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Environmental protection in the Constitution of the Czech Republic\*\*

*Abstract*

*This article aims to analyse the constitutional order of Czechia and the decision-making practice of the courts to define the legal means of environmental protection at the constitutional level. The aim is also to provide the reader with an essential insight into environmental protection in Czechia at the constitutional level so that the legal regulation and decision-making practice can be compared with other countries.*

**Keywords:** environmental protection, constitution, Czechia, the right to a favourable environment, environmental information, restrictions.

## 1. Introduction

Václav Havel, the first Czechoslovak post-communist and then the first Czech president, believed that the modern Constitution of the newly built democratic State should not lack an ecological article.<sup>1</sup> This was also the ethos of constitutional adoption in other post-communist states. Thus, in the 1990s, the greening of constitutions in post-communist countries was well underway, involving environmental protection among constitutionally protected values and the adoption of progressive environmental legislation.<sup>2</sup> This effort resulted, among other things, in incorporating specific provisions protecting the environment into the constitutional order of Czechia.

This article aims to analyse the constitutional order of Czechia and the decision-making practice of the Constitutional Court in particular, but also of the Supreme Administrative Court and other administrative courts, to define the legal means of environmental protection at the constitutional level. The aim is also to provide the reader with an essential insight into environmental protection in Czechia at the constitutional level so that, among other things, the legal regulation and decision-making practice can be compared with other countries.

The first chapter will set out the constitutional background and context for environmental protection. In the following chapters (second, third and fourth), the individual institutes of environmental protection in the Czech constitutional order will

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<sup>1</sup> Chrástilová & Mikeš 2003, 114.

<sup>2</sup> Hanák 2016, 147.



be analysed, namely the right to a favourable environment, the right to timely and complete information on the State of the environment and natural resources and the limitation of the exercise of other rights in favour of environmental protection. Finally, an assessment of the analysed legislation and case law will be made. It should be noted that a newly published commentary written by leading experts in environmental law from the Faculty of Law of Masaryk University in Brno and the Faculty of Law of Palacký University in Olomouc served as a key source for the writing of this article, especially in terms of a thorough review of the case-law mentioned therein.<sup>3</sup>

## 2. Constitutional background and context of environmental protection

The Czechia's constitutional order has reflected environmental protection in several elements that are balanced against each other. This was due to the change of the political regime after 1989 (the fall of the socialist establishment as a result of the Velvet Revolution). The significant factors that contributed to its entrenchment were, in addition to the above, also severe environmental pollution, the priorities of the country's political leadership at the time, as well as the desire to be inspired by good examples and to become a member of the European Union as soon as possible.<sup>4</sup>

The Constitution of the Czech Republic (hereinafter referred to as the Constitution), as the highest law of the country, not only contains a reference to environmental protection in its preamble (*"We, the citizens of the Czech Republic in Bohemia, Moravia and Silesia [...] determined to jointly protect and develop the inherited natural and cultural, material and spiritual wealth [...]"*) but also directly sets out the constitutional obligation of the State to protect the environment, in Art 7 (*"The State shall take care to use natural resources sparingly and to protect natural wealth."*).

In this context, the Constitutional Court ruled in 1993 that the Constitution *"is not based on value neutrality. It is not a mere definition of institutions and processes but incorporates into its text certain regulative ideas expressing the fundamental inviolable values of a democratic society."*<sup>5</sup> One of the values on which the Constitution is based is the environment. This has been confirmed by the Constitutional Court in its subsequent decision-making practice, according to which in a democratic state governed by the rule of law, *"the environment is a value whose protection is to be implemented with the active participation of all components of civil society, including civil associations and non-governmental organisations which have the status of legal persons. Discourse within an open society, where appropriate by legal means and in proceedings before the courts, is then an effective guarantee of the protection of the natural wealth of the State."*<sup>6</sup>

The Constitutional Court has referred to a 'healthy' environment as a public good (public value), concluding that *"it is typical of public goods that the benefits from them are inseparable and people cannot be excluded from enjoying them. Examples of public goods are national*

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<sup>3</sup> Vomáčka, Tomoszková & Tomoszek 2020, 974–1031.

<sup>4</sup> Ibid.

<sup>5</sup> Judgment of the Constitutional Court of 21 December 1993, No. Pl. ÚS 19/93 (N 1/1 SbNU 1; 14/1994 Coll.).

<sup>6</sup> Judgment of the Constitutional Court of 6 January 1998, No. I. ÚS 282/97 (U 2/10 SbNU 339).

*security, public order, and a healthy environment. Therefore, a public good becomes a particular aspect of human existence on condition that it cannot be conceptually, substantively or legally broken down into parts and assigned to individuals as shares.*<sup>7</sup> At this point, it should be emphasised that the Constitutional Court referred to the public good not only as of the environment itself, but as an environment of a certain quality ('healthy'), and added that it is a public value protected by the constitutional order in Czechia, which is reflected in particular in the Charter of Fundamental Rights and Freedoms (hereinafter referred to as the "Charter"), as the essential human rights catalogue of the Czech constitutional order.

