Chapter IV

Czech Republic: Limited Constitutional Regulation of Environmental Protection Complemented by the Case Law of the Constitutional Court

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1. Introduction

Compared to other countries, the Constitution of the Czech Republic[1] is rather specific; it is relatively brief and contains only basic rules, mainly connected to the powers of the State. No articles of the Constitution deal with fundamental rights and basic freedoms. However, another relevant document exists called the Charter of Fundamental Rights and Freedoms.[2] The Constitution of the Czech Republic (the Constitution sensu stricto) and the Charter of Fundamental Rights and Freedoms compose the Czech Constitution sensu lato (the Constitutional Order).[3]

Concerning the Constitution sensu stricto, its Art. 7 should be mentioned in particular as it declares that the state shall concern itself with the prudent use of its natural resources and the protection of its natural wealth. The Charter in Art. 35 specifically grants the right to a favorable environment and the right to timely and complete information regarding the state of the environment and natural resources.

1 Act no. 1/1993 Sb., the Constitution of the Czech Republic, as amended.
2 Act no. 2/1993 Sb., the Charter of Fundamental Rights and Freedoms, as amended.
3 Radvan, 2016, p. 517.

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It also states that no one may, in exercising their rights, endanger or cause damage to the environment, natural resources, the wealth of natural species, or cultural monuments beyond the extent set by law. The significance of Art. 35 is diminished by Art. 41, which stipulates that these rights may be claimed only within the confines of the laws implementing these provisions.[4] It should be stated that the term "favorable environment" is the synonym for the "healthy environment" which is used more commonly in international documents.[5] A literal translation of the term "healthy environment" into the Czech language is not possible, as the Czech language does not include such a phrase.

The Environment Act[6] is a framework norm, while most of its provisions are of a proclamatory rather than a normative nature. Officially, it is not a constitutional act; however, it corresponds more to the provisions of constitutional law than to those of ordinary law.[7] The Act defines the environment as everything that creates the natural conditions for the existence of organisms, including humans, and is a prerequisite for their further development. The components of the environment are primarily air, water, rocks, soil, organisms, ecosystems, and energy.

The Czech environmental law theory[8] divides environmental acts into two groups: cross-cutting regulations and component regulations. Cross-cutting regulations are laws that contain regulation of the means applied to protect all components of the environment and regulate all threatening and harmful activities,[9] including laws dealing with the various types of liability relations; ownership issues; access to information, including environmental information; tax regulation; and procedural regulations.[10] With regard to liability for environmental matters in civil law, the Civil Code defines the general duty of prevention expressed as an obligation to act in such a way as to avoid unjustified harm to the liberty, life, health, or property of another.[11] In spite of the fact that terms such as nature and environment are not explicitly stated, there is no doubt that the liability for environmental matters is covered by this article. There are two types of crimes related to the environment: crimes against the environment and crimes related to the protection of the environment.[12]

Component regulations refer to legislation dealing with the protection of individual components of the environment such as nature, agricultural land, water

4 Vomáčka and Jančářová, 2021, p. 479. Also Jančářová, 2016, p. 163. Also Vomáčka, 2016, p. 175.
5 E.g., Art. 11 of the Protocol of San Salvador; Art. 38 of the Arab Charter on Human Rights; Art. 4.1 of the Escazú Agreement; UN Human Rights Council's Resolution 48/13 of 8.10.2021.
6 Act no. 17/1992 Sb., Environment Act, as amended.
7 Hanák, 2016, p. 120. See also Supreme Administrative Court, 3 Ans 8/2005-52, 18.5.2006.
8 Hanák, 2016, pp. 121–122.
9 E.g., Act no. 100/2001 Sb., Environmental Impact Assessment Act, as amended; Act no. 76/2002 Sb., Integrated Prevention Act, as amended.
10 E.g., Act no. 183/2006 Sb., the Building Act, as amended; Act no. 258/2000 Sb., the Act on the Protection of Public Health, as amended; Act no. 40/2009 Sb., the Criminal Code, as amended; Act no. 89/2012 Sb., the Civil Code, as amended.
11 Sec. 2900 of the Civil Code.
12 For details, see part IV.

and forests, air, cultural monuments, or animals from cruelty as well as regulations containing conditions for waste management and chemicals. Within the cultural monuments, the Czech law covers the protection of both the built and the cultural heritage.[13] It also establishes the right of access to cultural wealth.[14]

As an EU Member State, the Czech Republic is also bound by regulations based on Art. 191 of the Treaty on the Functioning of the European Union.

The most important administrative authority in the area of the protection of the environment is the Ministry of the Environment as a body of supreme state supervision. Other institutions, such as the Czech Environmental Inspectorate, the Nature and Landscape Protection Agency, and the National Parks Administrations are subordinated to the Ministry. At the local level, regions and municipalities should be mentioned with their departments of the environment.

The international case law in environmental law related to the Czech Republic is scarce: the only case to be mentioned is the case judged by the European Court of Human Rights (case of Sdružení Jihočeské Matky v. Czech Republic[15]), concluding that Art. 10 of the Aarhus Convention cannot be interpreted as guaranteeing an absolute right of access to all technical details concerning the construction of a nuclear power plant as, unlike information related to environmental impact, such data cannot concern a matter of general interest. In the future, it might be interesting to follow the Mine de Turów case[16] in the Court of Justice of the European Union.

2. Actors of the formation of constitutional law and constitutional jurisdiction related to the protection of future generations and especially the environment

According to Art. 7 of the Constitution of the Czech Republic, the state shall concern itself with the prudent use of its natural resources and the protection of its natural wealth. The state carries out this duty through the legislative, executive, and judiciary powers. The legislative power is represented by Parliament, which adopts (environmental) law and grants consent to international (environmental) treaties. The Chamber of Deputies has its Committee on Environment, while the Senate has the Committee on Public Administration, Regional Development, and the Environment.

Within the executive power, the role of the President of the Republic is marginal. The government is more crucial as it adopts the primary politics, strategies, and

13 Art. 35/3 of the Charter.
14 Art. 34/2 of the Charter.
15 European Court of Human Rights, Appl. no. 19101/03, 10.7.2006.
16 Court of Justice of the European Union, C-121/21 R, 26.3.2021.

programs dealing with the environment and prepares most of the drafts of acts. The government also adopts many government decrees concerning the environment and its protection. The leading authority in the area of the protection of the environment is the *Ministry of the Environment* as a body of supreme state supervision. The Ministry is the central state administration authority for protecting water, air, nature and landscape, zoos, the agricultural land fund, and the rock environment. It is responsible for waste management and national environmental policy. To ensure the management and control activities of the Government of the Czech Republic, the Ministry of the Environment coordinates the actions of all ministries and other central state administration bodies of the Czech Republic in environmental matters. The Ministry also ensures and manages a unified information system on the environment and administers the Fund for the Creation and Protection of the Environment of the Czech Republic.

The Ministry of the Environment has several subordinated bodies playing a crucial role in environmental protection. The Czech Environmental Inspectorate is an expert body subordinate to the Ministry of the Environment that is responsible for supervising compliance with environmental legislation. It imposes corrective measures and penalties based on identified deficiencies and has the power to restrict or stop operations and other activities if they endanger the environment. The Inspectorate applies statements and binding opinions in proceedings concerning the environment. The Czech Environmental Information Agency collects, evaluates, interprets, and distributes environmental information. The State Environmental Fund of the Czech Republic collects certain ecological taxes sensu lato and finances the protection and improvement of the environment. The Nature Conservation Agency of the Czech Republic performs state administration on the territory of protected landscape areas, national nature reserves, and national natural monuments. Finally, the Czech Hydrometeorological Institute deals with clean air, hydrology, water quality, climatology, and meteorology.

In addition to the Ministry of the Environment, there are other ministries with competencies in the area of environmental protection, such as the Ministry of Agriculture, the Ministry of Industry and Trade, the Ministry of Regional Development, the Ministry of Culture, and the Ministry of Health. Moreover, local bodies are responsible for the given area, specifically municipalities and regions and their environment departments.

Within the judiciary power, the role of the *Constitutional Court* must be highlighted. The decision-making practice of the Constitutional Court is essential for the protection of the environment (from the position of the addressees of rights and obligations as well as from the position of the executors of public authority). The Court protects fundamental human rights and freedoms both through ruling on constitutional complaints and the role of the Constitutional Court as a "negative legislator" in deciding on motions to repeal part or all of a legal regulation. Concerning the exercise of public authority, the Constitutional Court's decision-making powers in

relation to selected conflicts of competence are significant. The Court rules on both fact and legality in environmental matters.

From many judgments dealing with environmental protection, it is necessary to note some of the findings. The Court has dealt with the constitutional enshrinement of environmental protection and stated that "the fact that the environment is a public good (value) within the meaning of the preamble to the Constitution and the Charter and Art. 7 of the Constitution does not exclude the existence of a subjective right to a favorable environment (Art. 35/1 of the Charter), as well as the right to claim it to the extent provided for by law (Art. 41 of the Charter)."[17] Art. 7 of the Constitution does not in itself establish a subjective fundamental right, as it only contains an obligation of the state to ensure the careful use of natural resources and the protection of natural wealth. In this respect, in the opinion of the Constitutional Court, that article cannot be invoked independently.[18] Moreover, the Court noted that "the right to a favorable environment cannot, by its very nature, prohibit all activities that have a negative impact on the environment, and is therefore based on the concept of generally binding prohibitions of negative impacts above a certain defined threshold, the extent, amount or value of which is influenced by the level of human of human knowledge, the situation in society, international obligations, and the results of the national economy, and other, often political, influence."[19]

The Constitutional Court also stated that environmental issues have political and scientific aspects when assessing national parks and the rules on how to behave in them: "It is an ideological conflict between (especially) so-called environmentalists and businessmen, property owners and representatives of local governments, which should be resolved in the legislature, not in the Constitutional Court. The contested legal regulation of national parks is reasonable and appropriately balances the conflict between the right to own property within the meaning of Art. 11/1 of the Charter of Fundamental Rights and Freedoms, the freedom of movement under Art. 14 of the Charter, and the right to self-government under Art. 101 of the Constitution, on the one hand, and the right to a favorable environment, also enshrined at the constitutional level in Art. 35 of the Charter, accompanied by the positive obligation of the state to take care of the protection of natural resources under Art. 7 of the Constitution."[20] This decision of the Constitutional Court may present a perfect example that fundamental rights might be subject to restrictions to protect the environment.

