside Forests

After several years without the necessary decree, the Ministry of the Environment issued a *decree on the protection of trees and authorization for felling (No. 189/2013 Coll.)*. The decree is valid and effective from 15 July 2013 and further implements section 8 para 3 and 5 of *Act No. 114/1992 Coll., on the Protection of Nature and Landscape*. A permit from the nature conservation authority is required for the felling of a tree or trees that are part of an 'alley', regardless of the circumference of the trunk of the tree. 'Alley' is defined as a continuous series of at least ten trees with regular spacing. If there are some trees missing in a continuous row of trees, it is still an alley. Trees growing in orchards and plantations of trees are not considered as part of an alley.

The owner of a garden can cut trees without any permission. 'Garden', for the purpose of the Decree, is defined as the site connected to a residential premises in a built-up area of a village, which is fenced and inaccessible to the public. All these conditions must be fulfilled at the same time.

Compensatory measures may be part of the nature protection authority's permitting decision. For example, there can be a requirement that the cutting of trees is offset by their replacement (planting the new ones) under section 9 of the Act on the Protection of Nature

and Landscape. The nature protection authority can impose a requirement on applicants who are permitted to cut trees that they plant new trees and care for them for the required period of time (not exceeding a period of five years).

Waste Act

The amendment of *Waste Act No. 169/2013 Coll.* will enter into force in three stages during 2013 and 2014. One of the main objectives of the amendment is to eliminate or mitigate certain requirements - mainly of an administrative nature - without any negative impact on the protection of the environment. Small and medium-sized businesses should primarily benefit from the amendment. The major changes include changes in the classification of waste by category. The list of hazardous waste will be deleted in the relevant decree (*No. 381/2001 Coll., on Waste Catalogue*) and *Annex 5 of the Waste Act* will also be revoked. Only municipalities will be obligated to prepare a waste management plan. It will be possible to perform the function of waste manager for unlimited number of operators.

Producers of hazardous waste do not have to apply for permission for their collection. Changes are planned also for control of transboundary transport of waste. The integrated system of reporting compliance environment (ISPOP) will be utilized for the assessment of waste, records on transporting waste will be kept also by this system.

Natura 2000

The Government also approved *Decree no. 318/2013 Coll.* which establishes a national list of Sites of Community Importance (so-called "SCI"). This Decree replaces the previously existing government decree. The reason for the adoption of a new government decree was the need to adjust the appropriate forms of national protection for individual SCIs. In accordance with this amendment, there is protection based on the basic protection conditions set by decree as well as protection in the form of specially protected areas, i.e. contractual protection.

The conditions of basic protection are directly defined in section 45c para 2 of *the Act on Nature and Landscape Protection*. The conditions of basic protection do not, therefore, need to be promulgated in further provisions. The adoption of the new Decree allows the government to ensure protection of the entirety of 189 SCIs through the basic protection conditions and of part of a further 210 SCIs. The practical consequence will be the reduction

of the number SCIs protected by specially protected areas and a reduction of the administrative burden whilst the necessary protection is maintained at all sites.

Building Act and EIA

In 2013, *the Construction Act (No. 350/2012 Coll.)* was amended at more than 250 different points. Detailed explanation of these changes goes far beyond the scope of this article. Changes are made to all phases of construction permitting - from land-use planning, through zoning permit, to building permits. Importantly however, even this extensive amendment did not solve the gaps in the transposition of *the Directive 2011/92/EU of 13 December 2011 on the Assessment of the Effects of Certain Public and Private Projects on the Environment*. The Aarhus Convention Compliance Committee has described the transposition as poor (*No. ACCC/C/2010/50*) and its findings and recommendations, which are already freely available, comprehensively describe the failure of the Czech system (concerning mainly the absence of a definition of 'public concern', ineffective public participation and lack of access to the courts). The infringement process of the European Commission was also initiated in April 2013 against the Czech Republic. Further drawing on European funds by the Czech Republic is subject to proper amendment of the impact assessment process. The Czech Republic is therefore working on an amendment to the EIA Act, which is closely linked with the Building Act and other laws in the field of environment, and it will probably be one of the biggest changes in this area in recent years.

New Civil Code

From 1 January 2014, the new *Civil Code (Act No. 89/2012 Coll.)* will enter into force. The new code, with more than three thousand sections, brings an unprecedented amount of changes, especially in the areas of property law, contract law, family law and tort law. Some of them are also related to the environment.