The Charter also states in its preamble that the citizens of Czechia are aware of their share of "*responsibility towards future generations for the fate of all life on Earth*" and enshrines both the substantive subjective right to a favourable environment (in Article 35(1)) and the procedural right to timely and complete information about the State of the environment and natural resources (in Article 35(2)), as well as the individual's duty to protect the environment (in Article 35(3)). A detailed discussion of these three individual environmental protection components will be made in chapters 2, 3 and 4 of this article.

However, other provisions of the constitutional order are also related to the right to a favourable environment. On the one hand, an unfavourable environment can have an immediate negative effect on a person's health, thereby interfering with the right to health under Article 31 of the Charter or even leading to a restriction of the right to life under Article 6 of the Charter.

In practice, however, the most frequent conflict arises between the right to a favourable environment and the property right, not least because Article 11(3) of the Charter provides that the exercise of the property right "*shall not harm human health, nature or the environment beyond the extent prescribed by law.*" Thus, it is possible to identify three specific purposes that the constitution maker pursued in enshrining this legislation. Firstly, regulating the conflict between environmental protection and other rights is thus specified in limits or the degree of permissible damage to the environment. Secondly, the obligation to set the level of allowable environmental damage is thus enshrined, even in those parts of the environment where the rights and freedoms of individuals are not restricted. Finally, the third consequence is the explicit enshrinement of the principle of the participation of all in the protection of the environment (the principle of shared responsibility), which implies that, although the protection of the environment is a constitutionally enshrined task of the State, individuals must inevitably participate in its implementation and are also subject to certain obligations or restrictions.<sup>8</sup>

Another related provision is Article 14 of the Charter, which regulates freedom of movement and residence, closely linked to the right to a favourable environment. This is manifested, for example, by the right to free passage through the countryside, which is specified in sub-legislation, and this movement cannot be limited to recreation, as is evident, for example, from the regulation of the general use of forests without

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<sup>7</sup> Judgment of the Constitutional Court of 9 October 1996, No. Pl. ÚS 15/96 (N 99/6 SbNU 213; 280/1996 Coll.)

<sup>8</sup> Drobník 2010, 51.

reference to their categorisation. Article 14(3) of the Charter provides for the possibility of restricting freedom of movement on the grounds of nature protection.

Article 17 of the Charter enshrines the right to information in a general form and thus constitutes a general provision to Article 35(2) of the Charter, which regulates the right to timely and complete information on the State of the environment and natural resources (see Chapter 3 of this Article for details). It is crucial for the relationship between Article 17 and Article 35(2) of the Charter that the two provisions pursue different purposes - in the case of Article 17 of the Charter, the basis for the control of public authority, the exercise of political rights and the power of the management of public funds. In contrast, in the case of Article 35(2) of the Charter, the main objective is protecting the environment and the right to information on the State of the environment.

Article 20(1) of the Charter, which guarantees the right to freedom of association, is also significant to the right to a favourable environment, as environmental associations play an essential role in protecting the environment.

An essential part of the right to a favourable environment is its procedural component based on Article 36(2) of the Charter. According to the Charter, judicial review of decisions relating to fundamental rights and freedoms under the Charter, including all the components of the right to a favourable environment enshrined in the Charter, must be provided for and cannot be excluded. In addition to access to judicial protection itself, the effectiveness of judicial review is also crucial, particularly the length of the judicial procedure and the use of the institution of the suspensive effect of administrative action to avoid already irreversible damage to the environment. It is therefore settled case-law that *“the applicants from among the public concerned must be granted their applications for the grant of suspensive effect to administrative action in such a way that situations cannot arise where, at the time the administrative action is decided, the authorised project has already been irreversibly implemented.”*<sup>9</sup>

Article 41(1) of the Charter is very relevant to the definition of the intensity of environmental protection, according to which, among other things, the rights enshrined in Article 35 of the Charter (see Chapters 2, 3 and 4 of this Article) may be invoked only within the limits of the laws implementing them. The right to a favourable environment thus belongs in the Czech constitutional order to the category of so-called social rights, the limitations of which are examined by the test of rationality, not proportionality, as is the case with other rights enshrined in the Charter. The rationality test and the formulation of its steps have been repeatedly formulated by the Constitutional Court in a somewhat different manner, taking into account the aspects used<sup>10</sup>, but their essence is identical. The rationality test consists of the following four steps: 1. defining the essential content of the right; 2. assessing whether the claimed

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<sup>9</sup> Judgment of the Constitutional Court of 6 May 2015, No. II. ÚS 3831/14 (U 7/77 SbNU 943), judgment of the Constitutional Court of 15 May 2018, No. III. ÚS 3114/17, judgment of the Supreme Administrative Court of 14 June 2007, No. 1 As 39/2006-55, or judgment of the Supreme Administrative Court of 29 August 2007, No. 1 As 13/2007-63 (No. 461/2008 Coll.).

<sup>10</sup> See e.g. Judgment of the Constitutional Court of 27 January 2015, No. Pl. ÚS 16/14 (N 15/76 SbNU 197; 99/2015 Coll.), paragraph 85 vs. judgment of the Constitutional Court of 24 April 2012, No. Pl. ÚS 54/10 (N 84/65 SbNU 121; 186/2012 Coll.), paragraph 48.

claim affects the core of the right (its actual content); 3. assessing whether the interests opposing the claimed claim are legitimate (acceptable from a constitutional point of view); and 4. consider whether the legislation relating to the claim is reasonable (rational), though not necessarily the best, most appropriate, most influential or wisest, in light of the legitimate competing interests. This test of rationality is then used to assess, in individual cases, whether there has been an interference with the rights protected by Article 35 of the Charter.