Finally, it is necessary to mention the judgment dealing with two issues: the relationship between Art. 35 and Art. 41 of the Charter ("The right to a favorable environment under Art. 35/1 of the Charter is a right with relative content and can be invoked only within the framework of the laws implementing it [Art. 41/1]. The

17 Constitutional Court, III ÚS 70/97, 10.7.1997.
18 Constitutional Court, II. ÚS 2614/08, 19.8.2010.
19 Constitutional Court, II. ÚS 251/03, 24.3.2005.
20 Constitutional Court, Pl. ÚS 18/17-1, 25.9.2018.

constitutionality of interference with that fundamental right must be assessed not by a proportionality test but by a rationality test. The essence of this right can be considered to be the state's obligation to protect against interference with the environment if the interference reaches such a level that it makes it impossible to fulfill the basic needs of human life"") and the participation of associations in the procedures connected with environmental protection ("Neither the constitutional order nor the international treaties by which the Czech Republic is bound can imply an obligation on the part of the state to ensure that associations whose main mission, according to their statutes, is the protection of nature and the countryside, participate in all administrative proceedings.").[21]

Not only from the decisions mentioned above but also from the long-term practice of the Constitutional Court in other matters, it is possible to state that the Czech Constitutional Court is the court of law administering justice based on legislation and very often also on previous court decisions. It combines practices of both the court of law and the court of facts.

In addition to the Constitutional Court, the ordinary courts are engaged in environmental issues as well. These are primarily civil and administrative courts (regional courts and the Supreme Administrative Court).[22] At least two examples from many cases concerning cross-cutting and component regulations should be mentioned. The *Supreme Administrative Court* confirmed that the right to information covers both natural and legal persons (including associations the main mission of which is to protect nature and the countryside).[23] However, the plaintiff, which is a civil association dealing with the protection of individual components of the environment and is not a holder of rights and obligations arising from substantive law, can only allege a violation of procedural rights in action.[24]

The Constitution of the Czech Republic does not include any special organization or person that has an outstanding function or task for protecting the interest of future generations or the interest of the environment. However, the role of the Public Defender of Rights (the *Ombudsman*) must not be overlooked, regardless of whether the Constitution regulates this institution. The Ombudsman shall work to defend persons against the conduct of authorities and other institutions when such conduct is at variance with the law or does not comply with the principles of a democratic state governed by the rule of law and good administration as well as against their inaction, thereby contributing to the defense of fundamental rights and freedoms.[25] It means that they are also active in environmental issues, including involvement in the comment procedure for draft laws. Between 2015 and 2020, the Ombudsman dealt with more than 4,500 complaints relating to the environment to a greater or

21 Constitutional Court, Pl. ÚS 22/17-2, 26.1.2021.
22 Vomáčka and Žídek, 2016, pp. 315-338.
23 Supreme Administrative Court, 6 A 93/2001-56, 25.10.2004.
24 Supreme Administrative Court, 7 A 139/2001-67, 29.7.2004.
25 Vomáčka, 2016a, pp. 213–214.

lesser extent, including construction activities affecting the landscape, assessments of buildings' impact on the environment, landscaping with waste on runoff conditions in the area, the operation of industrial enterprises affecting air quality, wastewater discharge, waste management, tree felling, the protection of agricultural land, noise pollution, and more.[26]

The Ombudsman is elected by the Chamber of Deputies for a term of six years from among candidates, of whom two shall be nominated by the President of the Republic and two by the Senate. The Ombudsman may be elected for a maximum of two consecutive terms, and they shall discharge their office independently and impartially. They are accountable to the Chamber of Deputies: by March 31 each year, they must submit to the Chamber of Deputies a written annual report on the Ombudsman's activities during the past year. They must also submit to the Chamber of Deputies information on their activities (at least once every three months), a report on individual cases in which adequate remedial measures have not been achieved even after the procedures, and recommendations regarding legal regulations.

The Ombudsman acts on the basis of a complaint lodged by a natural or legal person or on their own initiative. After the investigation, they can mainly suggest the following remedial measures: initiating proceedings on the review of a decision, act, or procedure of the authority if it is possible to initiate such proceedings ex officio, performing acts to eliminate inactivity, initiating disciplinary or similar proceedings, initiating prosecution for a criminal offense, infraction, or some other administrative offense, provision of an indemnification, or filing a claim for indemnification. The Ombudsman is also authorized to recommend that a legal or internal regulation be issued, amended, or canceled.[27] Moreover, they have the right to make a complaint to protect the public interest if they prove a compelling reason for the submission in the public interest.[28] In 2012, the Ombudsman directed his first action for the protection of the public interest against several final administrative decisions of the Duchcov Municipal Office, by which this administrative authority permitted the construction of a photovoltaic power plant in the cadastral area of Moldava and subsequently approved it. As part of its standard investigation, the Ombudsman found a number of shortcomings in the administrative procedure itself, in which the environmental impact of the industrial construction was not assessed in advance (possible and probable impact on the landscape, impact on the favorable status of the

26 Veřejný ochránce práv, 2020.

27 Act no. 349/1999 Sb., the Act on the Public Defender of Rights, as amended.

28 Sec. 66/3 of Act no. 150/2002 Sb., the Code of Administrative Justice, as amended. See also Supreme Administrative Court, 9 As 24/2016-109, 14.7.2016: "The active procedural legitimacy of the Public Defender of Rights under Sec. 66/3 of the Code of Administrative Justice is given only in the case of serious public interest, i.e., e.g., in those cases in which on the date of filing a lawsuit against a decision on a building permit the statutory exemptions from the prohibition of activity in a specially protected area have not been granted (i.e., the activity is ex lege prohibited), or in cases in which the relevant administrative decisions (permits) were issued as a result of criminal activity by officials."

bird area, failure to grant an exemption from the protection conditions for specially protected species of plants and animals). Furthermore, there was a fundamental violation of the Building Act, as construction was permitted and implemented in the open countryside in an undeveloped area and was, therefore, contrary to one of the basic objectives of building-law regulation, which is the protection of undeveloped areas. In view of the intensity of the illegality, which contradicts the very principles of legality and prevention, and in a situation in which the public administration as a whole has been unable to remedy these illegal practices, the defender exercised his active legitimacy and brought the action for the protection of the public interest, knowing that it was an ultima ratio remedy.[29]

The Ombudsman can investigate only in relation to public actors (i.e., when the authorities do not act correctly or according to the law, the complainant disagrees with the authority's decision or does not like the authority's procedure, the authority does not act when it should, the complainant is not invited as a party to the proceedings, the official behaves inappropriately, etc.). As evident from the example of the photovoltaic power plant mentioned above, the Ombudsman cannot react to the activities of private law subjects (including multinational companies) but only to the illegal activities or inactivity of the offices.

Even if it was the first Czech president, Havel, who believed that the Constitution should not lack an ecological article, the role of the President in environmental issues is meaningless.

3. The basis of fundamental rights and protecting the environment by enshrining rights related to political freedoms

The proof that human rights, including the right to a favorable environment, are taken seriously in the Czech Republic, particularly after the communist regime, can be found in several preambles of the most important constitutional acts generally (the Constitution of the Czech Republic and the Charter of Fundamental Rights and Freedoms) or explicitly dealing with environment protection (the Environment Act). The preamble of the Constitution states that the citizens of the Czech Republic in Bohemia, in Moravia, and in Silesia are resolved to guard and develop together the natural, cultural, material, and spiritual wealth handed down to our generation. Similarly, the Charter recalls the share of responsibility to future generations for the fate of all life on Earth. The most concrete is the Environment Act. It states that humans, along with other organisms, are an inseparable part of nature. It reiterates the natural interdependence of humans and other organisms and the respect for the

29 Veřejný ochránce práv, 2012, p. 34. Supreme Administrative Court, 9 As 24/2016-109, 14.7.2016.

human right to transform nature in accordance with the principle of sustainable development. Further, it highlights the awareness of the responsibility to preserve a favorable environment for future generations and emphasizes the right to a favorable environment as a fundamental human right.

As stated above, the Constitution itself is relatively brief, and it does not contain any articles dealing with fundamental rights and basic freedoms. These rights and freedoms are set in the Charter. Only Art. 7 of the Constitution briefly declares that the state shall concern itself with the prudent use of its natural resources and the protection of its natural wealth.[30] The spiritual author of this provision was President Václav Havel, who believed that the Constitution should not lack an ecological article.[31] The term "natural wealth" is synonymous with the "environment".[32] Art. 7 is considered a provision that imposes not only legal but also moral and political obligation on the state to respect the protection of the environment as its priority and state objective. Therefore, the state should respect this priority when designing legislation (including environmental law) and interpreting the law as well as when regulating the behavior of the addressees of the law and limiting other rights to the need to protect the environment. The significance of Art. 7 of the Constitution in practice is thus primarily interpretative: the protection of the environment is declared to be a constitutionally protected value.[33]

Art. 7 of the Constitution is inextricably linked to Art. 35 of the Charter, which regulates the human rights dimension of environmental protection. It specifically grants the *right to a favorable environment* and the right to timely and complete information regarding the state of the environment and natural resources. It also states that no one may, in exercising their rights, endanger or cause damage to the environment, natural resources, the wealth of natural species, or cultural monuments beyond the extent set by law. However, Art. 35 also requires the active action of the legislator, as Art. 41 of the Charter stipulates that these rights may be claimed only within the confines of the laws implementing these provisions. The right to live in a favorable environment also occurred in the Civil Code.[34]

The right to a favorable environment is interpreted in the classical approach. This right belongs to the third generation of human rights as proposed in 1979 by Czech-French lawyer and university professor Karel Vašák, who was the first director of the International Institute for Human Rights in Strasbourg.

The Constitutional Court pointed out that "the right to a favorable environment cannot, by its very nature, prohibit all activities that have a negative impact on the environment, and is therefore based on the concept of generally binding prohibitions of negative impacts above a certain defined threshold, the extent, amount or value

30 Uhl, 2015.

31 Chrastilová and Mikeš, 2003, p. 114.

32 See Constitutional Court, IV. ÚS 652/06, 21.11.2007. See also Hanák, 2016a, p. 148.

33 See the findings of the Constitutional Court mentioned above in the part dealing with the Court's role. See also Hanák, 2016a, p. 150.