The Civil Code (under section 81 para 2) stipulates for a human right to a healthy environment. "The protection especially enjoys the life and dignity of man, his health, and right to live in a favourable environment (...)".

New Civil Code on Animals

One of the most important environmental provisions is the provision that living animals will no longer be considered as things, but as a sentient, gifted, living creatures which must be adequately and sensitively handled (under section 494). The provisions on the thing shall apply *mutatis mutandis* on the living animals only to the extent in which it does not contradict the animal's nature. If someone injures an animal, he or she is then obliged to pay the owner for all necessary costs associated with its healing, even if they were substantially higher than the value of the animal (under section 2970).

The existence of property rights in animals is somewhat inconsistent with the concept of the animal as a sentient being. Under section 1046 a wild animal is without a master until it no longer lives in freedom. The captured animal will become an animal without a master as soon as it has its freedom and the owner is not promptly and consistently searching in an attempt to re-capture it. Such an animal is not considered as without a master if it is labelled in such a way that it is possible to find its owner. Under section 1047, the tamed animal becomes an animal without a master, and it will then become possible to appropriate it on the private property by the owner of that property, in cases where the owner of the tamed animal has not searched for the animal, and the animal does not return within a reasonable time (six weeks). This does not apply if the animal is identified in such a way that it is possible to find its owner. Under section 1048, a domestic animal is to be considered abandoned if it is obvious from the circumstances that the owner has the intention to dispose of or expel the animal. This also applies to pet animals. Under section 1049, animals bred in a zoo and fish bred in pond, which are not public property, are not without a master.

New Civil Code on property rights

The new *Civil Code* narrows the definition of the term "thing" to "everything different from human and serving the needs of the people". It is interesting that the term "thing" will also cover controllable forces of nature which are traded (for example, electricity) (under section 497). The *Civil Code* also firmly establishes that all plants grown on land are an integral part of that land (under section 507).

The new *Civil Code* also restricts property rights under section 1013. The owner has to refrain from all that causes the pollution to trespass on the land of another owner (for example, waste water, smoke, dust, gas, odour, light, shadow, noise, vibration, entering

animals and other similar effects). The thresholds are local conditions and normal use of land. The direct emission on the land of another owner is forbidden regardless of the extent of such impacts and the level of nuisance of neighbour, unless it is based on specific legal grounds. *The Civil Code* now allows only for pecuniary compensation for harmful emissions caused by industrial operations. In case of emissions resulting from the business operation, which has been officially approved, neighbours have rights only for compensation in money, even if loss was caused by circumstances that during official negotiations had not been taken into account.

The new *Civil Code* then broadly analyses the different options relating to and situations which may arise concerning the ownership of things, including damages as compensation in relation to those things. Stock animals or bees, for example, may be legally sought on neighbouring land owned by another without previous permission of that owner, if the owner of those animals considers that they ran away or were blown away (under section 1014).

All the foetus of nature (trees, shrubs) which fall on property can easily be picked up and consumed by the owner of that "victim" land. At the moment they land they will become his property (under section 1016). The Civil Code also addresses other similar disputes, for example, the roots, branches and other parts of trees and shrubs. If an owner fails within a reasonable time after being asked by a neighbour to remove roots and branches, the neighbour may remove by sound manner and at appropriate time of year roots or branches of tree beyond his land when they caused him damage exceeding interests in maintaining the pristine tree.

The land owner may also require the neighbour to maintain land boundaries free from trees and shrubs in a reasonable way (trees usually growing at a height exceeding 3m have allowable distance from the common land boundary 3m and other trees 1.5m) (under section 1017). This does not apply if the neighbouring land is forest, or orchard, or when the trees are specially protected under other legislation.

The new *Civil Code* also attempts to solve problems with trickling water, snow or ice from adjacent land or buildings. A landowner has (with some exceptions caused by nature) the right to require a neighbour to modify construction of the neighbouring property so that the building does not trickle water or so that snow and ice do not fall on his land (under section 1019).

New Civil Code on Damages

The new *Civil Code* also regulates liability regimes for all types of damages and losses. Section 2924 provides the operational activities. The operator is held strictly liable. The Liability shall be relieved if evidence of having taken any care which may be reasonably required in order to prevent the damage. Section 2925, which imposes liability for harm from damage from particularly hazardous operations, held the operators also strictly liable. The operation is particularly hazardous, if the possibility of serious damage cannot be reasonably ruled out in advance by the exercise of due care. The liability is relieved, if the damage was caused by external force majeure or unavoidable act of a third party.