### 3. The right to a favourable environment

Article 35(1) of the Charter provides that *“Everyone has the right to a favourable environment.”* The Constitutional Court observes<sup>11</sup> that *“The core of the right to a favourable environment under Article 35(1) is, in particular, the possibility for everyone to claim, in the manner prescribed by law, the protection of the natural environmental conditions of his or her existence and sustainable development, which corresponds to the positive obligation of the State to safeguard the inherited natural wealth, to ensure the prudent use of natural resources and to protect natural wealth (preamble and Article 7 of the Constitution). The positive obligation of the State thus consists, inter alia, in protecting against interference with the environment to such an extent as to prevent the realisation of the basic needs of human life.”* However, according to some authors<sup>12</sup>, such a definition is entirely inadequate, as it omits the substantive component of the right and states as its core the possibility for everyone to claim this right in the manner prescribed by law, without specifying what constitutional requirements for the procedural aspect of the right belong to the critical content. However, the Constitutional Court was a little more specific in its last key ruling on environmental protection, stating that *“The obligation of the State to protect against interference with the environment can be considered as the essence of this right if the interference reaches such a level that it makes it impossible to realise the basic needs of human life.”*<sup>13</sup>

#### 3.1. Substantive content

The right to a favourable environment is anthropocentric in the Czech conception,<sup>14</sup> corresponding to the obligation to ensure healthy living conditions for man and the favourable development of the environment where man is located or whose protection he has a sufficient interest. Thus, the content of the right to a favourable environment is not protecting the environment without more; there must therefore be a particular link between the interest at stake and the specific persons concerned.

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<sup>11</sup> Judgment of the Constitutional Court of 17 July 2019, No. Pl. ÚS 44/18 (N 134/95 SbNU 124; 225/2019 Coll.).

<sup>12</sup> Tomoszek & Tomoszková 2016, 156.

<sup>13</sup> Judgment of the Constitutional Court of 26 January 2021. No. Pl. ÚS 22/17 (124/2021 Coll.).

<sup>14</sup> For the ecocentric concept, cf. e.g. Vomáčka 2015, 26–31.

The Constitutional Court refers to the right to a favourable environment as a right with a relative content, which must be “*interpreted from many aspects and always in the light of the specific case*”<sup>15</sup> while finding that the choice of individual instruments for the protection of the right to a favourable environment and their mutual balance are primarily a task of political decision-making, which is not for the courts to assess.<sup>16</sup> Still, the setting of specific instruments and their enforcement are subject to judicial review.

*In concreto*, the implementation of the right to a favourable environment has so far been identified by the courts as the implementation of public environmental standards in the field of air<sup>17</sup> and noise protection,<sup>18</sup> where quantitative standards of pollution levels are set. The Constitutional Court also includes special territorial protection of nature among the components of the right to a favourable environment.<sup>19</sup> Public law standards thus indicate (not set binding) environmental friendliness. Through them, it is possible to define even a condition that is not favourable. For example, the Supreme Administrative Court<sup>20</sup> has identified a non-favourable condition as one in which, due to the high accumulation of a large number of sources (industrial, local and transport), both short-term and annual immission and target limits for the number of pollutants are consistently exceeded.<sup>21</sup> What matters in terms of potential interference with the right to a favourable environment is “*not how the individual technical standards are conceived and formulated, but the overall impact of the regulation.*”<sup>22</sup>

The right to a favourable environment applies even where the exact level of protection is not specified by law, for example, in the context of housing amenity.<sup>23</sup> In particular, the courts have held that the administrative authorities are obliged to reflect all the influences that may affect the home's well-being in an interrelated manner.<sup>24</sup> It follows from the case-law of the Supreme Administrative Court that the requirements for the well-being of housing cannot be absolutised since every building causes a specific burden on its surroundings, and it is fair to require the owners of surrounding buildings to bear such a burden if it is proportionate to the

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<sup>15</sup> Judgment of the Constitutional Court of 25 October 1995, No. Pl. 17/95 (N 67/4 SbNU 157; 271/1995 Coll.).

<sup>16</sup> Judgment of the Constitutional Court of 18 December 2018, No. Pl. ÚS 4/18 (N 201/91 SbNU 535; 30/2019 Coll.).

<sup>17</sup> E.g. Judgment of the Supreme Administrative Court of 23 March 2017, No. 10 As 299/2016-29.

<sup>18</sup> E.g. Judgment of the Regional Court in Prague of 6 December 2018, No. 50 A 25/2017-125.

<sup>19</sup> Judgment of the Constitutional Court of 25 September 2018, No. Pl. 18/17 (N 156/90 SbNU 525; 261/2018 Coll.).

<sup>20</sup> Judgment of the Supreme Administrative Court of 14 November 2014, No. 6 As 1/2014-30, 3170/2015 Coll.

<sup>21</sup> For details, cf. e.g. Jančářová 2015, 15–19., 155–169.

<sup>22</sup> Judgment of the Constitutional Court of 18 December 2018, No. Pl. ÚS 4/18 (N 201/91 SbNU 535; 30/2019 Coll.).