34 Sec. 81/2 of the Civil Code.

of which is influenced by the level of human of human knowledge, the situation in society, international obligations, and the results of the national economy, and other, often political, influence."[35] The Court also stated that "the fact that the environment is a public good (value) within the meaning of the preamble to the Constitution and the Charter and Art. 7 of the Constitution does not exclude the existence of a subjective right to a favorable environment (Art. 35/1 of the Charter), as well as the right to claim it to the extent provided for by law (Art. 41 of the Charter)."[36] It further stated that environmental issues have political and scientific aspects, and fundamental rights may be subject to restrictions to protect the environment: "The contested legal regulation of national parks is reasonable and appropriately balances the conflict between the right to own property within the meaning of Art. 11/1 of the Charter of Fundamental Rights and Freedoms, the freedom of movement under Art. 14 of the Charter, and the right to self-government under Art. 101 of the Constitution, on the one hand, and the right to a favorable environment, also enshrined at the constitutional level in Art. 35 of the Charter, accompanied by the positive obligation of the state to take care of the protection of natural resources under Art. 7 of the Constitution."[37]

Compared to the Hungarian practice, the *right to health* is not as strictly related to the right to a healthy environment in the Czech Republic. According to Art. 31 of the Charter, everyone has the right to the protection of their health. Citizens shall have the right, via public insurance, to free medical care and medical aid under conditions provided for by law. Additionally, in this case, Art. 41 of the Charter stipulates that this right may be claimed only within the confines of the laws implementing this provision. Only once was the link between the right to a favorable environment and the right to health stated by the Constitutional Court: "The protection of human freedom without the protection of human life, health, and the environment that makes life and freedom possible would lack meaning. The right to health protection implies a positive obligation of the state to act and protect health by various necessary measures … It is the duty of the state to take adequate measures to ensure and fulfill the right to the protection of health … by, i.a., improving all aspects of external living conditions. In cases transcending the legal sphere of the individual, the state has a duty to protect health even against the will of the persons concerned."[38]

Interference with the environment or its poor condition can interfere not only with the right to health but also with the right to life protected by Art. 6 of the Charter as well as the right to privacy.[39] The right to timely and complete information regarding the state of the environment and natural resources, as mentioned

35 Constitutional Court, II. ÚS 251/03, 24.3.2005.
36 Constitutional Court, III ÚS 70/97, 10.7.1997.
37 Constitutional Court, Pl. ÚS 18/17-1, 25.9.2018.
38 Constitutional Court, Pl. ÚS 7/17-1, 27. 3. 2018. Cited in Constitutional Court, Pl. ÚS 33/16-2, 10.11.2020.
39 Art. 7 of the Charter.

in Art. 35 of the Charter, partially overlaps with the right to information as defined by Art. 17 of the same document. This article states that state as well as territorial self-governing bodies are obliged, in an appropriate manner, to provide information on their activities. The conditions and the implementation thereof shall be provided for by law. Furthermore, several rights from the group of *political rights* are to be mentioned, namely the right of petition, the right of peaceful assembly, and the right of association.[40] All rights mentioned in this paragraph are not limited by Art. 41 of the Charter.

The Czech Republic fully follows the Aarhus Convention[41] when protecting the environment by enshrining rights related to political freedoms. There are several articles in the Charter dealing with these issues, namely the right to timely and complete information regarding the state of the environment and natural resources[42] and the right to information[43] as well as other rights from the group of political rights, specifically the right of petition,[44] the right of peaceful assembly,[45] and the right of association.[46] The right to a fair trial must not be omitted, even if it does not belong to the group of political rights according to the Czech Charter.

The *right to information* is also not a political right according to the Charter. It is one of the legal guarantees of legality in public administration. Access to environmental information is a prerequisite for effective public participation in environmental protection.[47]

The right to timely and complete information regarding the state of the environment and natural resources is stated explicitly in Art. 35/2 of the Charter. This right may be claimed only within the confines of the laws implementing this provision. Moreover, there is a general right to information expressed in Art. 17/5 of the Charter. It states that state bodies as well as territorial self-governing bodies are obliged, in an appropriate manner, to provide information on their activities. The conditions and the implementation thereof shall be provided for by law. According to the Supreme Administrative Court,[48] the right to information applies to both natural and legal persons, including associations the primary mission of which is to protect nature and the countryside. In its decision, the Supreme Administrative Court also stated that both the political right to information in Art. 17/5 of the Charter and the right to timely and complete information regarding the state of the environment and natural resources in Art. 35/2 of the Charter as a third-generation right are among

40 Arts. 18-20 of the Charter.
41 The UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.
42 Art. 35 of the Charter.
43 Art. 17 of the Charter.
44 Art. 18 of the Charter.
45 Art. 19 of the Charter.
46 Art. 20 of the Charter.
47 Vomáčka and Humlíčková, 2018, pp. 389–408.
48 There are no essential Constitutional Court decisions in this area.

public nature rights.[49] However, there is no relevant Constitutional Court practice in relation to the right to timely and complete information.

The primary law mandating the right to information is the Act on Free Access to Environmental Information[50] and the Act on Free Access to Information.[51] The reason for the two acts, based on the same premises, was mainly political: the Act on Free Access to Environmental Information was not controversial, while the Act on Free Access to Information was a new issue, and a substantial number of political debates and disputes in Parliament were expected. As Vomáčka states, the acts are very close to each other, and the conclusions of case law interpreting the provisions of one or the other can be reasonably applied.[52] Additionally, according to the case law,[53] there is no reasonable reason why the norms embodied in the Act on Free Access to Information should be interpreted differently from the comparable explicitly expressed norm of the Act on Free Access to Environmental Information. In practice, the Act on Free Access to Information is the general norm, while the Act on Free Access to Environmental Information is a special one. It is up to the obliged body to assess under which act the information will be provided, regardless of the formal designation of the request. If it finds that the information in question cannot be considered environmental information and the special act cannot be applied, it must still assess a possible obligation to provide it under the general act.[54] Vomáčka highlights several other significant differences between these acts, for example, in the definition of obliged bodies, reasons for refusing to disclose the requested information, the method of determining the amount of the payment for disclosure of information, and the length of procedural deadlines.[55] In addition to the Act on Free Access to Environmental Information, the access to environmental information is regulated by a number of specific acts, primarily in the area of regulation of the handling of specific sources of endangerment.

The legislation distinguishes between active and passive disclosure of information. Passive disclosure is defined as the disclosure of information based on a request that the applicant must address to the obliged body to obtain the necessary information. The requested body is obliged to respond and address it adequately. Active disclosure means that the obliged bodies publish selected environmental information without it having to be requested by the public in various registers accessible remotely via the internet.[56] Active access exists in three basic ways: 1. by informing the public in the event of an imminent threat to health or the environment, 2. by informing the public regarding the type and extent of environmental information

49 Supreme Administrative Court, 6 A 93/2001-56, 25.10.2004.
50 Act no. 123/1998 Sb., as amended.
51 Act no. 106/1999 Sb., as amended.
52 Vomáčka, 2016c, p. 246.
53 Supreme Administrative Court, 1 As 44/2010-103, 1.12.2010.
54 City Court in Prague, 9 Ca 270/2004, 27.4.2007.
55 Vomáčka, 2016c, p. 247.
56 Vomáčka, 2016c, p. 238.

that is available to obliged bodies as well as regarding the disclosure process itself, and 3. by creating publicly accessible registers and datasets.[57]

The *right of petition* is guaranteed by Art. 18 of the Charter. For matters of public or other common interest, the Charter additionally states that everyone has the right, on their own or together with other individuals, to address state or territorial self-governing bodies with requests, proposals, or complaints. In these circumstances, the Constitutional Court examined a very interesting case dealing with the conflict between civil and public rights. The Court stated that "the private-law requirement to respect contracts (pacta sunt servanda principle), resp. the contractual freedom, and the assumed obligation of employees to be loyal to their employer cannot a priori exclude another important public-law interest, namely the interest that employees should also be able to contact the state authorities in situations where the employer threatens to endanger important social interests such as the protection of the health of citizens, the protection of the environment, or the protection of clean water, or where these public goods are even violated. The agreement between the employee and the employer cannot interfere with public relations, undermining society's interest in ensuring that every citizen in a democratic state governed by the rule of law can assist the State in detecting shortcomings and, where necessary, draw attention to them. In the present case, in deciding whether the sending of a letter warning the public authorities that the employer, a sewage treatment plant, is not complying with the operating regulations and endangering the environment can be regarded as grounds for the immediate termination of an employee's employment for a particularly serious breach of labor discipline, the general courts failed to adequately assess and compare the public interest in protecting the environment and the health of citizens on the one hand, with the interest in respecting contracts and the employee's loyalty to the employer on the other."[58]

Concerning petitions, it should also be stated that they may not be misused to interfere with the independence of the courts or for the purpose of calling for the violation of the fundamental rights and freedoms guaranteed by the Charter.

Art. 19 of the Charter guarantees the *right of peaceful assembly*. An assembly shall not be made to depend on the granting of permission by a public administrative authority. This right may be limited only by the law in the case of assemblies held in public places if, in a democratic society, it is necessary to protect the rights and freedoms of others, the public order, health, morals, property, or the security of the state. Regarding environmental protection, there are several interesting court findings. For example, the Regional Court in Brno, when judging an assembly with the purpose of expressing criticism of the growing negative impact of car traffic on the environment and human health in Brno, stated that the "prohibition of an announced assembly (street procession) which would cause such a restriction of traffic on the most important and frequented route of the town as to result in the prevention

57 Vomáčka, 2016c, p. 253.
58 Constitutional Court, III. ÚS 298/12-1, 13.12.2012.

of access by motor vehicles to large shopping centers for three hours during normal shopping hours and the restriction of the passage of vehicles to a trauma hospital is justified if the assembly can be held elsewhere without undue hardship and without defeating the announced purpose of the assembly."[59] According to the Supreme Administrative Court, the blockade against the felling of trees lasting several weeks in the national park was not an exercise of the right of assembly.[60]

The related *right of association* is guaranteed by Art. 20 of the Charter: everybody has the right to associate together with others in clubs, societies, and other associations (including political parties and political movements). The exercise of these rights may be limited only in cases specified by law if measures are required that are necessary in a democratic society for the security of the state, the protection of public security and public order, the prevention of crime, or the protection of the rights and freedoms of others. The Constitutional Court confirmed that the existence of a hunting association is a form of the right of association.[61] The Court was also dealing with issues connected to the participation of associations in the procedures related to environmental protection when it stated that "Neither the constitutional order nor the international treaties by which the Czech Republic is bound can imply an obligation on the part of the state to ensure that associations whose main mission, according to their statutes, is the protection of nature and the countryside, participate in all administrative proceedings."[62]

The *right to a fair trial* is created by the set of rights specified in Arts. 36–40 of the Charter. The Charter establishes the right to judicial protection (everyone can claim their rights in court), rights in court proceedings (all parties are equal and have the right to legal assistance and, if they do not understand the language, to an interpreter), the right to a lawful judge (the jurisdiction of the court and the judge is established by law), and rules of criminal prosecution (e.g., the presumption of innocence). The principle of nulla poena sine lege is also enshrined in the Charter, that is, that only acts that are so designated by criminal law are criminal. The Constitutional Court frequently investigates the right to a fair trial in all matters, including environmental protection. The right to claim rights in court ("The fact that the administrative courts decided on the complainant's action against the planning decisions over a period of seven years, without the action being granted suspensive effect, led to the fact that the decisions issued in the meantime to authorize the construction of the motorway caused irreversible interference with the landscape [habitats of specially protected species of animals and plants]. In a situation where the legislation did not allow, when reviewing construction permits issued, to take into account the fact that planning decisions preceding the construction permits had been annulled, such a situation resulted in the complainant not being afforded

59 Regional Court in Brno, 30 Ca 246/2000, 28.5.2000.
60 Supreme Administrative Court, 8 As 39/2014-56, 18.11.2015.
61 Constitutional Court, Pl. ÚS 34/03, 13. 12. 2006; Constitutional Court, Pl. ÚS 74/04, 13.12.2006.
62 Constitutional Court, Pl. ÚS 22/17-2, 26.1.2021.

effective protection by the administrative courts of his right to a fair trial."[63]) and the right to proceed without undue delay ("In the opinion of the Constitutional Court, delays in proceedings also occur when they are not based on subjective, but on objective circumstances on the part of the court affecting its procedural activity."[64]) should be mentioned.

In addition to the aforementioned political and similar rights, both active and passive *rights to vote* regarding representative and self-governing bodies at all levels (state, regional, local) should also be mentioned. Art. 21 of the Charter ensures the right of citizens to participate in the administration of public affairs either directly or through the free election of their representatives. The right to vote is universal and equal and shall be exercised via secret ballot. Citizens shall have access, on an equal basis, to any elective and other public offices.

Compared to most European countries, the Czech Constitution does not directly guarantee a *referendum*. Only Art. 2/2 of the Constitution states that a constitutional act may designate the conditions under which the people can exercise state authority directly. However, Parliament never adopted such a constitutional act introducing a general referendum. There was only an ad hoc referendum (and an ad hoc constitutional act) on the accession of the Czech Republic to the European Union. At the local level, there may be referendums at the regional[65] and municipal levels.[66] For the council to call a local referendum based on a proposal, there must be a certain minimum number of signatories of the proposal. For a referendum result to be valid, at least 35% of eligible citizens must participate. Vomáčka points out the most problematic issues concerning referendums of environmental issues: "It is typical for major sources of environmental pollution that they often take on a supra-local significance, and their planning and permitting is usually the responsibility of the region. However, in relation to local and regional conditions, this fact creates a paradox. In a local referendum, affected citizens can only oblige the municipality to defend their interests in the processes and proceedings before the region, resp. the regional authority. To succeed in the regional referendum, they would also have to secure the support of people who are not affected by the plan or who are satisfied with its location (NIMBY – not in my background), which is very difficult or even impossible."[67]

Other fundamental rights may be subject to *restrictions* with reference to the protection of the environment. The general rule in Art. 35/3 of the Charter states that no one may, in exercising their rights, endanger or cause damage to the environment, natural resources, the wealth of natural species, or cultural monuments beyond the extent set by law. Specifically, the ownership right protected by Art.

63 Constitutional Court, II. ÚS 3831/14-1, 6.5.2015.
64 Constitutional Court, III. ÚS 70/97, 10.7.1997.
65 Act no. 118/2010 Sb., as amended.
66 Act no. 22/2004 Sb., as amended.
67 Vomáčka, 2016d, p. 344.

11 of the Charter may not be exercised so as to harm human health, nature, or the environment beyond the limits established by law. For example, the Constitutional court stated that "in the Czech Republic, hunting and hunting law are social activities approved by the state to protect and develop one of the components of the environment – game. The implementation of hunting and hunting rights is, in general, a legitimate restriction of property rights."[68] Moreover, the Court stated that "a decision ordering the removal of a building constructed without a building permit on someone else's land without the consent of its owner pursues a legitimate aim consisting in the interest of maintaining building discipline, protecting the environment and protecting the property right of the landowner. The imposition of an obligation to remove the 'black' and 'unauthorized' building is an intervention proportionate to the objectives pursued since they could not have been achieved by any other measure. It is not a sanction which would be offered as an alternative to, e.g., a fine for an offense against the building regulations, but a measure aimed at restoring the land to its original state."[69] In addition, the freedom of movement and residence set in Art. 14 of the Charter may be limited by law if such is unavoidable to protect nature. In these circumstances, the decision of the Constitutional Court dealing with the existence of national parks as described above should be mentioned.[70]

The Charter also deals with the right to ownership,[71] stating that ownership entails obligations. The ownership may not be misused to the detriment of the rights of others or in conflict with legally protected public interests. It may not be exercised so as to harm human health, nature, or the environment beyond the limits established by law. This principle is aimed in a general sense at sources that threaten the environment (or human health or nature).[72] In these circumstances, it is necessary to highlight the decision of the Constitutional Court stating that the legislation prohibiting the placement of billboards near motorways and roads is in support of other public interests related to environmental protection.[73] Furthermore, a decision ordering the removal of a building constructed without a building permit pursues a legitimate aim consisting, i.a., in the interest of protecting the environment.[74]

The Charter also guarantees freedom of movement and residence.[75] However, these freedoms may be limited by law if such is unavoidable for the security of the state, the maintenance of public order, the protection of the rights and freedoms of others, or, in demarcated areas, the purpose of protecting nature.

68 Constitutional Court, Pl. ÚS 34/03, 13.12.2006.
69 Constitutional Court, II. ÚS 482/02, 8.4.2004.
70 Constitutional Court, Pl. ÚS 18/17-1, 25.9.2018.
71 Art. 11 of the Charter.
72 Constitutional Court, III. ÚS 77/97, 8.7.1997.
73 Constitutional Court, Pl. ÚS 21/17-1, 12.2.2019.
74 Constitutional Court, II. ÚS 482/02, 8.4.2004.
75 Art. 14 of the Charter.

In addition, other rights may be connected to the right to a favorable environment, for example, the right to property,[76] the right to engage in enterprise and pursue other economic activity,[77] and the right to access to cultural wealth.[78]

Theoretical literature defines three *approaches to using human rights to protect the environment*: 1. an environmental interpretation of existing human rights (e.g., understanding the right to privacy also as a right to non-interference in this space by immissions), 2. the granting of procedural rights to the public and individuals (i.e., the possibility of obtaining information on the environmental impact of activity and of expressing their views regarding such issues), and 3. the formulation of a substantive right to a favorable environment.[79] The most commonly used approach is the second one, as it is the easiest one to implement. Its limitation, however, is that it does not affect the intrinsic nature of the case. The environmental interpretation of human rights is mainly used by the European Court of Human Rights. The limit of this approach is that the interpretation of human rights inevitably requires that the state of the environment or activities within it must impinge on those rights; that is, there has been direct interference with the human sphere. Thus, an ecocentric approach is preferred, which would grant people the means to protect the environment even though its condition does not directly affect them, that is, an approach in which intervention in the human sphere would not have to be demonstrated.[80]

Müllerová, referring to Knox,[81] summarizes the development of environmental rights and their protection by the constitutional courts in four points:

1) Human rights law does not require states to prohibit all activities that may cause environmental damage; in setting substantive legal standards of environmental protection, states have a relatively wide margin of discretion in how they strike a balance between environmental protection and other legitimate social interests, such as economic development, but this balance must be justified and must not result in unwarranted interference with human rights.
2) States must fulfill certain procedural obligations in environmental decision-making (environmental impact assessment, public information, opportunity for participation of affected persons in procedures, effective mechanisms for protection against malpractice by the State) to help ensure that, in formulating the final decision, the environmental protection interests are properly taken into account.

76 Art. 11 of the Charter.
77 Art. 26/1 of the Charter.
78 Art. 34/2 of the Charter.
79 Formulated by Shelton, as stated by Müllerová, 2015, p. 15. Also Kokeš, 2012, p. 715. All in Hanák, 2016b, p. 152.
80 For details, see Hanák, 2016b, pp. 152–154.
81 Knox, 2016, pp. 220 et seq.

3) In the application of environmental measures, states have a general duty of non-discrimination as well as specific obligations toward members of groups particularly vulnerable to environmental harm.
4) States must ensure that these obligations are met with regard to their own conduct.[82]

The theoretical literature also defines several *legal principles of environmental protection* respected by the legislator and in the decision-making practice of the courts. These principles can be subdivided or further categorized: 1. principles with a high degree of generality and vagueness in their definition that deal with the very essence of protection (the principle of the highest value, which declares the need to protect the environment as a supreme and irreplaceable human value, and the principle of sustainable development), 2. principles that have in common the determination of the method of protecting the environment (the principle of prevention, the precautionary principle, the principle of best available technology, and the principle of comprehensive and integrated protection), and 3. principles of responsibility (the principle of state responsibility and the polluter pays principle).[83]

The principle of the highest value is not explicitly defined and expressed in environmental law at the international, EU, or national levels. However, it can be inferred from the so-called right to a favorable environment expressed in Art. 35/1 of the Czech Charter of Fundamental Rights and Freedoms.[84] The principle of sustainable development is defined as a specific goal to be achieved through law. It provides a framework for other principles of environmental protection, and it has a significant influence on the development, interpretation, and application of legal norms, as also stated by the Constitutional Court.[85] The concept of the principle of sustainable development is built on three fundamental pillars: environmental, social, and economical. In Czech law, sustainable development is defined as development that preserves for present and future generations the chance to satisfy their basic life needs, and in doing so, the variety of nature is not reduced, and the natural functions of ecosystems are preserved.[86]

The principle of prevention is one of the core and strong legal principles. It is expressed in the Czech Charter of Fundamental Rights and Freedoms,[87] several sections of the Environment Act,[88] many other cross-cutting and component environ-