<sup>23</sup> *Ibid.*

<sup>24</sup> Judgment of the Supreme Administrative Court of 4 March 2009, No. 6 As 38/2008-123.

circumstances.<sup>25</sup> It is then within the power of the law only to prevent an extreme imbalance in the rights of neighbouring landowners.<sup>26</sup> Therefore, the existence of specific standards is a guide to assessing the interference with the legal sphere of individuals and the allocation of the burden of proof.

### 3.2. Holders of the right to a favourable environment

Under Article 35(1) of the Charter, everyone has the right to a favourable environment. The Charter, therefore, does not exclude anyone *a priori* from the enjoyment and protection of this right. The Charter and the laws governing the exercise of fundamental rights by legal persons are based on the assumption, not explicitly stated in the Constitution, that fundamental rights also belong to legal persons to the extent that their nature permits<sup>27</sup>. Therefore, the holder of the right to a favourable environment should be every natural and legal person existing in the environment and affected by environmental interventions.

However, for a long time, the Constitutional Court assumed that only procedural rights belonged to legal persons, later admitting that they could protect their members' right to a favourable environment<sup>28</sup>.

First, the Constitutional Court held<sup>29</sup> that *"rights relating to the environment belong only to natural persons since they are biological organisms which – unlike legal persons – are subject to possible negative environmental influences."* Second, the Constitutional Court held that only procedural rights *"related to the right to the environment"* belong to legal persons, particularly civil associations whose primary mission, according to their statutes, is the protection of nature and the countryside.<sup>30</sup> Third, however, the Constitutional Court considered such constitutional complaints filed by legal persons to be filed *"in favour of a third party, possibly in the interest of protecting public interests."* At the same time, the so-called *actio popularis* is not admissible.<sup>31</sup>

However, the approach of the Constitutional Court has not always been shared by the general courts. Thus, for example, the Supreme Administrative Court has held<sup>32</sup> that the bearers of this constitutional right are also *"those legal persons, typically civil associations, for whom the protection of environmental interests is the main or essential part of their activities and which can thus be seen not only as a group of natural persons for whom such a legal person represents a kind of medium through which these natural persons defend their right to a*

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<sup>25</sup> E.g. Judgment of the Supreme Administrative Court of 2 February 2006, No. 2 As 44/2005, No. 850/2006 Coll.

<sup>26</sup> Judgment of the Constitutional Court of 28 June 2017, No. I. ÚS 3610/16.

<sup>27</sup> See also judgment of the Constitutional Court of 19 January 1994, No. Pl. ÚS 15/93 (N 3/1 SbNU 23; 34/1994 Coll.).

<sup>28</sup> Judgment of the Constitutional Court of 30 May 2014, No. I. ÚS 59/14 (N 111/73 SbNU 757).

<sup>29</sup> Judgment of the Constitutional Court of 6 January 1998, No. I. ÚS 282/97 (U 2/10 SbNU 339).

<sup>30</sup> Judgment of the Constitutional Court of 10 July 1997, No. III. ÚS 70/97 (N 96/8 SbNU 375).

<sup>31</sup> Judgment of the Constitutional Court of 11 May 1999, No. I. ÚS 74/99 (U 34/14 SbNU 329).

<sup>32</sup> Judgment of the Supreme Administrative Court of 29 March 2007, No. 2 As 12/2006-111.

*favourable environment but also as an advocate of this right in favour of other people.”* The Constitutional Court, however, rejected these conclusions, finding that *“The proceedings for the authorisation of the operation of Unit 2 of the Temelin Nuclear Power Plant did not and could not have involved any of the complainant’s substantive fundamental rights, such as the right to life under Article 6, the right to the right to the protection of his privacy under Article 7 of the Constitution, the right to protection of private and family life under Article 10, and the right to a favourable environment under Article 35(1) in conjunction with Article 41(1), on the ground that these fundamental rights, ‘asserted’ by the complainant, belong only to natural persons.”*<sup>33</sup>

In 2014, however, the Constitutional Court reconsidered its conclusions when it concluded<sup>34</sup> that environmental associations could be actively legitimated to file an action for the annulment of a measure of a general nature, *in concreto* a zoning plan, because it would be *“already absurd at first sight if a person meeting the defined conditions, for example, the owner of land directly adjacent to the regulated area, would not have the standing to bring an action for the annulment of the zoning plan simply because they and other persons (residents of the same municipality or neighbouring municipalities) have joined together and are seeking the annulment of the zoning plan or part of it on behalf of the association.”* However, the environmental association must first claim interference with its subjective rights and demonstrate a local relationship to the area regulated by the zoning plan or a focus on an activity with local justification. The administrative courts later concluded that the fulfilment of these conditions must also be assessed in proceedings against a decision of the administrative authority<sup>35</sup> and proceedings against unlawful interference<sup>36</sup>.