82 Müllerová, 2021, p. 553.
83 Dudová, 2016, pp. 129–130. Also Vomáčka, 2013, pp. 194–196. Also Tomoszek et al., 2021.
84 See also Constitutional Court, II. ÚS 482/02, 8. 4. 2004; Constitutional Court, III. ÚS 70/97, 10.7.1997.
85 See also Constitutional Court, Pl. ÚS 18/17, 25.9.2018.
86 Sec. 6 of the Environment Act.
87 Arts. 11 and 35 of the Charter, as analyzed above. See also Supreme Administrative Court, 9 As 24/2016-109, 14.7.2016; Constitutional Court, Pl. ÚS 8/08-1, 8.7.2010.
88 Secs. 9, 17, 18, and 19 of the Environment Act.

mental regulations (e.g., the Environmental Impact Assessment Act[89]), and the Constitutional Court's decisions.[90] The essence of the precautionary principle is the need to take all possible precautions whenever there is a risk of potential danger. This principle should be applied even if the risk is uncertain or not fully verified. This principle is also expressed in Czech law: if there is a supposition in respect to all circumstances of a forthcoming danger of irreclaimable or material damage to the environment, there must be no doubt that such damage happens, which is the reason for the postponement of measures that should avoid the damage.[91] Specifically, the precautionary principle is mentioned in the GMO Act.[92]

The principle of state responsibility for environmental protection expresses the fact that only the state can guarantee the need for comprehensive and integrated environmental protection. Art. 7 of the Czech Constitution directly sets that the state shall concern itself with the prudent use of its natural resources and the protection of its natural wealth.[93] The protection of the environment is the State's task. The interesting point is that this is the only task of the State mentioned explicitly in the Czech Constitution sensu lato. Da Silva precisely describes the relationship between the right to the environment as a fundamental right and a task of the State. He notes that the fundamental right to the environment, as a subjective right, is composed of the following elements: 1. the right of nonaggression (freedom from public aggression; for example, authorities or public services have the duty to refrain from atmospheric emissions or producing polluting waste, which could jeopardize the right to the environment of neighbors or users); 2. the right to the action of public authorities, the content of which is related to the specific and determined duties of the action, to which they are bound by legal norms (prevention and control of pollution, taking measures to prevent its verification, and inspecting and punishing responsible individuals and companies in the event of these situations); 3. the right (at least) to a minimum or a reasonable proportion of state intervention (establishing generic legal duties, tasks, or principles of action under the responsibility of public authorities); and 4. the right to protection by the state against attacks on fundamental rights by private entities (the existence of procedural means to settle disputes between private parties concerning the fundamental right to the environment).[94] Although da Silva uses the Portuguese Constitution, his findings are fully applicable to the Czech case.

The polluter pays principle seems to be the trendiest principle in recent decades. It is included in all international and European treaties, declarations, and legal and

89 Environmental Impact Assessment Act.
90 E.g., Constitutional Court, Pl. ÚS 18/17, 25.9.2018.
91 Sec. 13 of the Environment Act.
92 Sec. 3/3 of the Act no. 78/2004 Sb., the Act on Handling Genetically Modified Organisms and Genetic Products, as amended.
93 See also Constitutional Court, Pl. ÚS 18/17, 25.9.2018, dealing with the existence of national parks, as analyzed above.
94 da Silva, 2022, p. 15.

non-legal acts. In Czech law, the principle is part of the Environment Act,[95] stating that for the contamination of the environment or its parts and for the economic utilization of natural resources, the natural persons or legal entities pay taxes, charges, levies, and other payments stipulated by special regulations.[96] The principle of public information and participation belongs to the third group of legal principles of environmental protection as well. Due to its specifics, a special part of the contribution below deals with this principle.

From the analyses mentioned above, it is possible to state that in law, the principles with the strongest effects, including the courts' decisions, are principles related to prevention and sustainable development.

4. Regulation of issues regarding responsibility

The responsibility regarding the protection of the environment does not appear in the Czech Constitution as a positive provision. However, the responsibility is indirectly mentioned in the preamble, which states that the citizens are resolved to guard and develop together the natural, cultural, material, and spiritual wealth handed down to our generation. In addition, the Czech Charter of Fundamental Rights and Freedoms is very brief in regard to this issue when it recalls in its preamble the share of responsibility to future generations for the fate of all life on Earth. However, Art. 35/3 of the Charter states explicitly that no one may, in exercising their rights, endanger or cause damage to the environment, natural resources, the wealth of natural species, or cultural monuments beyond the extent set by law.[97] This obligation is valid for everyone: Czech citizens, foreigners, and Czech and international (multinational) corporations, both private and public, which is evident from the decisions of the Constitutional Court dealing with the cases of all of the complainers mentioned above.

Referring to the environmental law theory, liability in its most general form does not exist, even in objective environmental law. Rather, it takes on a form corresponding to the nature of the social relationships that are supposed to be protected. Thus, in environmental law, there is a system of liability based on liability in several forms: private law liability for harm (damage), administrative law liability, criminal

95 Sec. 31 of the Environment Act.

96 See also Constitutional Court, I. ÚS 1821/16, 12.12.2017, dealing with compensation for damages in civil proceedings between a power plant that emits SO_2 and NO_x emissions into the air, which allegedly adversely affect and cause immission damage to forest stands, and a forest owner.

97 See also Constitutional Court, Pl. ÚS 24/2000, 12.10.2001, stating that "it is not possible to absolutize one fundamental right at the expense of the other, in the present case the right to do business and the right to a favorable environment"; Constitutional Court, III. ÚS 338/04, 14.9.2004 dealing with public places in private ownership.

law liability, and specific liability for environmental damage.[98] The different types of liability are separate so that they can be used independently. On the other hand, they are also complementary, and their simultaneous use can be advantageous, at a minimum because of the technical complexity and difficulty of proving a causal link between the defective activity and the damage caused or the need to obtain costly reports, measurements, investigations, etc.[99]

Administrative law liability is regulated by the Act on Liability for Offenses and Proceedings in Respect of Them.[100] An offense is defined as a socially harmful unlawful act that is expressly designated as an offense in the law and has the characteristics set out in the law unless it is a criminal offense (a crime). While a natural person is an offender if, by their culpable conduct, they have fulfilled the elements of an offense, objective liability applies to legal persons and natural persons running a business: culpability (whether intentional or negligent) is not necessary for the commission of the offense. The Act on Liability for Offenses and Proceedings in Respect of Them itself does not deal with environmental offenses but creates a general legal norm applicable in this area. Specific environmental offenses are regulated in specific legal acts,[101] including sanctions (mostly penalties) and precautionary measures. For example, the Environment Act states that in cases in which serious damage to the environment is imminent or has already occurred, the competent authorities of the state administration for the environment are entitled to decide to temporarily suspend or restrict the activity that may cause or has already caused such damage for a period of no more than 30 days (interim measure) and, at the same time, to propose remedial measures to the relevant state administration authorities.[102] Many authors believe that it would be helpful to unify the liability provisions now fragmented into many different regulations.[103]

The *liability for environmental damage* regulated by the Environment Act[104] and the Act on Prevention and Remedying Environmental Damage[105] is a specific type of liability applied only to environmental matters.[106] It is close in nature to liability for damages. Conceptually, however, it is not private law liability because of its public law basis consisting in the public regulation of remedial measures as sanctions of a restorative nature and because of the involvement of the competent state administration bodies, which decide on the imposition of remedial measures.[107] Ecological damage is defined as the loss or impairment of the natural functions of ecosystems

98 Vomáčka, 2016b, pp. 580–581.
99 Vomáčka, 2016b, pp. 581–582.
100 Act no. 250/2016 Sb., as amended.
101 E.g., the Environment Act.
102 Sec. 30 of the Environment Act.
103 Humlíčková, 2012, p. 81.
104 Sec. 27 of the Environment Act.
105 Act no. 167/2008 Sb., the Act on Prevention and Remedying Environmental Damage, as amended.
106 Jančářová et al., 2013, p. 240.
107 Jančářová, 2016a, p. 617.

resulting from damage to their components or disruption of internal linkages and processes due to human activity.[108] The liability for environmental damage is constructed as objective: anyone who has caused ecological damage is obliged to restore the natural functions of the disturbed ecosystem or part of it. If this is not possible or, for serious reasons, is impractical, they shall compensate for the ecological damage in another way (compensation). If this is not possible, they shall compensate for this damage monetarily. The concurrence of these types of compensation shall not be excluded. Additionally, correction measures and penalties may be imposed. The decision on the imposition of these obligations is up to the competent state administration authority.

Criminal law liability is regulated by the Criminal Code and the Act on the Criminal Liability of Legal Entities.[109] According to this act, all environmental crimes can also be committed by legal entities. The ultima ratio principle is being fully applied.

The Criminal Code includes two groups of crimes concerning the environment: 1. criminal offenses (crimes) against the environment and 2. criminal offenses (crimes) related to environmental protection. Offenses against the environment are further divided into the offense of damaging and endangering the environment and special offenses. The general offense against the environment is focused on those who, contrary to another legal enactment, intentionally or out of gross negligence, damage or endanger soil, water, air, forest, or another component of the environment to a larger extent, over a larger area, or in such a way that it may cause serious detriment to health or death or if it is necessary to expend costs to a considerable extent for eliminating the effects of such conduct. It also targets those who increase such damage or threat to a component of the environment or aggravate its aversion or mitigation.[110] The special offenses are damages to a water source or a forest, unauthorized discharge of pollutants (from ships), unauthorized waste disposal, unauthorized production and other disposals of ozone-depleting substances, unauthorized handling of protected wild animals and wildlife plants, damage to a protected component of nature, maltreatment of animals, negligent omission of animal care, poaching, wrongful manufacture, possession and other disposal of pharmaceuticals and other

108 Sec. 10 of the Environment Act. The Act on Prevention and Remedying Environmental Damage is more concrete and defines ecological damage as an adverse measurable change to a natural resource or measurable impairment of its functions, which may occur directly or indirectly. It is a change to 1. protected species of wildlife or plants or natural habitats that has significant adverse effects on the achievement or maintenance of a favorable conservation status of such species or habitats; 2. groundwater or surface water, including natural medicinal and natural mineral water sources, which has a significant adverse effect on the ecological, chemical, or quantitative status of the water or on its ecological potential; 3. land by pollution that presents a significant risk of adverse effects on human health as a result of the direct or indirect introduction of substances, preparations, organisms, or micro-organisms on or below the land surface.

109 Act no. 418/2011 Sb., the Act on the Criminal Liability of Legal Entities, as amended.

110 Secs. 293–294 of the Criminal Code.

substances affecting the efficiency of livestock, spreading contagious animal disease, and spreading contagious disease and pests of commercial herbs.[111]

Criminal offenses related to environmental protection are those in which the perpetrator's actions are not directed against the environment, but as a result, the environment may be adversely affected or endangered. These include criminal offenses that are generally dangerous (public endangerment,[112] damage to and endangerment of the operation of publicly beneficial facilities,[113] unauthorized production and possession of radioactive or highly dangerous substances, nuclear material and special fissionable material,[114] unauthorized production and other disposals with narcotic and psychotropic substances and poisons,[115] and possession of narcotics and psychotropic substances and poisons[116]), criminal offenses against health (endangering health via unhealthy food and other objects[117]), and criminal offenses against property (damage to a thing of another, misuse of property[118]).

There are two issues to be analyzed in *private law*: the prevention duty and the compensation for environmental damage. The Civil Code defines the general *duty of prevention* expressed as an obligation to act in such a way as to avoid unjustified harm to the liberty, life, health, or property of another.[119] As previously stated, even if terms such as nature and environment are not explicitly stated, there is no doubt that the liability for environmental matters is covered by the Civil Code. In terms of special types of prevention, there is an obligation to intervene and a notification obligation.[120] The legal regime for *compensation for environmental damage* is included in the system of the legal regulation of tort liabilities in the Civil Code.[121] The Civil Code is based on the premise that the basic essence of the facts is the subjective obligation to compensate for damage.[122] There are several special characteristics of the facts connected to the environment: damage resulting from operating activities, damage caused by a particularly hazardous operation, damage to an immovable thing (which also affects the damage to the environment and its components), and damage caused by the operation of a means of transport. Compensation in kind (restoration to the original state) is a priority. The Civil Code gives the injured party the possibility to claim compensation monetarily. If restoration to the original state is not possible, the damages shall always be paid in money. Actual damages and lost

111 Secs. 294a–307 of the Criminal Code.
112 Secs. 273–273 of the Criminal Code.
113 Secs. 276–277 of the Criminal Code.
114 Secs. 281–282 of the Criminal Code.
115 Sec. 283 of the Criminal Code.
116 Sec. 284 of the Criminal Code.
117 Secs. 156–157 of the Criminal Code.
118 Secs. 228–229 of the Criminal Code.
119 Sec. 2900 of the Civil Code.
120 Secs. 2901–2902 of the Civil Code.
121 Secs. 2894–2990 of the Civil Code.
122 Průchová, 2016, p. 671.

profits are covered. The court has the power of moderation, which cannot be exercised if the damage was caused intentionally.

The polluter pays principle is not reflected in the Czech Constitutional Order – it is only mentioned in the Environment Act.[123] This provision imposes an obligation on natural or legal persons who pollute the environment to pay taxes, fees, levies, and other payments. It is then obvious that pollution is not necessarily an illegal activity; it also covers the legal use of the environment. From this perspective, there is no connection between the liability and the polluter pays principle. The taxes sensu lato are further set out in specific legislation and analyzed later in this contribution.

5. High level of protection of natural resources

Concerning the Constitution sensu stricto, Art. 7, in particular, should be mentioned as it declares that the state shall concern itself with the prudent use of its natural resources and the protection of its natural wealth. The Charter of Fundamental Rights and Freedoms in Art. 35 specifically grants the right to a favorable environment and the right to timely and complete information regarding the state of the environment and natural resources. It also states that no one may, in exercising their rights, endanger or cause damage to the environment, natural resources, the wealth of natural species, or cultural monuments beyond the extent set by law.

Natural resources are defined in the Environment Act[124] as parts of living or non-living nature that humans use or can use to satisfy their needs. There are no references to a separate component of natural resources such as water, forest, or air in the Constitution, nor are there any in the Environment Act. Natural resources are divided into renewable and non-renewable ones. Renewable natural resources have the capacity to be partially or entirely renewed by themselves or with the contribution of humans as they are consumed over time. Non-renewable natural resources are lost through consumption. The obligation of the state to ensure the careful use of natural resources and the protection of natural wealth was explicitly mentioned by the Constitutional Court when considering the exemption from the payment of the levy for the permanent withdrawal of agricultural land from the agricultural land fund exclusively for the construction of roads owned by the state (while regions and municipalities or private persons are obliged to pay the levy in respect to roads they own): “The specific examination of whether the contested provision results in a violation of the principle of equality and the prohibition of discrimination, or the protection of the right to property, is precluded by the State’s obligation to ensure the careful use of natural resources and the protection of natural wealth under Art.

123 Sec. 31 of the Environment Act.
124 Sec. 7 of the Environment Act.

7 of the Constitution. In fact, if the Constitutional Court were to annul the contested provision, it would substantially extend the scope of exemptions from the payment of levies on roads. A decision in accordance with the petition would imply the establishment of an exemption from payment of the levy for all road constructions without distinction; it would constitute a significant interference with the basic mission of the law, which is based on the fact that the agricultural land fund is a fundamental natural asset of our country, an irreplaceable means of production enabling agricultural production and one of the main components of the environment."[125]

According to the latest debates in Parliament as well as proposals for amendments, it seems that water is the most important natural resource. The amendment to Art. 7 of the Constitution presented by the deputies representing the Communist party[126] presumed that water as well as other natural resources and natural wealth should be owned by the Czech Republic. This approach would fundamentally change the design of the existing environmental legislation. For example, the Water Act[127] explicitly states that surface and groundwater are not subject to ownership and are not part of or appurtenant to the land on or under which they occur. Water becomes subject to ownership only when it is abstracted.[128] The proposal also stated that the Czech Republic protects and enhances this wealth and is obliged to ensure the protection and sustainable use of water as a basic necessity of life as well as other natural resources and natural wealth for the benefit of its citizens and future generations. A similar amendment to Art. 7 of the Constitution was presented several days later by the deputies representing the Christian and Democratic Union – the Czechoslovak People's Party.[129] The proposal stated that the State shall ensure the sustainable use of natural resources, especially water resources and soil, and the protection of natural resources. Both proposals aim to explicitly reinforce the emphasis on the conservation of water, land, and other natural resources. Neither of the proposed changes in themselves regulate specific activities of natural and legal persons; they only confirm and develop an already existing commitment of the State. Without further implementation of the proposed amendment, the normative impact of this provision is not apparent.[130]

Furthermore, in 2019, deputies from STAN (Starostové a nezávislí – Mayors and Independents) presented a proposal to amend Art. 31 of the Charter dealing with the right to health and add the right to drinking water. They also wanted to define water resources as a public utility administered by the State. Drinking water resources were planned to be used as a matter of priority and in a sustainable manner to supply drinking water for consumption. The drinking water

125 Constitutional Court, Pl. ÚS 30/15-1, 15.3.2016.
126 Chamber of Deputies of the Parliament of the Czech Republic, 2019.
127 Act no. 254/2001 Sb., the Water Act, as amended.
128 Snopková, 2021, p. 572.
129 Chamber of Deputies of the Parliament of the Czech Republic, 2019b.
130 Snopková, 2021, p. 572.

supply should be provided by municipalities on a non-profit basis.[131] The proposal responded to the problems of the water crisis, climate change, related drought, and water imbalances.[132]

In 2020, the group of deputies presented an entirely new constitutional act on the protection of water and water resources.[133] In its preamble, three pillars of the act were mentioned: 1. the responsibility to future generations; 2. the objectives aimed at strengthening the protection of the environment, nature, and landscape as well as natural resources for the quality of life of the population in a healthy environment; and 3. water as an irreplaceable basic condition for life on Earth. The proposal stated, i.a., that everyone has the duty to protect and improve the environment, nature, landscape, and land in order to preserve and protect water resources. No person shall endanger water resources by harmful interference with the environment. The State and the local self-government units shall create conditions for sustainable use of water resources based on the protection of their quantity and quality and on water conservation contributing to the reduction of the consequences of drought. The State and local self-government units shall ensure the protection of waterworks as water resources intended for the mass supply of drinking water to the population. The proposal also contained the right to drinking water. This right was defined as the right to have access, at the place of residence, to drinking water for the basic needs of life from a public water supply or to drinking water from publicly available sources under socially and economically acceptable conditions. The protection of water resources used for the mass supply of drinking water to the public was defined as a matter of overriding public interest. The State and local authorities should ensure the protection of water sources used for the mass supply of drinking water to the population. Further, everyone should be obliged to comply with the measures taken by the competent authorities in the event of a water shortage.

All four above-mentioned proposals have the same shortcomings: they do not follow existing constitutional and legal regulations in the area of environmental protection. They are typical examples of amendments to existing acts or entirely new acts presented by members of Parliament without the assistance of experts dealing with legislation. It would be helpful to establish the right to water on the constitutional level; however, the detailed manner or extent of securing this right must also be regulated. The obligation of individual municipalities to ensure access to drinking water for their inhabitants should be established; however, the feasibility and cost-effectiveness of this system, particularly in relation to the existing water supply infrastructure (in terms of property and operations), are not further addressed. The emphasis on keeping the price of drinking water within a certain affordable range is evident; however, how and whether pricing policy will eventually be further

131 Chamber of Deputies of the Parliament of the Czech Republic, 2019c.
132 Snopková, 2021, p. 573.
133 Chamber of Deputies of the Parliament of the Czech Republic, 2020.

regulated from the status quo is not elaborated on or implied, and whether and how the long-standing dispute over the control of water prices by multinational companies will be resolved is not clear.[134] Finally, there is a question of why to protect only (drinking) water specifically on the constitutional level – why not air, forests, soil, or other environmental components?[135]

6. Reference to future generations

The preamble of the Constitution sensu stricto states the citizens of the Czech Republic in Bohemia, Moravia, and Silesia are resolved to guard and develop together the natural, cultural, material, and spiritual wealth handed down to our generation. Similarly, the Charter of Fundamental Rights and Freedoms recalls the share of responsibility to future generations for the fate of all life on Earth in its preamble. The most concrete is the Environment Act. It states that humans, along with other organisms, are an inseparable part of nature and reiterates the natural interdependence of humans and other organisms and the respect for the human right to transform nature in accordance with the principle of sustainable development. It also highlights awareness of the responsibility to preserve a favorable environment for future generations and emphasizes the right to a favorable environment as a fundamental human right.