According to the conclusions of the Constitutional Court, an interference with the rights of associations other than environmental associations is also conceivable. However, these associations must be at least marginally focused on environmental protection<sup>37</sup>, or the alleged interference must have consequences for the achievement of the objectives pursued by the association in question, and *“in addition to associations for the protection of nature and the countryside, one can imagine, for example, gardening associations, associations organising recreational use of a particular locality, etc.”*<sup>38</sup>

Municipalities are also actively legitimated to protect the right to a favourable environment. The Supreme Administrative Court<sup>39</sup> has held that a city (in this particular case Ostrava) is a public person, which, according to the Constitution, is already a territorial community of citizens and is directed by its nature called upon to represent and protect the rights and interests of its citizens, who *“through their council and the general binding ordinance adopted by it, implement and enforce their idea of the form and quality of the living space that immediately surrounds them and has a direct impact on their physical and mental health and*

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<sup>33</sup> Judgment of the Constitutional Court of 10 July 2008, No. III. ÚS 3118/07.

<sup>34</sup> Judgment of the Constitutional Court of 30 May 2014, No. I. ÚS 59/14 (N 111/73 SbNU 757).

<sup>35</sup> Judgment of the Supreme Administrative Court of 25 June 2015, No. 1 As 13/2015-295 and judgment of the Supreme Administrative Court of 15 July 2015, No. 2 As 30/2015-38.

<sup>36</sup> Judgment of the Regional Court in Prague of 9 March 2017, No. 45 A 31/2016-19.

<sup>37</sup> Judgment of the Supreme Administrative Court of 8 February 2018, No. 10 As 145/2017-62.

<sup>38</sup> Judgment of the Supreme Administrative Court of 26 April 2017, No. 3 As 126/2016-38.

<sup>39</sup> Judgment of the Supreme Administrative Court of 26 June 2013, No. 6 Aps 1/2013-51.



*the well-being of their living environment.*" The courts<sup>40</sup> have also concluded that a municipality's authority is not limited to its territory; it may also be affected by plans implemented in the territory of a neighbouring municipality. Thus, cities protect the rights and interests of their citizens, particularly in the exercise of the right to self-government, which, according to the Constitutional Court<sup>41</sup>, is also a manifestation of environmental protection.<sup>42</sup>

It follows from the above that the conditions for access to the right to a favourable environment (and access to judicial protection) for affected individuals, environmental associations and municipalities are now gradually being unified, where it is the "affectedness" - not the type of subject - that will be the decisive criterion as to whether or not the right to a favourable environment has interfered within each case and whether the subject can claim this right. According to the Supreme Administrative Court, *"in environmental matters, the standing of the public concerned is based on the unlawful interference with the subjective public right to a favourable environment under Article 35(1) of the Charter. [...] Municipalities or individuals whose legal sphere is adversely affected by the contested act of an administrative authority, as so-called persons of the public concerned, should not have a different (inferior) position than associations concerned with the protection of the environment, which are also granted standing under national law."*<sup>43</sup>

### 3.2.1. Conditions for the rights of natural persons

Even in the case of the right to a favourable environment for natural persons, the case law has evolved considerably. At first, it expected individuals to prove an intense interference with property rights (ignoring, for example, the rights of tenants<sup>44</sup>), while, in addition, the courts required a relatively close relationship between the natural person and the potential environmental damage already when assessing the conditions for active standing to bring an action. However, the above-mentioned recent case law shows a specific shift in judicial practice, as now at least conceivable, even indirect, interference with the plaintiff's rights is sufficient to satisfy the conditions for active standing.<sup>45</sup> In addition, account must be taken of the case law, which recognises that the individuals concerned may also defend the public interest through their rights.<sup>46</sup> Therefore, the courts have referred to the public or general interest not only in the environment itself but also in its protection.

Furthermore, it is understood that environmental protection proceedings are not intended to resolve individual disputes between the investor and the owners of the affected or intervening properties.<sup>47</sup> Still, environmental protection cannot simply be

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<sup>40</sup> See also Judgment of the Constitutional Court of 11 December 2007, No. Pl. ÚS 45/06 (N 218/47 SbNU 871; 20/2008 Coll.).

<sup>41</sup> Judgment of the Constitutional Court of 25 September 2018, No. Pl. 18/17 (N 156/90 SbNU 525; 261/2018 Coll.).

<sup>42</sup> Cf. Damohorský & Snopková et. al. 2015. Or Švarcová 2019.

<sup>43</sup> Judgment of the Supreme Administrative Court of 29 May 2019, No. 2 As 187/2017-264.

<sup>44</sup> Cf. Židek 2015, 394–406.

<sup>45</sup> Judgment of the Supreme Administrative Court of 29 May 2019, No. 2 As 187/2017-264.

<sup>46</sup> Judgment of the Supreme Administrative Court of 17 October 2018, No. 8 As 21/2018-66.

<sup>47</sup> Judgment of the Supreme Administrative Court of 27 June 2012, No. 3 As 1/2012-21.

described as the subject of a personal disagreement. In other words, even in the case of the individuals concerned, the interference with (the very) right to a favourable environment should be regarded as an interference with their legal sphere.

In summary, therefore, it can be stated<sup>48</sup> that sufficient interest may be determined, for example, by the fact that the person concerned lives in the area in question, has been recreating there for a long time, or is linked to it by some other firm and objectively recognisable relationship. It will also be given whenever the interference under consideration will lead to a noticeable deterioration in the quality of life, which applies to assessing the interference under the public law regime and any private law claims. The impairment of the quality of life may thus also consist of an interference with privacy, family life or other personality rights which are linked to the right to a favourable environment, or which are difficult to distinguish from each other in practice if the interference with different personality rights consists of interference with the environment. However, it is not a condition of the interference with the right to a favourable environment that affects health, which is also true of other personality rights.