References to future generations are also mentioned in the construction law defining the aim of spatial planning,[136] specifically in the legal regulation dealing with the management of radioactive waste and spent nuclear fuel,[137] genetic resources of plants and microorganisms,[138] and gardening activities.[139]

The definitions of "our generation" and "future generations" are missing in the case law of the Constitutional Court. The only reference to generations is included in two decisions of the Supreme Administrative Court dealing with site plan review and changes in land use. The newer decision cites the older one and states that spatial planning aims to create the conditions for construction and sustainable development of the territory, consisting of a balanced relationship between the conditions for a favorable environment, for economic development, and for the cohesion of the community of inhabitants of the territory and that satisfies the needs of the present generation without endangering the living conditions of future generations. The

134 Snopková, 2021, pp. 574–576.
135 See also Vomáčka, 2020, pp. 103–125.
136 Sec. 18 of the Building Act.
137 Sec. 108 of Act no. 263/2016 Sb., the Atomic Act, as amended.
138 Sec. 1 of Act no. 148/2003 Sb., the Act on Genetic Resources of Plants and Microorganisms, as amended.
139 Sec. 2 of Act no. 221/2021 Sb., the Gardening Act, as amended.

regulation of land use is an issue that goes beyond the lifetime of one or more generations and, therefore, must be elevated above the momentary short-term or even immediate needs of this or that political representation resulting from the results of elections.[140] Moreover, the Constitutional Court once mentioned the relationship between the environment and future generations, stating that "The right to a favorable environment derives from the environment as a public good for the protection of which society has assumed its share of responsibility towards future generations. … The right of everyone to a favorable environment thus corresponds to the duty of everyone to prevent pollution or damage to the environment and to minimize adverse effects on the environment."[141]

Furthermore, the scientific literature does not provide any definition of our generation and future generations. The only exception is Müllerová when dealing with climate change and efforts to extend human rights in time and space. She states that several theorists have addressed the question of whether the concept of human rights can be extended to include ratione temporis aspects so that human rights instruments can be effectively applied to the effects of climate change. Müllerová believes that the approaches to the possible conclusion of future persons as holders of human rights described by the author-theorists seem to be far from realistic possibilities. The applicants' approach of involving young people and children, representing the next generation, in the plaintiff groups and using intergenerational justice arguments as merely supplementary, alongside the main argument of an already existing impairment of rights, seems much more pragmatic. If the courts at least partially accept this approach, Müllerová believes that it is a solution that may be satisfactory from the point of view of time (action on climate change must not be postponed but taken now; however, it will only take effect in the future).[142]

It is possible to conclude that the term "our generation" covers all persons living today, while the group of "future generations" includes not only those who have not yet been born but also young people and children. They belong to both groups (our and future generations) as they can (even if only partially) influence (not only) the environment but do not have sufficient real possibilities and legal tools to protect the environment for their future life.

The de lege ferenda proposals mentioned above in the subchapter on the high level of protection of natural resources are also applicable for the issues of future generations.

140 Supreme Administrative Court, 2 Ao 3/2007-40, 24.10.2007; Supreme Administrative Court, 2 Ao 4/2008-88, 5.2.2009.

141 Constitutional Court, IV. ÚS 254/02, 28.1.2003.

142 Müllerová, 2021, p. 564.

7. Reference to sustainable development

Although the principle of sustainable development is among the most important principles in environmental law, sustainable development is not expressis verbis mentioned in the Czech Constitution sensu lato or in the Constitutional Court's decisions. However, the Environment Act reiterates the respect for the human right to transform nature in accordance with the principle of sustainable development and highlights the awareness of the responsibility to preserve a favorable environment for future generations. The sustainable development of society is defined as development that maintains the ability of present and future generations to meet their basic needs for life while not reducing the diversity of nature and while preserving the natural functions of ecosystems.[143] The explanatory report to the Environment Act classifies the principle of sustainable development as one of the cornerstones of European Communities' environmental legislation. The report also states that the Environment Act is consistently based on the generally accepted principle of sustainable development of society and that the principle aims at the greatest possible breadth and diversity of satisfaction of the demands and needs of contemporary human civilization (society) without deteriorating the quality of the environment and without narrowing the space for the search and application of distinctive ways of life, systems of life values, and forms of management, both for present and future generations. The report also highlights that economic and social development is primarily directed toward the use of renewable natural resources while preserving the diversity and richness of nature and the natural functions of ecosystems.[144] Thus, the principle of sustainable development belongs to the generally accepted environmental principles. These findings are also confirmed by (though very rare and indirect) findings of the Constitutional Court dealing with issues other than environmental ones[145] as well as scientific literature.[146]

The principle of sustainable development is mentioned in both environmental law regulation (environmental impact assessment,[147] energy law,[148] mining waste,[149] spatial planning,[150] and environmental education[151]) and non-environmental legal

143 Sec. 6 of the Environment Act.
144 Chamber of Deputies of the Parliament of the Czech Republic, 1991.
145 Constitutional Court, Pl. ÚS 4/18-1, 18.12.2018; Constitutional Court, Pl. ÚS 44/18-1, 17.7.2019.
146 E.g., Mácha and Vícha, 2020, p. 73. Stejskal, 2017, p. 79. Pekárek, 2015, p. 78. Vomáčka, 2013, p. 193. Dudová, 2016, pp. 131–134.
147 Sec. 1 of the Environmental Impact Assessment Act.
148 Sec. 3 of Act no. 406/2000 Sb., the Energy Management Act, as amended; Sec. 1 of Act no. 165/2012 Sb., the Supported Energy Sources Act, as amended; Sec. 5c of Act no. 416/2009 Sb. on Accelerating the Construction of Transport, Water and Energy Infrastructure and Electronic Communications Infrastructure (the Linear Act), as amended.
149 Sec. 5 of Act no. 157/2009 Sb., the Mining Waste Management Act, as amended.
150 Secs. 18–102 of the Building Act.
151 Sec. 2 of Act no. 561/2004 Sb., the Education Act, as amended.

regulation (public procurement law,[152] investment law,[153] development law,[154] public transportation,[155] etc.).

The de lege ferenda proposals mentioned above in the subchapter on the high protection of natural resources are also applicable to the issues connected to sustainable development. Many of them are very useful and should be adopted.

8. Other values relevant to the protection of the environment in the Constitution

The preamble of the Constitution sensu lato states that the citizens of the Czech Republic are resolved to guard and develop together not only natural but also cultural, material, and spiritual wealth. In its preamble, the Charter of Fundamental Rights and Freedoms recalls the share of responsibility to future generations for the fate of all life on Earth and emphasizes universally shared values of humanity and nations' traditions of democracy and self-government. It also brings to mind the bitter experience of periods when human rights and fundamental freedoms were suppressed in our homeland (the Czech Republic).

Family, parenthood, and children are protected by the specific article of the Charter.[156] The text of the Charter states that parenthood and the family are under the protection of the law, and special protection is guaranteed to children and adolescents. All children have equal rights, whether they were born in or out of marriage. In particular, they have the right to parental upbringing and care. Similarly, it is the parents' right to care for and bring up their children. Parents who are raising children have the right to assistance from the state. Parental rights may be limited and minor children may be removed from their parents' custody against their will only by the decision of a court on the basis of the law. Special care, including protection in labor relations and suitable labor conditions, is guaranteed to pregnant women.

Although the Constitution does not explicitly mention the protection of unborn generations, the preamble of the Charter, when discussing the responsibility to future generations, also considers unborn generations. De lege ferenda, it would be helpful to state this principle explicitly, including the encouragement to childbearing.

152 Sec. 28 of Act no. 134/2016 Sb., the Public Procurement Act, as amended.
153 Sec. 1, 3 of Act no. 211/2000 Sb., the Act on the State Investment Promotion Fund, as amended.
154 Sec. 2 of Act no. 151/2010 Sb., the Act on Foreign Development Cooperation and Humanitarian Aid Abroad, as amended; Sec. 7 of Act no. 248/2000 Sb., the Act on Act on Support for Regional Development, as amended.
155 Sec. 2, 4b of Act no. 194/2010 Sb., the Act on Public Passenger Transport Services, as amended.
156 Art. 32 of the Charter.

9. Financial sustainability

Expressis verbis, neither the sustainability nor the protection of the interest of future generations appear in the Czech Constitution sensu lato among the rules of public finances. However, there are several issues to be mentioned in these circumstances. Especially today, shortly after the COVID-19 pandemic and during the Russian aggression in Ukraine, all countries face economic crises connected to inflation growth. To ensure sustainability, price growth (inflation) should be under control. The primary purpose of the Czech National Bank (the state central bank) shall be to maintain price stability as stated in the Constitution of the Czech Republic.[157] The independence of the central bank is guaranteed:[158] interventions into its affairs are permissible only on the basis of the statute.[159]

The budgetary responsibility rules as defined by Directive 2011/85/EU on Requirements for Budgetary Frameworks of the Member States are not set by the constitutional acts but by the regular Act on the Rules of Budgetary Responsibility.[160] The debt brake means a general government debt level of at least 55% of the nominal gross domestic product. It refers to the obligation to take corrective measures, including presenting a draft and medium-term outlook for the state budget and the budgets of the state funds that lead to a long-term sustainable state of public finances, presenting proposals for balanced budgets for health insurance funds, and approving the budgets of local government units as balanced or in surplus. Public institutions may not incur new contractual obligations leading to an increase in the public sector's debt for a period of more than one calendar year. If the public sector debt is more than 60% of the nominal gross domestic product, the government shall propose measures to reduce it.

The other area closely connected to financial sustainability is tax law. Financial sustainability and adequate financial sources are conditio sine qua non for environmental protection. area great deal of tax revenue is used for these purposes at both the state and local levels. Several environmental charges are budgeted for the State Environmental Fund of the Czech Republic.

However, the Czech Constitution sensu lato does not include any principles stating that everyone shall contribute to covering common needs according to their capabilities or shall comply with their responsibilities and public duties, including the payment of taxes. There is no principle limiting the extent of contribution for persons raising children by taking into consideration the costs of raising children. Moreover, the principle of the ability to pay is inferred only from academic publications and judicial decisions; the tax or any other public payment must not be of a liquidating nature (must not have a choking effect) in terms of what is secured by

157 Art. 98 of the Constitution.
158 See also Constitutional Court, Pl. ÚS 59/2000, 20.6.2001.
159 Mrkývka, 2004, pp. 209–210.
160 Act no. 23/2017 Sb. on the Rules of Budgetary Responsibility, as amended.

corrective components (exemptions, relief, etc.) or deferral and waiver of the tax by administrative means. The polluter pays principle (pay-as-you-throw principle) is used for many environmental taxes and other public payments, but it is not enshrined in the Constitutional Order. The only rule concerning taxes is included in the Charter of Fundamental Rights and Freedoms. Its Art. 11/5 states that taxes and fees can be imposed only by acts. This means taxes sensu stricto as well as all of the fees and other taxes sensu largo must be imposed by acts, not merely by ordinances of municipalities or ministries.

Generally, almost every tax sensu lato collected – not only in the Czech Republic – includes ecological aspects in its legal regulation. For clarity, it is possible to divide taxes sensu lato into two groups: taxes sensu stricto collected on a fairly regular basis with no equivalent compensation for the taxpayer and charges (fees) collected on a relatively irregular basis with appropriate consideration for payment. The title of the public payment is decisive; all taxes, charges, fees, levies, etc., have either a tax or a charge nature.[161]

The most common ecological taxes are energy taxes harmonized by the European Union. In the Czech Republic, the tax on natural gas and certain other gases (the tax on gas), the tax on solid fuels (tax on coal), and the tax on electricity were introduced in 2008.[162] These days, the most discussed issue is the exemption of aviation fuel (kerosene) from taxation. Ecological aspects should be apparent in motor vehicles taxation. However, the Czech road tax (annual tax on motor vehicles[163]) is obsolete. The tax is still based on the engine capacity in cm^3 of the personal car or the combination of the highest permissible weights on axles in tons and the number of axles in the case of other motor vehicles rather than on CO_2 emissions. On the other hand, charges for using highways and motorways[164] include ecological motivation such as exemption or lower rates.

There are several pollution taxes sensu lato: a pollution charge from stationary sources, a charge for the discharge of wastewater into surface waters, a charge for the authorized discharge of wastewater into groundwater, and two possible charges on communal waste (a local charge for the municipal waste management system or a local charge for the disposal of municipal waste from the immovable property). Furthermore, several resource taxes sensu lato are collected: a groundwater abstraction charge, a payment for the management of watercourses and river basin districts, a levy for the withdrawal of land from the agricultural land fund, a charge for the withdrawal of forest land, and levies from the mining area and the extracted minerals.

The revenue from ecological taxes sensu lato is usually shared between the State Environmental Fund of the Czech Republic and local budgets. The revenue is usually used to finance measures in the field of environmental protection.

161 Radvan and Neckář, in print.
162 Act no. 261/2007 Sb., on the Stabilization of Public Budgets, as amended.
163 Act no. 16/1993 Sb., on the Road Tax, as amended.
164 Act no. 13/1997 Sb., the Land Roads Act, as amended.

The environmental principle in connection with sustainability is also mentioned in the public procurement law. The contracting authority is obliged to comply with the principles of socially responsible procurement, environmentally responsible procurement, and innovation within the meaning of this Public Procurement Act when establishing the terms of reference, evaluating tender, and selecting the supplier, provided that this is possible given the nature and purpose of the contract.[165] Environmentally responsible procurement refers to a procedure in which the contracting authority is obliged to take into account, for example, the environmental impact, sustainable development, the life cycle of the supply, service, or work, and other environmentally relevant aspects associated with the public contract.[166]

10. The protection of national assets

The basic legal rules dealing with national assets are set in Art. 11/2 of the Charter of Fundamental Rights and Freedoms. This article states that the law shall designate the property necessary for securing the needs of the entire society, the development of the national economy, and the public welfare, which may be owned exclusively by the state, a municipality, or designated legal persons.[167] The law may also provide that certain items of property may be owned exclusively by citizens or legal persons with their headquarters in the Czech and Slovak Federal Republics.[168] The Constitution of the Czech Republic also defines territorial self-governing units (municipalities and regions) as public law corporations that may own property and manage their affairs on the basis of their own budget.[169] However, the Constitution sensu lato does not include any definition of state, municipal, or regional property.

To define ownership exclusively by the state, it is necessary to investigate individual legal acts. State property is thus mineral resources in the territory of the Czech Republic[170] as well as highways and first-class roads.[171] The most recent legislation generally introduces a regime of things exempted from legal commerce (res extra commercium) for the property that was originally the exclusive property of the state; it stipulates that no one can own them. This applies to natural healing

165 Sec. 6 of the Public Procurement Act.
166 Sec. 28 of the Public Procurement Act.
167 Tomoszek and Vomáčka, 2021.
168 Until 2011, there were restrictions on the acquisition of immovable property by foreigners in Act no. 219/1995 Sb., the Foreign Exchange Act, as amended.
169 Art. 101/3 of the Constitution.
170 Sec. 5 of Act no. 44/1988, the Mining Act, as amended.
171 Sec 9/1 of the Land Roads Act.

sources and sources of natural mineral water,[172] surface water and groundwater,[173] and caves.[174] The exclusive owners of second- and third-class roads are the regions, while the owners of local roads are the municipalities in whose territory those roads are located.

The body that audits the management of state property is an independent body: the Supreme Audit Office.[175]

11. Good practices and proposals de lege ferenda

The environmental law regulation at the constitutional level in the Czech Republic is somewhat specific compared to other countries. This is primarily because of the system of the Constitutional Order (the Constitution sensu lato) created by the Constitution of the Czech Republic (the Constitution sensu stricto) and the Charter of Fundamental Rights and Freedoms. From the environmental law perspective, the Constitution declares only that the state shall concern itself with the prudent use of its natural resources and the protection of its natural wealth. Fundamental rights and basic freedoms, including the rights and freedoms related to the environment, are included in the Charter. The regulation is relatively brief, and many articles must be explained using regular acts. The key to interpreting individual rights and freedoms is very often presented by the Constitutional Court. Its decision-making practice is essential for protecting the environment from the position of both the addressees of rights and obligations and the executors of public authority.

It was the Constitutional Court that stated that the environment is a public good (value) and that environmental issues have political and scientific aspects. The Court also highlighted that the right to a favorable environment could not prohibit all activities having a negative impact on the environment. It is necessary to consider both environmental protection and other (business) values, respecting the level of human knowledge, the situation in society, international obligations, and the results of the national economy.[176] Not only based on the decisions mentioned above but also based on the long-term practice of the Constitutional Court in other matters, it is possible to state that the Czech Constitutional Court is the court of law administering justice on the basis of legislation and very often also of previous court decisions; moreover, its decisions are broadly respected.

172 Sec. 4 of Act no. 16/2001 Sb., the Spa Act, as amended.
173 Sec. 3 of the Water Act.
174 Sec. 61/4 of Act no. 114/1992 Sb., the Act on Nature and Landscape Protection, as amended.
175 Art. 97 of the Constitution.
176 Comp. Constitutional Court, II. ÚS 251/03, 24.3.2005.

The role of the Public Defender of Rights (the Ombudsman) must be emphasized, regardless of the fact that the Constitution does not regulate this institution. In relation to environmental law as well as other issues, the Ombudsman may initiate proceedings for the review of a decision, act, or procedure of an authority, perform acts to eliminate inactivity, initiate disciplinary or similar proceedings, initiate prosecution for a criminal offense, infraction, or other administrative offense, and provide an indemnification or file a claim for indemnification. The Ombudsman is also authorized to recommend that a legal or internal regulation be issued, amended, or canceled. Moreover, the Ombudsman has the right to make a complaint to protect the public interest if they prove a compelling reason for the submission in the public interest.

Human rights, including the right to a favorable environment, are taken seriously in the Czech Republic, especially after the communist regime. President Václav Havel believed that the Constitution should not lack an ecological article. He is considered the spiritual author of Art. 7 of the Constitution, which declares that the State shall concern itself with the prudent use of its natural resources and the protection of its natural wealth.[177] Karel Vašák, a Czech-French lawyer and university professor and the first director of the International Institute for Human Rights in Strasbourg, ranked the right to a favorable environment among the third generation of human rights in 1979. The Charter includes all rights necessary for effective protection of the environment, including the right to a favorable environment, the right to health, the right to life, etc. The general right to information and the special right to timely and complete information regarding the state of the environment and natural resources are among the legal guarantees of legality in public administration, as access to environmental information is a prerequisite for effective public participation in environmental protection.

The protection of the environment at the constitutional level in the Czech Republic is generally similar to the regulation in other European countries. However, it might be improved by the good-practice examples from other EU member states. In particular, it seems necessary to specify the responsibility to future generations, especially to unborn generations. The de lege lata constitutional regulation explicitly deals only with already born children and their protection. Although it is clear from the sense of the Constitutional Order and from the regular acts concerning environmental protection that the unborn generation is also under this protection, it would be reasonable to change the wording of the constitutional regulation.

Recent years have shown that the amount of decimal precipitation is decreasing in the Czech Republic, and in some areas, more than drinking water is at risk. Water seems to be the most important natural resource. However, the amendments at the constitutional level introducing the right to drinking water must be followed by the amendments of the related acts to specify the detailed manner and extent of securing this right. If any political party proposes an obligation of individual municipalities

177 Uhl, 2015.

to ensure access to drinking water for their inhabitants, the feasibility and cost-effectiveness of this system must be further addressed, particularly in relation to the existing water supply infrastructure and its operators. In addition, there might be a question as to why to protect only (drinking) water specifically on the constitutional level and not soil, air, forests, or other environmental components.[178]

Financial sustainability and adequate financial sources are conditio sine qua non for effective environmental protection. A great deal of tax revenue is used for these purposes at both state and local levels. In this area, it would be helpful to introduce new principles at the constitutional level: 1. the principle of financial participation in public goods (everyone shall contribute to covering common needs according to their capabilities or shall comply with their responsibilities and public duties, including the payment of taxes; 2. the principle of a reduced contribution for raising children (limiting the extent of contribution for persons raising children by taking into consideration the costs of raising children); 3. the principle of the ability to pay (the tax or any other public payment must not be of a liquidating nature/must not have a choking effect in terms of what is secured by corrective components such as exemptions, relief, or deferral and waiver of the tax by administrative means); 4. The polluter pays principle (pay-as-you-throw principle, applicable for many environmental taxes and charges, especially for communal waste charges).

The last issue to be solved is the amendment of the Linear Constructions Act,[179] as there are different approaches for individual construction offices, and very often, ecological reasons are misused to disproportionately extend the construction preparation time. The Linear Constructions Act regulates the procedures for preparing and permitting the construction of transport, water and energy infrastructure, and electronic communications infrastructure to acquire the rights to the land and buildings necessary for the implementation of this construction and for putting this construction into use to speed up their property-law preparation, permitting, and subsequent judicial review of administrative decisions in connection with this construction. This Act also regulates the exercise of state administration and the procedure for permitting projects of common interest. It is necessary to establish the Supreme Construction Office as a central authority and to limit the possibilities of "wannabe environmental activists" to initiate various appeals, remedies, and actions. On the other hand, related environmental protection must always be secured.

178 See also Vomáčka, 2020, pp. 103–125.
179 Linear Act.

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