### 3.2.2. Conditions for the rights of environmental associations to be affected

In the case of legal persons (in particular environmental associations), the assessment of the right to a favourable environment was established by the Constitutional Court in 2014,<sup>49</sup> according to which natural persons, through associations, promote their interests and cannot be *“denied the right to participate jointly in decisions concerning their environment simply because, because they have set up a legal person to which they have delegated their rights of direct participation in the protection of nature and the countryside”*, while the Supreme Administrative Court<sup>50</sup> further specified the conditions of concern (in particular) to environmental associations by stating the following criteria: (a) prejudice to the subjective rights of the association; (b) the local relationship of the association to the site affected by the general nature measure (c) or the focus of the association on an activity that has local relevance.

The courts infer the fulfilment of the individual conditions mainly from the statements of the association itself or the statutes<sup>51</sup>. The Supreme Administrative Court then establishes a rebuttable presumption that the association focuses on the entire area defined in its statutes, which does not necessarily correspond to its name<sup>52</sup>. The courts also infer the association's commitment and relationship to the locality from facts known to them on an official basis, i.e. that the association in question is involved in judicial and administrative proceedings in environmental protection matters<sup>53</sup>

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<sup>48</sup> Vomáčka, Tomoszková & Tomoszek 2020, 974–1031.

<sup>49</sup> Judgment of the Constitutional Court of 30 May 2014, No. I. ÚS 59/14 (N 111/73 SbNU 757).

<sup>50</sup> Judgment of the Supreme Administrative Court of 26 June 2014, No. 5 Aos 3/2012-70.

<sup>51</sup> Judgment of the Regional Court in Ostrava of 16 August 2017, No. 79 A 1/2016-82 or judgment of the Regional Court in Brno of 29 January 2018, No. 64 A 4/2017-205.

<sup>52</sup> Judgment of the Supreme Administrative Court of 28 March 2018, No. 2 As 149/2017-164.

<sup>53</sup> Judgment of the Supreme Administrative Court of 24 May 2016, No. 4 As 217/2015-197.

or submitted comments in previous proceedings.<sup>54</sup> The association was established to support a political group does not preclude it from being concerned.<sup>55</sup>

The relationship to the locality may also be due to the members' activities, for example, by participating in administrative or judicial proceedings.<sup>56</sup> The association doesn't need to be consistently involved in environmental protection. In some cases, the situation is relatively clear to assess: for example, when an association based in a neighbouring street opposes a decision on the location of a school<sup>57</sup>, an association focusing on nature and environmental protection in the same municipality and its surroundings<sup>58</sup>, or an association of residents opposes a land-use plan<sup>59</sup>. For example, associations of citizens in other municipalities may also be affected by the regulation of road traffic in one urban area since large cities are interconnected settlements.<sup>60</sup>

A broader authorisation may also be justified by the importance of the disputed project or the importance of the interests concerned. Thus, for example, an association with a national scope of activity<sup>61</sup> may be affected in its substantive sphere by a decision concerning a project if its operation "*undoubtedly extends beyond the boundaries of the region concerned.*"<sup>62</sup> On the other hand, projects with a more negligible but still supra-local impact may affect associations based in the same region (e.g., bypassing the district town of Břeclav<sup>63</sup>). Similarly, an association based outside the area concerned may defend interests in protecting a nationally or even transnationally unique site (e.g. the Slavíkovy Islands<sup>64</sup>; the Šumava National Park and NATURA 2000 Area<sup>65</sup>; the Jeseníky Protected Landscape Area and the Praděd National Nature Reserve<sup>66</sup>).

*The "interference with the right of the members of the association to a favourable environment (without deriving it from an existing property right in the regulated area) is sufficient to confer prejudice if the alleged interference has consequences for achieving the objectives pursued by the association."*<sup>67</sup>

Therefore, the environmental association's involvement will always need to be assessed on a case-by-case basis, and logically in some cases, this will be a complex assessment.<sup>68</sup> However, an overemphasis on the prejudice of the association members may also conflict with the conception of the role of environmental associations that emerges from the Aarhus Convention and European Union law. However, it should be

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<sup>54</sup> Judgment of the Supreme Administrative Court of 28 February 2017, No. 4 As 220/2016-198.

<sup>55</sup> Judgment of the Municipal Court in Prague of 7 February 2018, No. 10 A 173/2016-119.

<sup>56</sup> Judgment of the Regional Court in Brno of 9 October 2018, No. 63 A 2/2018-105.

<sup>57</sup> Judgment of the Regional Court in Prague of 24 January 2018, No. 45 A 25/2016-66.

<sup>58</sup> Judgment of the Supreme Administrative Court of 31 October 2017, No. 8 As 178/2016-69.

<sup>59</sup> Judgment of the Regional Court in Ústí nad Labem of 9 January 2017, No. 40 A 5/2016-96.

<sup>60</sup> Judgment of the Supreme Administrative Court of 23 May 2018, No. 10 As 336/2017-46.

<sup>61</sup> Judgment of the Supreme Administrative Court of 6 January 2016, No. 3 As 13/2015-200.

<sup>62</sup> Judgment of the Regional Court in Ostrava - Olomouc Branch of 28 February 2018, No. 65 A 95/2017-96.

<sup>63</sup> Judgment of the Supreme Administrative Court of 28 March 2018, No. 2 As 149/2017-164.

<sup>64</sup> Judgment of the Supreme Administrative Court of 30 September 2015, No. 6 As 73/2015-40 (No. 3343/2016 Coll.).

<sup>65</sup> Judgment of the Supreme Administrative Court of 27 July 2017, No. 1 As 15/2016-85.

<sup>66</sup> Judgment of the Supreme Administrative Court of 26 April 2017, No. 3 As 126/2016-38.

<sup>67</sup> Ibid.

<sup>68</sup> In more details cf. also Vomáčka & Židek 2017, 36–54.

noted in conclusion that, in addition to the 'European concept', which is more supportive of the professionalisation of environmental associations, the Czech courts also take into account the interests of small associations established *on an ad hoc basis* and the conditions of prejudice will be assessed based on the case law mentioned above.

#### 4. The right to timely and complete information on the State of the environment and natural resources

Article 35(2) of the Charter provides that *“Everyone has the right to timely and complete information on the State of the environment and natural resources.”* The Constitutional Court points out that *“this right, as well as the right to a favourable environment (Article 35(1)), may, however, because of the wording of the provisions of Article 41(1), be invoked only within the limits of the laws implementing the provisions of Article 35.”*<sup>69</sup> This law is the Act No. 123/1998 Coll. on the right to information on the environment, as amended, and in addition to it, several unique component and other laws, mainly in the field of regulation of the management of specific sources of endangerment. The implementation of Article 35(2) of the Charter is based on the fact that the provision of information on the environment is not so much to control the management of public funds and to satisfy the interest of individuals in the running of public affairs, but rather to portray the State of the environment which may directly and substantially affect those individuals. *“Only based on detailed information about the environment is the public able to know its condition, to be aware of its changes over time, to take responsibility for its quality and to make informed decisions to protect it. By its very nature, full weather information, or the resulting environmental information, must be available on request free of charge, if only because access to its content cannot be dependent on an individual's financial income and social status.”*<sup>70</sup> Although the right to environmental information is often classified as a typical procedural right, it *“constitutes a kind of guarantee for environmental protection”*, which also has a substantive quality.

According to the Constitutional Court<sup>71</sup>, the constitutionally guaranteed right to information on the State of the environment and natural resources is exclusively held by natural persons. This is because they are the only ones who can be affected by changes in the environment. The Constitutional Court later<sup>72</sup> confirmed this conclusion, stating that *“at the level of simple law, the right of a legal person to request information on the environment is not limited or even excluded.”* However, according to some authors, it seems most appropriate for the Constitutional Court to change its legal opinion. As the current development of the Constitutional Court's case law indicates, *“this negative attitude is gradually being reconsidered.”*<sup>73</sup>

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<sup>69</sup> Judgment of the Constitutional Court of 19 January 1996, No. Pl. ÚS 26/95.

<sup>70</sup> Judgment of the Municipal Court in Prague of 27 June 2018, No. 5 A 128/2015-49.

<sup>71</sup> Judgment of the Constitutional Court of 6 January 1998, No. I. ÚS 282/97 (U 2/10 SbNU 339).

<sup>72</sup> Judgment of the Constitutional Court of 27 September 2005, No. II. ÚS 42/05.

<sup>73</sup> Výchá 2018, 91.

It should also be stressed that the regime for providing environmental information in Czechia does not allow for financial remuneration for particularly extensive searches, which means that a significant part of the information is provided free of charge. Regarding the grounds for refusing to provide information, there is a particular public interest in providing information on emissions emitted or emitted into the environment, which overcomes the interest in protecting personal or individual data, the protection of personality and commercial secrecy. In summary, it should be stated that obtaining information on the State of the environment in Czechia does not pose any significant problems in practice, and the legal regulation can be assessed as more than sufficient.

### **5. Restrictions on the exercise of other rights in favour of environmental protection**

Article 35(3) of the Charter provides that *“In the exercise of his or her rights, no one may endanger or damage the environment, natural resources, the species richness of nature or cultural monuments beyond the extent prescribed by law.”* The purpose and intent of this provision are not to prohibit across the board all potentially hazardous activities to the environment but rather to legitimise legal measures that restrict or impose conditions on the exercise of various rights on the grounds of environmental protection. Without such restrictions, it would be left entirely to the discretion of the individual to determine how far he or she would take the environment into account in exercising his or her rights. However, according to the Constitutional Court<sup>74</sup>, such a situation leaves *“no space for possible simultaneous consideration of other constitutionally protected values, including a favourable environment.”*

Specific restrictions can be identified in many Acts. They may take the form of an express prohibition or an obligation, the fulfilment of which results in a restriction of one of the rights of the obliged person. The consequence of a breach of the prohibition or failure to comply with the obligation is usually creating a liability relationship and the possibility of being sanctioned for the infringement. However, it should be noted that the legislation does not always associate the possibility of a sanction with a breach of a specified obligation in the field of environmental protection. The restrictive measure may take the form of a duty to act or an obligation to refrain from a particular action. It may arise directly from the law, but it may also stem from various protective or corrective measures adopted by public authorities, from partial conditions for the enforcement of decisions, and from control and sanction measures to fulfil the right to a favourable environment.<sup>75</sup> However, the restrictions must always be proportionate, respecting a fair balance between the imperatives of the general interest and the protection of the individual's fundamental rights.

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<sup>74</sup> Judgment of the Constitutional Court of 25 April 2017, No. III. ÚS 3997/16.

<sup>75</sup> Judgment of the Constitutional Court of 22 September 2003, No. IV. ÚS 707/02.

In assessing the proportionality of a measure, it always depends on the circumstances of the particular case, its subject matter and the area of social life affected by the measure adopted by the public authority and concerning the subject's rights.<sup>76</sup>

*In concreto*, for example, the owner of a cultural monument is obliged to take care of its preservation at his own expense, maintain it in good condition, and protect it from threat, damage, deterioration, or theft. According to the Constitutional Court,<sup>77</sup> this general obligation is a manifestation of Article 35(3) of the Charter, balanced by the various compensations provided by the State to owners of monuments for their preservation and restoration. The Constitutional Court was also successful in regulating the possibility of taking individual measures to protect the environment<sup>78</sup> or inspecting solid fuel boilers in households. The Constitutional Court<sup>79</sup> also concluded that the right to a favourable environment justified the possibility of interfering with the inviolability of the home. For example, the Constitutional Court has also supported restrictions on logging in protected areas, which “pursues a legitimate objective, namely the protection of forests in national nature reserves as specially protected areas, which, because of their biological uniqueness and diversity, are worthy of strict protection by the state power.”<sup>80</sup> Similarly, it found constitutionally consistent the restriction of the right of ownership in favour of the protection of game in the exercise of hunting because “the State has a direct obligation to ensure the legal prerequisites for the possibility of protecting game as a natural wealth”<sup>81</sup> or the restriction of the owner as a result of the declaration of a thing as a cultural monument, since “the protection of cultural monuments is associated in all cultural states with a certain restriction on the free disposition of one's property.”<sup>82</sup> From the point of view of balancing constitutionally guaranteed rights and protected interests, the general conditions for felling trees, which “reflect the need for proportionate protection of both the right to life and health of the people and the right to a favourable environment; one is not a priori mutually exclusive with the other in the present case”<sup>83</sup>, or the obligation of owners of waterworks to allow access to their land to other persons for a specified purpose, since the operation and maintenance of waterworks is “an integral component of environmental protection.”<sup>84</sup>

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<sup>76</sup> Judgment of the Constitutional Court of 26 April 2012, No. IV. ÚS 2005/09 (N 91/65 SbNU 221).

<sup>77</sup> Judgment of the Constitutional Court of 9 October 2018, No. III. ÚS 3147/18.

<sup>78</sup> Judgment of the Constitutional Court of 8 July 2010, No. Pl. ÚS 8/08 (N 137/58 SbNU 115; 256/2010 Coll.).

<sup>79</sup> Judgment of the Constitutional Court of 18 July 2017, No. Pl. ÚS 2/17 (N 125/86 SbNU 131; 313/2017 Coll.).

<sup>80</sup> Judgment of the Constitutional Court of 26 April 2012, No. IV. ÚS 2005/09 (N 91/65 SbNU 221).

<sup>81</sup> Judgment of the Constitutional Court of 13 December 2006, No. Pl. ÚS 34/03 (N 226/43 SbNU 541; 49/2007 Coll.) or judgment of the Constitutional Court of 6 March 2007, No. Pl. ÚS 3/06 (N 41/44 SbNU 517; 149/2007 Coll.).

<sup>82</sup> Judgment of the Constitutional Court of 23 June 1994, No. I. ÚS 35/94 (N 36/1 SbNU 259) or judgment of the Constitutional Court of 4 October 2016, No. III. ÚS 3244/15.

<sup>83</sup> Judgment of the Constitutional Court of 25 April 2017, No. III. ÚS 3997/16.

<sup>84</sup> Judgment of the Constitutional Court of 21 November 2007, No. IV. ÚS 652/06 (N 202/47 SbNU 613).

The reasonableness of legal obligations and various legislative or individual restrictions must then be assessed on a case-by-case basis.

## 6. Conclusion

This article aimed to define the legal means of environmental protection at the constitutional level based on an analysis of the constitutional order of Czechia and court case law. To this end, the constitutional background and context of environmental protection were first defined. Then the individual institutes of environmental protection in the Czech constitutional order were analysed in turn, namely the right to a favourable environment, the right to timely and complete information on the State of the environment and natural resources and the limitation of the exercise of other rights in favour of environmental protection. I have already outlined my partial conclusions and legal opinions on the legislation and the courts' decision-making practice in the individual chapters, so I refer to them in detail. However, the unifying conclusion, in my opinion, is that with the ever-advancing climate change<sup>85</sup> and the resulting social changes, environmental protection and its legal anchoring in the constitutional order of not only Czechia but also other European countries will be an increasingly topical issue. It is up to the legislator, political representation and legal and judicial practice to deal with it in the future.

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<sup>85</sup> Cf. e.g. Vomáčka & Jančářová 2021, 472–488.

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